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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 21-11-014

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

1. Procedural Background

On September 13, 2018, Governor Newsom signed Senate Bill (SB) 1014 (Skinner, 2018) to enact the California Clean Miles Standard and Incentive Program (Clean Miles Standard or Program). SB 1014 added Section 5450 to the Public Utilities (Pub. Util.) Code to require the California Air Resources Board (CARB) to adopt, and the California Public Utilities Commission (Commission) to implement, annual targets and goals to reduce greenhouse gas (GHG) emissions by transportation providers regulated by the Commission that provide prearranged transportation services for compensation using an online-enabled application or platform to connect passengers.¹

On September 14, 2021, CARB released the Proposed Modifications to the Proposed California Clean Miles Standard and Incentive Program Regulation

¹ Pub. Util. Code §§ 5450(a)-(b).

Order,² which would establish the GHG reduction and electric vehicle miles traveled targets for transportation network companies to meet beginning in 2023 to reduce emissions from their operations in California. CARB submitted the Clean Miles Standard Final Regulation Order to the Office of Administrative Law for approval on March 8, 2022.

On November 18, 2021, the Commission filed an Order Instituting Rulemaking (OIR) to implement the Clean Miles Standard.

The Commission held a prehearing conference (PHC) on February 11, 2022 to address the issues of law and fact, the need for an evidentiary hearing, and the schedule for resolving the matter. On February 23, 2022, parties filed PHC statements. After considering the PHC statements and the discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this scoping memo.

2. Issues

The issues in this proceeding will be addressed in two or more phases. Phase 1 will address issues necessary to begin implementation of the Clean Miles Standard.

The issues to be considered in Phase 1 of the proceeding are:

1. GHG Emissions Reduction Plans. How should the Commission guide the development of and review of GHG Emissions Reduction Plans?
 - a. What should the standard template for GHG Emissions Reduction Plans include?

² See CARB's Attachment A: Proposed Modifications to the Proposed Regulation Order for the Clean Miles Standard Regulation (September 14, 2021) (hereafter CARB Proposed Regulation Order) available at <https://ww2.arb.ca.gov/rulemaking/2021/cleanmilesstandard>.

- b. What review and reporting framework should the Commission adopt for GHG Emissions Reduction Plans?
- 2. Low- and Moderate-Income Drivers. How should the Commission ensure minimal negative impact on low- and moderate-income drivers?
 - c. How should the Commission define and identify low- and moderate-income drivers for Program implementation and reporting?
 - d. Should the Commission establish, or require regulated transportation service providers to establish, a fee to fund a Drivers Assistance Program? If so, how should the Drivers Assistance Program be designed and who should administer the program?
 - e. How should the Commission evaluate the impact of the Program on low- and moderate-income drivers and barriers to transitioning to zero-emission vehicles for low- and moderate-income drivers? What data sources, criteria, or metrics should the Commission use or create?
- 3. Clean Mobility. How should the Commission advance the goals of clean mobility for low- and moderate-income individuals and/or communities?
 - a. How should the Commission define low- and moderate-income individuals and/or communities and "the goals of clean mobility" for low- and moderate-income individuals and/or communities?
 - b. How should the Commission identify low- and moderate-income individuals and/or communities?
 - c. How should the Commission monitor and evaluate advancement of the goals of clean mobility for low- and moderate-income individuals and/or communities?
- 4. Compliance and Enforcement Approach. How can the Commission promote maximum compliance with Program requirements? What approach to enforcement should the

- Commission adopt for failure to comply with Program requirements, including requirements to ensure minimal negative impact on low- and moderate-income drivers? What criteria or metrics should the Commission use for enforcement?
5. Outreach and Engagement. How should the Commission and/or transportation providers engage with drivers and community-based organizations, including those that are not parties to this proceeding? What issues should this outreach and engagement address?
 6. Data. What data requirements should the Commission adopt to implement the Clean Miles Standard?
 - a. What data should the Commission collect to implement the Program?
 - b. How should the Commission verify that compliance data received from transportation providers is consistent with Program requirements, complete, and accurate?
 - c. What Program data should be shared with other government entities and the public, and how should the data be shared?
 7. Coordination with Transportation Electrification Efforts. How should this proceeding coordinate with Rulemaking (R.) 18-12-006, other Commission proceedings, and other agency activities, including but not limited to the California Energy Commission, to support the consideration of the Clean Miles Standard in the planning of transportation electrification infrastructure, rate design, and the review of applications for transportation electrification infrastructure?
 8. Environmental and Social Justice. How should the Commission measure or evaluate the impact of Program implementation on Environmental and Social Justice

communities and advancing the Commission's Environmental and Social Justice Action Plan?³

9. Exemptions. Should the Commission adjust the exemptions to Program requirements proposed by CARB? If so, please explain what adjustment(s) should be considered and why, and to what extent adjustments would impact the Commission's responsibility to advance the goals of clean mobility for low- and moderate-income individuals?

In Phase 2 of the proceeding, the Commission will address the following issues, along with any additional issues I may identify in the Phase 2 scoping memo.

1. Supporting Sustainable Land-Use Objectives. How should CMS support sustainable land use objectives in Government (Gov.) Code Section 65080? What criteria, metrics, and data should the Commission use to evaluate whether CMS supports sustainable land-use objectives in Gov. Code Section 65080?
2. Enforcement Program Design. How should the Commission design the Clean Miles Standard enforcement program consistent with its Enforcement Policy or other relevant enforcement statutes?⁴
3. Autonomous Vehicle Passenger Services. How should the Commission apply Program requirements to transportation providers who participate in the Commission's Autonomous Vehicles passenger service programs?
4. Biennial Unanticipated Barriers Review. How should the Commission conduct the biennial review of unanticipated

³ The Commission's Environmental and Social Justice Action Plan, which include TNCs and transportation electrification is available at <https://www.cpuc.ca.gov/news-and-updates/newsroom/environmental-and-social-justice-action-plan>.

⁴ Resolution M-4846, which includes the Enforcement Policy, is available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-and-enforcement-division/documents/m-4846.pdf>.

- barriers to expanding the usage of zero-emission vehicles by transportation network companies required by Pub. Util. Code Section 5450(b)(4)? How should the Commission define “unanticipated barriers” for purposes of these reviews? How should the Commission incorporate the findings from these biennial reviews or additional information into Program implementation?
5. Optional Credit Programs. Should the Commission adopt any optional credit programs?
- a. Should the Commission adopt the Optional Credit Programs defined in CARB's Proposed Regulation Order and/or any other credit programs?
 - b. Should the availability of optional credit programs be dependent on certain factors, such as transportation providers meeting certain requirements (*e.g.*, a GHG emissions reduction threshold) or the outcome of an unanticipated barriers review?
 - c. For any credit programs not defined in CARB's Proposed Regulation Order, what criteria should the Commission adopt to evaluate the claims for credit?

This scoping memo modifies the preliminary issues in scope identified in the OIR based on party comments. This scoping memo does not adopt the following party recommendations to expand the scope of this proceeding for the reasons set forth below.

The Public Advocates Office recommended that the Commission consider the electric utility ratepayer impact of transportation electrification investments to the extent that Clean Miles Standard implementation will impact those ratepayers. We clarify that this proceeding will not consider investments by electric utility ratepayers. However, this proceeding will consider how to coordinate with Commission proceedings and the actions of other state agencies that will consider transportation electrification investments by electric utility

ratepayers, including applications by electric utilities and broader planning efforts.

In its PHC statement, Waymo LLC recommended that the Commission consider whether the Clean Miles Standard will apply to an Autonomous Vehicle passenger service provider that has a Charter-Party Carrier permit but does not have a Transportation Network Company permit.

The Clean Miles Standard will apply to passenger service providers that have a Charter-Party Carrier permit and do not have a Transportation Network Company permit to the extent that the passenger services fit the statutory criteria. Pub. Util. Code Section 5450(a) provides that the Clean Miles Standard will apply to “transportation providers regulated by the [C]ommission that provide prearranged transportation services for compensation using an online-enabled application or platform to connect passengers, including autonomous vehicles, charter-party carriers, and new modes of ridesharing technology that may arise through innovation and subsequent regulation.” Pub. Util. Code Section 5450(a) is clear that Clean Miles Standard requirements will apply to Autonomous Vehicle passenger service providers with Charter-Party Carrier permits that provide prearranged transportation services for compensation using an online-enabled application or platform to connect passengers.

The Joint Commenters⁵ recommended that the Commission specifically consider a per-mile or per-trip fee and Drivers Assistance Fund controlled by the Commission. The scope of Phase 1 will include consideration of a fee and Drivers Assistance Fund as a strategy to ensure minimal negative impacts on low- and

⁵ Union of Concerned Scientists, Rideshare Drivers United, Sierra Club, and BlueGreen Alliance filed joint comments as the “Joint Commenters.”

moderate-income drivers. However, we will not limit our consideration to a specific structure for the fee or the fund.

Lyft and Uber each recommended that the Commission review the “feasibility” of transportation network companies meeting CARB’s targets and goals. Phase 2 of the proceeding will consider how to review whether “unanticipated barriers exist to expanding the usage of zero-emission vehicles by transportation network companies” in accordance with statutory requirements.⁶

San Francisco Taxi Workers Alliance recommended prioritizing consideration of how the Clean Miles Standard can reduce traffic congestion. In its PHC statement, San Francisco Taxi Workers Alliance asserted that traffic congestion is an element of the statutory requirement for the Clean Miles Standard to support sustainable land use objectives of Gov. Code Section 65080.⁷ Parties will have the opportunity to comment on how to interpret this statutory requirement in Phase 2.

3. Need for Evidentiary Hearing

The OIR for this proceeding preliminarily determined that an evidentiary hearing is not needed. No parties have identified any material issues of fact that will require an evidentiary hearing. Most parties agreed that an evidentiary

⁶ Pub. Util. Code Section 5450(b)(4) provides, “The board shall delay adoption, and the commission shall delay implementation, of the targets and goals pursuant to paragraph (2) if the board or commission finds that unanticipated barriers exist to expanding the usage of zero-emission vehicles by transportation network companies. The board and commission shall review the available data related to barriers to expanding the usage of zero-emission vehicles by transportation network companies no less often than every two years, including data relative to current and future electric transportation adoption rates and charging infrastructure utilization rates.”

⁷ Pub. Util. Section 5450(d)(2) requires the Commission to “[e]nsure that the program complements and supports the sustainable land-use objectives contained in Section 65080 of the Government Code.”

hearing is not needed. Accordingly, this scoping memo affirms that an evidentiary hearing is not needed for this proceeding.

At the PHC, a few parties requested additional time to request an evidentiary hearing. However, no parties raised the need for evidentiary hearings in the PHC statements. On the other hand, several parties have raised the importance of expediting an initial decision in this proceeding.

This scoping memo affirms that an evidentiary hearing is not needed for Phase 1 of this proceeding. Parties will be given an opportunity in the future to comment on the need for evidentiary hearings in Phase 2 of this proceeding.

4. Schedule

The following schedule is adopted here and may be modified by the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the rulemaking.

EVENT	DATE
Phase 1	
Workshop held	March 8, 2022
Scoping Memo	April 2022
Ruling requesting comments on the workshop report	April 2022
Rulings with questions for party comments	Quarter (Q) 2 - Q3 2022
Phase 1 Staff Proposal issued	Q2/Q3 2022
Comments on Staff Proposal	Q3 2022
Phase 1 Proposed Decision	No later than 90 days after submission
Phase 1 Final Decision	No sooner than 30 days after proposed decision

EVENT	DATE
Phase 2	
Phase 2 Scoping Memo	Q1 2023
Phase 2 Workshop	Q1 2023
Rulings with questions for party comments	Q2-Q3 2023
Phase 2 Staff Proposal issued	Q3 2023
Comments on Staff Proposal	Q3 2023
Phase 2 Proposed Decision	No later than 90 days after submission
Phase 2 Final Decision	No sooner than 30 days after proposed decision

Due to the complexity and number of issues in this proceeding, it is the Commission's intent to complete this proceeding within 24 months of the date this scoping memo is issued. (Pub. Util. Code § 1701.5(b).)

5. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission's ADR program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.⁸

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules of Practice and Procedure (Rules) and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest.

⁸ See Decision 07-05-062, Appendix A, § IV.O.

The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

6. Category of Proceeding and *Ex Parte* Restrictions

This ruling confirms the Commission's preliminary determination in the OIR that Phase 1 of this proceeding is a quasi-legislative proceeding. No party raised concerns with this categorization for Phase 1 of the proceeding at the PHC or in PHC statements. Accordingly, *ex parte* communications are permitted for Phase 1 without restriction or reporting requirement pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

However, parties should not communicate with the assigned ALJ about non-procedural issues outside of a public forum that has been noticed to the service list of this proceeding. Parties with procedural questions for the assigned ALJ should e-mail the judge and copy the service list of this proceeding.

7. Public Outreach

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website.

In addition, the Commission served the OIR on all respondents to the proceeding and the official service lists for R.12-12-011, R.19-02-012, and R.18-12-006.

8. Intervenor Compensation

Intervenor compensation rules are governed by Pub. Util. Code Sections 1801, *et seq.* Intervenor Compensation is not permitted in this proceeding.

9. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

10. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

11. Filing, Service, and Service List

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.⁹

When serving any document, each party must ensure that it is using the current official service list on the Commission’s website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail whenever possible, transmitted no later than 5:00 p.m. on the date scheduled for service to occur.

⁹ The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-divisions/documents/additiontoservicelisttranscriptordercompliant.pdf>

Rule 1.10 requires only electronic service on any person on the official service list, other than the assigned ALJ. Parties are instructed to *not* send hard copies of documents to the assigned ALJ, the Commissioners, or the Commissioners' advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

12. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive e-mails from the Commission. Please add "@cpuc.ca.gov" to your e-mail safe sender list and update your e-mail screening practices, settings and filters to ensure receipt of e-mails from the Commission.

13. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Stephanie Wang is the assigned ALJ for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is not needed for Phase 1 of this proceeding.
4. The category of Phase 1 of this proceeding is quasi-legislative.

This order is effective today.

Dated April 8, 2022, at San Francisco, California.

/s/ GENEVIEVE SHIROMA

Genevieve Shiroma
Assigned Commissioner