

State of California
AIR RESOURCES BOARD

Volkswagen Zero Emission Vehicles Investment Plan

Resolution 17-23

July 27, 2017

Agenda Item No.: 17-8-3

WHEREAS, recognizing that the transportation sector is the largest contributor to greenhouse gas and criteria pollutant emissions in California, the Air Resources Board (ARB or Board) has developed a comprehensive strategy for reducing those transportation sector emissions, including initiatives supporting the expanded use of zero-emission vehicles (ZEVs);

WHEREAS, Executive Order B-16-12 sets goals that, by 2020, ZEVs be accessible to mainstream consumers and the private sector's role in the supply chain for ZEV component development and manufacturing will be expanding, and that, by 2025, over 1.5 million ZEVs be on California roads, Californians have easy access to ZEV infrastructure, and the ZEV industry be a strong and sustainable part of California's economy, and California's needs to meet these goals are still tremendous;

WHEREAS, the Governor's 2016 ZEV Action Plan identifies ZEV Infrastructure Investment, ZEV Awareness programs, and ZEV Access programs as being among the highest priorities for fostering ZEV adoption;

WHEREAS, on October 25, 2016, the United States District Court for the Northern District of California approved the 2.0-liter Partial Consent Decree between the United States Department of Justice, the United States Environmental Protection Agency, and the State of California, by and through ARB and the Attorney General of the State of California, and Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, Volkswagen (VW)) for violations of federal and state laws and regulations by VW in regards to its 2.0-liter diesel engine vehicles;

WHEREAS, Appendix C of the 2.0-liter Partial Consent Decree calls for Volkswagen to spend \$800 million over ten years in California on eligible ZEV Investments through the implementation of four 30-month (Cycle) California ZEV Investment Plans approved by ARB, consistent with the goals and terms of the 2.0-liter Partial Consent Decree, to be known as the ZEV Investment Commitment;

WHEREAS, Appendix D of the 2.0 liter Partial Consent Decree requires VW to pay money into a trust to mitigate the excess oxides of nitrogen (NOx) emissions caused by VW's use of defeat devices in its 2.0-liter vehicles, about \$381 million of which will go to California to be spent by California on replacing older, dirtier heavy-duty vehicles and equipment with cleaner vehicles and equipment;

WHEREAS, on May 17, 2017, the United States District Court for the Northern District of California approved the 3.0-liter Partial Consent Decree between the United States Department of Justice, the United States Environmental Protection Agency, and the State of California, by and through ARB and the Attorney General of the State of California, and Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, VW), for violations of federal and state laws and regulations by VW in regards to its 3.0-liter diesel engine vehicles;

WHEREAS, Appendix D of the 3.0 liter Partial Consent Decree requires VW to pay money into a trust to mitigate the excess NOx emissions caused by VW's use of defeat devices in its 3.0-liter vehicles, about \$41 million of which will go to California to be spent by California on replacing older, dirtier heavy-duty vehicles and equipment with cleaner vehicles and equipment;

WHEREAS, on May 17, 2017, the United States District Court for the Northern District of California approved the California-only Second Partial Consent Decree between the State of California, by and through ARB and the Attorney General of the State of California, and VW, for violations of federal and state laws and regulations by VW in regards to its 3.0-liter diesel engine vehicles;

WHEREAS, the California-only Second Partial Consent Decree requires VW to (1) complete two Green City initiatives in California as part of its ZEV Investment Commitment under the 2.0 liter Partial Consent Decree, with one city to be implemented in a city of approximately 500,000 that predominantly consists of Disadvantaged Communities; (2) offer and sell two additional Battery Electric Vehicle (BEV) models in 2019, offer and sell a third additional BEV model in 2020, offer and sell an average of 5,000 of these three additional BEV models in California each year from 2019 until 2025, and sell a total of 35,000 of these three additional BEV models in California from 2019-2025; and (3) to pay \$25 million to California for ZEV-related investments in disadvantaged communities;

WHEREAS, Appendix C of the 2.0 liter Partial Consent Decree requires VW, or a subsidiary thereof, to submit a separate ZEV Investment Plan for each of the four 30-month Cycles to ARB for approval, in whole or in part, consistent with the terms and goals of the 2.0-liter Partial Consent Decree, including Appendix C, paragraphs 1.9, 1.10, 3.1, 3.3.2, 3.3.2.1-3.3.2.11, 3.3.3, and 3.6;

WHEREAS, in February 2017, ARB provided Electrify America, the VW subsidiary charged with implementing the ZEV Investment Commitment under Appendix C of

the 2.0-liter Partial Consent Decree, with information regarding ZEV Investment opportunities consistent with the objectives and criteria set forth in Appendix C, in the form of a Guidance Document. This Guidance Document incorporated stakeholder feedback consistent with the 2.0-liter Partial Consent Decree obtained through a public process;

WHEREAS, on March 8, 2017, Electrify America submitted its first draft 30-month ZEV Investment Plan to ARB for review and approval;

WHEREAS, ARB staff reviewed Electrify America's March 8th submission for compliance with the terms and goals of the 2.0-liter Partial Consent Decree and posted it for a four-week public comment period regarding its compliance with the terms and goals of the 2.0-liter Partial Consent Decree. ARB staff also provided an overview of the Plan and received comments at a public Board meeting on March 24, 2017.

WHEREAS, based on the Board, Legislative, and public comments received regarding the Plan's compliance with the terms and goals of the 2.0-liter Partial Consent Decree, and a comparison between the 2.0-liter Partial Consent Decree's terms and goals and the draft Plan submitted, on May 24, 2017, ARB directed Electrify America to provide additional information in the form of a supplement to the investment plan;

WHEREAS, on June 27, 2017, Senate Bill 92 (Committee on Budget and Fiscal Review, Chapter 26, Statutes of 2017) was chaptered, which provided direction on Appendices C and D of the 2.0-liter Partial Consent Decree.

WHEREAS, on June 29, 2017, Electrify America submitted a draft Supplement to its March 8th draft Plan, in response to ARB's May 24, 2017, direction. ARB posted this draft Supplement for a 2-week comment period and ARB staff reviewed the draft Supplement for compliance with the terms and goals of the 2.0-liter Partial Consent Decree;

WHEREAS, ARB staff has reviewed all comments received on the draft Plan and draft Supplement, and has provided a summary of the comments on the draft Plan to the Board and the public at the March Board hearing and a summary of the comments on the draft Supplement at this July Board hearing, as well as in its public staff analysis;

WHEREAS, Health and Safety Code section 39614, subdivision (b)(1), requires ARB to strive to ensure that investments made pursuant to Appendix C of the 2.0-liter Partial Consent Decree are aligned with the State's priorities before approval of the Plan, and Electrify America's draft Plan and Supplement identifies how its proposed projects are anticipated to align with State priorities;

WHEREAS, Health and Safety Code section 39614, subdivision (b)(1), requires ARB to strive to ensure that investments made pursuant to Appendix C of the 2.0-liter

Partial Consent Decree provide for public transparency before approval of the Plan, and Electrify America's draft Plan and Supplement identifies how it will provide for public transparency during the first 30-month Cycle;

WHEREAS, Health and Safety Code section 39614, subdivision (c)(1)(A), requires the Board, in approving each Investment Plan, to strive to ensure, to the maximum extent allowable under the 2.0-liter Partial Consent Decree, that at least 35 percent of the funds that will be invested under each Investment Plan benefit low-income or disadvantaged communities disproportionately affected by air pollution, and Electrify America's draft Supplement estimates that at least 35 percent of the funds it proposes to invest in the first 30-month cycle will be in disadvantaged or low-income communities;

WHEREAS, Health and Safety Code section 39614, subdivision (c)(1)(B), requires the Board, in approving each Investment Plan, to strive to ensure, to the maximum extent allowable under the 2.0-liter Partial Consent Decree, the periodic submission of progress reports to the Board on the implementation of the investment plan from VW or its subsidiary, and Electrify America's draft Supplement commits to providing ARB periodic updates, that is, a bi-annual report, including one that can be made public, and an annual report, consistent with the requirements of the 2.0-liter Partial Consent Decree;

WHEREAS, Health and Safety Code section 39614, subdivision (c)(1)(B)(3), requires ARB, in approving each Investment Plan, to post each proposed Investment Plan for public comment, to the maximum extent allowable under the 2.0-liter Partial Consent Decree, and ARB has posted both the first draft ZEV Investment Plan and the draft Supplement for public comment;

WHEREAS, ARB staff has reviewed the first draft ZEV Investment Plan, including the draft Supplement, with consideration, to the maximum extent allowable under the 2.0-liter Partial Consent Decree, of ARB's obligations under Health and Safety Code section 39614, subdivisions (b)(1) and (c), and the Board's direction to staff in Resolution 17-11, for compliance with the terms and goals of the 2.0-liter Partial Consent Decree, including Appendix C, paragraphs 1.9, 1.10, 3.1, 3.3.2, 3.3.2.1-3.3.2.11, 3.3.3, and 3.6, and has determined that the draft Plan and draft Supplement together comply with the terms and goals of the 2.0-liter Partial Consent Decree, including Appendix C, paragraphs 1.9, 1.10, 3.1, 3.3.2, 3.3.2.1-3.3.2.11, 3.3.3, and 3.6;

WHEREAS, ARB staff recommends that the Board approve the first draft ZEV Investment Plan, including the draft Supplement, as the First ZEV Investment Plan;

WHEREAS, the Board has reviewed the Staff Analysis, particularly Table 2, and the Board Presentation; and

WHEREAS, the Board finds that:

The Board has reviewed the Staff Analysis, particularly Table 2, and the Board Presentation;

The Board has complied with Health and Safety Code section 39614, subdivisions (b)(1) and (c), to the maximum extent allowable under the 2.0-liter Partial Consent Decree;

A public hearing has been held to approve the first draft ZEV Investment Plan, including the draft Supplement, according to the provisions of Health and Safety Code section 39614, subdivision (c)(B)(2);

ARB staff has complied with the Board's direction in Resolution Number 17-11; and

The first draft ZEV Investment Plan and draft Supplement together comply with the terms and goals of the 2.0-liter Partial Consent Decree, including Appendix C, paragraphs 1.9, 1.10, 3.1, 3.3.2, 3.3.2.1-3.3.2.11, 3.3.3, and 3.6, as laid out in the Staff Analysis, particularly Table 2, and the Board presentation.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby approves the first draft ZEV Investment Plan, as submitted on March 8, 2017, and draft Supplement, as submitted on June 29, 2017, as follows:

The ZEV Investment Plan and the Plan Supplement together form one complete body of terms for creditable spending in the first 30-month Cycle in the amount of \$200 million, and includes only the following types of projects and activities, with spending in the following estimated amounts, unless ARB agrees otherwise in writing:

- Spending on investments in the following four spending categories in the estimated sums laid out, unless ARB agrees otherwise in writing:
 - ZEV Infrastructure (\$120 million will fund about 2,000-3,000 chargers at approximately 400 charging stations):
 - \$75 million for a high-speed highway network
 - \$45 million for community charging in Fresno, Los Angeles, Sacramento, San Diego, San Francisco, and San Jose;
 - ZEV Access, including Sacramento Green City (\$44 million)
 - Green City initiatives include ZEV car sharing, ZEV delivery fleet, and ZEV taxi fleet; and
 - ZEV Awareness (\$20 million):
 - \$20 million will be directed to public education initiatives designed to use various media to highlight ZEV benefits and overcome barriers to ZEV adoption. \$2-3 million of that \$20 million will be specifically targeted toward new partnerships with entities that have particular access to, and credibility within, California's disadvantaged and low-income communities.
 - Awareness projects will be in other languages where appropriate;

- Allowable overhead (\$18 million);
- Strive to ensure, to the maximum extent allowable under the Consent Decree, that at least 35 percent of funds for the investment plan benefit low-income or disadvantaged communities disproportionately affected by air pollution.
- Awareness program materials will use a language other than English when appropriate;
- Awareness program materials will be brand-neutral;
- For community EV charging investment, ZEV Infrastructure funding will be spent in the metropolitan areas surrounding Fresno, Los Angeles, Sacramento, San Diego, San Francisco, and San Jose, in the sums laid out in the Plan and Supplement, unless ARB agrees otherwise in writing, including the following:
 - A minimum of \$1 million will be spent in each metropolitan area for community EV Charger investments, and
 - The spending amount will be similar to the gap analysis results in each metropolitan area;
- Electrify America will provide written quarterly reports to ARB staff that can be made available to the public, Electrify America will provide annual reports to ARB, and ARB and Electrify America will discuss implementation status at least monthly;
- Included in these reports will be how much of that investment as a percentage of the total investment to date has been in disadvantaged and low-income communities and the described census tracts in which they occurred;
- Electrify America and ARB will prepare and update a map of charging station investments installed by Electrify America, which includes census tract specificity as defined by ARB, and also includes the location of other existing public charging stations, as compiled on the Department of Energy's Alternative Fueling Station Locator maintained by the National Renewable Energy Lab.
- Staff, after consulting with stakeholders, including environmental justice groups, labor organizations, auto manufacturers and other EV charging companies, will report to the Board at least twice a year on progress towards achieving the objectives of the Consent Decree;
- Awareness program materials will include acknowledgement of hydrogen fuel cell electric vehicles when appropriate;

- All implementation and crediting of expenditures will be done consistent with the terms and goals of the 2.0-liter Partial Consent Decree; and
- Any expenditures made on ZEV Investment activities which are not approved by ARB are not credited toward Volkswagen's \$800 million obligation.

NOW, THEREFORE, BE IT RESOLVED, that the Board further expects VW, Electrify America, and any other entities implementing the ZEV Investment Commitment in the future to, as required under the 2.0- and 3.0-liter consent decrees, as applicable:

- Include additional detail and specifics in future Plan submittals, including on business plans, project descriptions, project partners, project timelines, and proposed project expenditures;
- Continue to include underserved/disadvantaged communities, with underserved communities defined not as those merely without access to ZEV technology, but those who are low-income and in disadvantaged communities as defined by CalEnviroScreen; and
- Invest in a second Green City located in primarily disadvantaged communities.

NOW, THEREFORE, BE IT RESOLVED, that for subsequent investment plans, the Board further directs VW, Electrify America, and any other entities implementing the ZEV Investment Commitment, to the extent possible under the consent decree, to:

- Strive to ensure that they spend at least 35 percent of its ZEV Investment Commitment to benefit disadvantaged or /low-income communities, in alignment with Electrify America's goals in its first Plan, and that they draw from the experience from the first investment plan so that future Plans further increase the benefits to disadvantaged or low-income communities;
- Include an evaluation of heavy-duty hydrogen opportunities in future Plan submittals to ARB;
- Include job creation, and job training estimations (especially in terms of minority-, woman-, and veteran-owned businesses) as part of the criteria for awarding contracts under future cycles, and explain the process for doing so in future Plan submittals to ARB;
- Implement projects in a way that ensures fair competition in the zero-emission vehicle market, to ensure the market's long-term robustness, when planning and implementing projects, in this and future Cycles;

- Implement its projects over the ten-year period in a transparent manner that allows for public input; and
- Execute the programs in a manner which ensures that all the investments are self-sustaining by the end of the ten-year Investment Commitment period, ensuring existence of the programs beyond the 10-year Investment Commitment period.

NOW, THEREFORE, BE IT RESOLVED, that the Board further directs ARB staff to closely monitor and report on Electrify America's implementation progress, including by doing the following:

- ARB staff will participate in a planning partnership with Electrify America in coordination with relevant state agencies (e.g., CEC, CPUC) throughout the implementation of the Plan to assist with identifying project site opportunities consistent with ARB's guiding principles, with participation by ARB's Assistant Executive Officer for Environmental Justice;
- ARB staff will meet with Electrify America to discuss implementation progress at least monthly and report back to the Board in the event there are any issues with Electrify America fully and effectively implementing the investment plan; and
- ARB staff will prepare and update a report on its web site of how many of the charging stations installed by Electrify America are in census tracts with existing charging stations, including maps of where Electrify America's charging stations have been installed and identify where existing public stations are located.

I hereby certify that the above is a true and correct copy of Resolution 17-23 as adopted by the Air Resources Board.

Rana McReynolds, Clerk of the Board