



via electronic mail

February 5, 2024

Maine Board of Environmental Protection
17 State House Station
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rulecomments.dep@maine.gov

Subject: Proposed Chapter 127-A: Advanced Clean Cars II Program (Reposting)
Comments of Conservation Law Foundation

Dear Chair Lessard and Members of the Board of Environmental Protection:

Conservation Law Foundation (CLF)¹ thanks the Board of Environmental Protection (“Board”) and the Department of Environmental Protection (“Department”) for the opportunity to provide comments on the proposed Advanced Clean Cars II (ACC II) Program (Reposting) (“Reposted ACC II”). The ACC II was originally posted for rulemaking on July 20, 2023 (“Original Proposal”). The Reposted ACC II is “substantially different”² from the Original Proposal because implementation of the zero-emission vehicle manufacturer requirement is delayed by one year until model year 2028.³

CLF strongly supports adoption of the Reposted ACC II with haste. Further, to comply with Maine’s mandatory decarbonization targets and avail Maine people and businesses of the rule’s full value, we urge the Board to incorporate zero-emission sales standards through model year 2035 and beyond, ultimately requiring 100% of new light-duty sales to be zero-emission vehicles (ZEVs).

¹ Founded in 1966, CLF is a nonprofit, member-supported, regional environmental organization, working to conserve natural resources, protect public health, and promote thriving communities in New England. CLF protects New England’s environment for the benefit of all people. We use the law, science, and markets to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. CLF protects and promotes the interests of its 6,000 members, including more than 400 members in Maine.

² 5 M.R.S. § 8052(5)(B).

³ A state emergency resulting from a climate-fueled storm forced the Board to reschedule its December 21, 2023 vote on the Original Proposal. Under the federal Clean Air Act, 42 U.S.C § 7507(2), pushing the vote into 2024 means the rule cannot take effect until model year 2028, thus resulting in the substantial difference to the rule.

I. The Delayed Implementation in the Reposted ACC II Jeopardizes Maine's Compliance with its Climate Mandates and Necessitates Urgent Action

In our previous comments in this rulemaking, CLF argued that Maine law demands the Board adopt the full⁴ ACC II in 2023, effecting vehicles beginning with model year 2027.⁵ Maine's transportation sector contributes the most greenhouse gas emissions of any in the state—49% of Maine's total CO₂ emissions from the combustion of fossil fuels.⁶ Thus the state cannot comply with its mandatory decarbonization targets—requiring a 45% cut in gross greenhouse gas emissions by 2030, 80% by 2050, and net zero by 2045⁷—unless it addresses transportation emissions. Recognizing the greatest-contributing and hardest-to-decarbonize sectors are the most critical to address, the Legislature specifically directed, “by September 1, 2021, the board shall adopt rules to ensure compliance” that “prioritize greenhouse gas emissions reductions by sectors that are the most significant sources of greenhouse gas emissions.”⁸

Yet the Board has failed to adopt any rule that would meaningfully reduce emissions from the transportation sector and has no regulatory options before it, save for the Reposted ACC II.

The state's own declarations on the importance of the ACC II are telling. In the fact sheet accompanying the Original Proposal, Department staff indicated: “If ACCII regulation is not adopted, Maine will revert to the less stringent federal standards, and the state will be unable to meet the goals set in the Maine's 2020 Climate Action Plan.”⁹ Now, in the fact sheet accompanying the Reposted ACC II, DEP staff reiterates this caution: “If the ACC II regulation is not adopted, Maine will revert to the less stringent federal standards, and the state will be unable to meet the goals set in the Maine's 2020 Climate Action Plan.”¹⁰

Department staffs' admonitions are consistent with the Maine Clean Transportation Roadmap, which describes the ACC II as the “most important regulatory driver in the electrification of Maine's light-duty vehicles in the next two decades,”¹¹ the “most critically important [recommendation] in terms of impact on GHG emissions,”¹² and as having a “profound impact on GHG emissions from the transportation sector.”¹³

Far from hyperbole, these lofty statements are premised on projections demonstrating the essential role of the ACC II in Maine. The Clean Transportation Roadmap examines light-duty electric vehicle (EV) adoption through the year 2035 in four scenarios. The first, **Maine Won't**

⁴ The zero-emission vehicle component of California's ACC II ramps up to a 100% requirement for model year 2035 and beyond. 13 C.C.R. § 1962.4(c)(1)(B). As explained in our prior comment, CLF urges the Board to harness the full suite of available climate, economic, health, and environmental justice benefits by adopting the full rule through 2035 instead of the truncated versions proposed in the Original Proposal and the Reposted ACC II.

⁵ See Comments of Conservation Law Foundation, *Proposed Chapter 127-A: Advanced Clean Cars II Program* (Aug. 28, 2023).

⁶ Maine Department of Environmental Protection, *Ninth Biennial Report on Progress toward Greenhouse Gas Reduction Goals* (July 2022) at 15.

⁷ 38 M.R.S. § 576-A.

⁸ *Id.* § 576-A(4).

⁹ Maine Department of Environmental Protection, *Rulemaking Fact Sheet, Original Proposal* (July 20, 2023) at 2.

¹⁰ Maine Department of Environmental Protection, *Rulemaking Fact Sheet, Reposted ACC II* at 1.

¹¹ Cadmus, *Maine Clean Transportation Roadmap* (Dec. 2021) at 29.

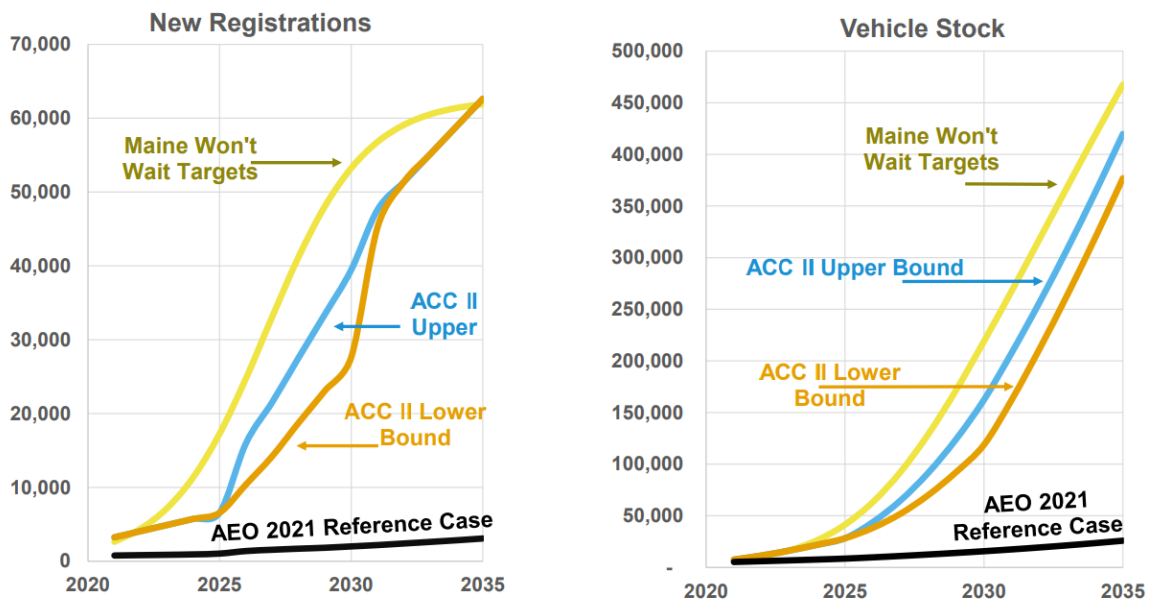
¹² *Id.* at 53, referring to both the ACC II and the Advanced Clean Trucks program.

¹³ *Id.*

Wait Targets, “uses the central EV adoption curves in the Maine Won’t Wait Climate Action Plan. This curve aligns with Maine’s EV adoption targets for 2025 and 2030,”¹⁴ premised upon modelled pathways for compliance with Maine’s mandatory 45% greenhouse gas emissions cut.¹⁵ In other words, the **Maine Won’t Wait Targets** curves in the figures below are the state’s best estimate of the electrification necessary to achieve the climate mandates that are the Board’s charge. The Clean Transportation Roadmap also models the following three scenarios:

- **ACC II Upper Bound** assumes automakers exactly comply with the maximum number of required EV deliveries in Maine set by the California Air Resources Board. . . .
- **ACC II Lower Bound** assumes automakers use the maximum available flexible credits (i.e., historical, pooled, and EJ) to comply with the ACC II regulation in Maine. . . .
- **Annual Energy Outlook (AEO) 2021 Reference Case** uses the Energy Information Administration’s AEO 2021 Reference Case. The curve accounts for currently enacted federal programs such as the fuel economy standards but does not account for any current or planned state-level policies.¹⁶

The following figures illustrate the scenario results:¹⁷



Maine’s Clean Transportation Roadmap explains the import of these figures:

The scenarios . . . illustrate four widely different outlooks of the future. *The Maine Won’t Wait curve is the adoption needed to meet the state’s GHG targets*, under

¹⁴ *Id.* at 30.

¹⁵ Synapse Energy Economics, Inc., *Volume 3: Mitigation Modeling Consolidated Energy Sectors Modeling Results* (Nov. 9, 2020) at 7-13.

¹⁶ Clean Transportation Roadmap at 30 (bold in original).

¹⁷ *Id.*

current assumptions about the ability of other sectors (buildings, industry, etc.) to decarbonize. The two ACC II curves provide estimates of what automakers will be mandated to deliver to Maine after adoption of the standard. Given the lack of historical evidence of automaker compliance, Cadmus sees these two curves as the most likely path toward vehicle electrification. The AEO 2021 Reference Case provides a far more pessimistic outlook and would require no additional action by Maine or other states. . .¹⁸

These curves, which show Maine falling short of the 2030 climate mandate even in the highly optimistic ACC II Upper Bound scenario, assume adoption of the ACC II in 2022 and implementation beginning with model year 2026. Maine now lags those projections by two years.

While the delay in implementation from model year 2027 to model year 2028 imperils compliance with Maine’s climate mandates, the Reposted ACC II is the state’s best shot at meeting those targets. The Board has no time to lose in adopting the rule.

II. The Case for ACC II Adoption Continues to Strengthen

While, unfortunately, the volume of EV misinformation seems to have increased over the last several months, shouting doesn’t validate claims that Maine is not ready for the ACC II. Rather, since the original comment period in this rulemaking, EV markets and Maine’s electricity grid preparation have continued to progress, meaning Maine is even better poised today than it was six months ago for ACC II adoption. The Board can proceed with confidence that the state is ready for the ACC II and Mainers will reap billions of dollars in benefits from its adoption.¹⁹

A. Maine’s Electricity Grid Will Support the ACC II

As CLF has previously explained, the Reposted ACC II’s gradual (and incomplete²⁰) transition to ZEVs ensures that Maine’s electricity grid will keep pace with evolving needs.²¹ And estimations of rampant growth of electricity demand often don’t adequately account for EVs’ flexible load or demand management strategies. Strategic planning for load flexibility can enhance efficient use of existing grid infrastructure, resulting in far lower projections of infrastructure costs.²²

¹⁸ *Id.* (emphasis added).

¹⁹ See Comments of Conservation Law Foundation, *Proposed Chapter 127-A: Advanced Clean Cars II Program* (Aug. 28, 2023) at 10-16, Attachment A: ERM, *Comparison of Maine Adoption of ACC II Results: Through 2032 vs. 2035* (Aug. 17, 2023), Attachment B: ERM, *Comparison of Maine Adoption of ACC II Results: Through 2032 vs. 2035, Fact Sheet* (Aug. 17, 2023).

²⁰ The Reposted ACC II and Original Proposal require manufacturers to comply with ZEV sales requirements through model year 2032, maxing out at an 82% requirement, rather than running through 2035 and requiring 100% of sales to be ZEVs and plug-in hybrids, as the California ACC II does.

²¹ See Comments of Conservation Law Foundation, *Proposed Chapter 127-A: Advanced Clean Cars II Program* (Aug. 28, 2023) at 16-17.

²² See, e.g., Brattle on behalf of Governor’s Energy Office, [Maine Energy Plan, Pathways to 2040, Session 3 Slides](#) (Nov. 16, 2023), at 25.

But even so, Maine and the region have significant preparations underway for a future in which both the transportation and heating sectors are significantly electrified. Public Utilities Commission (“Commission”) proceedings to manage load growth have developed and expanded in the last several months. For instance, CLF previously described a Commission docket stemming from legislation requiring a “10-year integrated grid plan . . . designed to improve system reliability and resiliency and enable the cost effective achievement of the greenhouse gas reduction obligations and climate policies pursuant to Title 38, section 576-A and section 577, subsection 1.”²³ There, the Commission will consider utility grid plans to assist in the cost-effective transition to a clean, affordable and reliable electricity grid, including by identification of near-term grid investments and operations.²⁴ The Commission has conducted numerous stakeholder workshops and solicited comments from interested parties more than once. Commission Staff recently released memos for stakeholder feedback and a Commission order laying out required plan contents is expected shortly.

The Governor’s Energy Office described its *Maine Energy Plan: Pathway to 2040* to the Board back in July, when the Department first posted the Original Proposal.²⁵ This plan, which is intended to “align with goals of the state’s climate action plan, *Maine Won’t Wait*,”²⁶ and has a principal goal of ensuring “sufficient planning and policies are in place to ensure Maine households and businesses have access to clean, affordable, and reliable energy over the coming decades,” continues to progress.²⁷ The study kicked off back in August and work sessions were conducted in the fall of 2023. Over the coming months, the consultant team is expected to finalize modeling, consider policy implications, and prepare a report, which will inform the State’s Energy plan. Thus again, the Board can feel confident that other state entities are doing their part to ensure grid readiness supportive of widespread transportation electrification.

One additional new Commission docket bears mention: an examination of energy storage.²⁸ This docket is aimed primarily at exploring whether utilities should own energy storage, but relatedly looks at how that question interrelates to the utilities’ role in achieving Maine’s climate and clean energy targets. Energy storage will play an important role in a smarter grid that balances increased grid demand due to electrification with increased intermittent renewable power.

Maine, of course, is not alone in considering the grid needs of extensively electrified transportation and heating sectors. The regional transmission operator, ISO-NE, has its own planning efforts underway, namely a 2050 Transmission Study assessing future summer and winter transmission needs due to electrification.²⁹ That study, aimed at identifying grid needs through 2050 and developing a regional process for procuring solutions to those needs, is now well underway.³⁰

²³ See P.L. 2022, c. 702; 35-A M.R.S. § 3147(1)(C); see also Comments of Conservation Law Foundation, *Proposed Chapter 127-A: Advanced Clean Cars II Program* (Aug. 28, 2023) at 18.

²⁴ See *Maine Public Utilities Commission*, Proceeding to Identify Priorities for Grid Plan Filings, No. 2022-322.

²⁵ Governor’s Energy Office, *Presentation to Board of Environmental Protection* (July 20, 2023) at slide 62.

²⁶ Governor’s Energy Office, *Maine Energy Plan: Pathway to 2040*.

²⁷ *Id.*

²⁸ *Maine Public Utilities Commission*, Commission Initiated Inquiry regarding Utility Control or Ownership of Energy Storage, No. 2023-316.

²⁹ See, e.g., ISO-NE, [2050 Transmission Study, Key Takeaways and Transmission Development Roadmaps](#) (July 25, 2023).

³⁰ See, e.g., ISO-NE, [Longer-Term Transmission Studies](#).

B. Maine’s EV Charging Network Will Support the ACC II

As the Department of Transportation and Efficiency Maine Trust presented to the Board back in July, Maine is already well on its way to having a reliable network of public EV chargers in place throughout Maine.³¹ The state has identified gaps (i.e. locations more than 25 miles from a public charger) and is implementing a multi-step plan for filling those.³² In a major boon to those efforts, this month, the U.S. Department of Transportation awarded Maine a \$15 million grant to install more electric vehicle chargers throughout the state.³³ The funding for the “Recharge Maine Project” comes from the federal government’s Charging and Fueling Infrastructure Discretionary Grant Program, a \$2.5 billion initiative in the Bipartisan Infrastructure Law.³⁴ Maine DOT explains, the “Project will help MaineDOT and the Efficiency Maine Trust. . . fund the installation of EV chargers in areas devoid of sufficient charging infrastructure while simultaneously filling the gaps between chargers already in place.”³⁵ The grant money, which will be matched by 20% state funds, is expected to go toward installation of 520 Level 2 chargers and 62 fast chargers.³⁶

It bears repeating that Maine’s network of public EV chargers will never replicate Maine’s existing system of gas stations—nor should it. The *vast* majority of charging takes place at home or at work—meaning even those with uniquely long commutes are unlikely to rely on roadside charging, and most everyone will be able to make it back and forth on their typical daily outings without needing to refuel. Of course, Maine still needs a reliable network of chargers for those circumstances when home charging won’t suffice, but the perception that Maine is not ready because we don’t have a charger at every corner or rural intersection is a false narrative.

C. Maine Continues to Demonstrate its Commitment to Electrification—But Needs the ACC II to Achieve its Electrification Goals

Maine’s Second Lead-by-Example report was released earlier this month.³⁷ Focused on meeting the state’s climate mandates, the report celebrates state actions already underway and outlines additional actions for state agencies to take. The state’s target for transportation is, “[b]y 2030, 100 percent of all newly purchased or leased light-duty state fleet vehicles will be ZEVs. The state will ensure the availability of adequate and coordinated charging infrastructure to meet this

³¹ See generally Joyce Taylor, Chief Engineer, Maine Department of Transportation, *Vehicle Electrification in Maine (Part I)* and *(Part II)* (July 20, 2023); Michael D. Stoddard, Executive Director, Efficiency Maine Trust, *Electric Vehicle Initiatives & Incentives in Maine* (July 20, 2023).

³² Maine Department of Transportation, [Maine’s Updated Plan for Electric Vehicle \(EV\) Infrastructure Deployment \(Maine’s NEVI Plan\)](#) (Submitted to Federal Highway Administration Aug. 2023).

³³ U.S. Department of Transportation, [Charging and Fueling Infrastructure Program Grant Recipients](#).

³⁴ U.S. Department of Transportation, [Charging and Fueling Infrastructure \(CFI\) Discretionary Grant Program](#).

³⁵ Maine Department of Transportation, [Recharge Maine Project, Project Narrative](#).

³⁶ *Id.*

³⁷ Governor’s Office of Policy Innovation and the Future, Governor’s Energy Office, [State of Maine Lead By Example Report 2023-2024](#) (Jan. 17, 2024).

target.”³⁸ The Report also talks about the state’s intentions to continue tapping into federal funds for charging infrastructure.³⁹

Adoption of the Reposted ACC II is not only fully consistent with state policy, it is supportive of advancing and achieving Maine’s goals. The Lead-by-Example Report notes that progress on its EV goal has been stymied by a lack of EVs in Maine:

The state faces the same electric vehicle supply constraints which impact drivers across Maine. While national and global carmakers have pledged to go fully electric within the next decade, purchasing an electric vehicle in Maine remains challenging; in a recent round of state-led procurement, no Maine dealer offered an electric model for sale to the state.⁴⁰

This is precisely why Maine so desperately needs the ACC II—without it, there is no reason to think that manufacturers will send EVs to dealerships here. Manufacturers will send EVs where they are demanded, and where they will suffer penalties if they fail to deliver.⁴¹ As more states adopt the ACC II—now up to 13, including three in New England—Maine will need to follow suit, lest we will have an increasingly difficult time competing with those states and EV stock will remain limited.

D. Electric Vehicle Markets Continue to Strengthen

Thanks to monumental progress of EV markets in 2023, the Board can proceed with adoption of the Reposted ACC II assured that the rule will only help accelerate a trajectory that is already well underway here and across the country.

Maine has seen significant growth in EVs in just the last few years. In 2020, 4,268 EVs were on the road.⁴² By 2023, the number had nearly tripled to 12,369.⁴³ We still have a long way to go, but sales are trending in the right direction, and these positive numbers are despite the global pandemic impacting vehicle sales, generally. Moreover, the delayed implementation in the Reposted ACC II means that Mainers will have an extra year to warm to the technology.

³⁸ *Id.* at 11.

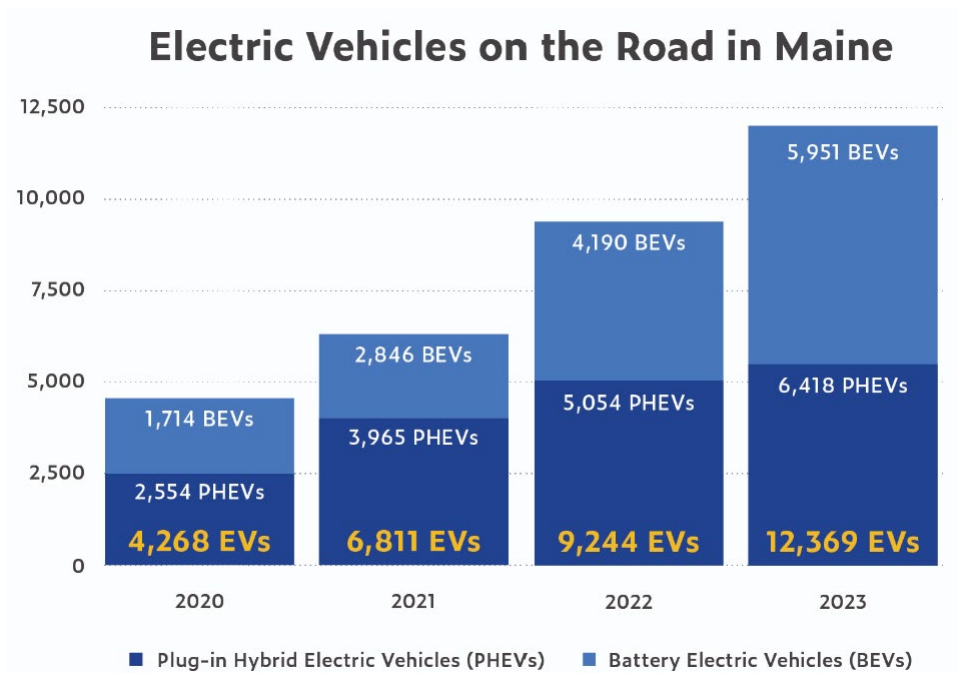
³⁹ *Id.* at 24-25 (“Significant federal funds are currently available to help green the state fleet. New federal clean vehicle tax credits, competitive grant programs, rural charging infrastructure funding, and other flexible funding designed to reduce transportation emissions can be used to help support electrification of both passenger vehicles and MHDVs.”).

⁴⁰ *Id.*

⁴¹ See, e.g., Center for American Progress, [Plug in Electric Vehicles: Evaluating the Effectiveness of State Policies for Increasing Deployment](#) (June. 2018), at 17.

⁴² Maine Climate Council, [Maine Won’t Wait Climate Action Dashboard, Electric Vehicles](#) (Dec. 12, 2023).

⁴³ *Id.*



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The electric vehicle market experienced unprecedented sales in the U.S. in 2023, by various measures. The U.S. Energy Information Administration reports that EVs and hybrids⁴⁵ surpassed 16% of total 2023 vehicles sales, hitting 17.9% of sales in the second half of the year.⁴⁶ All-electric share of new cars was 7.6% in 2023.⁴⁷ These shares were driven by increased model availability and diversity—manufacturers added 20 new electric models last year, half of which were crossovers.⁴⁸ Further easing the transition were the plummeting costs of electric vehicles. The average price for an all-electric vehicle in December 2023 was \$50,798, just \$2,000 higher than the overall industry average for a light-duty vehicle.⁴⁹ Only 5% market share is considered a “critical EV tipping point”—signaling “the start of mass adoption, when technological preferences rapidly flip.”⁵⁰

Year-over-year growth of EVs is also remarkable. EV sales were up 42% in the second quarter of 2023 compared to the same period in 2022.⁵¹ “It took 10 years for the US to sell its first million fully electric vehicles, two years to reach the second million, and just over a year to reach the third.”⁵²

⁴⁴ Chart from Maine Climate Council, [Maine Won't Wait Climate Action Dashboard, Electric Vehicles](#) (Dec. 12, 2023).

⁴⁵ Recall that the ACC II ZEV trajectory includes an allowance for hybrid vehicles meeting certain eligibility requirements.

⁴⁶ U.S. Energy Information Administration, [Electric vehicles and hybrids surpass 16% of total 2023 U.S. light-duty vehicle sales](#) (Jan. 31, 2024).

⁴⁷ Cox Automotive, [A Record 1.2 Million EVs Were Sold in the U.S. in 2023. According to Estimates from Kelley Blue Book](#) (Jan. 9, 2024) (citing Kelly Blue Book).

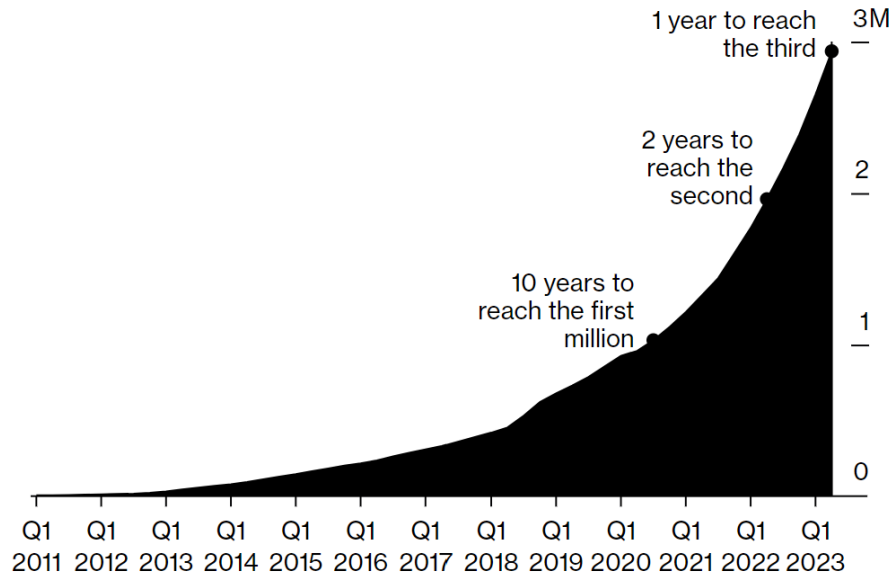
⁴⁸ U.S. Energy Information Administration, [Electric vehicles and hybrids surpass 16% of total 2023 U.S. light-duty vehicle sales](#) (Jan. 31, 2024).

⁴⁹ *Id.*

⁵⁰ T. Randall, Bloomberg, [Electric Cars Pass a Crucial Tipping Point in 23 Countries](#) (Aug. 28, 2023).

⁵¹ *Id.*

⁵² T. Randall, Bloomberg, [US Electric Vehicle Sales Reach Breakthrough Pace](#) (Sept. 14, 2023).



Source: BloombergNEF
 Note: Does not include plug-in hybrids.

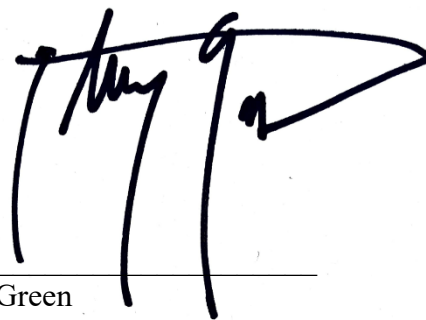
The Board can rest assured that adopting the Reposted ACC II won't push Maine out ahead of the markets or technology. Rather, by adopting the Reposted ACC II, the Board will ensure that Mainers aren't left behind as the rest of the nation transitions to a technology that is better for our health, better for our climate, and better for our wallets.

III. Conclusion

Failure to adopt the Original Proposal by the end of 2023 meant that Maine missed out on model year 2027, detrimentally impacting the state's ability to comply with the 2030 climate mandate. To hit our targets now requires rapid adoption of the Reposted ACC II. Maine is ready for the rule. We urge the Board to adopt the Reposted ACC II with haste. And to comply with Maine's long-term decarbonization targets and avail Maine people and businesses of the rule's full value, CLF urges the Board to incorporate zero-emission sales standards through MY 2035 and beyond, ultimately requiring 100% of new light-duty sales to be zero-emission vehicles.

We thank you for the opportunity to comment on the Reposted ACC II.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean Mahoney', written over a horizontal line.

Emily K. Green
Sean Mahoney

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