BEFORE THE PUBLIC UTILITIES COMMISSION 
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement 
Senate Bill 1014 – the California Clean Miles 
Standard Program. 

Rulemaking R21-11-014 
(Filed November 18, 2021)

JOINT COMMENTS OF SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 
721 AND SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021 
CONCERNING ORDER INSTITUTING RULEMAKING TO IMPLEMENT SENATE 
BILL 1014 – THE CALIFORNIA CLEAN MILES STANDARD PROGRAM 

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I. INTRODUCTION

Service Employees International Union, Local 721 (“SEIU Local 721”) and Service Employees International Union, Local 1021 (“SEIU Local 1021”) (collectively “SEIU Locals”, “we” or “our”) respectfully submit these comments in response to the California Public Utilities Commission’s (“CPUC” or “Commission”) November 18, 2021, Order Instituting Rulemaking to Implement Senate Bill 1014 – The California Clean Miles Standard Program (“OIR”).

Pursuant to Rule 11.6 in the Commission’s Rules of Practice & Procedure, Administrative Law Judge Stephanie Wang issued an email ruling dated December 16, 2021, granting an extension of time up to and including January 7, 2022, to file and serve opening comments.

SEIU Local 721 is a labor union that represents approximately 95,000 private- and public-sector workers in Southern California, including in the transportation industry, many of whom also provide and/or utilize Transportation Network Company (“TNC”) transportation services, and is also an associate of the Mobile Workers Alliance, an advocacy group representing approximately 20,000 TNC and/or Delivery Network Company (“DNC”) drivers.
SEIU Local 1021 is a labor union that represents approximately 64,000 private- and public-sector workers in Northern California, including in the transportation industry, many of whom also provide and/or utilize TNC transportation services, and is also a partner of We Drive Progress, a worker advocacy organization composed of approximately 10,000 Northern California TNC and/or DNC drivers.

We applaud the efforts made by legislators, the California Air Resources Board (“CARB”) and the CPUC to ensure that TNCs are partners in achieving California’s climate goals. Without intervention from the CPUC to enact measures that will prevent otherwise, however, TNCs will surely seek to shift the financial burden of transitioning their fleets to electric vehicles (“EVs”) onto drivers and the taxpaying public. Several of the largest TNCs that will be subject to the Clean Miles Standard (“CMS”) regulations have already succeeded in shirking their financial responsibilities in other areas. For example, in 2020, Uber, Lyft, and other gig corporations spent a record-breaking $225 million to pass Proposition 22 (“Prop 22”) in California. Although the constitutionality of Prop 22 is still being litigated, the measure presently denies TNC drivers the same rights to a minimum wage, overtime pay, paid sick days, unemployment benefits, and affordable healthcare coverage that other employees receive.

Therefore, in order to ensure that the CMS regulations appropriately hold TNCs accountable for achieving greenhouse gas (“GHG”) and electric vehicle mile traveled (“eVMT”) targets, SEIU Locals make four over-arching recommendations in this OIR:

1. Require TNCs to deposit a per-mile fee, in real-time as trips are completed, into a fund controlled and administered by the CPUC. Collected revenue should be used solely to provide financial assistance to TNC drivers for the purchase of electric vehicles, charging expenses, and other infrastructure-associated investments. The Commission should explicitly prohibit TNCs from deriving any required per-trip or per-mile fees from TNC drivers’ wages. Based on economic analyses performed by the CARB during their
rulemaking process, the Union of Concerned Scientists (“UCS”) estimates that a $0.04/mile or roughly $0.43/trip fee would be adequate to cover these costs.¹

2. Institute robust data reporting requirements that allow the CPUC to determine regulatory compliance and assess the economic impacts on low- to moderate-income drivers. Meaningful financial penalties should be levied against TNCs in violation of the policy and deposited in the aforementioned driver assistance fund. Aggregated data analyses should be made available to the public for review.

3. Create formal, quarterly meetings between the CARB, the CPUC, and stakeholders that are directly impacted by CMS implementation. These meetings should empower stakeholders (like TNC drivers) to provide timely feedback, identify programmatic deficiencies, and play a substantive role in crafting solutions.

4. If the current employment status of TNC drivers is materially altered—either by legislation, regulation, judicial order, or some other similar development—both agencies (CARB and CPUC) must reopen their formal rulemaking processes in order to make relevant adjustments to the CMS regulations.

II. COMMENTS

Below we provide responses to select issues raised in the OIR and reserve the right to respond to others during the OIR process:

1. Preliminary Scoping and Schedule.

   a. Should the preliminary scope of issues be revised to include additional issues? Should certain issues be prioritized for an initial decision or addressed later in the proceeding?

   As stated above, TNCs subject to the CMS regulations spent a record-breaking amount of money to pass Prop 22 in California and will surely leverage

their tremendous financial resources to shift the financial burden of transitioning their fleets to EVs onto drivers and the taxpaying public.

Therefore, SEIU Locals urge the Commission to prioritize issues in the proceeding that will have the greatest impact on low- and moderate-income individuals. This recommendation is consistent with the Commission’s statutory obligation to “[e]nsure minimal negative impact on low-income and moderate-income drivers” and “[s]upport the goals of clean mobility for low- and moderate-income individuals.” (Pub. Util. Code, § 5450, subds. (d)(1) and (3).) We also recommend that the CPUC revise the preliminary scope of issues to include an assessment of existing or new mechanisms required to ensure an equitable transition of the TNC fleet to zero-emission vehicles (“ZEVs”). Further, we encourage the Commission to collaborate with the CARB to reopen and make relevant adjustments to the CMS program should the employment status of TNC drivers change, whether by federal- or state-level policy changes, court order, or other means.

2. **GHG Emissions Reduction Plans.**

   a. What specific content and level of detail should the Commission include in the standard template for GHG emissions reduction plans?

      The GHG emissions reduction plans should provide detailed information about how companies plan to support drivers in transitioning to ZEVs, including financial support and other assistance (i.e., general education about CMS, charging access, etc.).

   b. What review and reporting framework should the Commission adopt for GHG emissions reduction plans? Should a framework from another Commission proceeding, such as the Renewables Portfolio Standard or Integrated Resources Plans be adopted?

      We reserve the right to comment on this topic at a later stage.
b. On what basis or by what metric(s) or criteria should the Commission evaluate the TNCs’ GHG emissions reduction plans for compliance?

We reserve the right to comment on this topic at a later stage.

c. What model solutions or resources should TNCs include or consider in their GHG emissions reduction plans?

We reserve the right to comment on this topic at a later stage.

3. Low-Income and Moderate-Income Drivers and Individuals.

a. How should the Commission define and identify low- and moderate-income (LMI) drivers and individuals for the purposes of CMS implementation and monitoring of impact?

App-based workers often earn less than the minimum wage. In a recent report on conditions faced by app-based workers, the National Employment Law Project found government and company-supplied data, as well as worker surveys, reveal that app-based workers are paid sub-minimum wages and many app-based workers’ real wages have declined over time. Mobile Worker Alliance and We Drive Progress members’ reports of decreasing pay rates affirm the results of these studies.

Low wages are often caused by the amount of unpaid time required to perform job duties and expenses incurred while performing those duties. Uber and other ride-sharing companies only compensate drivers for time spent transporting passengers. The time required to obtain work or fulfill work requirements (such

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3 App-Based Workers Speak: Studies Reveal Anxiety, Frustration, and a Desire for Good Jobs at 5, supra note 2.

4 Interview with Hector (We Drive Progress member), https://www.wedriveprogress.org/our-stories/hector-tried-to-tell-uber-lyft-how-they-hurt-drivers-he-says-drivers-need-a-union (“Instead of working 8 hours, now we have to work 12 hours to get the same salary we had a few years ago.”).

as time spent logged onto the app and waiting for an assignment, obtaining gas, charging an EV, and returning from deliveries or drop-offs) is unpaid time.\(^6\)

Expenses incurred by app-based workers in performing their work are substantial and, in some instances, cut earnings by half.\(^7\) Regular expenses include insurance, maintenance and repair costs, depreciation, fuel, and additional payroll taxes that must be paid due to obligations associated with independent contractor status. Neide Tameirão, a TNC driver and member of Mobile Workers Alliance, has been driving for Uber and Lyft for two years and depends on her earnings to support herself and her son. Despite working full-time, she reports that it is difficult to make enough money to pay for basic necessities like rent, food, and the expenses related to maintaining her vehicle. She cannot afford health insurance.\(^8\)

Prior to the pandemic, in 2019, after conducting an informal survey of their members, Mobile Workers Alliance found that only one-third of respondents were not reliant on public assistance programs, such as CalFresh, reduced school lunch programs, Section 8, and My Health Los Angeles. Therefore, SEIU Locals recommend the Commission adopt a definition of LMI that is consistent with those utilized to determine eligibility for similar social assistance programs, particularly those that take regional or area median income into consideration.

For ongoing monitoring purposes, SEIU Locals suggest the Commission adapt certain data sharing provisions within a recent settlement agreement executed between The Consumer Protection and Enforcement Division, Uber Technologies, Inc., and The Rape, Abuse & Incest National Network, Inc. and incorporate them into CMS regulations. Pursuant to Decision 21-12-003, Uber

\(^6\) App-Based Workers Speak: Studies Reveal Anxiety, Frustration, and a Desire for Good Jobs at 5-6, supra note 2.

\(^7\) Id. at 6.

\(^8\) Id. at 9.
will provide the Commission with the names and contact information for witnesses of incidents of sexual assault or sexual misconduct who have “opted-in” or given consent to sharing their personal information with the CPUC.\(^9\) While TNCs already share driver names and driver’s license information within their annual reports, additional data is required to determine TNC drivers’ baseline income levels, housing type, and access to charging infrastructure. Therefore, for ongoing monitoring and evaluation purposes, TNCs subject to CMS regulations should provide each driver registered with their platform in California the ability to “opt-in” to sharing their name and contact information with the CPUC.

b. **How should the Commission define “the goals of clean mobility” for LMI individuals for the purposes of CMS implementation and monitoring of impact?**

   To the extent that the CMS rulemaking establishes a baseline for monitoring the “goals of clean mobility” for LMI individuals and drivers for future regulation of the TNC industry, it is important to encompass a reduction in greenhouse gas and criteria pollutant emissions at the same time as a reduction in overall transportation cost burden (defined as the percent of income spent on transportation), and an increase in access to destinations.

c. **How should the Commission advance the goals of clean mobility for LMI individuals?**

   We reserve the right to comment on this topic at a later stage.

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\(^9\) Decision 21-12-003 Adopting the Settlement Agreement Between The Consumer Protection and Enforcement Division, Uber Technologies, Inc., and The Rape, Abuse & Incest National Network, Inc., p. 27, https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M428/K530/428530843.PDF
d. How should the Commission evaluate barriers to transitioning to zero-emission vehicles for LMI drivers? What types of data are needed to identify barriers to acquiring zero-emission vehicles, and what is the best method for the Commission to collect this data?

Please see comments above regarding the “opt-in” process that can be implemented in order to communicate directly with drivers and assess their ongoing barriers to acquiring zero-emission vehicles, as well as other impediments that may be inhibiting TNCs from meeting GHG and eVMT targets, such as a lack of access to affordable charging options.

e. How should the Commission “ensure minimal negative impact on low-income and moderate-income drivers”?

SEIU Locals recommend that the CPUC utilize existing or create new mechanisms to ensure an equitable transition of the TNC fleet to ZEVs. For example, TNCs could be required to deposit a per-mile fee, in real-time as trips are completed, into a fund controlled and administered by the CPUC. Any revenue that is collected and deposited into that fund (“Driver Assistance Fund”) should be used solely to provide financial assistance to TNC drivers for the purchase of electric vehicles, charging expenses, and other infrastructure-associated investments. The Commission should explicitly prohibit TNCs from deriving any required per-trip or per-mile fees from TNC drivers’ wages. As noted, based on economic analyses conducted by the CARB, UCS estimates that a $0.04/mile or roughly $0.43/trip fee would be adequate to cover these costs.

f. How should the Commission evaluate the financial impact of CMS on LMI individuals and drivers? What data sources, criteria, or metrics should the Commission use or create?

TNCs should be required to report on financial subsidies or incentives offered to drivers on a quarterly basis. Additionally, the most valuable source of information is TNC drivers themselves. Therefore, rather than relying on statistics or reports compiled by TNCs, please see earlier comments regarding a
suggested “opt-in” process that could allow drivers to share their personal contact information directly with the CPUC. Once collected, the CPUC or a consulting academic institution should conduct quantitative/qualitative research to evaluate the financial impacts on drivers.

g. How should the Commission evaluate whether CMS supports the goals of clean mobility for LMI individuals? What data sources, criteria, or metrics should the Commission use? What additional data should the Commission collect to measure and evaluate service quality and availability?

We reserve the right to comment on this topic at a later stage.

h. What other impacts of CMS on LMI drivers and individuals, aside from financial and access to clean mobility, should the Commission seek to evaluate?

We reserve the right to comment on this topic at a later stage.

4. Environmental and Social Justice (ESJ).

   a. How can CMS be designed to advance the goals of the Commission’s ESJ Action Plan? For example, should the GHG reduction plans include specific solutions for Tribal communities?

   We reserve the right to comment on this topic at a later stage.

   b. Should the Commission measure, evaluate or implement CMS to improve public health for ESJ communities?

   We reserve the right to comment on this topic at a later stage.

   c. How should CMS support clean mobility for Access and Functional Needs communities?

   We reserve the right to comment on this topic at a later stage.

5. Supporting Sustainable Land-Use Objectives.

   a. How can CMS support sustainable land-use objectives in Section 65080 of the Government Code?

   We reserve the right to comment on this topic at a later stage.
b. What criteria, metrics, and data should the Commission use to evaluate whether CMS supports sustainable land-use objectives in Section 65080 of the Government Code?

We reserve the right to comment on this topic at a later stage.

c. What data, if any, should the Commission collect or use to evaluate other environmental impacts of CMS on communities?

We reserve the right to comment on this topic at a later stage.

6. Data.

a. Data Collection. The Commission currently collects a significant amount of data from TNCs through Annual Reports (submitted in September each year as required in D.13-09-045 and D.16-04-041) and Quarterly Reports on its WAV services (as required in D.20-03-007 and D.21-03-005). The Commission will collect similar data from permitted companies in the Commission’s Autonomous Vehicle Phase I Deployment Program on a quarterly basis (D.20-11-046) once permits are issued. What data or information, if any, should the Commission collect in addition to the data specified in CARB’s regulation? Why is this data necessary?

SEIU Locals recommend that the Commission adopt a quarterly, rather than an annual, data collection process for CMS-related information, similar to the one in place for WAV services, especially for the first three years of the program’s implementation. We also encourage the Commission to add Total Time in Period 1 throughout the quarter to the required driver data submission. To adequately assess changes in driver compensation over time, it is important to capture not just engaged time, but also the time drivers spend waiting to receive a ride request.

b. Data Verification. How should the Commission verify that compliance data received from TNCs is consistent, complete, and accurate?

The California Constitution grants the Commission the authority to fix rates and establish rules for the transportation of passengers and property by transportation companies, prohibit discrimination, and award reparation for the exaction of unreasonable, excessive, or discriminatory charges. Cal. Const., art.
XII, § 4. Public Utilities Code section 701 further grants the Commission the authority to “do all things necessary and convenient” in exercising this jurisdiction.

In light of this broad grant of authority, the SEIU Locals respectfully encourage the Commission to develop a process for independently auditing data received from TNCs throughout the duration of the CMS program. As the interests of the TNC industry will not always align with the interests of the Commission or consumers, the Commission has a responsibility to ensure the numbers provided in CMS reports are trustworthy bases for assessing the effectiveness of industry policies.

c. Data Sharing. Should compliance data be shared with other government entities, researchers, and the public? If the Commission were to share compliance with other government entities, researchers, and the public, how should this sharing be structured?

SEIU Locals strongly recommend that the Commission make compliance data available to other government entities, researchers, and the public. There are models from places around the country, such as the City of Chicago’s Transportation Network Provider dataset,\(^\text{10}\) to ensure that public versions of data do not compromise individual identity or confidentiality, while also providing a valuable resource for government agencies, researchers and driver advocates seeking to understand impacts of the TNC industry. Compliance data should be easily accessible, machine readable, and posted on the Commission’s website.

7. CMS Enforcement.

a. How should the Commission structure a citation program and fines for noncompliance with GHG Reduction Plans?

The Commission should institute robust financial penalties that should be levied against TNCs that are noncompliant with CMS regulations. SEIU Locals recommend that the Commission adopt an escalating fine structure for repeat violations, including the suspension or revocation of a TNC permit if the TNC commits a pattern of violations that indicate their intentional disregard for the program and public safety. All fines collected from enforcement activities should be deposited in the aforementioned Driver Assistance Fund.

b. How should we incorporate lessons learned from other citation programs into the proposed CMS citation program?

We reserve the right to comment on this topic at a later stage.

8. Exemptions.

a. Should the Commission use its existing authority to regulate emissions of TNCs’ WAV services and/or Small TNCs? If so, how?

We reserve the right to comment on this topic at a later stage.

b. Does the WAV exemption impact Access and Functional Needs communities?

We reserve the right to comment on this topic at a later stage.


a. How can the Commission engage with TNC drivers and LMI community-based organizations to mitigate the above impacts? What types of outreach and engagement will be effective for LMI groups?

SEIU Locals and their affiliated driver advocacy groups are eager to work with the Commission to develop structures that facilitate ongoing, active engagement opportunities between Commission staff and TNC drivers. We
recommend that the Commission create formal, quarterly meetings between the CARB, CPUC, and stakeholders that are directly impacted by CMS implementation. These meetings should empower stakeholders (like LMI drivers) to provide timely feedback, identify programmatic deficiencies, and play a substantive role in crafting solutions. Notices for hearings and workshops should be shared with designated representatives from LMI driver organizations.

b. **Does the WAV exemption impact Access and Functional Needs communities?**

We reserve the right to comment on this topic at a later stage.

10. **Optional Credit Programs.**

a. **Should the Commission adopt the Optional Credit Programs as defined by CARB’s Proposed Regulation Order? Should the Commission adopt other credit programs other than those in CARB’s Proposed Regulation Order?**

The Commission should adopt the credit structure established by the CARB, which was subject to several rounds of workshops and feedback from all stakeholders, and not add additional credits or modify existing ones. The CARB’s approach, which limits credits to the GHG target and does not allow credits to apply to the eVMT portion of the rule, ensures that the standard achieves meaningful emission reductions.

b. **Should certain thresholds in GHG emission reductions or eVMT be met before TNCs may avail themselves of the credit programs?**

We reserve the right to comment on this topic at a later stage.

c. **For any credit programs, what criteria should the Commission use to evaluate the applications if different from the criteria identified in CARB’s Proposed Regulation Order?**

We reserve the right to comment on this topic at a later stage.
11. Coordination to advance CMS in Transportation Electrification efforts.

   a. How should this proceeding coordinate with R.18-12-00637 to develop infrastructure and rate design to support the goals of CMS?

   We reserve the right to comment on this topic at a later stage.

III. CONCLUSION

Groundbreaking policy changes like the CMS are imperative to making positive environmental progress. SEIU Locals are committed to working with partners to combat the climate crisis and urge the Commission to enact regulations that do not inadvertently hold TNC drivers and the general public financially responsible for problems created and perpetuated by TNCs’ exploitative business model. We appreciate your consideration of our comments and look forward to actively engaging in this proceeding.

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