July 1, 2022

Public Comment on the New York Climate Action Council's Draft Scoping Plan

These comments are submitted on behalf of

Mark Schienberg, President

Greater New York Auto Dealers Association

18-10 WHITESTONE EXPRESSWAY, WHITESTONE, NEW YORK 11357

| 718.746.5900 | GNYADA.COM

Members of the Climate Action Council,

Thank you for the opportunity to submit comments on an issue of importance not just to the future of New York's transportation system but also to the future of our planet. The Greater New York Automobile Dealers Association (GNYADA) writes to specifically address sections T1 and T2 of the draft scoping plan, which deal with policy proposals intended to encourage sales of zero-emissions vehicles (ZEVs).

GNYADA is a not-for-profit trade association representing nearly 400 franchised new vehicle dealers in the downstate region of New York. GNYADA members are engaged in the retail sale and leasing of new and used vehicles and servicing, repairing, and supplying parts for new and used vehicles. Our roughly 425 members support 65,500 jobs in the 12 Downstate counties. They generate over $48 billion in sales, $5.6 billion a year in payroll, and over $2.7 billion in state and local taxes. Our members also make about $20 million a year in charitable contributions in their communities.

Climate change is the greatest threat we face now and in the coming decades; to defeat it, we need to act boldly and immediately. The automotive retail industry understands this challenge. Indeed, the National Automobile Dealers Association has demonstrated that dealers across the United States are "all-in" on electric vehicles through extensive training and assistance for dealers and the promotion of electric vehicles (EVs). Our members are already engaged in not only selling and servicing affordable ZEVs but also in building the necessary infrastructure for these vehicles. For years already, our members have serviced hybrid technology vehicles in communities across the state, and they have done so even in regional and rural markets that only local franchise dealers can or want to reach. We strongly believe that the state's ZEV policy must support a healthy franchise system for exactly that reason. It also must consider the livelihoods of tens of thousands of New Yorkers employed by local auto dealers, many of whom are union members, and the interests of millions of consumers across the state who depend on franchise dealers to keep prices and service quality high through competition.

While we applaud the Council's recommendation to increase investments in the ZEV charging infrastructure, we vehemently oppose its appeal for legislation to enable direct-to-consumer sales of automobiles in our state. We base our opposition on a thorough understanding of the industry, a balanced assessment of direct sales proposals, and the conclusion that such legislation would undermine consumer and worker protections and have little to no benefit for the growth of ZEV sales in the long run.

Our position boils down to this: the state does not need to dismantle the franchise system to meet its EV goals. In fact, it is in New York's interest to continue supporting the franchise model precisely because it can quickly deliver enormous amounts of inventory across the entire state. If the Council insists on proceeding down a path of tossing franchise dealers aside, then the transition will happen more slowly. Meanwhile, competition will decrease, prices will rise, service quality will drop, and job security for tens of thousands of workers will go out the window.

Instead of advocating for the erosion of the franchise system—the only distribution model ever shown to successfully disseminate new vehicle technology to the mass market—we urge you to refocus the Council's ZEV policy recommendations on increasing rebates for ZEV purchases and hastening the buildout of charging infrastructure. These measures will put ZEVs within reach of the average consumer and ease concerns that keep those consumers from buying their first ZEV.

I. Direct Sales Legislation Does Not Address the Reasons Most Consumers Do Not Purchase ZEVs

Direct sales legislation does not address the two issues holding back America's ZEV market: (1) price and (2) "range anxiety." An August 2020 Consumer Reports survey found that 43% of people believe electric cars cost too much. And a February 2019 Volvo survey found that 58% "are afraid that they will run out of power before being able to charge their vehicle." In fact, 20% of California electric car owners switched back to gasoline-powered cars for this reason.[1]

Direct sales will not lower the price of ZEVs. The manufacturers with the most to gain from switching to a direct-sales model sell primarily high-priced vehicle models, which the average car buyer cannot afford. The average ZEV now costs $54,000, which is over 20 percent more than the average gas-powered model.[2] During the ongoing supply chain crisis, the cost of both rose. Still, ZEV prices have surged 8% higher to date.[3] These statistics testify to the fact that rebate and price-incentive policies designed to put affordable models of ZEVs within reach for low- and middle-income buyers are the most important intervention New York can make in the current market. Because franchise dealers will continue to sell the most affordable models, it is dangerous to undermine that distribution stream in favor of a handful of luxury ZEV manufacturers who refuse to participate in the Franchise System to increase profits.

Some have asked why California's ZEV sales numbers are higher than New York's. The answer is that there are many contributing factors, but the most important ones directly impact price, range, and optimal weather conditions to assist the range. Today, California has 33,156 public charging stations. In contrast, New York has only 6,087.[4] As of April 2019, California had 62% more charging stations per charging location.[5] Californians also benefit from a far better year-round climate for maintaining a battery charge than New York, which is critical to keeping a car's range high. That state also has gas prices that counteract ZEV's price disadvantages: for years, California has had far higher gas prices than New York. As of this writing, the difference is more than $1.35 per gallon.[6]

Rather than jeopardize new car dealers and the tens of thousands of jobs they support, we urge you to call for additional incentives for middle-and low-income consumers so that everyone can afford to buy or lease a new ZEV. NYSERDA's Drive Clean Rebate program, which franchise dealers have supported from its inception, has proven quite successful. Since 2017, franchise dealers have sold or leased over 40,000 ZEVs (Battery Electric Vehicles [BEV] and Plug-in Hybrid Vehicles [PHEV]) with the support of

---

[1]Dominick Reuter, *1 in 5 electric vehicle owners in California switched back to gas because charging their cars is a hassle, research shows*, Yahoo News (July 21, 2021) (https://news.yahoo.com/1-5-electric-vehicle-owners-164149467.html?soc_src=social-sh&soc_trk=ma).

[2]Stephan Jones, *Americans are paying $54,000 on average for an electric vehicle. A year ago, they were paying closer to $44,000*, BusinessInsider.com (June 27, 2022) (https://www.businessinsider.com/electric-vehicle-prices-rise-22-percent-fossil-fuel-14-percent-2022-6).

[3]Id.

[4] U.S. Dept. of Energy, Alternative Fuels Data Center, *Electric Vehicle Supply Equipment (EVSE) Ports by State* (data and visualization available at: https://afdc.energy.gov/data/10366).

[5] *Charging Stations by State*, EVadoption.com (Sept. 31, 2021) (https://evadoption.com/ev-charging-stations-statistics/charging-stations-by-state/).

[6] *State Gas Price Averages*, AAA.com (accessed June 29, 2021) (https://gasprices.aaa.com/state-gas-price-averages/)

this program.[7] An increase in the rebate amount from $2,000 (the top amount presently available) to $5,000 would guarantee an extraordinary increase in EV sales.

Secondly, the Council should focus on the proliferation of charging infrastructure across the state, both public and in homes. As the California example shows, this step is crucial to supporting ZEV sales. But a recent State Comptroller report on public fast-charging stations found New York is far behind its own goals and this directly "threatens state's ability to meet climate act's 2030 deadline."[8] The report also indicates that we need more fast-charging terminals and that charging capacity must increase in the areas with the highest number of registered ZEVs. In many instances, high-speed charging stations are the only viable option for drivers who have limited time to travel significant distances.

Neither the data nor common sense supports the argument that a fully intact franchise system holds back New York ZEV sales. Our members are in the business of selling vehicles and profit nothing by keeping consumers from purchasing ZEVs. Legacy OEMs already produce more than 40 EV models that Franchise dealers sell statewide and will sell many more models in the coming years to any consumer who desires one. Instead, data and reason point squarely at price and range anxiety as the real causes of New Yorkers' lag in buying ZEVs. Therefore, we urge the Council to center its ZEV recommendations squarely on these factors and not to endorse policies that dismantle the franchise network that stands ready to distribute ZEVs to consumers in every corner of our state, as it did with hybrids and other new environmentally friendly technologies.

II. Direct Sales Will Hinder Acceleration of ZEV Purchases

We are all keenly aware that we must win the fight against Climate Change. The evidence points to the franchise system as the best means of winning that fight by reducing consumer transportation emissions. Legacy manufacturers' design and production of affordable ZEVs have reached the tipping point from being a sideshow in legacy manufacture lineups to being the main event. Last month, Bloomberg Intelligence reported that Volkswagen will overtake Tesla as the world's biggest ZEV producer by 2024 and that they have already done so in Europe.[9]

Deregulating the distribution system now only invites upheaval that will postpone and impede the sale of the over 50 additional ZEV models, for a total of nearly 100, set to debut on franchise dealer lots by 2025. As discussed above, we are preparing for the market to accelerate even further once the median ZEV model reaches price parity and New York's fast-charging infrastructure is up and running in full. But it will not reach its full potential if you cut New York's nearly 1,000 new car dealers out of the distribution model.

Conversely, direct-sales ZEV manufacturers serve a tiny segment of the new vehicle market. Since 2012, the direct sales ZEVs have gone, on average, to increasingly wealthier buyers. The average electric

---

[7] *Drive Clean Rebate Primary Statistics*, NYSERDA.ny.gov (accessed June 29, 2021) (https://www.nyserda.ny.gov/All-Programs/Drive-Clean-Rebate/Rebate-Data/Rebate-Stats).

[8] *DiNapoli: New York Power Authority's Installation of Electric Vehicle Chargers Years Behind Schedule*, Office of the New York Comptroller (Feb. 4, 2022) (https://www.osc.state.ny.us/press/releases/2022/02/dinapoli-new-york-power-authoritys-installation-electric-vehicle-chargers-years-behind-schedule).

[9] Ryan Hogg, *Bumpy road ahead for Elon Musk as Tesla faces losing world's biggest electric car maker crown, study says*, BussinessInsider.com (June 19, 2022) (https://www.businessinsider.com/tesla-will-lose-crown-biggest-electric-car-maker-2024-study-2022-6).

vehicle buyer is a white male in his 40s or 50s with an annual income over $100,000.[10] Simultaneously, neither the advocates campaigning for direct sales nor the ZEV manufacturers themselves can adequately explain why ZEV-only manufacturers cannot join the franchise system that has worked well for legacy manufacturers.

Last fall, during a public hearing on ZEV distribution held by the NYS Assembly transportation committee, ZEV lobbyists repeatedly tried to articulate their reason for blocking the proven franchise model system that sells millions (17 million pre pandemic) from the ZEV market. Their reasons ranged from opaque assertions about their "business model"[11] to "connecting people who have a love of the planet through activities and shared tools."[12] Each explanation fell flat. We should not sacrifice career-oriented, often unionized jobs in franchise dealerships or the economic communities and charitable contributions that dealerships sustain across New York in favor of an unproven "business model" with

---

[10]*New Car Buyer Demographics 2020 (Updated)*, Hedges & Company.

[11]Testimony of Albert Gore III, East Coast Lead, Public Policy & Business Development, Tesla, during Assembly Transportation Committee, Public Hearing on Retail Sale of Zero Emission Vehicles (Nov. 10, 2021) (https://nystateassembly.granicus.com/MediaPlayer.php?view_id=8&clip_id=6432) (timecode: 01:42:09) (

Assemblyman William Magnarelli: "Now, I ask these three companies, ok? Why can't—I know you don't want to. Okay, I understand that, that's your corporate philosophy. But why can't—is there anything stopping Tesla, Rivian or Lucid from doing business in New York. Is there anything stopping you from selling your cars here through the laws we have on the books?"

Albert Gore III: "I mean, I think the . . ."

Assemblyman Magnarelli: "It's a kind of a direct question."

Albert Gore III: "It is."

Assemblyman Magnarelli: "Is there anything stopping you from selling your cars in New York through the laws we have on the books?").

Albert Gore III: "Yes. With the business model that we have, yes."

Assemblyman Magnarelli: "Okay, the business model, and I understand that. Okay, but that's—but that's it. So it's this idea that you have come up with a way to sell your vehicles and this is the way you want to do it. But there is nothing that stops you from selling these cars in New York.").

[12]Testimony of Kaitlin Monaghan, Manager of Public Policy & Senior Counsel, Rivian during Assembly Transportation Committee, Public Hearing on Retail Sale of Zero Emission Vehicles (Nov. 10, 2021) (https://nystateassembly.granicus.com/MediaPlayer.php?view_id=8&clip_id=6432) (timecode 01:33:04) ("I want to take a moment to talk about Rivian's sales model. Rivian will not sell vehicles through the franchise model in New York, anywhere in the country or anywhere in the world. Instead, we will utilize our physical spaces to create unique and curated experiences for our visitors. At these spaces, we want to inspire people by connecting them with their community and connecting them with nature. This is a totally different environment than what is offered on the dealer lot today. We will create an ecosystem of three different types of space in three different regions. First are Hubs which will be in population centers in cities . . . In neighborhoods, we want to connect people who share a love of the world around them. Next we will have Outposts, and these are spaces between cities and the wilderness and there we want to connect people with planet through activities and shared tools. And finally—and this is in my opinion the most important—are the Rivian Preserves. This is land that we will preserve to keep land, water and nature wild. At these spaces we want to create transformational experience and moments for visitors to inspire people to change the way, the fundamental way that they interact with the planet and the people around them. Our plan could not be further than what is typically offered at your typical dealer lot."). Notably, absolutely nothing in the current law prevents Rivian from creating these unique connections and experiences as part of a dealership network.

such ephemeral "virtues" for completely ineffable justifications. Of course, we know the reasons are not ineffable. It is a reason as old as Adam Smith—maximization of the firm's profit above all else. Rivian and Tesla understand this lesson well, which may be why they announced double-digit percentage price increases last month.[13]

Historically manufacturers have experimented with a Direct Sales model and the results have been disastrous for consumers and workers alike—and it did not result in an increase of vehicle sales either. In the 1990s, Ford Motor Company experimented with direct sales by acquiring most of the Ford stores in the Rochester area. After several years, it became abundantly clear to Ford that the lack of local entrepreneurship cost them severely. Providing all the services of a dealership and running the production side of their business became too much for Ford at scale. Customer satisfaction dropped, and the company lost market share. Eventually, Ford got out of the business and sold those dealerships back to independent franchisees who continue to run them to this day.

Also, electric carmaker Fisker, an early entrant to the EV market, which today seeks to sell cars using the direct sales model, went out of business after a few short years in the market. The safety net for Fisker customers, when the company pulled out of the market was franchise dealers who represented the product and did and still provide warranty and recall repairs. Without the protections of the Franchise System, consumers would have no repair options.

One cost savings that non-franchise EV manufacturers accrue is having limited customer access to service centers. Tesla is a prime example of a direct-sales manufacturer that offers a weak service network.[14] The company even deployed untrained office workers into service roles.[15] Nothing shows that this would change if New York dismantled the franchise system.

Sadly, proponents of a direct sales model would have us try this experiment again at the expense of franchise dealers, workers, and consumers. We cannot afford to take that chance for our environment, consumers, or economy. Indeed, direct sales legislation will produce the opposite of its intended effect.

Instead of accelerating ZEV sales, direct sales will hinder growth. Direct sales will initially benefit a small number of luxury ZEV manufacturers who shun mass production in favor of an expensive one-at-a-time approach. This model will produce long waitlists and higher prices but fewer vehicles every year. Its second-order consequences, which legacy manufacturers have indicated they will pursue, will be thwarting existing franchise dealers' plans to sell new ZEV models. As manufacturers angle to establish a new vertically integrated distribution system, sales in the long run will drop, as history has shown us. This is especially problematic in a bellwether market like New York. This is precisely what we mean when we

---

[13]John Rosevaar, *Automakers are jacking up prices on electric vehicles to bake in rising materials costs*, CNBC.com (May 21, 2022) (https://www.cnbc.com/2022/05/21/electric-vehicle-prices-rise-at-tesla-rivian-gm-and-other-carmakers.html#:~:text=Rivian%20was%20another%20early%20mover,would%20jump%2021%25%20to%20%2484%2C500).

[14]Jamie LaReau, *Detroit 3 automakers may have found Tesla's weakness*, Detroit Free Press Online (March 11, 2021 at 11:47 a.m.) (https://www.freep.com/story/money/cars/2021/03/11/detroit-3-tesla-elon-musk-barra-farley/6923456002/).

[15]Fred Lambert, *Tesla is sending untrained employees to work on cars as service becomes problematic*, Electrek.co (June 16, 2022 at 12:24 p.m.) (https://electrek.co/2022/06/16/tesla-untrained-employees-work-on-cars-service-problematic/),

say that the franchise dealership network is the only way to sell the high volume of ZEVs into New York's consumer market fast enough to meet the state's climate goals.

While this may sound like a dramatic vision, it is realistic to see that legacy manufacturers would pursue legislation that bifurcates the retail market between a direct sales model for ZEVs only, which allows manufacturers reap all profits due to vertical integration, and and the existing dealership structure for gas-powered cars. Faced with that competitive landscape, why would a manufacturer *not* seek to spin off its ZEV production lines? But we do not afford to waste time as certain corporations try to resurrect a historically faulty distribution model to replace our current one, which is not broken. Moreover, why should we devastate an industry of 1,000 independent businesses, and the communities that depend on it, to serve the limited interests of out-of-state corporations and the billionaires that own them?

Direct Sales advocates argue that the future is remote sales where consumers avoid their local dealership. But this ignores how consumers go about car buying, a process that involves test drive a range of vehicles, understanding how they perform, and shopping on price, financing, and reliability. The dealership model will not go away, nor should the State of New York promote its demise.

III. Direct Sales Impedes a Just Transition

Allowing ZEV-only manufacturers to operate outside the franchise system has real costs to the franchise system that developed over a century-long period into the best method of distributing vehicles into the consumer market and every stakeholder in that system. **Let us be clear: legislation allowing ZEV manufacturers to make an end-run around the franchise system, using New York's statutory commitment to become a ZEV-only new vehicle market by 2035 as an excuse to further its agenda, amounts an unattainable promise and will serve only to dismantle the franchise system that has been a dependable provider of price and service competition for car owner for over 100 years.** While this direct sales proposal jeopardizes our businesses and the livelihoods of our hardworking employees, many of whom are unionized, it comes without any guarantee of any meaningful benefit to our environment.

In contrast, New York's Franchise System has continuously proved its worth since its inception over a century ago. The System ensures competition between 1,000 independent dealers on price and service for millions of vehicles annually. Our dealer networks maintain a close eye on warranty and safety recall issues and perform necessary repairs to keep vehicles safe and on the road. Our State's Franchise Law protects hundreds of millions of dollars worth of investments by our locally-owned businesses and the more than 107,000 jobs State-wide that depend on them. And franchise dealers and their manufacturers continue to respond aggressively to the call for action against climate change by offering more affordable EV models.

New York's automotive retail industry has grown into an economic cornerstone that supports career jobs, tax revenues, and charities in every community served by a dealership. As noted above, in the 12 Downstate counties, our Association's members support 65,500 jobs, generate over $48 billion in sales, $5.6 billion a year in payroll, over $2.7 billion in state and local taxes, and about $20 million a year in charitable contributions. They invest a further half-billion dollars in local advertising and hundreds of millions of dollars more in capital improvements to their dealerships. Compare these figures to those, if any, of Tesla, Rivian, and Lucid, which do not support local media.

Licensing manufacturers to operate outside the franchise system harms local economies. Even one dealership closure eats a sizable chunk out of local economic benefits traceable to dealerships that can devastate a Main Street. In contrast, direct sales galleries usually employ under ten workers and siphon the capital they generate to a balance sheet headquartered outside New York. Yet, the Council's proposal neither accounts for nor seeks to mitigate the damaging effect of preferring low employment, low investment galleries over full-service dealerships.

Furthermore, New York's Franchise Law protects our local dealership businesses and the communities we serve from unfair business practices by auto manufacturers, including unreasonable closures or dealership relocations. Independently owned automobile dealers have enforceable rights under New York's Franchised Motor Vehicle Dealer Act that defend their businesses from unfair manufacturer practices. These franchise law rights protect dealers' investments and economic activity and keep them firmly rooted in the communities that depend on them. These protections also benefit working families who have built their livelihoods around careers in the auto industry. The United Auto Worker, Regions 9 and 9A, and the United Service Workers Union, and other labor groups, have joined us in opposing direct sales because every iteration of the concept eliminates these worker protections.

Neither should it escape scrutiny that the proposal's main business proponents are anti-union corporations. Skilled union labor, whether in dealerships, repair facilities, or factories, are a benefit to those companies that use them and the localities where those workers live. Yet businesses in support of this legislation have repeatedly, in SEC filings and elsewhere,[16] described using union labor as a threat to their profitability and thus a threat to their "business model"—that Golden Calf in whose name all safeguards may be discarded and atrocities rationalized. Though every industry faces challenges during the green transition, now is not the time to lose faith in the flexible franchise network that has proven its mettle in creating high-quality union jobs for New Yorkers. It would be a disgrace to call for giving corporations with noted anti-union biases special legislation that further allows them to degrade the quality of the New York State workforce and the communities in which they live. But GNYADA worries the Council is about to do just that by imploring the state to abandon union labor and the franchise system at the request of anti-union/anti-local business special interests based on what amounts to little more than conjecture about other states' ZEV sales figures.

Finally, we must be wary of the vanishing act direct sales legislation performs on consumer rights and protections. A direct sales proposal can objectively be described as an invitation to vertically integrate the automobile retail market. It will doubtlessly pivot us toward a future where a handful of corporate giants wield an absolute monopoly on their products and may therefore set take-or-leave-it prices for their products and strip communities of convenient repair options at will. We should also be cognizant of the fact that the dealer is still the best advocate the consumer has with a manufacturer. In many instances, dealers raise the alarm about product failures and defects that lead to vehicle recalls. Furthermore, dealers perform warranty and recall repairs free of charge and assumes responsibility for reimbursement for this work from the manufacturer. Also, consumers have greater bargaining power to negotiate better prices and terms when they can take their business to a competing dealer. A direct-sales model simply throws the consumer to the wolves, and it has yet to produce competitive prices or pleasant customer service in any other industry in which it has been tried.

IV. Conclusion

GNYADA again thanks the Council for this opportunity to be heard on a topic of vital importance to our members, their workers, and the communities we serve. **A strong Franchise Dealership Network is essential to meeting New York's ambitious climate saving goals. We cannot replace that system**

---

[16]Tesla, Inc. (2022) FY2021 Form 10-K, pg 21, (available at: https://www.sec.gov/Archives/edgar/data/1318605/000095017022000796/tsla-20211231.htm).

based on incomplete and unfounded information, especially at a high cost to New York workers, consumers, small business owner, and local economies. If the Legislature permits ZEV-only manufacturers to disassemble this system, and all of its economic and consumer benefits, a system that workers and small business have defended for over 100 years, the damage will be irreversible.

We hope this message leads the Council to reconsider and ultimately edit sections T1 and T2 of the draft scoping plan to remove any recommendation that lawmakers adopt direct sales legislation in New York. We specifically encourage you to focus those sections on promoting policies that encourage New Yorkers' to make the switch to a ZEV: higher on-the-hood rebate incentives and easy access to high-speed charging stations.