TESLA

Testimony Regarding the Transportation Provisions of Governor Hochul's Executive Budget Proposal for SFY 2022-2023

February 15, 2022

Introduction

Thank you to the committee for taking up these important issues and for having me here today. I would like to start by addressing the many proposals in the budget to encourage and facilitate a transition to zero-emission transportation. Tesla applauds the Senate and Assembly's leadership on Chairman Englebright and Senator Harckham's bill to require 100% of new light duty vehicle sales to be zero-emission vehicles by 2035. This is a crucial step in aligning policy with New York's binding commitment to achieve net zero emissions by 2050. We also applaud Governor Hochul and Commissioner Seggos' leadership in adopting the Advanced Clean Truck Rule to ensure that New York can be a leader in adoption of this crucial emerging technology for the heaviest polluting vehicles on our roads today. This has enormous implications not only for climate change, but also for public health in disadvantaged communities who always bear the brunt of the health impacts from particulate matter and other pollutants associated with the burning of fossil fuels in all classes of vehicles, but particularly Medium- and Heavy-duty trucks. All of these policies are recommendations within the Climate Action Council's Draft Scoping Plan released in December, and action now on those policies demonstrates an understanding of the urgent need for near-term progress on all fronts if the state is to have a chance to comply with the requirements put in place by the Climate Act.

Direct Sales of Zero Emission Vehicles

With regard to light-duty vehicles, the Draft Scoping Plan further states, *"New York should enact legislation to expand direct-to-consumer sales of ZEVs by manufacturers, which can serve to increase the availability and sales of ZEVs in the State."*[1]

There has been a great deal of coverage lately in publications like The Atlantic, Bloomberg News, the Daily News, and the Times Union of the fact that Florida has seen 60% higher electric vehicle (EV) adoption than New York in the years since the CLCPA was passed into law. This is particularly notable because Florida has not implemented any of the measures supporting electric vehicle adoption implemented in New York, such as adoption of California's Advanced Clean Car Rule and establishment of a generous EV purchase incentive. These analyses have pointed to New York's 2014 ban on issuance of direct sales licenses as the most likely explanation for the disparity, which continues to grow. While many states have welcomed the business investment, economic development, job growth, workforce training, and electric vehicle deployment that direct sales brings with it - not to mention the increased revenues for franchised dealers that has been realized in states open to direct sales - New York is losing ground because of a law that was passed in order to further protect franchised automobile dealers from fair competition in the marketplace.

New York law was never intended to dictate to New Yorkers that the only way to buy a new car in this state is through a franchised dealer. The relevant sections of the Vehicle and Traffic law that have been written and amended over the last half century have governed the relationship between franchisors, like Ford and GM, and their franchisees with whom they had entered into contractual agreements to sell new

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[1] https://climate.ny.gov/-/media/Project/Climate/Files/Draft-Scoping-Plan.ashx

cars in New York. The Franchised Dealer Act was passed to ensure that Ford and GM, the biggest companies in the world at the time, would not use their market power to bully and coerce dealer partners into accepting terms that were unfair. In fact, the longest section of the Franchised Dealer Act is titled "Unfair business practices by franchisors". This 8,000-word section, along with section 415 governing sales licenses, ensures, among many other things, that franchisors cannot dictate maximum sales prices for vehicles, cannot require a dealer to only deal in a certain brand, cannot voluntarily terminate or fail to renew a franchise agreement with a dealer, and cannot compete directly with its franchisees in selling vehicles at retail, among many other rules. In short, franchised automobile dealers enjoy robust protections under the law against the type of unfair business practices by franchisors that were a big problem in the 1950s, when Ford and GM were the biggest companies in the world.

Unfortunately, in 2014 the auto dealers sought to expand the law prohibiting issuance of sales licenses to apply not only to franchisors, as it had for decades and as was the intention behind the law, but to apply to Tesla, even though Tesla has never been a franchisor in New York or anywhere else. As a non-franchised manufacturer, Tesla had obtained five sales licenses under this law, as it continues to do without issue in states like Florida and California, and had successfully defended a lawsuit brought by the Greater New York Automobile Dealers Association in the New York Supreme Court the year before in which it alleged, "its members will suffer competitive economic injury if they must compete in the marketplace" against Tesla. The Court rejected this argument, finding, "the only potential injury suggested in the record is increased business competition", and dismissed the case. Having failed to expand the scope of the law in court, the dealers turned to the legislature. Unfortunately, the law was subsequently changed, and competition to serve New York's growing electric vehicle demand has been severely limited relative to states like Florida for the last seven years, during which time Tesla has become the top seller of electric vehicles in the world.

In April of 2014, Director of the FTCs Bureau of Competition, along with FTC's Director of the Bureau of Economics and Director of the Office of Policy Planning, jointly wrote the following about the dealers' efforts in New York and elsewhere:

> *When the automobile industry was in its infancy, auto manufacturers recruited independent, locally owned dealers to reach consumers in localities across the country. State laws progressively embraced wide-ranging protections for these dealers due to a perceived imbalance of power between the typically small local dealers and major national manufacturers. Dealers persuaded lawmakers that they needed protections from abusive practices by manufacturers. Federal laws, too, developed to protect auto dealers from abuse.*
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> *These protections expanded until in many states they included outright bans on the sale of new cars by anyone other than a dealer—specifically, an auto manufacturer. Instead of "protecting," these state laws became "protectionist," perpetuating one way of selling cars—the independent car dealer. Such blanket bans are an anomaly in the broader economy, where most manufacturers compete to respond to consumer needs by choosing from among direct sales to consumers, reliance on independent dealers, or some combination of the two*
> *…*
> *Regulators should differentiate between regulations that truly protect consumers and those that protect the regulated. We hope lawmakers will recognize efforts by auto dealers and others to bar*

> *new sources of competition for what they are—<u>expressions of a lack of confidence in the competitive process that can only make consumers worse off.</u>*[2]

In fact, insulating auto dealers from new sources of competition has not benefitted consumers. This has been made abundantly clear over the last two years—the two most profitable years ever for franchised auto dealers. In 2020, despite a 14% decline in sales from 2019, auto dealer profits increased by 48%. That record was shattered in 2021, again a year in which sales were 11% below 2019 levels. It sounds counter-intuitive that selling fewer cars would lead to record profits, but while there are several factors at play, the dominant factor has serious implications for the near-term deployment of electric vehicles in New York and around the country. To let *Road and Track* explain it: "*How did dealers manage to make so much more money selling fewer cars? The first answer appears to be simple: They put the squeeze on us.*"[3]

We see this same scenario playing out around the country with the limited supply of new electric vehicles from legacy manufacturers sitting on dealer lots with "dealer adjustments" of $10,000 or more. Barclays estimated the total value of Ford dealers' price markups last year was $3.6 billion.[4] Both companies have expressed serious concern that dealer markups will severely impact adoption of their new electric vehicle models, but there is little they can do within the bounds of state franchise laws, which give dealers discretion over pricing of everything from the car to add-on products, service contracts, and even interest rates for indirect auto loans. The problems associated with this discretionary pricing model are not limited to electric vehicle deployment. A sales model in which different customers pay vastly different prices for the same products, even loans, based solely on the discretion of salespeople trained to maximize the value of each transaction, has been shown repeatedly by consumer protection organizations, the federal government, and the Attorney General of New York State to produce adverse outcomes for members of disadvantaged communities.

For all of these reasons, we humbly ask the Senate and Assembly to restore the right of non-franchised EV manufacturers like Tesla, Rivian, and Lucid to fairly compete in the growing market for electric vehicles in New York State in this year's budget. Doing so will bring much needed workforce development, capital investment, and zero-emission vehicle deployment to the state. Unlike many of the policies that will be necessary to comply with the Climate Law, restoring this policy does not require the creation of any new mandates, programs or incentives. Many New Yorkers are supportive of the leadership shown by their representatives and Governor Hochul on transitioning to zero-emission transportation, have heard the call to action, and want to take part in this effort by trading in their gas car for the most popular electric vehicle on the market today. Those New Yorkers deserve the right to make that choice without being forced to drive hundreds of miles or to go out of state simply to pick up their choice of electric vehicle.

<u>Clean Fuel Standard</u>

The Draft Scoping Plan also included a Clean Fuel Standard as one of the highest impact tools for decarbonizing transportation in New York State. Similar to opening up the state to direct sales, this policy would come at no cost to the state (beyond the modest administration costs of the program). Tesla has

[2] https://www.ftc.gov/news-events/blogs/competition-matters/2014/04/who-decides-how-consumers-should-shop (emphasis added)
[3] https://www.roadandtrack.com/news/a35695042/car-sales-tanked-in-2020-but-dealerships-had-their-most-profitable-year-ever/
[4] https://www.thedrive.com/news/44172/ford-boss-puts-the-kibosh-on-unreasonable-dealer-markups

seen first-hand how effective a CFS program can be at accelerating the transition to electric vehicles and reducing the operating costs for electric vehicle charging stations. A CFS is particularly helpful when it comes to incentivizing fleets to transition to zero emissions trucks and cars. The value of clean fuel credits can significantly offset upfront costs related to charging infrastructure and vehicles. Tesla supports adding the Clean Fuels Standard to the budget for this year.

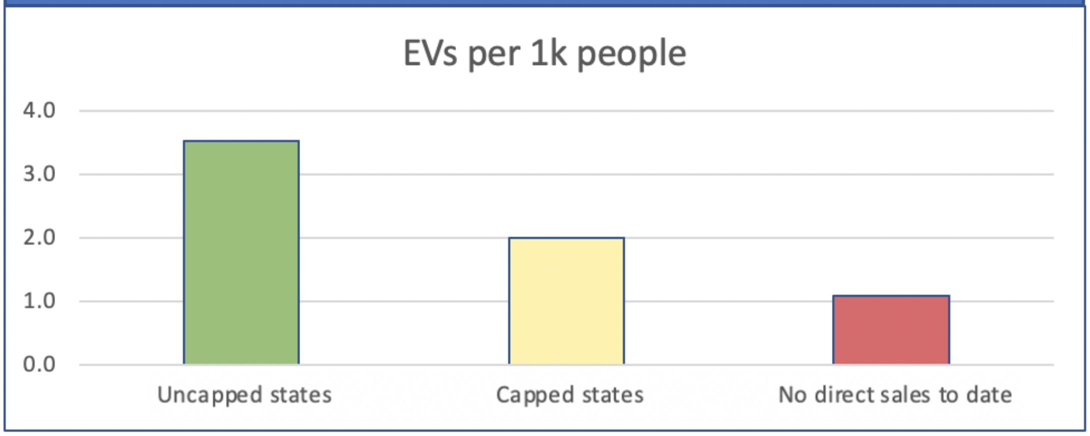
DMV Investments

Tesla is also supportive of the Governor's proposal to support additional investments in technology and process improvements to enhance the DMV customer experience. In particular, the DMV should utilize these investments to allow for the use of electronic signatures for customers purchasing a motor vehicle. Numerous other states have already adopted e-signatures for motor vehicle purchases including California, Massachusetts, Florida, Maryland, and New Jersey. Modernizing the DMV to allow for e-signature will create a better user experience for New Yorkers looking to purchase vehicles in the state, while providing additional security measures and safeguards.

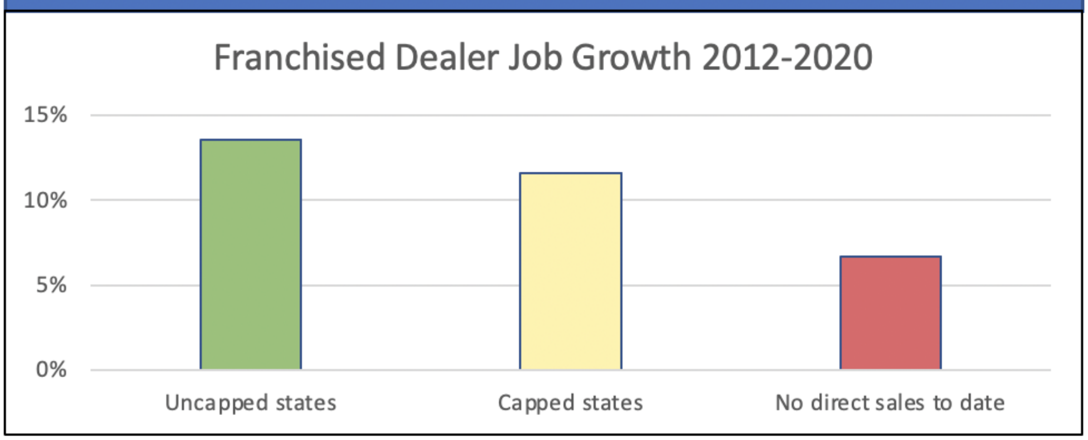
Conclusion

These policies are good for consumers because it gives them more choices, good for the environment because it leads to significantly higher EV adoption, and good for the economy because it ultimately correlates to more vitality and hiring in the overall auto retailing sector. Thank you for your consideration, and thank you for your time.

Greater EV Adoption



Higher Job Growth



Source: US Department of Energy; US Census

Source: National Automobile Dealer Association 2012 and 2020 NADA Data reports

Source: NYSERDA and VELOZ

Source: NYSERDA and Florida Power and Light