

ILLINOIS POLLUTION CONTROL BOARD
December 3, 2024

IN THE MATTER OF:)
)
PROPOSED CLEAN CAR AND TRUCK) R24-17
STANDARDS: PROPOSED 35 ILL. ADM.) (Rulemaking -
CODE 242) Air)

Volume II

Continued record of proceedings before
the Illinois Pollution Control Board, on
Tuesday, December 3, 2024, 10:00 a.m. CST, by
videoconference, between:

The Michael A. Bilandic Building
160 N. LaSalle Street, Room C-500
Chicago, Illinois
and
Illinois Department of Transportation
Hanley Building, Auditorium
2300 S. Dirksen Parkway
Springfield, Illinois

REPORTED BY:

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1 PRESENT:

2 ATTENDING BOARD MEMBERS:

3 Barbara Flynn Currie, Chair (Chicago)
Jennifer Van Wie (Chicago)
4 Michael Mankowski (Springfield)
Michelle Gibson (Chicago)

5 BOARD STAFF:

6 Vanessa Horton, Hearing Officer
7 Carlie Leoni, Hearing Officer
Dr. Anand Rao, Chief Environmental Scientist
8 Essence Brown, Environmental Scientist.
9

10 PROPONENT ATTORNEYS:

11 Robert Weinstock

12 Albert Ettinger

Sierra Club Natural Resources;

13 Nathaniel Shoaff,

Sierra Club Natural Resources,

14 Environmental Defense Fund,

Center for Neighbors of Technology;

15 Chase Deatrick,

16 Chicago Environmental Justice Network;

Respiratory Health Association;

17 PARTICIPANTS:

18 Gina Roccaforte,

19 Illinois Environmental Protection Agency;

20 Rory Davis,

21 Air Regulatory Unit for the Bureau of Air

22 Melissa Brown and Tom Miller,

Alliance for Automotive Innovation;

23 RULEMAKING COORDINATOR: Shannon Bilbruck
24

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1 HEARING OFFICER HORTON: All right.
2 It's 10:00 a.m., and we'll reconvene our first
3 set of hearings for R24-17, Rulemaking,
4 docketed in the matter of Proposed Clean Car
5 and Truck Standards.

6 We're here today to continue testimony
7 from Proponents, and we'll begin today with
8 Mr. Cackette.

9 But I had one more question for
10 Proponent's counsel before we get started.

11 You brought up yesterday in your opening
12 statement that issue of Section 177 of the
13 Clean Air Act, and I'm just curious. Are any
14 of the witnesses here today prepared to answer
15 questions about the identity issue, or is
16 that a legal issue?

17 MR. ROBERT WEINSTOCK: Give us one moment
18 to confer.

19 HEARING OFFICER HORTON: Sure.

20 MR. ROBERT WEINSTOCK: I think the safest
21 course there is to consider that a legal issue
22 for followup.

23 HEARING OFFICER HORTON: Okay. What we
24 could do is -- we have a couple questions.

1 We could do one of two things.

2 We could read them into the record right
3 now and we could come up with a date by which
4 you could respond in writing, or we could
5 issue a Hearing Officer Order tomorrow with it
6 in writing so everybody is aware of the
7 questions and then set a date for a response.

8 MR. NATHANIEL SHOAFF: I would propose
9 actually both, so that we know what the
10 questions are.

11 Mr. Patel, who spoke yesterday, will be
12 here and he might be in a position to answer
13 those questions, but he's not here yet.

14 HEARING OFFICER HORTON: Okay. How about
15 we wait?

16 MR. ALBERT ETTINGER: It's a legal
17 question. I think the lawyers will handle it
18 with whatever help Mr. Patel can give us.

19 HEARING OFFICER HORTON: Okay. So we'll
20 wait. Maybe around lunchtime we'll read it
21 into the record.

22 MR. ROBERT WEINSTOCK: That sounds good,
23 and then we can discuss the timing and
24 maybe we can discuss the broader timing for

1 next steps.

2 HEARING OFFICER HORTON: Very good.

3 All right, we'll move right along.

4 Mr. Cackette, if you could come and sit
5 at this table here, and our court reporter
6 will swear you in.

7 MR. NATHANIEL SHOAFF: Thank you,
8 Hearing Officer, and members of the board.

9 TOM CACKETTE,
10 having been first duly sworn, was examined and
11 testified as follows:

12 EXAMINATION

13 BY MR. NATHANIEL SHOAFF:

14 Q I'm Nathaniel Shoaff. I am here on
15 behalf of the Sierra Club Natural Resources
16 Defense Counsel, Environmental Defense Fund, and
17 Center for Neighbors of Technology.

18 Mr. Cackette, could you please spell your
19 name for the record.

20 A C-a-c-k-e-t-t-e.

21 Q Thank you. I appreciate you taking the
22 time to join us this morning.

23 Mr. Cackette, did you submit prefiled
24 testimony in this matter?

1 A Yes, I did.

2 Q And I see you have some documents in
3 front of you. One of those documents is your
4 prefiled testimony?

5 A Yes, it is.

6 Q And did you dock that prefiled testimony
7 as your testimony today?

8 A Yes.

9 MR. NATHANIEL SHOAFF: Hearing Officer, I
10 move that the prefiled testimony of
11 Mr. Cackette be moved into evidence.

12 HEARING OFFICER HORTON: Okay. That will
13 be Exhibit 12.

14 (Document marked as Exhibit No. 12
15 for identification.)

16 BY MR. NATHANIEL SHOAFF:

17 Q Mr. Cackette, did you also help direct
18 responses to prefiled questions?

19 A Yes, I did.

20 Q And are the answers that you provided
21 among the documents that are in front of you
22 today?

23 A Yes. The written one, yes.

24 Q And you adopt those written prefiled

1 answers as part of your testimony?

2 A Yes.

3 MR. NATHANIEL SHOAFF: Hearing Officer,
4 I'd move that the prefiled answers of
5 Mr. Cackette be moved into evidence.

6 HEARING OFFICER HORTON: Okay. That will
7 be Exhibit 13.

8 (Document marked as Exhibit No. 13
9 for identification.)

10 MR. NATHANIEL SHOAFF: Thank you.

11 BY MR. NATHANIEL SHOAFF:

12 Q Okay. Mr. Cackette, with the formalities
13 out of the way, could you please describe for us
14 your professional background as it relates to
15 adoption of the California vehicle standards?

16 A Well, I have engineering degrees in
17 aeronautics and astronautics, which doesn't have
18 much to do with this. I did that for about
19 three years after undergraduate school.

20 And then I changed my living -- in
21 Los Angeles, I learned about smog and I changed
22 my interests. And I got a master's degree in
23 engineering with an environmental focus. And so I
24 have both of those degrees.

1 I went to work for U.S. EPA for
2 eight years in Ann Arbor. That's where they do
3 their regulations. So I'm somewhat dated, but
4 certainly understand the process that they must go
5 through.

6 And then I was recruited to come out and
7 be an executive officer, deputy executive officer,
8 at the California Air Resources Board in 1982.
9 And I spent 30 years there before retiring at the
10 beginning of 2013.

11 During that time I became responsible for
12 all of the motor vehicle emission regulations and
13 the fuel regulations, except for gasoline and
14 diesel, but the alternative fuels that the board
15 adopted.

16 So I was there for the beginning of the
17 ZEV program, the LEV program, the heavy-duty
18 program, all the off-road things and stuff. And I
19 managed about 500 people, all of which had
20 something to do with writing regulations,
21 implementing them, and enforcing those
22 regulations. So I'm quite familiar with that.

23 And then after retiring, I didn't want to
24 just go and do nothing, so I became a consultant,

1 which many people do. And I decided that I would
2 only do consulting work that was positive for the
3 environment, for the climate. And so I didn't
4 work for auto industry or heavy-duty industries,
5 except on some very minor things.

6 And mainly, I've been working with NGOs,
7 helping them develop comments on the ARD standards
8 that have -- like the truck standard, ACT
9 standard, for example, and ACC II standard that
10 were developed after -- adopted after I retired.

11 And also on some of the EPA regulations
12 that are complementary to those, I helped them
13 understand what regulations were and developed
14 testimony and things like that.

15 So that's what I've been doing for the
16 last 11 years on a very part-time basis.

17 Q Thank you, Mr. Cackette.

18 As you know, the parties to this matter
19 filed several questions that were general in
20 nature, not directed to any specific witness. I
21 understand you're here today prepared to answer
22 some of those questions as they fall within your
23 area of expertise; is that correct?

24 A Yes, that's correct. I want to make

1 clear that I'm not a lawyer.

2 And while I understand the purpose of the
3 regulations, I may not understand exactly how they
4 have to apply to Illinois, for example, if you
5 were to choose to adopt them. So there would be
6 some legal issues that I won't be able to respond
7 to.

8 Q Thank you. But in general, is it fair to
9 say that you're prepared to answer questions
10 around how these three rules, the ACC II rule, the
11 ACT rule, and the Low NOx omnibus rule, how those
12 rules operate?

13 A Yes.

14 Q And the compliance flexibilities that are
15 built into those rules?

16 A Yes.

17 Q And the availability of zero emission
18 vehicles and where the market is today, and where
19 it's going likely in the future?

20 A Yes.

21 Q Thank you.

22 All right, Mr. Cackette. I only have one
23 more question for you which is:

24 Do you care to summarize the main points

1 of your testimony for us?

2 A Yes, I can.

3 I was asked to testify on the three
4 individual rules, so I kind of like to take those
5 piece by piece, because they don't always have the
6 same provisions or the same outlook.

7 I'll start off with the advanced clean
8 cars rule.

9 I was in charge of ACC I. That was my
10 penultimate effort on the Air Resources Board
11 before retiring. Of course that had the initial
12 ZEV mandate there as well. So I have followed
13 that in the years since.

14 And what has impressed me the most is
15 that first, the vehicles that the manufacturers
16 have produced are just outstanding vehicles.
17 These are not, you know, golf carts or, you know,
18 cars that could go 50 miles or anything like that.
19 Those were the past, perhaps.

20 But the cars that they started producing
21 in the 2010 and beyond period are really wonderful
22 vehicles. And my personal view on that is that
23 they are better than internal combustion engines.
24 They're more fun to drive, they drive better,

1 they're reliable. So I have that as a background
2 as to why I think that these fairly high ZEV
3 goals, as percent sales, can be met.

4 Second of all, at the beginning, you
5 know, we're forced with realizing that the price
6 of these vehicles are very high. But that's
7 because many of the technologies were in very
8 limited production and the vehicles were in very
9 limited production.

10 So, you know, if you want to go out and
11 buy a Porsche, you usually have to pay a lot more
12 money than if you want to buy a Chevrolet. And
13 that's because, in part, because they don't make
14 that many per year, and because they have advanced
15 technologies on them.

16 So I looked at that. And what I have
17 found is that the prices of electric vehicles are
18 dropping rapidly. That's because the batteries
19 are, you know, 90 percent cheaper than they were
20 in 2010. They're still going down, and the
21 battery is one of the major costs of an electric
22 vehicle. Also, costs of other components like
23 motors are going down.

24 And when we look at the people that have

1 studied that, both technical people and people in
2 the investment industry who want to know whether
3 they should stay invested in the companies that
4 are doing ZEVs or not, they find that the
5 batteries are going to be very, very cheap.

6 And when you put it all together, you can
7 see that for cars -- almost all the cars, you
8 know, by 2028 or 2029, those vehicles will be as
9 cheap or cheaper than an internal combustion
10 engine, either gasoline or diesel.

11 For that reason, the economics are
12 looking very good. And when you add on top of
13 that the fact that electricity, when it's provided
14 in your home at least, is usually about -- maybe a
15 third to a quarter of the price of gasoline,
16 depending on -- the price is more expensive in
17 California, but...

18 So that means that the cost of operation
19 is going to be substantially less. So you'll pay
20 less than you were paying at the gas pump for a
21 similar car, quite a bit less.

22 And on top of that, it looks like the
23 maintenance costs are also going to be something
24 in the order of half of what it is for a gasoline

1 car. You don't change the oil, you don't -- you
2 don't do anything to these cars except rotate the
3 tires and change the air filter from the cabin.
4 That's basically it.

5 And they have the same kind of warranty
6 as the internal combustion cars have, where all
7 the parts are related to an electric vehicle.

8 So it's clear that the studies are good,
9 and you can see it in the price of vehicles
10 dropping now, such that these cars are going to be
11 at price parity and total cost of operation
12 cheaper than gasoline before the end of the
13 decade.

14 And there might be a few that take a
15 couple more years, like a really long-range pickup
16 truck. But other than that, no.

17 So I think the -- and the manufacturers,
18 if you look at them, they have all committed
19 billions of dollars for this electrical vehicle
20 market. Billions. And you know, they don't
21 invest something -- they open up new plants and
22 close down old plants. They don't do that if
23 they don't expect this market to be what the
24 future is.

1 So for cars, I'm very confident that
2 we're going to be able to meet these kinds of
3 requirements of the ACC II.

4 To be a little bit more short, presented
5 on the truck part, but trucks is very similar.
6 It's obviously somewhat later, in that we're just
7 starting. We are in the early commercialization
8 stage, very early, where with the cars, we're in
9 the -- ready to be in the full commercialization
10 stage.

11 Trucks, though, are being produced now
12 that are electric in every single category.
13 There's -- you know, it's upward of 200 different
14 models available for electric trucks right now.
15 And yes, they're more expensive, but the same
16 thing is happening. They're only building a few
17 hundred of them.

18 They cost a lot of money. You build
19 10,000 of them, they're going to be a lot cheaper.
20 And they use similar or the same batteries, and
21 the battery prices are dropping quickly as well.

22 And here, the economics are really
23 important. Price parity again will be achieved on
24 these trucks compared to gasoline and diesel.

1 You know, before -- most of them before the end of
2 the decade.

3 And the total cost of operation is really
4 important to the truck driver, because they
5 accumulate more miles per year than a car does.
6 And so they get the savings of the cheaper
7 electricity.

8 And they can get that cheaper electricity
9 because most of the trucks we're talking about are
10 going to be refueled overnight, like their car.
11 They're going to be at a depot somewhere where
12 electric is provided, and they won't necessarily
13 have to go out and go to a fast charge station
14 somewhere.

15 So I think that means the market there is
16 going to be quite robust very quickly, just
17 because it's, you know, cheaper to operate and
18 because they operate better again. When they go
19 up a hill, an electric vehicle truck goes up the
20 hill. The gasoline and diesel truck, it slows
21 down. It's got a load behind it. It's not true
22 of these vehicles, because of the massive torque
23 the electric motors have.

24 On omnibus regulation, as my testimony

1 has stated, California has decided to align with
2 the recently adopted regulations that were
3 promulgated by the U.S. EPA, just in the last
4 year; and they pretty much came down to almost
5 where California was.

6 So instead of a 90 percent reduction in
7 NOx, they have 80 percent reduction in NOx. And
8 because trucks are so interstate operated,
9 especially the larger ones, it made sense to try
10 to align them.

11 They're somewhat smaller volumes, many of
12 them, and so it doesn't make sense to have a
13 California truck and a federal EPA truck, as long
14 as the performance -- usually the bottom of the
15 hill performance is roughly the same, and so this
16 alignment occurred.

17 And you know, the emission benefits
18 between the two are relatively small compared to
19 the total benefits.

20 What's different is, as I'll point out,
21 is that California is much more stable and
22 committed to these environmental goals than the
23 federal government is. The federal government
24 tends to go up and down, depending on who is

1 elected president and running the executive branch
2 and Congress. And California, even when we've
3 gone up and down, the legislative people -- the
4 governor and the public -- all support these
5 regulations with a very high percentage.

6 And so our regulations in California, I
7 think, will stay around and they're not going to
8 be relaxed.

9 And on omnibus, what ARB did is they
10 said, Well, you know, what happens if our
11 authority is taken away from us?

12 And what California decided to do is
13 negotiate this alignment on omnibus on the --
14 that's the emission standards for heavy-duty
15 trucks, the smog standards -- and make an
16 agreement with the truck manufacturers. And
17 that's called the Clean Truck Partnership.

18 And those manufacturers have agreed to
19 comply with California regulations, regardless of
20 whether California has authority to enforce them
21 or even has authority to adopt them anymore.

22 So that's an insurance policy that these
23 regulations, if adopted by Illinois, would still
24 be available for you, even if the federal

1 government decided to roll back all these
2 requirements. So that's kind of the major reason
3 on omnibus for adopting it, even though those
4 standards are now going to be pretty much the
5 same.

6 And there are pieces of the omnibus that
7 California really -- EPA lets California run, like
8 the check engine light, on-board diagnostics. We
9 have tighter end use requirements, tighter cold
10 engine -- cold temperature requirements for
11 compliance, things like that, than the federal
12 rule does.

13 And we will be -- if we align, it doesn't
14 mean we'll be accepting EPA's certifications and
15 decisions; we'll be doing it independently. But
16 the numbers will still be the same, so the same
17 trucks will be produced.

18 That's probably too long of a statement,
19 but that's my general view of the future.

20 MR. NATHANIEL SHOAFF: Thank you very
21 much, Mr. Cackette.

22 I don't have any other questions for you.
23 But the parties to this matter submitted
24 roughly 30 prefiled questions that were

1 directed to you, and a good number of the
2 general questions fall within your area of
3 expertise.

4 So I expect that the Board and EPA and
5 other parties here may have some questions for
6 you. Okay?

7 HEARING OFFICER HORTON: Okay. I'll
8 first turn to here in Chicago.

9 Anybody have followup questions for
10 Mr. Cackette?

11 Okay. I don't see any.

12 In Springfield, anyone have followup
13 questions for Mr. Cackette?

14 BOARD MEMBER MICHAEL MANKOWSKI: We do
15 have questions down here.

16 HEARING OFFICER HORTON: Okay.

17 MS. GINA ROCCA FORTE: Good morning.

18 My name is Gina, G-i-n-a, Roccaforte,
19 R-o-c-c-a-f-o-r-t-e. And with me today, in
20 case I need assistance, is Mr. Rory Davis,
21 R-o-r-y, D-a-v-i-s. And he is the manager of
22 the Air Regulatory Unit for the Bureau of Air
23 with the agency.
24

EXAMINATION

BY MS. GINA ROCCAFORTE:

Q. Good morning, Mr. Cackette.

In case you're unable to answer any of these questions, or you believe that they would be better addressed in post-hearing comments, you can just indicate as such.

Regarding Question 20.

In its response, rule proponents acknowledge that Section 242.104 prohibits certain actions by individuals and business entities other than vehicle manufacturers. Rule proponents indicate, however, that quote:

Manufacturers remain the entities that have compliance obligations under the proposed rules, end quote.

Are individuals and business entities, other than vehicle manufacturers, obligated to comply with the provisions in Section 242.104 under the current language in that section?

A That is the 104 section that you described? I don't have all the regulations in front of me, but...

MR. ROBERT WEINSTOCK: First of all,

1 do you mean Question 20 of the questions not
2 directed to a specific witness, or do you mean
3 Question 20 to Mr. Cackette?

4 BOARD MEMBER JENNIFER VAN WIE: Or can
5 she refer to the specific page? That would be
6 helpful.

7 HEARING OFFICER HORTON: Do you have a
8 page number, Ms. Roccaforte, for the --

9 THE WITNESS: And this is Illinois EPA
10 parts. Right?

11 MS. GINA ROCCAFORTE: EPA Question 20 --
12 response to our Question 20 begins on page 28.

13 HEARING OFFICER HORTON: And then,
14 Mr. Weinstock, does Mr. Cackette have a copy
15 of the proposed rule language?

16 MR. ROBERT WEINSTOCK: We can get that
17 for him.

18 THE WITNESS: Yeah. I don't have
19 page 28. So...

20 MR. ROBERT WEINSTOCK: Tom, are you
21 looking in the general questions or the
22 ones --

23 THE WITNESS: I don't have the general
24 questions. I have some of them, but I

1 don't -- let me see if I've got that one.

2 (Discussion off the record.)

3 MR. NATHANIEL SHOAFF: This binder I'm
4 bringing to the witness has the prefilled
5 questions in it.

6 HEARING OFFICER HORTON: So Question 20
7 on page 28; is that correct?

8 THE WITNESS: Okay. I know what the
9 issue is. I'm not going to be able to refer
10 you to the specific provisions. I think the
11 lawyers could do that.

12 So the general issue here is, beyond
13 enforcement of requirements that the auto
14 manufacturers must comply with, what does the
15 vehicle owner have to do?

16 And in California, I can tell you how the
17 rule is implemented.

18 If you are a resident of the state of
19 California, you cannot buy a vehicle that's
20 not certified by the California Air Resources
21 Board -- a new vehicle. Okay?

22 So what defines a new vehicle is whether
23 it has 7500 miles or less on the odometer. If
24 you have more -- if you want to buy an

1 out-of-state vehicle that's not certified by
2 California, and it's got -- it's used, you can
3 bring that in and register it.

4 If you try to buy a new one, or one with
5 less than 7500, the Department of Motor
6 Vehicles will not register the vehicle to a
7 California resident.

8 Now, there's exceptions to this.

9 If you're -- if you live in Illinois and
10 you want to move to California, and you've got
11 a 3,000 mile new vehicle with you, you can
12 bring it and register it because you're not a
13 resident, but you're seeking residency.

14 If something happened to your car and
15 you're a resident and you're driving in
16 Illinois and it got totaled and you couldn't
17 buy a -- you bought a new car and it wasn't
18 California certified, but you're a California
19 resident, we would allow that to be certified.

20 These are very narrow exceptions to the
21 rule. But that's the way it works. And it's
22 enforced through our Department of Motor
23 Vehicles on the registration department.

24 So we don't have many areas of our

1 borders that are on large -- other large
2 cities. But like for the Reno area, it used
3 to be a difficult problem. They just -- they
4 don't want to sell California cars in that
5 area, because many of your -- they want to be
6 able to sell it to people in California who
7 are California residents, and that's kind of
8 what happens.

9 And most of the cars these days are what
10 they call 50-State Certified. They meet
11 California regulations -- this is for the smog
12 part -- and they meet EPA regulations. So
13 it's just one car, and they call it a 50-state
14 car. And those aren't a problem. So that's
15 the way it works in California.

16 And I think that's the way it would
17 work -- those definitions would work in
18 Illinois. But, you know, whether Illinois
19 enforces those things and how they enforce it,
20 I believe, is an Illinois issue, not a
21 California issue.

22 MR. ROBERT WEINSTOCK: And just for
23 reference, I'm going to hand Mr. Cackette a
24 copy of the original proposed regulations that

1 were attached to our petition.

2 So if counsel wants to keep referring to
3 specific sections, he'll now have those to
4 look at.

5 HEARING OFFICER HORTON: And just one
6 small point -- go right ahead.

7 But we've entered in witness's specific
8 answers, but we have not entered into evidence
9 these general answers.

10 Would you like to do so?

11 MR. ROBERT WEINSTOCK: Yes. Now?

12 HEARING OFFICER HORTON: Yes.

13 MR. ROBERT WEINSTOCK: Okay.

14 Hearing Officer, I would like to move
15 into evidence the document entitled "Rule
16 Proponents' Answers to Prefiled Questions not
17 Directed at any Specific Witness."

18 HEARING OFFICER HORTON: Yes. That will
19 be Exhibit 14.

20 (Document marked as Exhibit No. 14
21 for identification.)

22 HEARING OFFICER HORTON: Sorry to
23 interrupt, Ms. Roccaforte.

24 You can continue.

1 BY MS. GINA ROCCAFORTE:

2 Q Okay. So based on your response
3 describing the situation in California, is the
4 intent that the prohibition in Section 242.104
5 apply identically for individuals and business
6 entities obligated to comply with the provisions
7 of this section?

8 A Well, I think that's a legal question.
9 But in general, I would say yes, when you're
10 talking about the vehicle manufacturers and
11 entities.

12 If you're talking about the individuals,
13 I've already answered the question, I think.

14 Q Okay. Are individuals and business
15 entities, other than vehicle manufacturers who
16 violate the provisions in Section 242.104,
17 subject to potential enforcement and penalties
18 under the current language in Section 242.106(A)
19 and (C)?

20 A Again, I can't call out whether the --
21 this exact section is the same as California's or
22 not.

23 But I can respond that what the penalties
24 or the enforcement is, as someone who doesn't

1 comply. So if I could limit my comments to that,
2 if I may?

3 If you're a vehicle manufacturer or a
4 dealer, and you try to sell in California a
5 vehicle that's not certified by the California Air
6 Resources Board, then you're violating the law.

7 So if a vehicle manufacturer ships a
8 noncompliant vehicle to a dealer in California,
9 that vehicle manufacturer would be in violation of
10 the law. And they would pay a per-vehicle
11 penalty, penalties established by California, that
12 could be as high as \$37,500. So that's the way
13 that works.

14 This failure to submit annual reports and
15 test data and inspection data, that's going to be
16 submitted to the Air Resources Board.

17 Illinois could certainly ask for copies
18 of it, or could ask ARB for copies of those. But
19 if someone doesn't report to California what the
20 regulations require, they are in violation of the
21 rule and there would be a penalty associated with
22 that.

23 Remember that these penalties are not --
24 that's a maximum penalty. Sometimes there's no

1 penalty. Or most of the time, it would be a very
2 small penalty; but in this case, the wrong vehicle
3 being shipped here is going to be -- it would be a
4 penalty. And part of that penalty would be to
5 remove the vehicle from the state of California.

6 Q Okay. But this would potentially be an
7 Illinois regulation. And Section 242.106
8 indicates that a person who violates any provision
9 of this part shall be subject to civil penalties.

10 So would that include individuals and
11 business entities other than the vehicle
12 manufacturers?

13 A Well, I think that's up to Illinois. So
14 I would defer my comments to the lawyers or people
15 who are familiar with Illinois law.

16 Illinois is going to be doing the
17 enforcing of this with California providing, you
18 know, lots of information when the cars are
19 violating emission standards or something like
20 that, that is going on in California. All the
21 177 states would be made aware of that.

22 But if this deals with buying a vehicle
23 in Indiana, or shipping a vehicle for sale in
24 Illinois, if it didn't meet the requirements of

1 242, I think that's an Illinois issue.

2 Q Do you think you could address in
3 post-hearing comments responses to these questions
4 in the context of Illinois and the proposed
5 rulemaking as they propose rule language?

6 MR. ALBERT ETTINGER: Who do you mean by
7 "you" in your question?

8 MR. ROBERT WEINSTOCK: Is that question
9 directed to counsel?

10 It goes back to what happened yesterday,
11 where it's not really -- we're not really
12 comfortable with individual witnesses
13 answering on behalf of all the rule
14 proponents. So you're asking counsel, I take
15 it?

16 HEARING OFFICER HORTON: So usually when
17 we have questions like this, it would be for
18 the counsel to respond later in writing, and
19 we'll set that date.

20 So I believe that's what Ms. Roccaforte
21 is asking for?

22 MS. GINA ROCCAFORTE: Correct.

23 MR. ROBERT WEINSTOCK: Okay. That sounds
24 good.

1 Just one point of clarification, Counsel.

2 Section 104 prohibits registering a
3 vehicle that's not certified. So when it
4 comes to individual auto owners, they already
5 have to register their vehicles with the
6 Secretary of State, and so this prohibits
7 registering a noncompliant vehicle.

8 So if they register a noncompliant
9 vehicle, the enforcement action would have to
10 recognize that the Secretary of State would
11 have issued it.

12 It's a little bit -- I'm a little
13 confused about the hypothetical here when it
14 comes to individual car owners. Because to
15 register a noncompliant vehicle, the
16 Secretary of State would have to be part of
17 that, because they're the ones that issue the
18 registration.

19 MS. GINA ROCCAFORTE: But the section
20 language specifically states it is unlawful
21 for any person to sell or register, offer for
22 sale or lease, deliver, import, purchase, or
23 lease a new motor vehicle.

24 So it does say "register." It is

1 unlawful for any person to register, unless
2 that vehicle has been certified to California
3 standards.

4 MR. ROBERT WEINSTOCK: That's right. I'm
5 just suggesting for them to register it, the
6 Secretary of State would have to give them the
7 registration. So really, this provision says
8 it's unlawful to do that. So, Secretary of
9 State, when you receive a registration
10 application, you shouldn't give them it.

11 So that's why I'm just suggesting that
12 the problem -- I'm wondering if there's a
13 real problem here to address, given that
14 it's the Secretary of State that issues
15 registrations.

16 HEARING OFFICER HORTON: I'll just jump
17 in --

18 MS. GINA ROCCA FORTE: Well, I have
19 questions following regarding the Secretary of
20 State.

21 But the clear language here on its face
22 indicates that it would be unlawful for anyone
23 to register.

24 And then we're just trying to follow that

1 enforcement would be anyone who violates any
2 provision of this part would be subject to
3 civil penalties. And we're just trying to
4 gather how it would work in the real world if
5 adopted.

6 MR. ROBERT WEINSTOCK: Yes. And
7 that's --

8 MS. GINA ROCCA FORTE: And I'll continue
9 with my questions.

10 MR. ROBERT WEINSTOCK: That's what I was
11 trying to help sort through. But thank you.

12 BY MS. GINA ROCCA FORTE:

13 Q Okay. Is it the rule proponents' intent
14 that the Illinois EPA would enforce the
15 prohibitions in Section 242.104 against
16 individuals and business entities other than
17 vehicle manufacturers?

18 MR. ROBERT WEINSTOCK: I think this one
19 again is addressed to counsel.

20 HEARING OFFICER HORTON: Mr. Cackette can
21 answer and say that he is not able to answer,
22 and then we can have that be one of the
23 questions that you follow up with.

24 A Yes. As a general rule, I don't have

1 knowledge of what Illinois' processes are. So I
2 cannot answer that.

3 BY MS. GINA ROCCAFORTE:

4 Q Okay. Next question.

5 In response to Question 20(E), as in
6 Edward, rule proponents indicate that the proposed
7 rules do not prohibit the purchase of a
8 noncompliant vehicle in another state.

9 Where in Section 242.104 does it indicate
10 that the prohibitions are restricted to activities
11 in Illinois?

12 A If that's addressed to me, again, I can't
13 respond to that.

14 Q Okay. In response to Question 20(F), as
15 in Frank, rule proponents indicate that the
16 proposed rule, quote:

17 Simply adds one item to the set of items
18 that must be supplied to the Secretary of State in
19 order to register a vehicle, end quote.

20 Also in response to question 37, rule
21 proponents indicate that the Secretary of State is
22 authorized by Illinois statute to request certain
23 information in an application for registration.

24 Is it rule proponents' contention to

1 require that individuals and businesses provide to
2 SOS, Secretary of State, proof that a vehicle
3 meets California regulations when registering the
4 vehicle?

5 If so, please identify the provision in
6 the proposed rule that specifies this requirement.

7 And also, please explain how individuals
8 and business entities would be notified of any
9 such requirement when registering a vehicle with
10 SOS and how the Board could ensure such
11 notification takes place.

12 MR. ALBERT ETTINGER: The witness is
13 doing a fine job of indicating when he doesn't
14 have knowledge of a subject. But I just want
15 to have clarity that when you're asking these
16 questions, you're asking it to the proponents
17 in general, to be either answered by the
18 witness currently if he can, or for the
19 proponents to answer at a later time?

20 HEARING OFFICER HORTON: That's what we
21 agreed to. So Mr. Cackette can say that he is
22 not able to answer and then he'll agree to
23 respond --

24 MR. ALBERT ETTINGER: I just wanted to

1 make sure that was in the record, so that's
2 fine.

3 HEARING OFFICER HORTON: It was. And it
4 is again.

5 A Yes. I can only answer how California
6 deals with them but not Illinois.

7 BY MS. GINA ROCCA FORTE:

8 Q I wasn't able to hear that clearly.
9 So this will be addressed in the
10 post-hearing comments?

11 HEARING OFFICER HORTON: That's correct.

12 MR. NATHANIEL SHO AFF: And also, the
13 witness indicated he could speak to how these
14 provisions apply in California rather than
15 Illinois.

16 MS. GINA ROCCA FORTE: Could you please
17 repeat that?

18 HEARING OFFICER HORTON: Would you like
19 to speak a little bit louder?

20 MR. NATHANIEL SHO AFF: Sorry. The
21 witness previously indicated that he could
22 speak to how these rules apply in California,
23 but not in Illinois. So if they are questions
24 about whether California has enforced against

1 individuals, that's something that the witness
2 has indicated he could answer. If it is about
3 how Illinois might enforce, that's something
4 that the witness indicated he is not prepared
5 to answer.

6 HEARING OFFICER HORTON: Okay. Great.

7 Dr. Rao has a followup question.

8 BOARD STAFF DR. ANAND RAO: Can you
9 explain how this process, registration
10 process, works in California?

11 THE WITNESS: For the --

12 BOARD STAFF DR. ANAND RAO: In
13 California. You said you can speak to how it
14 works in California. Can you explain for the
15 record how it works?

16 THE WITNESS: Yes. So when you apply for
17 registration of a vehicle, you have to give
18 the odometer reading if you bought the vehicle
19 somewhere else. And if it is under
20 7500 miles, it is considered new, to the
21 state. And you're applying to what we have as
22 the Department of Motor Vehicles, who does the
23 registration.

24 And the information on that document will

1 let DMV, the Department of Motor Vehicles,
2 know whether the vehicle is certified in the
3 State of California. It has a California
4 certification for it.

5 So if it's new, and you're a resident --
6 not a first-time resident, but a resident, and
7 you bought this car, regardless of where you
8 bought it -- you might have bought it in
9 Nevada -- if it says it is California
10 certified, which many cars are nationally
11 California certified, then you can register
12 it.

13 If you bought it out of state, you will
14 pay the sales tax, of course, to California.
15 And if it is under 7500 miles, you bought it
16 in Nevada but it's not -- it's not California
17 certified, then they won't register it.

18 BOARD STAFF DR. ANAND RAO: So it's the
19 manufacturer who provides the certification,
20 not an individual buyer?

21 THE WITNESS: The manufacturer has the
22 certification data. ARB provides that
23 information to the Department of Motor
24 Vehicles as well. So it's all available. And

1 so that way, you know, I don't think there are
2 many cars that slip through the system now.
3 It's pretty foolproof.

4 The only slipping through the system you
5 see is, you can see people that have
6 out-of-state plates that you know work and
7 live in California, and they've got the
8 license from somewhere else. And we do
9 have -- we do have the police to enforce that.
10 But it's not -- it's pretty spotty.

11 But you don't see a lot of it at all.
12 And the new vehicle registration part is
13 pretty flawless.

14 BOARD MEMBER MICHELLE GIBSON: Can you
15 clarify ARB?

16 THE WITNESS: The Air Resources Board, or
17 ARB. That would be California Air Resources
18 Board. Same thing.

19 HEARING OFFICER HORTON: Please continue,
20 Ms. Roccaforte.

21 MS. GINA ROCCAFORTE: Thank you.

22 BY MS. GINA ROCCAFORTE:

23 Q Is it rule proponents' contention that
24 the proposed rule will obligate the Secretary of

1 State to require proof that a vehicle meets
2 California regulations before allowing a
3 registration?

4 If so, please identify the provision and
5 the proposed rule that rule proponents believe
6 specifies this obligation, and identify the
7 statutory authority you believe exists for the
8 Secretary of State to refuse registration to
9 vehicles that do not comply with California
10 emission standards.

11 If not, please explain how the
12 registration prohibition in Section 242.104 will
13 be enforced if the Secretary of State declines to
14 require proof of compliance.

15 A Again, that's not a question I can
16 answer.

17 Q Is it rule proponents' contention that
18 the Board has the authority to impose obligations
19 on the Illinois Secretary of State's office?

20 If so, please explain the reasoning and
21 identify any applicable legal authority.

22 A Again, that's not anything I can answer.

23 Q Has the Secretary of State's office been
24 notified of this rulemaking?

1 A Again, I can't answer that one.

2 Q If this is addressed in post-hearing
3 comments, could you also set forth if any
4 discussions have taken place during the
5 stakeholder outreach?

6 And if so, summarize the discussions and
7 any feedback that you have received.

8 A Again, I would have to defer to the
9 Illinois people.

10 Q And can you please identify any other
11 Board regulations that establish standards for
12 Secretary of State's office regarding registration
13 of vehicles in Illinois?

14 A Again, I can't answer that.

15 Q In response to Question 20(G) regarding
16 how Illinois EPA could ever enforce the
17 prohibitions in Section 242.104, rule proponents
18 state, quote:

19 IEPA will not necessarily need to focus
20 on learning about particular transactions subject
21 to this section in determining compliance at the
22 point of individual transactions.

23 Instead, this provision is intended to
24 help provide a mechanism for preventing

1 registration of noncompliant vehicles in Illinois,
2 should IEPA determine that, for example, a
3 manufacturer's failing to meet its obligations to
4 certify vehicles to the California emission
5 standards, end quote.

6 Rule proponents also identify
7 recordkeeping and reporting obligations of vehicle
8 manufacturers and information that may be provided
9 to the Secretary of State's office as potential
10 sources of information for the agency.

11 Is it rule proponents' contention that
12 the prohibitions in Section 242.104 are
13 practically enforceable by the Illinois EPA
14 against individuals and business entities other
15 than vehicle manufacturers with no recordkeeping
16 and recording obligations for such individuals and
17 business entities?

18 A Not a question I can answer.

19 Q Regarding Question 21.

20 For each proposed exemption in
21 Section 242.105 that the rule proponents indicate
22 is not identical to California regulations; but,
23 rather, originated in other states, could you
24 please explain the purpose of the exemption and

1 the effect of the exemptions in Illinois?

2 And if you'd rather do this in
3 post-hearing comments, I can understand.

4 A Well, I could explain why California has
5 some of these exemptions in this that are
6 equivalent -- that I guess are equivalent to
7 Section 105.

8 But I can't answer the part about what
9 Illinois may have in this that would be different.
10 If any of them, I just -- you know, as I indicated
11 before, like if it's not a new vehicle under
12 7500 miles, then it is a used vehicle, and it can
13 be registered. For example, that's one of the
14 exemptions.

15 Q Well, there were a number of exemptions,
16 and it was indicated that had come from other
17 states, and we were just wanting to know what the
18 purpose of these exemptions were.

19 But that could be addressed in the
20 post-hearing comments.

21 If the Board opts to move forward with
22 this rule, but without the provisions in Subpart A
23 that are based on other states' programs and that
24 are not identical to California's regulations,

1 which exemptions set forth in Section 242.105
2 would still be relevant to Part 242?

3 A I'm looking at the long list of
4 exemptions here, so just give me a moment.

5 I'm not sure which ones of these are not
6 identical to California. So I'd have to defer to
7 lawyers to explain that.

8 Q That's fine.

9 A I'd like -- in my introductory remarks, I
10 did mention a number of these, I guess in my first
11 question. A number of these, like, you know,
12 motor vehicle transferred by inheritance. Those
13 are just exceptions to not overly prohibit people
14 with unusual circumstances from being able to buy
15 or use their relatively new car and get it
16 registered.

17 It's a matter of, I think, just common
18 sense in those cases, to have these exceptions.

19 Q Okay.

20 In response to Question 21(D) regarding
21 how the Illinois EPA would ever learn of the
22 applicability of an exemption to a particular
23 vehicle transaction, rule proponents indicate
24 that, quote:

1 Individuals and entities subject to this
2 part may present evidence that a transaction falls
3 under one of these exemptions to IEPA and other
4 state agencies to demonstrate that the transaction
5 is not subject to a requirement or provision of
6 this part.

7 For example, an individual or entity
8 seeking to register a vehicle that falls under one
9 of these exemptions could present evidence that
10 the exemption applies when submitting registration
11 materials to the Secretary of State, end quote.

12 Please identify any rule provision that
13 requires that individuals and business entities
14 provide evidence to the Illinois EPA or SOS to
15 demonstrate that a transaction falls under an
16 exemption.

17 A Again, I can't comment on the specific
18 Illinois processes.

19 Q Please identify the statutory authority
20 you believe Secretary of State has to determine
21 whether an exemption applies in issuing or
22 refusing registration.

23 A Same answer.

24 Q How would an individual or business

1 entity seeking to purchase, lease, sell, deliver,
2 import, or register its vehicle become aware of
3 these exemptions and the documentation needed to
4 justify the exemption?

5 A I would just say in California, if you
6 try to register the vehicle and it's not obvious
7 that it's registerable, it's out of state or
8 something like that, then the DMV would ask you
9 for verification if one of these exemptions
10 applies. Did you inherit it? Did you buy it
11 because your vehicle was wrecked in another state,
12 or whatever else is on the list.

13 BOARD STAFF DR. ANAND RAO: May I ask a
14 followup --

15 THE WITNESS: Basically, these are
16 very -- most of these are very unusual
17 situations. So it's not like...

18 BOARD STAFF DR. ANAND RAO: In
19 California, when they adopted these
20 regulations, did ARB work with the California
21 Department of Motor Vehicles to coordinate the
22 implementation of the rules?

23 THE WITNESS: Yeah, they worked very
24 closely together. But some of these things in

1 California are in statute. You know, the
2 legislature recognized that these kinds of
3 exemptions might occur and don't want to
4 create, you know, unusual difficult
5 situations -- difficult problems for a person
6 that's under one of these exemptions, unusual
7 exemptions. So that's how it got in there.

8 Many of these are not done -- invented by
9 regulation, but are in our statutes.

10 BOARD STAFF DR. ANAND RAO: So you have
11 expected the same kind of involvement here,
12 which is the Secretary of State as the
13 counterpart of the Department of Motor
14 Vehicles.

15 Should they have been involved in coming
16 up with these rules for implementation?

17 THE WITNESS: Well, I don't know what's
18 best for Illinois. But obviously, what I
19 described for California and its Department of
20 Motor Vehicles works very well. And it seems
21 to be automated, and it doesn't cause you a
22 lot of problems when you go in to register a
23 new vehicle.

24 I mean, we sell 1.5 million vehicles a

1 year, so it's pretty much proved its
2 effectiveness.

3 So whether you do the same thing in
4 Illinois, I don't know.

5 BOARD STAFF DR. ANAND RAO: Thank you.

6 BY MS. GINA ROCCAFORTE:

7 Q Is it rule proponents' intent that the
8 Secretary of State implement the exemptions in
9 terms of vehicle registration, that Illinois EPA
10 implements them, or that both entities implement
11 them?

12 A Again, same answer as before. I don't
13 know how Illinois should best do it.

14 Q If the agency does not control which
15 vehicles are registered by the Secretary of State,
16 could you explain the utility of an individual or
17 business entity presenting evidence to the agency
18 that an exemption applies to the registration
19 prohibition?

20 A Again, I don't have any knowledge of
21 that.

22 Q And what if the Illinois EPA and the
23 Secretary of State have a different interpretation
24 of an exemption, or of the documentation needed?

1 A Same answer.

2 MS. GINA ROCCA FORTE: That's all I have
3 for now. Thank you.

4 HEARING OFFICER HORTON: Thanks so much.
5 Anyone else in Springfield have followup
6 questions for Mr. Cackette?

7 BOARD MEMBER MICHAEL MANKOWSKI: Yes, we
8 do. They're coming up right now.

9 MS. MELISSA BROWN: Good morning. I'm
10 Melissa Brown, M-e-l-i-s-s-a, Brown,
11 B-r-o-w-n. I'm outside counsel for the
12 Alliance for Automotive Innovation. And with
13 me today is Tom Miller, M-i-l-l-e-r. He's the
14 senior director of Energy and Environment
15 Policy at the Alliance for Automotive
16 Innovation.

17 And just to begin -- again for clarity
18 for the court reporter -- we've heard the
19 acronym already for Zero Emission Vehicle,
20 ZEV, which I'll be using as well throughout my
21 questions, and also pronouncing it as ZEV.

22 EXAMINATION

23 BY MS. MELISSA BROWN:

24 Q Good morning, Mr. Cackette.

1 I'll be starting with followup questions
2 that are related to your prefiled responses to the
3 Alliance's prefiled questions directed
4 specifically to you.

5 And we'll start with the Alliance's
6 Question 13.

7 If you could let me know once you get
8 there and once you're ready.

9 HEARING OFFICER HORTON: This is Vanessa.
10 What page number is it?

11 (Discussion off the record.)

12 MR. ROBERT WEINSTOCK: Question 13, it
13 was?

14 HEARING OFFICER HORTON: Was it
15 Question 13?

16 MS. MELISSA BROWN: Yes. Question 13 on
17 page 100.

18 MR. ROBERT WEINSTOCK: 4 of 19 for
19 Mr. Cackette's individual packet.

20 (Discussion off the record.)

21 THE WITNESS: Okay. Thank you. I now
22 found it.

23 BY MS. MELISSA BROWN:

24 Q Okay. And so first, I'm going to ask an

1 introductory question before the specific question
2 based on your prefiled responses here.

3 But yesterday, Mr. Patel testified that
4 it was his assessment that an increase by 10
5 percentage points each year will be needed to meet
6 the debt requirement in model year 2029.

7 Would you agree with that assessment?

8 A That depends on from what baseline we're
9 talking about.

10 Q Sorry. Can you speak more directly into
11 the microphone? We're having a bit of a hard time
12 hearing you.

13 A Yes. You need to tell me from what
14 baseline you're referring to. In other words,
15 10 percent starting at what level?

16 (Discussion off the record.)

17 BY MS. MELISSA BROWN:

18 Q All right. I apologize. Can you please
19 repeat what your question was?

20 A You asked me to explain whether a
21 10 percent increase per year would be adequate to
22 meet the standard in 2029.

23 And I'm asking you: What is the baseline
24 that you are referring to, starting with what

1 percentage? If it's 50 percent today, it's going
2 to be a different answer than if it's 10 percent
3 today.

4 Q Let's start with 8 percent as the
5 baseline.

6 A Okay. Let's start with 10 percent as a
7 rough number, to make it a little simpler. Okay?

8 That would -- we are at 2023 for that
9 number, approximately. And so you're talking
10 about at least six years before. And so
11 10 percent would be 60 percent. So that's, I
12 think, where Mr. Patel's number would come from.

13 The reason that that might not be
14 necessary is that the rules provide for a number
15 of flexibilities. And the flexibilities would
16 allow Illinois to not have to achieve that large
17 of a number in 2029.

18 I just went through some of the
19 flexibilities, and these are up to vehicle
20 manufacturers as to whether they want to use them.

21 And with just some of them, if they maxed
22 out the flexibility requirements -- getting early
23 credits, IRA justice credits, a whole bunch of
24 different ones I could go over at your request --

1 the number for Illinois could go as low as
2 30 percent in 2029.

3 And that didn't include, you know, blind
4 credits from somebody else.

5 So the rule has lots of flexibility. And
6 I think, as we had previous discussions, it's also
7 possible for the rule to get some adjustment
8 credits early on that would help make the ramp not
9 quite so steep for a newly starting state.

10 So when you put all those together, I
11 don't think that's an unreasonable expectation
12 that it could be met in 2029 at 59 percent.
13 Because that 59 percent will probably be a lower
14 number for Illinois.

15 Q Thank you.

16 Just to clarify a bit more here.

17 So when I was referring back to
18 Mr. Patel's response yesterday, at that time we
19 were referring to that ZEV sales in Illinois in
20 the second quarter of 2024 were 8.2 percent.

21 And just for clarity of the record, that
22 was Mr. Patel's prefiled response to Alliance's
23 Question 1(A), as in apple.

24 And Mr. Patel, yesterday, clarified that

1 his response was that an increase by 10 percentage
2 points each year will be sufficient to reach
3 compliance by model year 2029.

4 Are you saying you would agree with that
5 or disagree with that assessment?

6 A Yes, I agree with those numbers. My
7 explanation was --

8 Q Okay.

9 A -- maybe it won't have to be that large.

10 Q Okay. And so turning back to the
11 question at hand, our prefiled Question 13 on
12 page 100.

13 And so in your prefiled response you
14 stated that national EV sales have increased from
15 4.4 percent in 2021 to 9.5 percent in 2023.

16 And then you state sales in the first
17 half of 2024 have slowed; yet, in Quarter 2 of
18 2024, compared to Quarter 2 of 2023, national EV
19 sales continued increasing.

20 And so would you agree that EV sales have
21 slowed in 2024 compared to the last three years?

22 A Yes, they have. But if you look -- you
23 pick one quarter where they're the slowest, it
24 increased in Quarter 3 already. Your reports are

1 not -- don't reflect that. But this data is your
2 data taken from your website.

3 So I'm just pointing out that -- mainly
4 trying to make the point that in the media,
5 et cetera, there's a lot of talk about sales have
6 slowed, meaning that they have gone -- people
7 interpret that as gone down.

8 They have not gone down. They have
9 gone up in all these quarters. The overall sales
10 of vehicles have gone down, but not EVs. It's
11 just slowed. And that's why I pointed out the
12 data from your quarterly reporting on your
13 dashboard.

14 Q Yes. Thank you. We just wanted that
15 clarification, and that sales have slowed in 2024,
16 based on what you quoted here. So we appreciate
17 that clarification.

18 And again in your prefiled response, you
19 quoted that again, in Quarter 2 of 2024, compared
20 to Quarter 2 of 2023, national EV sales continued
21 increasing by .9 percentage points.

22 And so would you consider an increase of
23 .9 percentage points in Quarter 2 sufficient
24 growth to meet the 59 percent ZEV requirement in

1 model year 2029?

2 A Well, we've been talking about things
3 that are linear, when you talk about 10 percent
4 per year. But the response on the new
5 technologies do not fall on a linear straight
6 line. They follow an S curve.

7 So in the beginning, it's going to be
8 slower in many cases, and then it accelerates.
9 And then as you get near the top, it has to bend
10 over again and slow down.

11 So what we're really trying to talk about
12 is what happens after you get past the early sales
13 in a state and when it's reflected by a
14 requirement that the sales increase.

15 And you know, that affects the vehicle
16 manufacturers, what vehicles they offer, what
17 price they put on those vehicles, and how hard
18 they sell them.

19 So those are all things in your basket,
20 not mine, per se. But the expectation is, in
21 other areas that have gotten beyond that 5 and
22 10 percent number is that they accelerate quickly.
23 They did in Europe. It's done that in California.

24 I mean, in Quarter 3 versus Quarter 4,

1 California went from kind of a static 25 percent
2 to 29 percent. So it's, you know, quickly picking
3 up again.

4 And if you look at the number of cars
5 that are coming into the marketplace by your
6 numbers, there's more of them and fitting more of
7 people's needs and variety that they desire, and
8 the prices are coming down.

9 I think that could only result in more of
10 these vehicles being sold, especially once people
11 understand and have a chance to drive them and
12 find out how the vehicles you make are so clearly
13 superior.

14 Q Would you agree that there would have to
15 be a steep or strong linear growth in EV sales, in
16 ZEV sales, to meet the 59 percent requirement in
17 model year 2029?

18 A Well, yes. You can look at the
19 requirements of the rule. It starts off a little
20 bit slower, then it just kind of goes linearly up
21 to some members in the 80 percent at the end, and
22 then it tapers off. I mean, that's how it was
23 designed.

24 And it was believed that that kind of

1 growth can occur because of all the things I
2 mentioned: The lower price, the greater variety
3 of vehicles, the higher volumes which drop prices.
4 All those things.

5 And the fact that -- I just want to keep
6 emphasizing this -- that the vehicles are great
7 vehicles. People that buy them, you know, are
8 joining the club that swears they'll never buy
9 another combustion vehicle again because of the
10 superiority.

11 So it's not like we're trying, you know,
12 to put an inferior vehicle into the hands of the
13 public and say, You're going to have to buy a lot
14 of them.

15 It's just a case of getting the consumers
16 to become aware of them. And at first, people
17 don't know what a ZEV is. But they're starting to
18 see this everywhere.

19 In California, where we have 25 percent,
20 you know, it's like it's -- the number one selling
21 car is the Tesla. You can't go down the street
22 without seeing multiples of these vehicles. All
23 kinds of people are driving them.

24 And the same thing for Hyundais and Fords

1 and the Mustang and things like that.

2 So it's not implausible that this could
3 occur at the rate that the regulation requires.
4 I'm quite certain that it will, in my opinion.

5 Q And you know, just related to the sale of
6 ZEVs, are you generally aware whether ZEVs are
7 being discounted currently in price in order to
8 sell them, either in Illinois or nationally?

9 A Well, in California, they have been
10 discounted when there's a large supply of them on
11 the lot. And that's partly because I think, you
12 know, the manufacturers did not anticipate the
13 slowdown.

14 But those vehicles are generally not
15 discounted much. And you know, Tesla is half of
16 the vehicles. They're not discounting them,
17 they're cutting the price.

18 You can buy a long range -- that's a
19 350-mile Tesla Model 3, that's a sedan. The price
20 on that, after the current IRA tax credit, is
21 somewhere around \$29,000 to \$34,000 for the long
22 range one.

23 And you know, even if you didn't have the
24 \$7500 tax cut, that's in the low \$40,000s.

1 You know what the cost of a new car -- an
2 average new car is? Today, it's \$48,000.

3 So there's an example of how the very
4 popular vehicle has reached price parity. And
5 many of the other manufacturers are matching
6 prices.

7 You could say it's a discount to get them
8 off the lot, but they're also dropping the price
9 of the vehicles that they're still producing
10 today. And that's because the cost of making them
11 is coming down as the volume goes up and as the
12 price of batteries goes down.

13 Q So you agree -- I mean, based on your
14 response, you acknowledge that ZEVs are being
15 discounted in price. Correct?

16 A I acknowledge that when there's a surplus
17 on the lots, some are. A lot of them aren't. You
18 still have to wait to get many of them and pay
19 full price, not a discounted price, to get them
20 off the lot.

21 So it may be some of your manufacturers
22 have that problem, because they have a 100-day
23 supply. But a lot of other ones are selling them
24 as soon as they get off the boat or off the

1 assembly line.

2 Q And so when you mention that some have
3 such a large supply, why is that, in your opinion?

4 A Well, you pointed it out. But I think
5 that's because there was overproduction. The
6 vehicle manufacturers probably didn't anticipate
7 that there was going to be a slowdown in 2023 and
8 into early 2024.

9 I don't know what all the reasons are for
10 that slowdown, but it's started to pick up again.
11 And you see these all the time. I mean, you know
12 from your own data that some years, you know, you
13 sell -- what is it, 20 million cars in the
14 United States, and other years it's 15 million --
15 or I don't know if I have those numbers right.
16 But it goes up and down depending on the economy,
17 depending on people's -- the amount of excess
18 income that they have or resources that they have.
19 It's never the same all the time.

20 So this is -- to me, this is a blip. And
21 you can see some reasons of it. The price of
22 lithium went way up for a while, and so the prices
23 of batteries went up. And now they've come way
24 back down again. So these kinds of things happen.

1 And it may be that the people that are
2 waiting to buy cars are looking for a model that
3 isn't yet available. But now they see that
4 there's more available models, like this 140 now.

5 So as you get the one -- if the model you
6 want is a ZEV, you're going to buy it and there's
7 lots more of them coming in this year, lots more
8 models.

9 Q Okay. We're going to move to the
10 Alliance's prefiled Question 14(A), as in apple.
11 And that would be on page 101.

12 A I've got it.

13 Q Okay. Perfect.

14 And so here, would you agree that if
15 ZEV sales were to increase at the rate required
16 under ACC II, that the installation of public
17 chargers would have to match that pace?

18 A Yes, it will.

19 And I won't answer what's happening in
20 Illinois. That's not a knowledge I have.

21 But in California, you know, we've gone
22 up rapidly in sales. And the amount of
23 infrastructure that's available for them is
24 matched, and probably been oversupplied in

1 the past.

2 And part of the reason is we're talking
3 about cars here, ACC II. And most people charge
4 cars in their home 80 percent of the time.

5 So you know, it's not like you have to
6 have a wide variety of public chargers available
7 at this stage. And there aren't. Because of the
8 IRA and infrastructure funding, there's a focus of
9 building more and more fast chargers on the
10 interstate highways, which deals with the one, you
11 know, kind of remaining anxiety question which is:
12 How do I get from, you know, from Chicago to
13 Phoenix in my EV?

14 And you know, that's been an issue,
15 especially if you don't have a Tesla, because you
16 had to charge at a non-Tesla type situation.

17 You could run into situations where there
18 is a gap. And that's rapidly closing, and will
19 close because of the IRA monies.

20 And on top of that, you know, all
21 manufacturers are switching from the charge handle
22 that you put in your car on the non-Tesla to a
23 Tesla handle. It's smaller, it's quicker, it's
24 neater.

1 And they're also negotiating agreements
2 with Tesla to use the Tesla charging network. The
3 Tesla charging network can get you virtually
4 anywhere in the United States with a car that has,
5 you know, 250 miles of real range.

6 So I don't see any evidence that it won't
7 increase. Apparently it's increased fast enough
8 in Illinois to keep up with the 7 percent sales.
9 And it's -- I don't think it's a major problem at
10 all.

11 Q Are you aware of what the ratio of EV
12 chargers in Illinois is today, ratio of EV
13 chargers to EVs?

14 A Yes. I do know that is one number higher
15 than it is in California. I think it's 29 EVs per
16 charger or something here, and it's -- charge
17 ports, I think it is -- and 28 in California.

18 Q And do you know what the California
19 recommended ratio is for EVs to chargers?

20 A I know it's on the California Energy
21 Commission's dashboard, but I don't recall what
22 the number is.

23 But the 29 is certainly -- right now is
24 certainly handling all the cars we have. And

1 it's -- you know, it's -- remember, it's
2 25 percent of sales. It doesn't mean 25 percent
3 of the vehicles on the road. When we get to the
4 100 percent level, it's only going to be
5 50 percent of the vehicles on the road have turned
6 over to be electric vehicles. So it's not quite
7 like that.

8 But I think we have one charging station
9 for every six gasoline stations now in California.
10 So, you know, the remote ones are rapidly
11 increasing. And most of those are fast charger
12 stations. They're not, you know, go to Walmart,
13 plug in for an hour or two and get, you know,
14 40 miles of range. These are ones that can fill
15 your car up in 20 minutes.

16 Q Are you generally aware, in California,
17 that there's an issue with public chargers not
18 functioning?

19 And if so, what percentage of public
20 chargers are known to have an issue?

21 A Yes, I am somewhat aware of those
22 numbers. I'll share with you what I know.

23 There is a problem, and the problem is
24 the non-Tesla chargers. They -- apparently, when

1 they were put in -- and these are private
2 businesses doing it on a smaller scale. There
3 just wasn't the volume of cars using them. And so
4 they didn't have the resources, or didn't apply
5 the resources, to keep them running, to keep them
6 operating. And so when they would break down,
7 there would be problems.

8 The majority of those problems were not
9 actually breaking down. It was making the
10 handshake between the car and the software that
11 the companies provided to figure out how to pay
12 for it, and the credit card, and so forth like
13 that.

14 With the knowledge that the Tesla
15 stations are 99 percent up and running all the
16 time, and the fact that -- that virtually all the
17 cars in 2025, and some of them in 2024, aren't
18 going to have access to the Tesla stations, I
19 think the various manufacturers of the other type
20 of charger that existing cars have that are not
21 Teslas, have kind of woken up and said, We're
22 going to have to step up and get this problem
23 fixed.

24 And so a lot of them are starting to

1 replace the old systems with new systems. You
2 see some of the money that's coming out of the
3 IRA, federal IRA, is conditioned upon performance
4 of these stations and replacing the old and less
5 reliable charging systems.

6 And so the bottom line is that by 2029,
7 at least when this is -- when this requirement
8 that you're considering adopting, this is going to
9 be an issue that's gone. I think it will be gone
10 in the next one or two -- two years.

11 I remember another blip in the -- you
12 know, it's an early learning thing for an early
13 industry, and that's what happened. Tesla, in
14 this case, proved that it doesn't have to happen
15 that way.

16 Q And you know, we heard you explain, you
17 know, what these issues might be and the reasons
18 for these issues potentially.

19 But just to get back to the basic
20 question, do you have a -- are you aware of,
21 roughly, you know, what percentage of public
22 chargers in California are having these issues?

23 A Well, I think when you say "are having
24 these issues," what percentage of them -- do you

1 mean the ones that are on the road that are
2 available today?

3 Q Yes.

4 A I don't know the exact number. I think
5 the number of charging ports -- Tesla might be a
6 quarter or a third of them, something like that.
7 The other ones are ports that are -- use the other
8 type of nozzle and are by other independent --
9 other independent companies. So that's what the
10 situation is today.

11 They can't continue with -- I do know
12 what the performance rate is. It's somewhere in
13 the 70 percent range of successful charges for the
14 non-Tesla ones. Like I said, for the Tesla ones
15 it's, like, 99 percent.

16 And a lot of that -- as I indicated, and
17 I'll repeat it in case it wasn't clear -- it has
18 to do with the handshake between the car and the
19 station to get it started. It's not that once
20 it starts it doesn't work. And that's being
21 fixed.

22 And even the cars now are all moving
23 because they want to use the Tesla system to where
24 the accounting and the payment is predetermined by

1 the company's charger and the car just plugs in
2 and you walk away.

3 And the next thing, you know, you either
4 get the bill and -- on the Tesla, it comes up on
5 your screen saying, This costs you \$7.50 to put a
6 charge in, and that's -- there's no credit card
7 port to go wrong, there's no software
8 communication between the company to show that you
9 have money to pay for this. None of that is going
10 to be there with the next couple of years, for all
11 the newer cars.

12 HEARING OFFICER HORTON: This is Vanessa
13 Horton.

14 I'm just going to interrupt for a minute.
15 Member Van Wie has followup questions.

16 BOARD MEMBER JENNIFER VAN WIE: If you
17 know, so all of the Tesla chargers, those are
18 owned and maintained by Tesla?

19 THE WITNESS: Yes, that's correct.

20 If you look at surveys, when you see
21 things about public chargers, often you've got
22 to go down and figure out whether Tesla is
23 included. Because in many surveys, they're
24 considered a private charger for only Tesla.

1 But that's all changing in 2025.

2 BOARD MEMBER JENNIFER VAN WIE: Thank
3 you.

4 HEARING OFFICER HORTON: Back to you,
5 Ms. Brown.

6 BY MS. MELISSA BROWN:

7 Q Thank you. So we'll move to Question 15,
8 prefiled Question 15, which is on page 102 at the
9 top.

10 So in your response, your prefiled
11 response, you stated that it is unlikely that
12 states like Illinois will need to make the same
13 level of investment and market development that
14 California has made over the past several decades.

15 Do you have an estimate for what level of
16 investment -- what that level of investment would
17 be in order for Illinois to support the ZEV sales
18 required under ACC II?

19 A No, I don't have a numerical number. I
20 could comment on what the steps are, but not --
21 not the numbers.

22 Q We'll move to Question 19, and that is on
23 page 108.

24 A It's 19(A), then?

1 Q Let me see. One second.

2 A 19 is on 107.

3 Q Oh, there it is. I'm sorry. I
4 apologize. Right. 107. Thank you.

5 A I had to say that. Because for once, I
6 actually had the documents in the right order.

7 Q And so here in your response to
8 Question 19 on page 107, your response refers to
9 an article by Goldman Sachs regarding projected
10 trends in battery costs.

11 Is it correct that there are other
12 estimates of battery costs out there?

13 A Yes, there are a number of them.
14 Bloomberg is one of them. Some of the consulting
15 firms are other ones. There are at least three or
16 four that do this regularly.

17 Q Would you agree that there's uncertainty
18 or fluctuation concerning the future of battery
19 costs?

20 A Well, of course. No one can predict what
21 the future is going to be exactly.

22 Q Okay. Moving to Question 20.

23 A I shouldn't say not --

24 Q That is on page --

1 A What I can be confident of is they are
2 going to be lower than they are today, battery
3 costs.

4 Q Again, is that -- I mean, that's not a
5 certainty, correct? That would be speculation?

6 A It's these curves, which I don't know if
7 you have them. It's this nice colored curve.

8 But I presented that one because I
9 thought that, you know, you might think that
10 environmental groups that look at this are biased
11 one way or something like that.

12 These are investment firms, Goldman Sachs
13 and Bloomberg. And they -- you know, their
14 audience is, Do you want to invest money in
15 these -- in this technology? And so that's why
16 they do this.

17 And you can see from the curve that,
18 other than that blip in '22 and '23, it's just a
19 constant exponentially decreasing line. And the
20 numbers are very low out by 2030, down in the
21 range of \$70 a kilowatt hour; where your question
22 had posed it as 146, which is what it is today.
23 But that's because of those two blips where the
24 price of lithium went crazy. And it went from

1 \$3 a pound to \$35 a pound, a tenfold increase,
2 almost instantly. And it's dropped to \$5 a pound
3 now.

4 So it's one of those market blips, and it
5 affects the 143 number you have. But the numbers
6 are closer to 100 in 2024.

7 Q And so again, I know you're referencing
8 back to the Goldman Sachs. And I think you made
9 reference to one other projection.

10 But is it fair to say that there are
11 other estimates of battery costs out there that
12 vary greatly, say, from the Goldman Sachs
13 estimate?

14 A No. I think -- I don't know if it was
15 included in our -- I think it was included in our
16 document.

17 There's a curve that shows the declining
18 battery costs up through, I think, 2030, that for
19 everybody who has ever done this, it could be a
20 comparable means. And they all go down the same
21 curve. Some of them start higher, some start
22 lower at the beginning. But they all get down
23 along the basic same trend.

24 And these are -- for 2023, these

1 investment firms happen to fall exactly on the
2 regression line that goes through all these
3 estimates.

4 So it kind of says, when they were
5 estimating in 2021 and '22 what the prices are,
6 they were pretty much on track except for this
7 blip. And now they're back on track again.

8 So I think they are merging into a closer
9 and closer agreement. I don't see anybody making
10 a claim that the battery prices are going to stay
11 at \$143 or they're going to go back up.

12 We know that there's all kinds of efforts
13 to increase the supply-demand on lithium, and many
14 of them in the United States, because the IRA
15 program will pay for investments in lithium. And
16 we're finding them in Nevada, in the Salton Sea,
17 and Arkansas, and all kinds of places.

18 And for some of the rare materials that
19 are, you know, like cobalt that have a whole bunch
20 of other issues because they're only made by
21 children in Africa, that kind of thing, those are
22 now starting to not be used in batteries anymore.

23 The hard-to-get materials are now being
24 replaced by phosphorous and iron. We have a lot

1 iron around and a lot of phosphorous around.

2 So lithium is the only one that's
3 remaining, and it's following the curve that
4 people have been projecting, which is cheaper.

5 Q Are you generally aware of how long it
6 takes to get a lithium mine up and running and
7 permitted?

8 A Sure. It takes many years. But I think
9 many of these will be online before 2029.

10 Q And what is that statement based on?

11 A Well, just looking at the Nevada
12 situation. It looks like that's going to go
13 ahead. Some of these Salton Sea ones got decent
14 studies.

15 The Arkansas one, well, that's probably
16 uncertain how real that is, in terms of being able
17 to get the materials.

18 But then the rest of the world is also --
19 you know, has to go with market, market trends.
20 And so people are invested where they're also
21 producing more lithium as well.

22 And then the part that's sort of the
23 fine orifice on this is that a lot of lithium has
24 to be processed into another compound, lithium

1 oxide. And that's, you know, mostly done in China
2 right now.

3 But again, the IRA money is putting out
4 funds to loans in support to build those
5 conversion factories here in the United States.

6 So again, I can't predict the future.
7 I don't pretend to. But the trends are all in the
8 right direction. And that's, I think, you know,
9 what we have to rely on.

10 And we could rely on the trends, when it
11 decides whether it wants to go forward with this.
12 We can't guarantee it, but it's looking pretty
13 good, from my viewpoint.

14 Q Your response in reference of timelines
15 for getting these materials such as lithium, do
16 you agree that presidential elections and changes
17 in administrations can potentially affect those
18 timelines?

19 A Yes, it certainly can affect the
20 timelines. But the overwhelming timeline is not
21 really a big political one.

22 The timeline is the vehicle manufacturers
23 have got billions of dollars each in investment in
24 producing electric vehicles because they see them

1 as the future.

2 And yeah, it could be a little faster or
3 slower depending on what the market is, things
4 like that.

5 But they're not investing these billions
6 of dollars because they want to go back to
7 100 percent internal combustion engine production.
8 I see them as being committed. You should know
9 that. You all representing the manufacturers know
10 better than I do.

11 So that's what's dictating the trend, and
12 the other pieces are sort of coming together and
13 are influenced by these other factors.

14 But the bottom line is we're going to
15 have more electric cars, more batteries in the
16 future than we have today. And that's a downward
17 trend, a positive downward trend.

18 Q All right.

19 Moving to Question 20, which is on the
20 same page, page 108.

21 The federal standards require 66 percent
22 ZEV requirement by model year 2032; is that
23 correct?

24 A I don't -- my memory is not the greatest.

1 It's pretty close, but I'd have to go back and
2 look at my notes, and I will tell you exactly what
3 it is.

4 Yeah. 69 percent in 2032 is their
5 projection. But I want to be clear that that is
6 not a requirement for 69 percent zero emission
7 vehicles. That's their modeling based on costs
8 that say that that's what's going to happen.

9 But their program is based on the
10 greenhouse gas emissions, not on the number of
11 vehicles like the ACC II is.

12 And so there could be improvements in
13 CO2 emissions, which means improvements in vehicle
14 sufficiencies. There could be other types of
15 vehicles that qualify that are not electric
16 vehicles. They don't mandate EV zero. This is
17 just their projection.

18 And by the way, the CARB number by that
19 is 82 percent versus 69 percent. And that's an
20 absolute -- that's a production number that's
21 required, not an average CO2. So that's something
22 to keep in mind when you're doing these
23 comparisons.

24 Q And turning back to ACC II specifically.

1 The third requirement under ACC II,
2 that's expressed as a percentage or a ratio.
3 Correct?

4 A Yes.

5 Q Do you agree that there's multiple ways
6 to comply with that requirement, such as
7 increasing the sale of ZEVs or decreasing the
8 gasoline vehicles sold?

9 A Analytically, that's a correct statement.
10 I don't believe that's a practical market
11 statement.

12 I don't believe that any of these major
13 manufacturers would purposely decrease the number
14 of sales of non-electric vehicles in order to
15 reduce the sales -- the percentage sales of zero
16 emission vehicles.

17 And as I indicated early on, the
18 flexibilities in the rule just give them many,
19 many more pathways to do that than to artificially
20 restrict sales of their combustion vehicles in
21 order to meet the ZEV requirements.

22 Q Do you acknowledge that there is a
23 penalty if a business does not meet the ZEV
24 requirement?

1 A There is a penalty after they've taken
2 advantage of all the flexibilities. Like if you
3 miss one year, you have another two years to make
4 up the difference, come back into compliance.

5 And then there's a whole host of other
6 things that I mentioned -- I don't have to mention
7 again -- that deal with flexibilities that let
8 them achieve the requirements.

9 I mean, we've had the ACC I ZEV mandate
10 since 2020 or 2019, or something along that line,
11 and nobody has missed it. Nobody has had a
12 penalty paid. They've exceeded that number
13 greatly.

14 I mean, our number right now, I think,
15 is something like 8 percent, and we're selling
16 25 percent ZEVs.

17 So you know, nobody wants to do this.
18 Nobody wants to pay the penalties. And the
19 auto -- 30 years of dealing with the auto industry
20 is they don't, on purpose, pay penalties. They go
21 to whatever steps are necessary to comply. And
22 only if they made an oops do they end up getting
23 into trouble and pay penalties.

24 The oops meaning they built a car that

1 didn't comply when they thought it would, or they
2 accidentally brought a noncompliant car to
3 California and gave it to a dealer to sell, or for
4 a fleet, or something like that. And then they
5 paid the penalties.

6 But most of the time -- and of course, if
7 they cheat, which is the VW situation. But
8 that's, hopefully, a one-time anomaly.

9 Q Do you agree that automakers buying
10 credits, say from Tesla, that could be equivalent
11 to what the penalty amount could be if they don't
12 meet the ZEV requirement?

13 A I don't think anybody but your members
14 know what the price of the credits are. So it's a
15 negotiable item, as far as I can see.

16 We know how many there are that's
17 required to be reported to California, but nobody
18 is required to report the price. So I can't tell
19 you what's the cheapest or the most effective way.

20 But you know, the penalty per vehicle for
21 not complying, on the passenger car side, has an
22 upper limit of \$20,000, in California.

23 And so, you know, to me -- I'm guessing,
24 just pure guessing -- I don't think that's what

1 the -- the total number -- amount of money they
2 spent to buy Tesla credits, I don't think it costs
3 that much.

4 And it's not like you're buying because
5 you failed and did something wrong. You're buying
6 because it's a safety valve that was provided by
7 California to make compliance easier when we're
8 going through what is more of a revolution than an
9 evolution of vehicles and technologies.

10 So it's a completely legitimate thing to
11 do. And it's the one thing, if you're -- if you
12 can't comply, that you're able to do.

13 And if it's not clear why these credits
14 are available, Tesla and Rivian, which only make
15 electric vehicles -- and I'm talking to the Board
16 now -- they make 100 percent vehicles, but they're
17 subject to these rules.

18 So when the requirement is 30 percent
19 ZEVs, 30 percent of their vehicles aren't
20 creditable. They can't sell the credit. But the
21 other 70 can. So they're always going to have
22 excess credits until the number of sales
23 requirement is 100 percent.

24 And so, you know, these are available and

1 negotiable on the market. And if you have a
2 problem, that's why you're not going to pay a
3 penalty, I think, to California or to Illinois,
4 unless you, like I said, violated the law in some
5 other way. You know, you didn't -- you made a
6 mistake somewhere.

7 HEARING OFFICER HORTON: This is Vanessa
8 Horton. I'm just going to jump in for one
9 second.

10 We typically take our lunch break at
11 noon, and we're about 20 minutes away from it.

12 Just checking with you, Ms. Brown. Do
13 you think you'd finish your questions before
14 noon or continue after?

15 MS. MELISSA BROWN: I think that would be
16 dependent on the length of the witness'
17 responses. But I mean, looking at my
18 questions right now, we have about two pages,
19 one and a half pages of questions left.

20 HEARING OFFICER HORTON: Okay. Would you
21 be okay --

22 THE WITNESS: I know what this signal
23 means. Get done before lunch, so I'll be sure
24 to shorten the answers.

1 HEARING OFFICER HORTON: No need. We'll
2 continue until about noon.

3 MR. ROBERT WEINSTOCK: I was just going
4 to say, is it possible, and depending on how
5 things are going, we would also appreciate --
6 especially if there's no questions direct to
7 Ms. Salgado-Romo, if we could squeeze her in
8 before noon as well. But --

9 MS. MELISSA BROWN: I apologize, but
10 would Counsel be able to speak into a
11 microphone? We're having a hard time hearing.

12 MR. ROBERT WEINSTOCK: I'm sorry. I was
13 just asking if we could --

14 HEARING OFFICER HORTON: Sorry. Let's go
15 off the record.

16 (Discussion off the record.)

17 HEARING OFFICER HORTON: Back on the
18 record.

19 BY MS. MELISSA BROWN:

20 Q And so to circle back.

21 I know you referenced in California that
22 the penalty is \$20,000.

23 Are you aware that under the proposed
24 regulations in this rulemaking that the penalty

1 for noncompliance is up to \$50,000 per vehicle?

2 A I'm aware of that. But that's an
3 Illinois issue, not California.

4 And by the way, that \$20,000 is the
5 maximum allowed, not what the penalty would be.

6 Q Would you agree that the amount of the
7 penalty for noncompliance, could that generally
8 dictate the cost of credits?

9 A I don't know the cost of credits. And so
10 I was only speculating that I think, based on the
11 past use of those credits or purchases from Tesla,
12 that it looked like they were less than that
13 number.

14 Q Okay. My next line of questioning isn't
15 specific to any of your prefilled responses to our
16 prefilled questions directed to you.

17 However, yesterday, when the Alliance was
18 asking questions to Mr. Patel's prefilled
19 responses, he indicated on several occasions that
20 the followup question may be better directed to
21 you, Mr. Cackette.

22 So my first set of followup questions
23 would just generally be about early compliance
24 vehicle values.

1 Is that a subject that you would be
2 willing to answer questions on?

3 A I can try.

4 Q Okay. So under ACC II, early compliance
5 vehicle values may be earned in model year 2027
6 and model year 2028 in Illinois.

7 Is that correct?

8 A The reg refers to two years prior to the
9 start of the regulation, which is in California.

10 I can't answer whether that means those
11 years or not for Illinois, whether that means
12 two years before that or whether it means '24 and
13 '25.

14 Q Okay. An automaker only generates early
15 compliance vehicle values for ZEV sales more than
16 7 percent of an automaker's total sales for a
17 model year; is that correct?

18 A This is going to kill our lunch break, I
19 think.

20 I'm not 100 percent recalling exactly how
21 this works. But the idea was that you could get
22 credits for the two years before the reg started
23 in California, so that would be '24 and '25, if
24 you're greater than 20 percent of ZEV sales in

1 those early years.

2 And then there was another requirement
3 that says you could get -- or opportunity you
4 could get more credits if you actually had lower
5 sales in the previous two years, so four years
6 before that.

7 So it depends on, you know, where that
8 manufacturer was that was treated differently,
9 whether they were already a pretty high sale
10 company versus one that was still in the infancy.

11 And the total amount of those kind of
12 early credits was limited to less than 15 percent
13 of your obligation in the future years. That's my
14 recollection of how it worked.

15 You may have -- your members probably
16 have a more -- a good memory, or have people that
17 know this back and forth. But I just don't
18 remember exactly how this all works. And it's --
19 a quick read this morning proved to be not
20 completely transparent to me.

21 Q Sorry. I think you referenced -- I think
22 you referenced 20 percent.

23 So would -- is it correct that you only
24 generate early compliance vehicle values for sales

1 that are greater than 7 percent but less than
2 20 percent of total sales for a model year?

3 A Yeah. But that was limited to those 2020
4 through 2022 vehicles that are in that category.

5 Q Right.

6 A The other category for '24 and '25 is if
7 you're more than 20 percent, the excess ones can
8 generate credits.

9 Q Okay.

10 A The idea is if you're ahead of -- in the
11 20 percent one, if you're ahead and you're real
12 close to this period, you should get extra credits
13 for those for getting in early.

14 The other was more to help the laggards.
15 I don't mean that negatively, but the ones that
16 have not sold that many vehicles in those earlier
17 years, to get some credits too.

18 Q Do you have any projections concerning
19 whether any full line automakers, which would be
20 automakers other than EV only auto makers, will
21 exceed 7 percent ZEV sales in model years 2027 and
22 2028 which are the first two years of
23 implementation in Illinois if adopted?

24 A I don't understand where you're getting

1 that 7 percent from. That 7 percent, I think,
2 applies to vehicles they sold in 2020 through
3 2022.

4 The credits they use in '27 and beyond
5 for these early credits were limited to, I
6 believe, to no more than 15 percent of their
7 obligation.

8 I don't think the 7 percent, unless I'm
9 missing something, applies to what they're selling
10 in 2027.

11 I mean, the average national is 7 percent
12 right now, in 2023. So I wouldn't expect,
13 especially with the number of states, you know,
14 that have -- I think it's about 25 percent or more
15 of the cars that are sold in the United States are
16 already subject to these 177 -- or ACC II rules in
17 California, in 177 states.

18 So I don't think there would be anybody
19 at 7 percent in 2027. If I'm wrong, you can
20 correct me on that.

21 MS. MELISSA BROWN: Sorry, I know we're
22 at 11:50.

23 Hearing Officer, I just have one question
24 on this line of questioning before turning to

1 a different subject matter.

2 Would it be okay to proceed with that one
3 question?

4 HEARING OFFICER HORTON: Yes. That
5 sounds good.

6 MS. MELISSA BROWN: Thank you.

7 BY MS. MELISSA BROWN:

8 Q Are you aware that there is a cap for
9 early compliance vehicle values?

10 A Yeah. I just quoted it as 15 percent, I
11 believe.

12 Q Okay.

13 A 15 percent of your obligation.

14 So if you had 30 percentage point
15 obligation, then you could make up 15 percent of
16 that. It's not half; it's 4 and a half percent,
17 I guess, of your percentage points could be made
18 up by these early credits. This is a
19 hypothetical.

20 But there are many other ones that add up
21 as well, which supports my idea that if you were
22 to take advantage of many of these, you could
23 bring the 59 percent number down to potentially as
24 low as 30 percent in 2029.

1 Q Sorry. Just to clarify, looking at model
2 year 2029 and that 59 percent requirement.

3 So 15 percent of that 59 percent
4 requirement can be met with early compliance
5 vehicle values; is that correct?

6 A Yes. That would be 9 percentage points
7 then.

8 Q Yeah. About 8.85 percent would -- is
9 that correct?

10 A I trust your math. I only work in round
11 numbers. I'm sorry.

12 Q Thank you.

13 We can stop there.

14 HEARING OFFICER HORTON: Okay. So at
15 this time we will pause Mr. Cackette's
16 testimony and he'll return after lunch.

17 And now we will move on to
18 Ms. Salgado-Romo.

19 If you could come up.

20 MR. CHASE DEATRICK: My name is Chase
21 Dietrich, and I am appearing on behalf of the
22 Chicago Environmental Justice Network and the
23 Respiratory Health Association under a 711
24 License.

1 MYRNA SALGADO-ROMO,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. CHASE DEATRICK:

6 Q So could you please state your full name
7 and spell it for the record.

8 A Good morning. My name is Myrna
9 Salgado-Romo. M-y-r-n-a, S-a-l-g-a-d-o, hyphen,
10 R-o-m-o.

11 Q And did you submit prefiled testimony in
12 this matter?

13 A Yes, I did.

14 Q Is that the document before you now --

15 A Yes, it is.

16 Q -- entitled "Prefiled Testimony of Myrna
17 Salgado-Romo"?

18 A Yes, it is.

19 MR. CHASE DEATRICK: I'd like to move to
20 admit that into evidence.

21 HEARING OFFICER HORTON: Okay, that will
22 be Exhibit 15.

23 (Document marked as Exhibit No. 15
24 for identification.)

1 BY MR. CHASE DEATRICK:

2 Q And did you also direct the preparation
3 of prefiled answers to prefiled questions
4 submitted to your attention by other parties?

5 A Yes, that is correct.

6 Q And is that the document you see before
7 you now titled "Rule Proponents' Answers to
8 Prefiled Testimony of Myrna Salgado-Romo"?

9 A Yes, it is.

10 Q Do you adopt those prefiled answers as
11 part of your sworn testimony in this matter?

12 A Yes, I do.

13 MR. CHASE DEATRICK: I move to submit
14 that into evidence.

15 HEARING OFFICER HORTON: Okay. That will
16 be Exhibit 16.

17 (Document marked as Exhibit No. 16
18 for identification.)

19 BY MR. CHASE DEATRICK:

20 Q And have you ever testified in a legal
21 proceeding like this before?

22 A No. This is my first time.

23 Q Excellent. This is my first time
24 questioning.

1 And the final question.

2 Could you please provide a brief overview
3 of your testimony and perspective on the proposed
4 rules?

5 A This is a -- this is a personal testimony
6 of my experience, and just having to do with
7 anything that would relate to clean air in our
8 community.

9 Just for context, I have been working for
10 the Chicago Environmental Justice Network for now
11 two years. And I didn't previously work in this
12 field until in 2018, an asphalt plant came into
13 our community. And it was situated in front of
14 our green park, McKinley Park.

15 And prior to my working in this field, I
16 worked as an operations manager at a charter
17 school, two different charter schools.

18 But the most recent one I worked at for
19 ten years, which definitely gave me an insight --
20 a little bit more on what the environment and how
21 the environment was affecting the children in our
22 community.

23 I personally worked with students in
24 administering medication, intaking documentation

1 for students with health issues.

2 I was also the first aid person, so the
3 person that would first see the students that were
4 dealing with any difficulties with medical
5 concerns.

6 But the school that I most recently
7 worked at focused on the holistic approach of
8 educating the child. And so one of the pieces
9 that was really strong in that environment was
10 that we had to -- we had to introduce the children
11 to healthy practices, and one of them was going
12 outside and getting fresh air.

13 And while that seems like something
14 that's very simple, it's not something that we do
15 on a regular basis on the south side of Chicago
16 for many reasons. Part of them being that
17 sometimes families are very exasperated with time,
18 and they don't have the ability to go out.

19 And so the director at our school
20 thought it would be a really great approach to
21 start to focus on children's well-being
22 nutritionally, physically. And so my role in that
23 position definitely opened up another perspective
24 on the environment and how this was affecting

1 our children.

2 Year after year in that experience of
3 working as a frontline first aid person, I started
4 to see the impact that it had with those
5 children.

6 Year after year I continued to receive
7 more documentation of students being diagnosed
8 with asthma and other medical conditions that I
9 believe had a reflection, or reflected to the
10 exposed environment that they were introduced to.

11 And in my experience in that position,
12 I often worked with students who would go to the
13 park where this new asphalt plant was installed,
14 and they would come back to the office talking
15 about how they were exasperated for air, they
16 couldn't breathe. They had challenges breathing.

17 So they would come and sit with me, and I
18 would try to understand what their diagnoses were,
19 call their parents and try to encourage further
20 medical treatment just to make sure they did not
21 get any other ailments.

22 I was not a health expert, but I was
23 certainly learning more about those issues.

24 And so, you know, fast forward to this

1 asphalt plant in our community. And just some of
2 the concerns that were being raised around this
3 issue were having to deal with an immense amount
4 of truck -- increased truck traffic that was
5 contributing to the environment of our children
6 and ourselves as well.

7 I personally have developed a reactive
8 airway disease, and it's treated with an inhaler.
9 Reactive airway disease.

10 I never had asthma. No one in my family
11 has had asthma. It's not something that we've
12 ever had to endure or have had to treat.

13 And last year, when my mother passed away
14 from ALS, Lou Gehrig's disease -- and I don't know
15 if the folks are aware, but Lou Gehrig's disease
16 starts to affect your mobility and your ability to
17 breathe.

18 And so there were many challenges with
19 exposure, to trying to take this person out and
20 get fresh air. So that's one experience.

21 My husband was diagnosed with cancer in
22 2006, a year after we were married. He worked in
23 the industrial industry. And he was, firsthand, a
24 person who experienced these issues and went

1 through, you know, just factory experience working
2 in these industries.

3 So when this plant that came into our
4 community came, he was well aware and understood
5 all of the variants and the variables of the
6 things that they would be doing, and things that
7 they wouldn't be doing to enforce the regulations
8 that were being put upon them.

9 We were not happy about it because it was
10 across the street from a park where we would go to
11 retreat for fresh, clean air. And now, this
12 community is being impacted by 200-plus trucks on
13 a daily basis.

14 Diesel trucks that not only emit
15 pollution through the tailpipes that they're
16 driving through in the community, but there's
17 also aggregate that is falling from these trucks
18 and seeping into our environment.

19 You know, it's really challenging to sit
20 here and listen to an hour and a half conversation
21 about sales, when the purpose of the reason that
22 we're here today is about pollution in our
23 environment and how it's impacting the people who
24 live in it.

1 And just yesterday, I learned that my
2 brother-in-law, who works in food distribution, is
3 hospitalized. And so it's interesting to hear
4 that the first thing on his mind is, What am I
5 going to do to sustain myself? I have to go to
6 work.

7 And just thinking about how we are trying
8 to discuss here the impacts of pollution on the
9 people that they affect, it's important that we
10 start to have that conversation and bring it back
11 to that.

12 Because as we've heard many testimonies
13 yesterday, people who are daily being infected by
14 the issue of clean air and clean water, these are
15 things that should be natural. These are things
16 that should be afforded to us without having to
17 pay consequences. And our lives are on the line
18 and our health is on the line.

19 And I'm not so much concerned about
20 myself, because I feel like I've lived a pretty
21 good life. But I am concerned about the future.

22 I had a conversation with my son this
23 morning, and he is very concerned about having
24 kids. He doesn't want to have kids. He said,

1 How am I going to have children when I can't
2 promise them that they're going to have access to
3 clean water, that they're going to have access to
4 clean air and clean health?

5 He works in the medical industry in the
6 cancer center at Loyola. And it just so happens
7 it's the same treatment center where my husband
8 was treated many, many years for chemotherapy and
9 radiation. And I think about the circle back our
10 life has had, and the decisions and how it's
11 impacted moves that we've done and where we are
12 today.

13 And you know, he shared with me that in
14 his experience in working in the medical field,
15 we're not looking for solutions for ailments for
16 health issues. We're just treating them, and
17 that's not okay. We need to start finding
18 solutions.

19 And I strongly believe that one of the
20 solutions that we can start to address today is
21 transitioning from gas and diesel vehicles to zero
22 emissions.

23 It's going to have its complications just
24 as, you know, gas and -- and vehicle emissions,

1 like gas and diesel vehicles had when they first
2 came into the market.

3 But like everything else, we have to
4 continue to evolve with the times. And that means
5 starting to look at things that are going to
6 really start to reflect on the well-being of our
7 lives.

8 What is the quality of life? You know,
9 what quality of life are we giving the future of
10 our generations if we're not thinking about how
11 these impacts are affecting them and whether
12 they're going to be able to walk outside and get
13 fresh air? That's concerning to me.

14 And so I hope that my testimony can serve
15 as evidence that there have to be some changes
16 here and we have to stop talking about sales,
17 because there will always be sales. But we won't
18 always be able to breathe clean air. We won't
19 always be able to drink clean water.

20 And that is why I'm here today.

21 MR. CHASE DEATRICK: Thank you. That's
22 all.

23 HEARING OFFICER HORTON: Okay. Thank you
24 so much, and you're dismissed.

1 We'll break for lunch and go off the
2 record.

3 (WHEREUPON, a lunch recess was taken
4 from 12:04 to 1:12 p.m., after which
5 the following proceedings were
6 held:)

7 HEARING OFFICER HORTON: All right. It's
8 1:11, and we're back on the record.

9 We're continuing with Mr. Cackette's
10 testimony. And, Ms. Brown, are you prepared?

11 MS. MELISSA BROWN: I am. Can you hear
12 us all right?

13 HEARING OFFICER HORTON: Yes, loud and
14 clear.

15 MS. MELISSA BROWN: Okay. Thank you.

16 TOM CACKETTE,
17 having been previously duly sworn, was examined
18 and testified further as follows:

19 FURTHER EXAMINATION

20 BY MS. MELISSA BROWN:

21 Q So, Mr. Cackette, we were talking earlier
22 about early compliance vehicle values, and so I'm
23 going to want to turn to a different type -- or a
24 credit.

1 And so are you familiar with the term
2 "carry-back credit"?

3 A Yeah. In general, yes.

4 Q So would you agree a carry-back credit
5 generally is when an automaker with a deficit in
6 one year can overcomply in later years and use
7 that overcompliance credit, then, in the earlier
8 model year that it did not comply?

9 A Right. If you held a deficit, you could
10 carry the deficit forward for up to a third year.
11 And that allows you to make -- have time to make
12 up for the deficit.

13 You can take credits that you had from
14 other sources and use them as well. But you have
15 to use the credits that you have to make up a
16 deficit. You can't, you know, not use them.

17 Q And your response references -- that's my
18 next question.

19 So it is correct that an automaker can
20 carry back these credits for up to three years; is
21 that correct?

22 A Yes.

23 Q Okay. Just turning really quickly back
24 to -- we had a little bit of a discussion on

1 penalties. And this is just generally.

2 But would paying a penalty for not
3 meeting the ZEV requirement relieve an automaker
4 of making up that deficit, or would they still
5 need to meet the ZEV requirement standard?

6 A Yes, they would still have to meet the
7 requirements in some way. It may not be, you
8 know, the way that the regulation laid out. But
9 in general, they'd have to solve the problem and
10 pay a penalty for violating it. That's the way
11 the penalties generally work.

12 So the penalty -- they're not going to
13 maintain -- they can't buy their way and maintain
14 compliance. If they continue to be in
15 noncompliance for multiple years and not take the
16 remedies that are available, the state could stop
17 them from selling vehicles in California.

18 That's never happened. So I think, you
19 know, manufacturers are serious. They're credible
20 companies that don't operate in violation of
21 rules.

22 And if, you know, something really big
23 comes along and no ZEVs are selling or anything,
24 you know, then they go to the Board and say,

1 Gee, we've got a problem. And the staff usually
2 comes up with some solution. Often the solution
3 is to not change the regulation stringency, but to
4 just give them more time.

5 And you have to realize that the car
6 companies -- we realize it -- but the car
7 companies are competing against each other. And
8 so you don't want to be -- no one wants to be the
9 laggard. No one wants to be out of compliance.

10 And if the other manufacturers are in
11 compliance -- because it says, Well, if they can
12 do it, why can't you?

13 So it goes to credibility. And that's
14 why these regulations work so well, is because it
15 gives the time and it gives the clear direction to
16 the manufacturers of what they have to do.
17 Because they have to build these cars, you know,
18 plan these cars, four or five years in advance.

19 So they need stability. They want
20 stability. They want to know what it is. They
21 want to know it's not going to change. And they
22 want to know that if something really bad happens,
23 that they can get some temporary relief from the
24 Board, or how these long lists of feasibility

1 provisions that they can rely on, and which we
2 finished off on the -- you know, one of the
3 easiest ones is to buy credits. And that puts you
4 in compliance. It's not like a penalty.

5 So I just don't see the manufacturers
6 being out of compliance with the rule unless, for
7 some reason, everybody can't sell them or they've
8 done something wrong and they've gotten caught at
9 it. Then the penalties go way up, as in the VW
10 situation.

11 Q The way it's written, though, Illinois'
12 regulations would have to be identical to
13 California's. Correct?

14 A You mean in terms of the amount of
15 penalties?

16 Q The technical requirements of the rule.
17 Such as the ZEV standards, for example.

18 A Yes. If you have a -- if you just look
19 at the straight ZEV percentage, that's what the
20 percentage has to be in Illinois, and it's the
21 same as in California.

22 But Illinois has -- and the manufacturers
23 have multiple options to not make that a full
24 compliance of vehicles, but to use other credits

1 and other feasibility extensions that they could
2 use to assure that they're complying in Illinois
3 as well.

4 So it's not like it has to be -- the
5 outcome has to be an example. But the actual
6 regulatory goal, or number, has to be met in some
7 way. It might be met differently in California
8 than it would be in Illinois. But they have to --
9 they're going to be the same, from the standpoint
10 as the Clean Air Act having the identicality of
11 the requirements for the regulation.

12 Q And so the standards need to be identical
13 in Illinois as they are to California.

14 So regardless of what actually happens in
15 Illinois, whether automakers meet these standards
16 or not, the Illinois -- and here, the Illinois
17 Pollution Control Board would not be able to
18 revise these standards, correct, because they have
19 to be identical to California?

20 A That's correct. But I think -- well, I
21 did mention that it leads to the ability to -- if
22 sales are slow in Illinois but not elsewhere, to
23 keep Illinois manufacturers in compliance in
24 Illinois, is pooling, you know. You're allowed to

1 pool sales in every state that's 177. So that's
2 sort of like averaging.

3 So let's say that California has
4 overcomplied, has more than what the standard is,
5 like we do right now. Then that would be -- could
6 be averaged into an undercompliance in Illinois
7 for the manufacturer, and they can take that from
8 the other states. They could include Washington
9 and Oregon, because they've got numbers almost as
10 high as ours. And that gives another flexibility
11 for the manufacturer.

12 They're not -- they don't have to
13 actually comply with the number in every state if
14 they take advantage of pooling. On the average,
15 it will be in compliance.

16 So there's just a lot of ways to do this.
17 And that's why I -- you know, I have pretty good
18 confidence that even though the numbers increase
19 at a fairly rapid rate, and you're starting at a
20 lower rate than California, Washington, and Oregon
21 and Colorado have, but it gives the manufacturer
22 flexibility to do it.

23 Remember, it's not you trying to meet the
24 standard. It is the manufacturer, the individual

1 manufacturers that have to meet the standard.

2 And they've got just, you know, a handful
3 of ways of doing it: supplanting or enhancing the
4 numbers of the actual vehicles that they sell,
5 carry back, carry forward, pooling, early credits,
6 all of that kind of stuff.

7 And it's all designed for that, because
8 we don't expect every manufacturer to be on the
9 same track as another manufacturer.

10 I think the states understand quite well
11 that they're not all at the same starting point
12 either. And yet we've gotten, you know, ten
13 states that have gotten the ZEV mandate on their
14 books. And I'm not hearing any large complaints
15 that they think they're not going to be able to
16 make it.

17 Q Your reference was pooling. But pooling
18 is not allowed under ACC II, is it?

19 A Yeah, it is.

20 Q Can you point to the requirement in
21 ACC II where pooling is allowed? Or even --

22 MR. ROBERT WEINSTOCK: Tom --

23 A Well, what I've written down is pooling
24 with other 177 states, including California --

1 there's two different options -- through 2030.
2 And the number is going to be up to 10 percent of
3 the credits in '29 and 5 percent of the credits in
4 2030.

5 There's different pooling requirements
6 in -- well, there aren't pooling requirements in
7 the truck regulation, but the ARB is looking at
8 that.

9 BY MS. MELISSA BROWN:

10 Q Just to clarify, though, you're saying
11 that pooling is allowed under ACC II?

12 A Yes. Unless my counsel back here is
13 telling me no, but I'm pretty sure that's correct.

14 Q Just to go back to what we were talking
15 about, that Illinois needs to be identical to
16 California, and that the Board, the Illinois
17 Pollution Control Board, cannot make adjustments
18 to the ZEV standards, because the requirements
19 need to be identical to California.

20 Has California made any adjustments to
21 the ZEV standards?

22 A Well, ACC II, which includes the ZEV
23 standard, was adjusted, you know, just last
24 year -- I think it was last year. Maybe it was

1 this year -- yeah, last year.

2 So yeah, they do make changes. They only
3 had standards that went up through 2025 or '26,
4 and then they were flat after that. And then they
5 adopted the more stringent standards that go all
6 the way up to 2035. And so they do that
7 occasionally.

8 And there are -- I think there are --
9 there's going to be a workshop and then another
10 Board meeting to make some changes to the ACC II,
11 but not to the ZEV sales requirement.

12 So there will be some alignment of the
13 pollution standards, where EPA did a new rule and
14 they actually set one of the -- a couple of
15 standards more stringent than we had from
16 two years before. So we're going to -- California
17 is going to knock those down to be the same.

18 And they're going to try to -- I think
19 they're going to try to -- they're proposing to
20 require that when you plug in, there's
21 interoperability with the car and the charger
22 station, so to get rid of all of those problems we
23 were talking about before, and a few other things
24 like that. But nothing -- nothing major. That's

1 not going to happen until 2025, Quarter 2, I
2 understand. But no big changes.

3 But they do -- I should say they do go
4 back and look at this quite often. It's not a
5 midterm review or something like that. But the
6 Board is kept aware by the staff of how things
7 are going, and it's all publicly available
8 information.

9 And if -- you know, if things aren't
10 looking good the Board would have to meet and
11 decide what they're going to do, because they're
12 not going to stop sales of vehicles in California.
13 That's clear. I mean they could, but I don't
14 think anybody logically would do that as a good
15 policy.

16 BOARD MEMBER JENNIFER VAN WIE: Excuse
17 me.

18 Could you just refer to the California
19 board as CARB?

20 THE WITNESS: I'm sorry.

21 BOARD MEMBER JENNIFER VAN WIE: And the
22 Board as the Board. Because otherwise, it's
23 going to be really...

24 THE WITNESS: I've been told about that a

1 dozen times, that it's CARB or ARB. When I
2 say that, I don't mean you.

3 BOARD MEMBER JENNIFER VAN WIE: Thank
4 you.

5 THE WITNESS: I'll try to remember that.
6 Sorry.

7 MS. MELISSA BROWN: All right. Thank
8 you.

9 That's all the questions we have.

10 HEARING OFFICER HORTON: Okay.

11 Anybody else in Springfield have followup
12 questions for Mr. Cackette?

13 MS. MELISSA BROWN: No, there's no one
14 else here to ask questions.

15 HEARING OFFICER HORTON: Good to know.

16 BOARD MEMBER JENNIFER VAN WIE: I just
17 want to clarify.

18 So when you were talking about the
19 pooling -- or when you were having a
20 conversation about the pooling, so that is
21 available under ACC II, but it is not
22 available under the ACT?

23 THE WITNESS: Right.

24 BOARD MEMBER JENNIFER VAN WIE: Okay.

1 THE WITNESS: Although they are
2 considering that. But it would be another
3 rulemaking to change that.

4 BOARD MEMBER JENNIFER VAN WIE: ARD is
5 considering?

6 THE WITNESS: Yeah.

7 BOARD MEMBER JENNIFER VAN WIE: Okay.
8 Thank you.

9 THE WITNESS: But there is an averaging
10 within the group for greenhouse gasses and
11 ZEVs. You can average some -- between some
12 categories, but that's not pooling. Pooling
13 is from another state.

14 BOARD MEMBER JENNIFER VAN WIE: Okay.
15 Thank you.

16 BOARD STAFF DR. ANAND RAO: Did you
17 provide a citation in the proposed rules that
18 allows the pooling in ACT, or are you going to
19 give it later?

20 One of you. I don't know if it is
21 Mr. Cackette or counsel has to answer this
22 question.

23 THE WITNESS: I'm not an expert in the
24 translation to Illinois regulations, so I

1 can't answer that.

2 MR. ROBERT WEINSTOCK: I believe that it
3 is -- sorry. I'll speak up a little bit.

4 I believe that's included in the
5 materials that are incorporated by reference
6 in the rule proposal. So there is the table
7 in Section 242.103 that has a 2-and-a-half-
8 page long table of California code provisions
9 incorporated by reference.

10 I believe it is within those, but we will
11 follow up with that.

12 BOARD STAFF DR. ANAND RAO: Thank you.

13 HEARING OFFICER HORTON: Okay. If there
14 are no other followup questions, I understand
15 counsel has some redirect for Mr. Cackette?

16 FURTHER EXAMINATION

17 BY MR. NATHANIEL SHOAFF:

18 Q Hi, Mr. Cackette. I'm Nathaniel Shoaff
19 on behalf of Sierra Club, EDF, and Center for
20 Neighbors of Technology.

21 Mr. Cackette, I know we're going on just
22 about two hours, maybe a little over for your
23 testimony today, so thank you for your time. I
24 just have a few short questions for you.

1 These all relate to questions you were
2 asked already this morning. I just want to make
3 sure that everybody here understands your answers
4 and so the record is clear.

5 You were just asked about the way in
6 which compliance credits work.

7 Mr. Patel yesterday -- I believe for
8 ACC II, Advanced Clean Cars II regulation -- the
9 requirement is that manufacturers sell 59 percent
10 of the cars that they sell in that state must be
11 zero emission vehicles in 2029. That's the
12 language in the regulation.

13 Is that your understanding?

14 A Yes.

15 Q And yesterday, Mr. Patel indicated that
16 he thought that number could be as low as
17 50 percent based on certain compliance credits
18 that the manufacturers are allowed to use under
19 the rules.

20 Today, you indicated that based on your
21 math, you thought those compliance credits could
22 actually lower the ZEV sales requirement in 2029
23 to as little as 30 percent.

24 Is that accurate and can you explain why

1 there might be different numbers there?

2 A Yes. I went through some of the
3 flexibilities that were available.

4 I think, you know, one of them was the
5 pooling, which would have dropped the number by
6 about 6 percent. Even though -- even though I
7 know that a plug hybrid electric vehicle is called
8 a ZEV, if you're having trouble selling BEVs, you
9 could sell plug hybrid vehicles. They remove --
10 they'll go any distance and things like that --
11 they've got a gasoline engine in them -- and that
12 could account for 20 percent of a manufacturer's
13 sales counting as ZEVs. So technically, that's a
14 ZEV, but it reduces a number of dedicated battery
15 electric vehicles.

16 There's a weird one, which is on fuel
17 cell vehicles, the manufacturer could get
18 2 percent reduction of the 59 percent number, if
19 it sells, I think, one fuel cell vehicle. Because
20 the basis for the fuel cell vehicle is what
21 California sells. And we have the infrastructure.
22 So every state would get that.

23 So you get possibly the full 2 percent,
24 regardless of whether you had any significant

1 number of fuel cell vehicle sales.

2 And in the earlier years, which would
3 include 2029 -- there is ACC I credits that have
4 been allowed. That's credits from pre- -- not
5 early compliance, but just credits in general,
6 from -- that have been banked under California's
7 rules.

8 And one of the things that we've
9 mentioned and discussed for future discussion is
10 that some other states, when they came in, created
11 a set of credits that sort of helped them catch up
12 to where California would be, and that smoothed
13 their transition. Those are good for another
14 15 percent of the credits.

15 And so if you take all of those together
16 and you maximize those, it could get you down in
17 the -- around 30 percent.

18 There's even other ones. Like the
19 manufacturer could do the dedicated program to
20 influence vehicles in low income areas. It's
21 called the EJ provision. And that could get
22 you -- if you do that as a manufacturer, and you
23 sell vehicles at a discounted price and you take
24 off lease vehicles and give them back to the

1 dealer so they can sell them to lower income
2 people, if you do those, you can get another
3 5 percent up to, I think, 2030 or '31, in that
4 credit.

5 So these things add up to quite a bit.
6 You can't use them, you know, multiple years,
7 because they either expire or you use them all up
8 in one year.

9 But they at least show that in 2029 and
10 2030, there's some flexibilities for manufacturers
11 to sell fewer ZEVs than those numbers reflect.

12 Beyond that, I think you pretty much have
13 to be on the same curve, because many of these
14 things are designed to only help individual
15 manufacturers catch up or keep up with that line.

16 But eventually, when these -- you're
17 talking about 60 percent, and we're talking about
18 a completely full commercial marketplace. And
19 it's not -- you know, a lot of doubts about these
20 vehicles are gone. It's going to be just consumer
21 reaction to the remaining people -- just like with
22 manual transmissions.

23 We still get complaints that nobody makes
24 manual transmissions anymore. But you know, now

1 it's 95 percent of the cars or something like that
2 have automatics.

3 So you know, things change. But it takes
4 a while for consumers to be comfortable with the
5 change. And this is a big change.

6 Q So, Mr. Cackette, thank you for that.

7 Is it accurate to say that the 50 percent
8 number that Mr. Patel was referencing was based on
9 an early compliance credit, and that the
10 30 percent number that you're referencing is based
11 on manufacturers using that early compliance
12 credit plus other credits?

13 A That's exactly right.

14 Q Got it.

15 So his number is a subset of the
16 available credits and yours --

17 A Yes.

18 Q -- encompassed all of them for ACC II in
19 2020?

20 A Yeah. Not all of them, but most of them.

21 Q Thank you.

22 Why don't we stay on that compliance
23 pathway issue.

24 I think you mentioned, in your initial

1 responses to Ms. Brown's questions, that
2 California's never had to issue a penalty against
3 a manufacturer for not complying with the ZEV
4 sales percentage mandates; is that accurate?

5 A That's -- yeah. I believe that's
6 accurate for all time. It's certainly accurate
7 since the numbers have started going up in 2019.

8 Q So what happens if a manufacturer misses
9 the ZEV sales requirement for one year? What
10 happens at that point?

11 How is it that CARB has never had to
12 issue a penalty?

13 A Well, because that creates -- if the
14 credits that they earn from selling the vehicles
15 are greater than -- or less than the obligation,
16 which is called deficits -- that's how many
17 they're supposed to sell. If that works out,
18 they're in the hole. They're not in
19 noncompliance, but they have a deficit shortage.
20 And they've got up to three years to make that up.
21 So nobody would pay a penalty in year one of
22 having a deficit.

23 You know, it could happen, because you
24 planned on a brand-new super model ZEV coming in

1 and something happened. You didn't get it out of
2 the -- you know, there was a problem with it
3 before production, and so it got delayed to the
4 next model year.

5 That's a way of dealing with those kind
6 of situations. I think they all plan on
7 complying, but these are to help them comply.

8 Q Thank you.

9 And just a few minutes ago after lunch,
10 Ms. Brown was asking you about the identicality
11 requirement that the emission standards and the
12 ZEV requirement are identical in Illinois to the
13 California standards, if Illinois were to adopt
14 these things.

15 And she said that those -- so those must
16 be identical. Correct?

17 And your answer was in the affirmative.
18 Yes, they must be identical.

19 A That's true.

20 Q I just want to make clear I understand
21 what it is you're referring to when you say "those
22 standards must be identical."

23 Is it right that those standards are that
24 59 percent, or maybe it's 50 or 30 with compliance

1 protocols? But it's that ZEV sales requirement
2 that must be identical rather than, say,
3 enforcement and recordkeeping or effective dates?

4 A Yes. I think that the primary is the
5 cars themselves. I think if, you know, the
6 reporting requirements and things like that are
7 addressed to the ARB, and if there's a problem
8 there they don't report, the ARB would take
9 enforcement action.

10 If you have that provision in your rule,
11 you could, but you don't have to take enforcement
12 action as well. The enforcement action would, you
13 know, give the data that CARB needed, and then it
14 would be shared with you. So that would solve the
15 problem.

16 Q Thank you.

17 You just mentioned enforcement. Let's
18 touch on that for a moment.

19 I think you said earlier there are about
20 a million and a half cars sold every year in
21 California.

22 Are there any instances that you're aware
23 of, of an individual or an individual business
24 being prosecuted or fined or held liable in some

1 way for failing to comply with the ZEV sales
2 percentages?

3 A Not with the ZEV sales percentage. I
4 mean, if you look at these rules, the smog ones,
5 the NOx and PM, every car has to comply. Every
6 truck has to comply.

7 The greenhouse gas and ZEV ones are all
8 fleet averages. So you don't know if the -- if
9 there's been compliance or not until a quarter
10 after the model year is done.

11 The manufacturer has to report sales and
12 do the calculations. And then they -- you know,
13 they'll say, We are in compliance, and ARD will
14 validate that.

15 So there's other people that sell the
16 vehicles. They really aren't involved in this at
17 all. They don't know if General Motors is going
18 to be in compliance or not. They're selling
19 electric vehicles, and hopefully enough of them
20 for GM to meet the requirements.

21 It's the same with the heavy-duty ACT
22 rules. Anything that's got an annual average
23 obligation rather than a specific vehicle
24 obligation is one that -- yeah. It's not going to

1 affect it -- probably isn't going to affect
2 anybody but the vehicle manufacturer.

3 Q Thank you, Mr. Cackette.

4 I just have a couple more questions.

5 You were asked about ZEV sales and the
6 trends in zero emission sales.

7 How do those compare with recent trends
8 for sales of internal combustion engines?

9 A If you look at internal combustion
10 engines, you know, you can see the -- nationally,
11 a great year, I think, is -- I might have the
12 numbers wrong. But, you know, like 19 million
13 cars sold -- cars and trucks sold in the
14 United States.

15 And then in a bad year, during the
16 pandemic or 2008 or something like that, the
17 numbers were down, you know, 12, 14 million
18 instead. So you know, they bounce around a lot.

19 But the ZEV sales are -- first of all,
20 are a percentage of that. So there will be fewer
21 ZEVs that necessarily will be sold. If the total
22 number of a manufacturer are lower or higher,
23 there will be more sales required.

24 And so what you can see is that there's

1 going to be -- I'm waving my hand. But, you know,
2 there's going to be ups and downs that occur in
3 this, like it was for ZEV sales in 2023, but
4 recovering in 2024.

5 So it's hard to say what the economy will
6 say and what any comply issues will be. But if
7 you're confident on the trend, and I think the
8 vehicle manufacturers are confident, that they --
9 you know, that they're always going to get back up
10 to that desired number of 19 million or whatever
11 it is, and not going to just be stuck at 15 going
12 down, you know.

13 And that's what, I think -- why we're
14 confident that the ZEV sales will be pretty
15 stable.

16 Q Thanks, Mr. Cackette.

17 This is my last question.

18 You were asked by Ms. Brown about public
19 charger reliability. The problem where somebody
20 drives up to a public charging station, they plug
21 in their car, and it just doesn't work. It won't
22 turn on. For whatever reason, the electrons are
23 not flowing from that charger to that vehicle.
24 That sounds like a legitimate concern.

1 Are you aware of the federal investment
2 dollars that's called the NEVI program, or the
3 National Electric Vehicle Infrastructure program?

4 A Yeah. I certainly know what NEVI means.
5 I'm not sure I know much more than that. But I
6 know it's a lot of money coming to -- for
7 installation of fast chargers and other chargers.

8 Q Right. These are federal investment
9 dollars --

10 A Yes.

11 Q -- already allocated --

12 A Yes.

13 Q -- intended to speed the development of
14 charging stations along the highway roads,
15 basically?

16 A Right.

17 Q Are you aware of what the uptime
18 requirement is for those? And can you explain to
19 the Board what "uptime requirement" means?

20 A Yeah. Well, I am aware of that. The
21 uptime requirement is trying to address future
22 stations that are put in place, not having the
23 problem that we're having with the non-Tesla
24 stations now.

1 And I believe that the money is
2 contingent on reaching a 97 percent uptime. And
3 that means -- I think the general definition --
4 that is, when you plug the car in, you get
5 charged. Not money charged, but electrical
6 charged. Yeah. You could fill your car back up
7 successfully.

8 Q I think it's safe to assume you get
9 charged both ways.

10 A Yeah. The free charging is pretty much
11 long gone. So that's what it is.

12 And it's trying to address this problem.
13 And there is money out of that NEVI that also
14 replaces -- a company that now has charging
15 stations to get rid of the old ones and put newer
16 ones in.

17 Because the technology has changed. They
18 were -- you know, the parts were kind of new, and
19 I guess it was not anticipated, but they are less
20 reliable.

21 But the big point is getting rid of --
22 having to put a credit card in or having to have a
23 screen to communicate with somebody to give your
24 number to or that kind of stuff. It's going to be

1 plug and play on this in the future. Simple.

2 I do it in my car, and it's just -- you
3 drive up, you get out of the car, you grab the
4 thing, you stick it in the back of the car -- this
5 is a Tesla -- and you either go in there and
6 listen to music, you play games on the computer in
7 the car, or you go in and have a coffee or grab a
8 burger.

9 And then it tells you on your phone, it
10 says, "You're done." And it reminds you, "You're
11 done," and in one minute or five minutes, you're
12 going to be paying a dollar a minute if you don't
13 get out there and free up the space, because they
14 don't want cars there while you're shopping at
15 Macy's or something for an hour.

16 So you know, it works out really well.
17 And I think all of it is going to migrate towards
18 that in the next few years.

19 MR. NATHANIEL SHOAFF: Okay. Thank you,
20 Mr. Cackette.

21 I have nothing further.

22 HEARING OFFICER HORTON: Okay. Thank you
23 so much. You're dismissed. I appreciate it.

24 MR. ROBERT WEINSTOCK: I was going to put

1 on the record -- address the Board's question
2 about the pooled credit values in the
3 regulatory proposal.

4 If you look at the -- and I'm just using
5 the revised language submitted with our
6 prefiled answers.

7 Section 242.124 is the ZEV credit bank
8 section. Part D addresses pool ZEV and PHEV
9 values. So it's there.

10 And then in --

11 HEARING OFFICER HORTON: Page 203?

12 MR. ROBERT WEINSTOCK: 203 would be the
13 redline version. I'm looking at 182 as the
14 clean version.

15 And that actually refers to the 2030
16 model year that Mr. Cackette just mentioned,
17 that those pooled up credits would be
18 available until 2030.

19 And then also, 242.126 talks about
20 demonstrating compliance, and then refers to
21 requiring a demonstration that you address in
22 Part B, any pooled ZEV or PHEV values that you
23 use to demonstrate compliance.

24 Those then refer to the CARB sections,

1 which are also incorporated by reference,
2 which is 1962.4J3, which essentially has the
3 same language about pooling for those '26 to
4 '30 model years.

5 BOARD STAFF DR. ANAND RAO: Thank you.

6 MR. ROBERT WEINSTOCK: Of course.

7 HEARING OFFICER HORTON: Okay. We can
8 move on to the next witness. I believe that's
9 going to be Mr.- -- or Dr. Daniel Horton?

10 Dr. Horton, the court reporter will swear
11 you in.

12 DANIEL HORTON, Ph.D.,
13 having been first duly sworn, was examined and
14 testified as follows:

15 EXAMINATION

16 BY MR. ROBERT WEINSTOCK:

17 Q Good afternoon, Professor Horton. Thank
18 you for being with us.

19 A Thank you for having me.

20 Q Could you please state and spell your
21 name for the record.

22 A Daniel Horton, D-a-n-i-e-l, H-o-r-t-o-n.

23 Q And Professor Horton, did you submit
24 prefiled testimony in this matter?

1 A Yes, I did.

2 Q And is that the document entitled
3 "Prefiled Testimony of Professor Daniel Horton in
4 Support of Rule Proponents' Regulatory Proposal"?

5 A Yes, it is.

6 Q Do you adopt that prefiled testimony as
7 your sworn testimony today?

8 A I do.

9 MR. ROBERT WEINSTOCK: With that, I would
10 move into evidence, Hearing Officer, the
11 prefiled testimony of Professor Daniel Horton
12 in Support of Rule Proponents' Regulatory
13 Proposal.

14 HEARING OFFICER HORTON: That will be
15 Exhibit 17.

16 (Document marked as Exhibit No. 17
17 for identification.)

18 BY MR. ROBERT WEINSTOCK:

19 Q And, Professor Horton, did you also
20 direct the preparation of prefiled answers to
21 certain prefiled questions submitted to our
22 attention by other parties?

23 A Yes, I did.

24 Q And is that the document entitled

1 "Rule Proponents' Answers to Prefiled Testimony of
2 Professor Daniel Horton"?

3 A Yes, it is.

4 Q Do you adopt those prefiled answers as
5 part of your sworn testimony today?

6 A I do.

7 MR. ROBERT WEINSTOCK: Hearing Officer
8 Horton, I would move that into evidence as
9 well.

10 HEARING OFFICER HORTON: That's
11 Exhibit 18.

12 (Document marked as Exhibit No. 18
13 for identification.)

14 MR. ROBERT WEINSTOCK: Thank you.

15 BY MR. ROBERT WEINSTOCK:

16 Q Professor Horton, I just have one
17 question for you, and we'll see if anyone has any
18 other questions.

19 The Board has your prefiled testimony and
20 answers. I'm just wondering if you would like to
21 take this opportunity to explain to the Board your
22 perspective on the proposed rules and maybe a
23 brief summary of your testimony.

24 A Sure. So thank you for having me.

1 I'm an associate professor up at
2 Northwestern University. And my research group
3 has spent at least the past seven years
4 investigating air pollution and characterizing it
5 over the southern Lake Michigan region, and also
6 investigating the adoption of electric vehicles.

7 And to do this, we use numerical models.
8 The numerical model that we use is state of the
9 science. It's a model called WRF CMAK, W-R-F
10 C-M-A-K. It's a U.S. EPA model.

11 With this model, we attempt to simulate
12 and characterize what the air quality is like in
13 our region.

14 To do this, we use datasets that are also
15 state of the art. Our emissions data comes from
16 the National Emissions Inventory. And our
17 surrogates, which are spatial allocation of those
18 emissions in counties in our region, are provided
19 by the Lake Michigan Air Directors Consortium,
20 also known as LADCO.

21 With this emissions data and the
22 simulation of meteorology, which is what the WRF
23 portion of the model does, we can simulate what
24 the ambient air quality is and simulate different

1 pollutants that are of concern.

2 Pollutants like -- primary pollutants
3 like nitrogen dioxide and particulate matter, but
4 also secondary pollutants like ozone, tropospheric
5 ozone.

6 So after we characterize what air quality
7 is like in a normal year here in our region, we
8 can also run what we call sensitivity experiments,
9 where we alter the emissions within our models by
10 implementing different emission factors for
11 different vehicle types.

12 So we run a series of experiments
13 targeting heavy-duty vehicles, light-duty
14 vehicles, and many others to see what the net
15 benefits would be.

16 With these simulations, we've shown that
17 the adoption of electric vehicles, particularly
18 heavy-duty vehicles, leads to significant
19 reductions in nitrogen dioxide, particulate
20 matter, and marginal increases in ozone pollution.
21 And most of these reductions and pollutants lead
22 to substantial health benefits, particularly in
23 disadvantaged communities.

24 Q I guess I will just ask one final

1 question.

2 It's the findings you've made in your
3 work that leads you to support rule proponents'
4 proposal here today?

5 A That's correct.

6 MR. ROBERT WEINSTOCK: Thank you.

7 Nothing further.

8 HEARING OFFICER HORTON: Okay. Does
9 anyone here in Chicago have followup questions
10 for Dr. Horton?

11 Anyone in Springfield?

12 BOARD MEMBER MICHAEL MANKOWSKI: No, we
13 have no questions down here.

14 HEARING OFFICER HORTON: Okay.

15 So, Dr. Horton, thank you so much.
16 You're dismissed.

17 THE WITNESS: Thank you.

18 HEARING OFFICER HORTON: Then our last
19 witness of the day is Brian Urbaszewski.

20 The court reporter will swear you in.
21
22
23
24

1 BRIAN URBASZEWSKI,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. ROBERT WEINSTOCK:

6 Q Thank you Mr. Urbaszewski.

7 Could you please state and spell your
8 name for the record.

9 A Sure. Brian Urbaszewski, B-r-i-a-n,
10 U-r-b-a-s-z-e-w-s-k-i.

11 Q Mr. Urbaszewski, did you submit prefiled
12 testimony in this matter?

13 A I did.

14 Q And is that the document before you now
15 entitled "Prefiled Testimony of Brian
16 Urbaszewski"?

17 A Yes.

18 Q Would you like to make any corrections or
19 clarifications to that document before we move
20 forward?

21 A To the original testimony or to the
22 questions?

23 Q The questions.

24 A The questions? No.

1 Q Thank you.

2 So do you adopt that prefiled testimony
3 as your sworn testimony in this matter here today?

4 A I do.

5 MR. ROBERT WEINSTOCK: Hearing Officer
6 Horton, I move into evidence the prefiled
7 testimony of Brian Urbaszewski.

8 HEARING OFFICER HORTON: Thank you. That
9 will be Exhibit 19.

10 (Document marked as Exhibit No. 19
11 for identification.)

12 BY MR. ROBERT WEINSTOCK:

13 Q And, Mr. Urbaszewski, did you also direct
14 the preparation of prefiled answers to certain
15 prefiled questions submitted to your attention by
16 other parties in this matter?

17 A I did.

18 Q And is that the document you see before
19 you now titled "Rule Proponents' Answers to
20 Prefiled Testimony of Brian Urbaszewski"?

21 A Yes.

22 Q Are there any corrections you would like
23 to make to that document?

24 A One small correction. Let me find

1 the page.

2 On page -- I guess it's 145. In
3 answering to AFAI 24(A) question, I originally
4 have here:

5 "All that said, there will be significant
6 benefits to Illinois' economy. Under the Federal
7 Inflation Reduction Act, extensive federal
8 resources are being used to build high-speed
9 charging networks along major roads and within
10 communities."

11 And I think that should read, instead of
12 "Inflation Reduction Act," the "Infrastructure
13 Investment and Jobs Act."

14 Q Thank you, Mr. Urbaszewski.

15 With that correction, do you adopt those
16 prefiled as answers as part of your sworn
17 testimony in this matter today?

18 A I do.

19 MR. ROBERT WEINSTOCK: Hearing Officer
20 Horton, with that correction, I would move
21 into evidence the prefiled answers of
22 Mr. Urbaszewski.

23 (Document marked as Exhibit No. 20
24 for identification.)

1 HEARING OFFICER HORTON: That will be
2 Exhibit 20.

3 And I'm just thinking out loud. Would
4 you like to submit a corrected exhibit with
5 that change or --

6 MR. ROBERT WEINSTOCK: If that's your
7 preference. The record reflects it now, so I
8 submit it to you.

9 HEARING OFFICER HORTON: Yeah. I would
10 prefer it.

11 MR. ROBERT WEINSTOCK: Okay. We will
12 follow up with that.

13 BY MR. ROBERT WEINSTOCK:

14 Q One question, actually, Mr. Urbaszewski,
15 before I ask you the final question.

16 In the correction you just made, it
17 refers to high-speed charging.

18 Is that the same as the NEVI program we
19 just heard Mr. Cackette discuss?

20 A Yes. That was my intent.

21 Q Okay. And are you aware of whether
22 Illinois has been awarded NEVI funds?

23 A Illinois has gotten NEVI funds -- or it
24 has gotten approval to incur expenses and be

1 reimbursed by the federal government under the
2 NEVI program for three years of funding. I
3 believe the fourth year of funding is still
4 pending, but it's expected to be approved soon.
5 And it's unclear what's going to happen with the
6 fifth year of NEVI funding.

7 Q And do you have an idea of what the
8 dollar value of those years of funding is?

9 A The total that Illinois should get under
10 formula funding, I think, is 148 or \$149 million.
11 So roughly four-fifths is that Illinois should
12 have guaranteed. It's the remaining year that's
13 uncertain at this point.

14 Q Thank you.

15 With that, I will ask the final question
16 which is: Could you please provide a brief
17 overview of your testimony and perspective of the
18 proposed rules for the Board?

19 A Sure. Just for reference, I'm the
20 Director of Environmental Health Programs for the
21 Respiratory Health Association. We're a nonprofit
22 lung health advocate organization founded in 1906
23 here in Cook County, and I am the director of
24 Environmental Health Programs.

1 In that position, I have advocated for
2 over 25 years for policies, laws, ordinances,
3 et cetera, that reduce air pollution, because of
4 the effective air pollution on lung health, which
5 is the primary goal of my organization.

6 So in that capacity, I'm here to advocate
7 for the three rules that are before the Board,
8 because I believe they will be good for lung
9 health and for the people we advocate for in my
10 organization, which are often among the most
11 vulnerable people to air pollution, people living
12 with chronic lung disease.

13 MR. ROBERT WEINSTOCK: With that, the
14 Board has Mr. Urbaszewski's prefiled testimony
15 and prefiled answers.

16 I have no further questions.

17 HEARING OFFICER HORTON: Okay. Any
18 followup questions for Mr. Urbaszewski here in
19 Chicago?

20 BOARD STAFF DR. ANAND RAO: I have a
21 followup.

22 HEARING OFFICER HORTON: Okay. Go ahead.

23 BOARD STAFF DR. ANAND RAO: Sir, you
24 mentioned the funding that the state may

1 receive under the federal -- is it the NEVI
2 program?

3 THE WITNESS: Yes, NEVI.

4 BOARD STAFF DR. ANAND RAO: Okay. Can
5 you clarify for the record what year was the
6 initial year that the state gets funding? And
7 going forward, how many years, if you can get
8 that?

9 THE WITNESS: I would have to say the
10 current year funding is the fourth year. So I
11 would have to go three years back and say 2021
12 would be the first year of funding.

13 BOARD STAFF DR. ANAND RAO: All right.
14 And is this funding going to end sometime?

15 THE WITNESS: It was part of the IIJA
16 federal law, and it was for a five-year
17 stretch.

18 BOARD STAFF DR. ANAND RAO: Five years.
19 Okay.

20 THE WITNESS: There are many other
21 sources of funding for building, especially
22 charging infrastructure in Illinois, that vary
23 a lot by where they come from and the time
24 frame and what they actually will pay for.

1 Illinois, in addition to the NEVI
2 funding, is getting funding from another
3 federal program called CFI. The acronym --
4 the spelling of the acronym escapes me right
5 now. But Illinois received, I think,
6 \$14.9 million earlier this year from that
7 program.

8 The City of Chicago just recently got
9 \$15 million for building chargers out in
10 Chicago, I think in late August or early
11 September.

12 There's also over \$70 million in monies
13 that were part of the original 2019 Build
14 Illinois Infrastructure Program, the state
15 infrastructure program, that were required by
16 CEJA, the Clean and Equitable Jobs Act, to be
17 specced out. Some of that money has already
18 been obligated. Other money -- the other
19 half of that money, roughly, is still in
20 process.

21 There's money from a large settlement
22 against Volkswagen Corporation, and Illinois
23 has \$12.6 million of that dedicated to
24 charging infrastructure programs. That's all

1 been allocated already.

2 And then there's the beneficial
3 electrification programs that are required
4 under the CEJA legislation in Illinois.

5 And the interesting thing about that
6 program, which -- and there's significant
7 amounts of money, I believe, between this
8 year and next. There is \$60 million that can
9 be spent in the ComEd territory on make-ready
10 work, to put in the infrastructure needed to
11 put chargers in.

12 For odd reasons, it doesn't actually pay
13 for the actual charging box. But it will pay
14 for the trenching and concrete work and
15 underground conduit and wiring needed to make
16 that charger work. Another \$60 million
17 allocated there between this year and next
18 year.

19 And the way CEJA has set up the
20 requirements for the beneficial
21 electrification programs, two major utilities,
22 Ameren and ComEd, have to go and propose a new
23 beneficial electrification program every
24 three years. That has to go through the

1 Illinois Commerce Commission process to get
2 approved.

3 But the way CEJA is written, that process
4 does not sunset. So it will go on forever
5 until the legislature decides to proactively
6 stop that funding mechanism from going forth.

7 BOARD STAFF DR. ANAND RAO: Thank you.

8 HEARING OFFICER HORTON: Okay. Any
9 followup questions in Springfield?

10 MS. MELISSA BROWN: Yes. Hello. This is
11 Melissa Brown for the Alliance for Automotive
12 Innovation.

13 EXAMINATION

14 BY MS. MELISSA BROWN:

15 Q So just to start off with, you were
16 discussing in your summary some figures regarding
17 charger funding, and I think I heard 60 million.

18 What is the source that data?

19 A The source of which data?

20 Q I think you were discussing specific
21 money allocated for charger funding. And I think
22 you were discussing 60 million, if we heard that
23 right.

24 A Are we talking about the NEVI program or

1 the state funding?

2 Q What you were discussing in your opening
3 summary. If you were discussing the NEVI program,
4 then yes.

5 A Within the NEVI program, that's formula
6 funding through the IIJA Act. That's federal
7 funding.

8 And I believe Illinois has 148 or
9 \$149 million allocated to it under that program
10 for five years. The monies get, you know,
11 authorized every single year throughout that
12 process.

13 And like I said, there's three years that
14 have already been approved. A fourth year, out of
15 that five-year program, is pending.

16 So my belief was that Illinois will get
17 roughly four-fifths of the funding allocated under
18 that federal program.

19 With the change in federal administration
20 and some voiced hostility towards electrical
21 vehicles and electrical vehicle charging at the
22 national level, I can't be certain about what's
23 going to happen with that fifth year of authority
24 to spend funding.

1 MR. ROBERT WEINSTOCK: Ms. Brown, for
2 your benefit, in Mr. Urbaszewski's prefiled
3 testimony, pages 6 and 7, Footnotes 11 through
4 18, there are roughly 15 or 20 sources that
5 Mr. Urbaszewski cited for these exact numbers
6 in this exact portion of his testimony, which
7 were not the subject of any prefiled
8 questions.

9 MS. MELISSA BROWN: Thank you.

10 BY MS. MELISSA BROWN:

11 Q And following up on this line of
12 discussion in your summary, are you aware of how
13 much it costs to install a high-speed EV charger?

14 A I don't have expertise in the exact
15 budgeting for an individual high-speed charger.
16 I assume it would vary quite a lot by how big it
17 was, where it was located, how many ports were
18 attached to it, and a number of other factors.

19 So I really can't speak to that.

20 Q Okay. So just to clarify, you're not
21 aware of how many chargers that funding that you
22 were discussing would cover; is that correct?

23 A I'm not aware. I do know that Illinois
24 DOT has recently announced that they awarded

1 approximately \$25 million of the CEJA -- or of the
2 NEVI funding, for high-speed chargers along
3 alternative fuel corridors throughout Illinois,
4 primarily along interstates.

5 They recently also put out a call for, I
6 think, another approximately 25 million for people
7 to apply for projects for that funding.

8 So I assume if IDOT has already, you
9 know, awarded \$25 million of that NEVI funding,
10 that they would have a good idea of what the
11 average high-speed charger location would be.

12 NEVI has a specific requirement that -- I
13 think you have to have at least four charging
14 ports for each location. So that would give some
15 ballpark idea of what such a facility would cost
16 to build.

17 Q All right. If we could turn to your
18 prefilled responses to the Alliance for Automotive
19 Innovation's prefilled questions.

20 And starting with the Alliance's
21 Question 23, which would be on page 143.

22 A Okay. I have that.

23 Q And in this response, you stated that the
24 California Air Resources Board -- and this is at

1 the very end of the answer.

2 The California Air Resources Board and
3 the Illinois Pollution Control Board could always
4 consider adjustments and reactions to significant
5 market condition changes.

6 Is that an accurate restatement?

7 A Are you talking in the last paragraph?

8 Q Yes. The last sentence of the last
9 paragraph.

10 A The last sentence. Okay. Let me read
11 this here.

12 MR. ROBERT WEINSTOCK: I would just note
13 an objection that she read half of the
14 sentence into the record.

15 But the document speaks for itself. It's
16 a full sentence.

17 A So the sentence:

18 "Additionally, if manufacturers fail to
19 meet requirements, agencies would have enforcement
20 discretion on how to respond. And both the
21 California Air Resources Board and the Illinois
22 Pollution Control Board could always consider
23 adjustments and reaction to significant market
24 condition changes."

1 I think that would go back to what
 2 Mr. Cackette said. That, you know, the rules are
 3 sort of, you know, living, breathing. And as
 4 California makes adjustments to them as would be
 5 needed for, you know, conditions they identify as
 6 issues that would hinder the rule from going forth
 7 as stated, that is an option.

8 I'm not suggesting that the Illinois
 9 Pollution Control Board, you know, can go off on
 10 its own and set its own requirements independent
 11 of the rules that California has set.

12 Does that clarify?

13 Q It does. I appreciate that.

14 Following up on that, are you aware
 15 whether the California Air Resources Board has
 16 ever adjusted its regulations based on significant
 17 market conditions, changes in another state?

18 A I'm not aware.

19 Q Okay. Turning to Question 24. Let's
 20 see. It is 24(B). So that would be on page -- at
 21 the top of page 146.

22 A I have it.

23 Q Thank you. All right.

24 And so in your response here, you state

1 that the proposed rules prohibit purchasing ICE,
2 I-C-E, which is internal combustion engines.

3 So the proposed rules prohibit purchasing
4 ICE vehicles out of state and then registering
5 them in Illinois.

6 Is there currently a prohibition on
7 purchasing an ICE vehicle out of state and then
8 registering them in Illinois currently?

9 A I don't believe so.

10 I should clarify that when I'm talking
11 about the prohibitive rules, prohibiting purchase
12 of ICE vehicles out of state and then registering
13 them in Illinois, under the rules in question,
14 that would only apply to new vehicles.

15 I don't know if that was the reason for
16 some confusion.

17 Q All right. I appreciate that.

18 So just to clarify more, you know. So
19 say a resident of Chicago were to find a good deal
20 on a new ICE vehicle, say in theory, in Indiana.
21 If these proposed rules were adopted, that
22 resident could no longer register that vehicle in
23 Illinois; is that correct?

24 A I'm sorry. Did you say what kind of

1 vehicle it was?

2 Q A new ICE vehicle.

3 A My understanding of the rules are that
4 would not be allowed.

5 Q Okay. And wouldn't that -- shouldn't
6 that be a policy question that's left to the
7 elected representatives of the people of Illinois?

8 A Hang on just a minute. I'm rereading the
9 question again.

10 I was assuming that you meant after 2035.
11 So I'm also --

12 Q That is correct.

13 A Is that in the -- is that what you are
14 assuming, in asking this question?

15 Q That is correct. Yes.

16 A Yes. As long as the vehicle -- unless
17 it's California certified, it would not be
18 allowed.

19 Q So skipping to the last question, don't
20 you think that's a policy question that should be
21 better left to the elected representatives of the
22 people of Illinois?

23 MR. ALBERT ETTINGER: Objection, calls
24 for a legal conclusion.

1 HEARING OFFICER HORTON: There's an
2 objection in the room from Mr. Ettinger that
3 it calls for a legal conclusion.

4 Do you have a response, Ms. Brown?

5 MS. MELISSA BROWN: Well, I just think it
6 goes towards the testimony and the prefiled
7 question of talking about that we can't
8 purchase, after model year 2035, new ICE
9 vehicles from out of state.

10 I mean, if Counsel thinks it's a legal
11 conclusion, that's fine. And maybe that's
12 something that can be better addressed in
13 post-hearing comments.

14 MR. ROBERT WEINSTOCK: I'm going to --

15 HEARING OFFICER HORTON: Could you answer
16 into the microphone?

17 MR. ROBERT WEINSTOCK: I was just going
18 to join the objection and note that it's a
19 question that the Board has already answered
20 in rejecting the motion to dismiss filed by
21 Counsel's law partner.

22 So I would object to this question as
23 attempting to take a second bite at the apple
24 to a legal question that the Board has

1 already rejected.

2 HEARING OFFICER HORTON: I think
3 Ms. Brown is asking the witness a question.

4 If he is saying that he can't respond
5 because it's a legal conclusion, that's a
6 perfectly acceptable response at this point.

7 And Counsel can respond further in
8 post-hearing comments.

9 THE WITNESS: I don't think I have the
10 expertise to answer that question.

11 HEARING OFFICER HORTON: Okay. Counsel's
12 objection is noted.

13 Ms. Brown?

14 MS. MELISSA BROWN: Thank you. That's
15 all the questions we have.

16 HEARING OFFICER HORTON: Okay.

17 And just to make double sure, nobody else
18 has any other followup questions in
19 Springfield?

20 MS. MELISSA BROWN: That is correct.

21 HEARING OFFICER HORTON: Okay. We'll go
22 off the record for a moment.

23 (Discussion held off the record)

24 HEARING OFFICER HORTON: Let's go back on

1 the record briefly.

2 There's no further questions for you,
3 Mr.- -- did you have any questions?

4 Okay. There are no further questions for
5 you, Mr. Urbaszewski. You're dismissed.

6 THE WITNESS: Thank you.

7 HEARING OFFICER HORTON: Off the record.

8 (Discussion off the record.)

9 HEARING OFFICER HORTON: Okay. Back on
10 the record.

11 We went back on the record to discuss
12 scheduling for the upcoming second hearing and
13 prefiled questions and answers.

14 So I will just read into the record what
15 we decided, and I will follow up with a
16 written Hearing Officer order with all of
17 these dates as well.

18 For the second hearing, prefiled
19 testimony will be due January 21st.

20 Refiled questions will be due
21 February 17th.

22 Prefiled answers will be due March 3rd.

23 And the second hearing will be in
24 person in Springfield on March 10th, 11th

1 and 12th.

2 There will be a public comment portion.
3 Proponents had asked for a remote option, and
4 I said that I will discuss internally with
5 Board staff, and I'll respond in a written
6 Hearing Officer Order for that request.

7 As to the written followup responses,
8 proponents will provide to questions that were
9 asked today; those will be due January 13th.

10 And going back to an earlier question
11 that we had today, Dr. Rao will read those
12 questions into the record.

13 BOARD STAFF DR. ANAND RAO: Thank you.

14 Mr. Weinstock, in your opening statement,
15 you addressed the issue of identity of
16 these proposed rules to the CARB regulations.

17 And you noted that while the proposed
18 standards are identical to CARB rules, the
19 proponents have made certain changes to tailor
20 the rules to fit the Illinois Air Pollution
21 framework.

22 Can you please specifically identify any
23 proposed substantive standards or provisions
24 that deviate from CARB rules in your proposal?

1 And also, comment on whether these deviations
2 are approved by U.S. EPA as meeting
3 Section 177 of the Clean Air Act.

4 And the second question deals with the
5 statement of reasons on page 14, notes that
6 14 states have adopted the ACC II rule; 11
7 states have adopted the ACC rule; and 10
8 states have adopted the Low NOx Omnibus rule.

9 Please clarify whether CARB rules adopted
10 by these states include deviations similar to
11 what's been proposed in this proceeding.

12 Has U.S. EPA approved any of these rules
13 adopted by other states?

14 If not, please provide the status of CARB
15 rules adopted by other states mentioned in the
16 statement of reasons.

17 MR. NATHANIEL SHOAFF: Thank you. We'll
18 be happy to prepare those answers.

19 HEARING OFFICER HORTON: Okay. Great.

20 Any other procedural issues?

21 All right. Hearing none, this hearing is
22 concluded.

23 (Whereupon the hearing concluded at
24 2:34 p.m., December 3, 2024.)

COUNTY OF C O O K)

Maria S. Wain

MARIA S. WINN, CSR, RPR, CRR
CSR No. 084-3784

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Illinois Code of Civil Procedure

Article II, Part E

Rule 207, Signing and Filing Depositions

Signing and Filing Depositions

(a) Submission to Deponent; Changes; Signing.

Unless signature is waived by the deponent, the officer shall instruct the deponent that if the testimony is transcribed the deponent will be afforded an opportunity to examine the deposition at the office of the officer or reporter, or elsewhere, by reasonable arrangement at the deponent's expense, and that corrections based on errors in reporting or transcription which the deponent desires to make will be entered upon the deposition with a statement by the deponent that the reporter erred in reporting or transcribing the answer or answers involved. The deponent may not otherwise change either the form or substance of his or her answers. The deponent shall provide the officer with an electronic or physical address to which notice is to be sent when the transcript is available for examination and signing. When the deposition is fully transcribed, the officer shall deliver to the deponent, at the address supplied,

notice that it is available and may be examined at a stated place at stated times, or pursuant to arrangement. After the deponent has examined the deposition, the officer shall enter upon it any changes the deponent desires to make, with the reasons the deponent gives for making them. If the deponent does not appear at the place specified in the notice within 28 days after the mailing of the notice, or within the same 28 days make other arrangements for examination of the deposition, or after examining the deposition refuses to sign it, or after it has been made available to the deponent by arrangement it remains unsigned for 28 days, the officer's certificate shall state the reason for the omission of the signature, including any reason given by the deponent for a refusal to sign. The deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 211(d) the court holds that the reasons given by the deponent for a refusal to sign require rejection of the deposition in whole or in part.

(b) Certification, Filing, and Notice of Filing.

(1) If the testimony is transcribed, the officer

shall certify within the deposition transcript that the deponent was duly sworn by the officer and that the deposition is a true record of the testimony given by the deponent. A deposition so certified requires no further proof of authenticity

(2) Deposition transcripts shall not be filed with the clerk of the court as a matter of course. The party filing a deposition shall promptly serve notice thereof on the other parties and shall file the transcript and any exhibits in the form and manner specified by local rule.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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