

# Clean Transit Enterprise

April 12, 2022

## **Regular Board Meeting – Tuesday, April 12, 2022, 1:30pm – 3:30pm, Virtual via Zoom Meeting**

### **Video Recording:**

[https://cdot.zoom.us/rec/play/Zb6loBobWuT45c0mu-4QYQ84Mo\\_VXIQTaqymua0F7vQN3RQcNTqqsL4i6-tPbQS56S4MBL7byLkm7bfv.\\_nZDOu5ZsQ5TPtep?continueMode=true](https://cdot.zoom.us/rec/play/Zb6loBobWuT45c0mu-4QYQ84Mo_VXIQTaqymua0F7vQN3RQcNTqqsL4i6-tPbQS56S4MBL7byLkm7bfv._nZDOu5ZsQ5TPtep?continueMode=true)

### **1. Call to Order, Roll Call - Time 1:35**

Board Members present: Chair Matt Frommer, Director Bonnie Trowbridge, Director Mark Garcia, Director Cris Jones, Director David Averill, Director Teresa Takushi, Director Richard Coffin.

### **2. Rulemaking Hearing: 2 CCR 607-1 Rules Governing the Clean Transit Enterprise Processes and Fees (Chair Frommer, Sari Weichbrodt, Kay Kelly) - Time 1:35**

#### ● Presentation on the rulemaking process and proposed rules. Steps CDOT has taken to meet the Administrative Procedures Act:

- February 22<sup>nd</sup>: the CTE board authorized CDOT to begin the rulemaking process
- February 25<sup>th</sup>: CDOT filed the proposed rules, including the hearing date, time, and registration link on the Secretary of State's website and with the Department of Regulatory Agencies (DORA) triggering notification emails to the public who have signed up on DORA's website to be notified of any transportation rulemaking
- February 25<sup>th</sup> and March 7<sup>th</sup>: CDOT staff sent outreach emails to our stakeholder group and interested parties, which consists of anyone who has notified us directly that they want to be notified of all CDOT rulemakings.
- March 4<sup>th</sup>: CDOT updated the filing on the Secretary of State's website, notified DORA of today's board meeting hearing date on zoom, and extended the period for written comments to April 7. Stakeholders and interested parties were sent updated notices by CDOT and DORA on March 7th.
- March 10<sup>th</sup>: public notice of the rules was published in the Colorado Register. Proposed rules and hearing information has been continuously published on the CDOT rules websites since February 25th.
- March 30<sup>th</sup>: updated definition of rule 2.3 published on website.
- April 8<sup>th</sup>: written comments submitted during the previous six weeks were provided to the board.

#### ● Overview of proposed rules and updates:

- Two parts to the CTE Rule: to promulgate the rule that sets the amount of the Clean Transit retail delivery fee, and to govern the process by which the enterprise accepts applications for awards and oversees grants, loans, and rebates. The maximum retail delivery fee of three cents is reflected in the rule we are proposing.
- Section 2.0 Definitions update: the definition of DI Communities in Rule 2.3 has been changed to: "the proportion of households that identify as minority is greater than forty percent", to align with statute.
- Section 4.0 Process for Awarding and Overseeing Grants, Loans, and Rebates update: has been changed from "annual call" to "process will be part of regular calls for transit grants at CDOT".

#### ● Testimony:

Tom Easley (Colorado Communities for Climate Action): speaking in support of the proposed rules including maximum fee collection. Regarding implementation, grants should go out as quickly as possible and we support special attention to DI communities. We would recommend fund allocation coordination between the various enterprises.

- No further public comment.
- Motion by Director Jones to adopt the proposed rules as amended, seconded by Director Coffin. Opportunity for discussion, discussion closed. Motion passes unanimously.

### **3. Action Agenda (Chair Frommer) - Time: 1:53**

- A motion by Chair Frommer to approve the meeting minutes from the March 29, 2022 CTE board meeting. Seconded by Director Garcia. Motion passes unanimously.

### **4. CTE Bylaw Updates (Kathy Young) - Time: 1:54**

- Summary of Bylaw changes: Added ability for the Program Administrator to sign documents on behalf of the CTE.

The Board has decided not to adopt formal resolutions. Added in a provision to create a Registry of Actions to keep clear records of the actions that the Board has taken.

- Motion to approve CTE bylaw updates as presented by Director Jones, seconded by Chair Frommer. Opportunity for discussion, discussion closed. Motion passes unanimously.

### **CTE 10-Year Plan (Michael King) – Time 1:58**

- Focus of Clean Transit Enterprise Board & Stakeholder Conversations has been on policy and strategy questions  
Section 4, Clean Transit Enterprise Funding Strategy
  - a. Funding Mechanisms (discussed March 29)
  - b. Funding Category Prioritization (discussed March 29)
  - c. Project Prioritization (discussed March 29)
  - d. Planning Requirements (discussed March 29)
  - e. Match Levels
  - f. Scrapping Requirements
  - g. Replacement Ratios
  - h. Other Policy Decisions
- Match Levels

Michael King: Many existing state and federal grant programs require matching funds, typically a 20% match by the grantee. Some programs have used a more generous match (i.e. 10% by the grantee) to make a program more attractive or accessible; other programs (typically at the federal level) have offered a less generous match (i.e. 50%) to spread limited grant dollars across more projects and ensure greater applicant commitment. Tiered match levels based on applicant need or other factors can also be established.

Director Coffin: Can you give examples of tiered match levels?

Michael King: The Multimodal Options Fund (MMOF) used a tiered match based on geographic equity considerations. Some communities have a higher level of cash on hand and, therefore, are more competitive for projects; whereas others do not, and so they had a multi variable metric to determine which communities are more financially stressed. The Department of Local Affairs and CDOT have examples of scoring tiered match levels.

Director Garcia: What is the process to change the match level in the future?

Michael King: If the 10-Year plan specifically defines the match level, a change would require an update to the 10-Year Plan. If the 10-Year Plan delegates the match level decisions to staff as part of the program design and call for projects, then small year to year adjustments would be simpler – not requiring a reopening of the 10-Year Plan.

Kay Kelly: It's up to the Board's pleasure. If we want to revisit match on a regular basis, or if we want to defer to staff. I think staff would do that in consultation with you when we present any calls for projects to the board.

Director Garcia: So, we could decide to match annually when we look at the request for projects that are going out.

Director Jones: If we are not required by legislation to include a match in the 10-year plan, my inclination is to defer to staff in the program design stage to provide us with more flexibility in the future. Match might not be appropriate for a smaller grant for a planning component, especially if a planning component is a barrier to entry to the larger pools of money for rolling stock replacement or other types of infrastructure. Larger requests, such as replacing buses, should already have money programmed to replace a diesel vehicle with a diesel vehicle. Since there are a lot of different match possibilities and levels, I don't know that we want to commit to that right now in the 10-Year Plan. We should acknowledge that staff is going to be thinking about those nuances and can bring us some proposals to consider in the future.

Director Trowbridge: I agree with Director Jones. In addition to the tiered match levels, are there program design match considerations you are seeing right now that are successful?

Michael King: I don't know of any particularly innovative approaches to match other than the tiered levels I described.

Director Takushi: I agree to keep it open. Accessibility is important and allows for more flexibility and deferring to staff.

Michael King: Should applicants be encouraged to use CTE funding as a match for other state or federal grant programs? Alternatively, would other state or federal grant programs be acceptable as a match for CTE funding?

Director Jones: Given the specific source of funding, I don't have major concerns about using these dollars as leverage for other dollars. It's not like it's double dipping because of how these dollars are being funded. As long as it fits the criteria for the types of projects we would like to see realized.

Director Averill: Regarding variable match, I feel like being able to leverage one source of funding towards another ought to be some sort of demonstrated need. There's a precedent with using CDOT's current grant funding and FASTER

programs to match FTA programs where agencies can make a good case for it. I would be open minded about that kind of thing, but I don't think it should be a free-for-all.

Chair Frommer: I agree in the early days we should be trying to cover as much of the incremental cost as possible. I think about our four project categories. For bus replacement, the match is inherent, I'm not going to cover the full cost of an electric bus. Planning or facility upgrades is such a nebulous category we might want to consider a cap, so we are not funding the construction of a giant depot that takes up a high percentage of the total fund. For EV charging infrastructure we should try leveraging utility programs as much as possible. Regarding factors used to define match level, we should be supporting equity here by helping transit agencies that are serving disproportionately impacted communities.

Director Garcia: We could set a minimum match with the caveat that an applicant could request a reduced match based on project strengths or criteria. Instead of it being totally wide open with 100% grant potential out there, consider the applicant's request to reduce match.

Michael King: I believe that there is precedent for that in the Division of Transit and Rail, that there is a mechanism for requesting match relief on certain grant programs, I would have to defer to Amber and her staff to clarify how that currently works. That might reduce the burden of developing a tiered formula up front, but rather, leaving it on a case-by-case basis. However, I do think you would want to have some clear criteria so that the applicants feel that there's a transparent process for determining if their request is approved.

- **Scrapping Requirements**

Michael King: Some zero-emission vehicle grant programs (including those funded by the Volkswagen Settlement) have required grantees to scrap vehicles in exchange for new vehicle funding. The existing gasoline or diesel vehicle comes off the road permanently, rather than continuing to operate in another fleet. This can also present a barrier for agencies that are looking to expand their fleets while they are electrifying or shifting to a zero emission or low emission fuel by locking them in at the current number of vehicles that they can transition. It can also be considered wasteful, because if the vehicle that is scrapped is not at the end of its usable life, then it is being destroyed and taken off the road. Some states use a hand-me-down program, where there is still a scrapping requirement, but there is a system where the fleet that receives the new zero emission vehicle delivers the used vehicle to another fleet that can use it for the remainder of its useful life. The recipient fleet of that used vehicle scraps an older dirtier vehicle that they currently have.

Director Coffin: I like the hand-me-down program. Replacement can be a gray area regarding where the existing ICE vehicle goes. At the end of the day, we are trying to reduce emissions, which typically involves scrapping. I am supportive of looking into the hand-me-down program.

Director Averill: I am a no on scrapping in general. I don't think it makes sense for transit agencies to scrap vehicles early in their useful life. The hand-me-down option could be a heavy lift on the reporting and tracking side for staff, but it is worth exploring. I think the CTE should be flexible. The FTA "Spare Ratio" has a 20% requirement - 20% of your fleet can be tagged for spares, if you start getting 100's of used buses the FTA is going to wonder why you need more. If agencies start bumping into that spare ratio, they're going to have issues and have to get rid of buses anyway, so in a way it kind of takes care of itself. I don't know that the legislation says to replace dirty buses as much as it makes a push to get clean buses out there, I guess there's probably a debatable point there.

Chair Frommer: Can you expand on the FTA 20% requirement.

Director Averill: They have an upper limit of 20% of your fleet that can be tagged for spares. It depends on the size of the agency, there is some wiggle room, so it's not a hard line in the sand. Small agencies can get away with having 25% because they've only got six buses. If you start getting hundreds of extra buses, then the FTA is going to wonder why you need more.

Michael King: If service is expanding at the same time that the fleet is transitioning, or if the vehicles are all being used on a regular basis, would the FTA consider that a spare? Or is that more in the case of you're holding on to a vehicle that is not regularly run on a daily basis.

Director Averill: It is calculated based on your maximum roll out, how many buses do you need on your busiest day of the year.

Director Takushi: I like the hand-me-down program. I feel like it proposes a double benefit to air quality. I have heard feedback from members of the public and a disproportionately impacted community that said that they have the dirtiest vehicles in their neighborhood. That resonates with me in that you'd have a benefit to that neighborhood by getting a cleaner vehicle. I would like to understand the workload implication of that better.

Director Jones: No on scrapping, I find it to be very wasteful. A dirty polluting bus full of people is still more efficient than most modes of transportation available to us. Having ridden and seen RTD buses, well beyond their useful life, operating in developing countries, there is a whole economy in developing countries that relies on used vehicles. It is a place of

great privilege to suggest that we can take something away that is fully operational, that while it might be dirty compared to what we're trying to incentivize, it's not necessarily dirtier than what other options folks have available to them. We are not affecting the demand for diesel vehicles. By keeping used diesel buses in the market, we can reduce the demand on that economy, which could help agencies transition to clean, new vehicles.

Director Trowbridge: I don't think scrappage is the way to go, it is a burden for small agencies. Hand-me-downs might be a strain to program staff. Vehicle upfitting or repowers can take an old bus and replace the drive train, bringing up questions on how you can scrap a bus.

Michael King: The VW Settlement required destruction of the engine, hypothetically there could have been a repower, although I don't think any of those were funded.

Director Garcia: Scrapping or repurposing could be part of that match reduction option I mentioned earlier.

Chair Frommer: In the application, ask applicants to quantify the greenhouse gas reduction from their project. The criteria include the electric bus, taking diesel buses off the road, hand-me-down, or the VMT reduction from expanded service. This could also be used to reduce the match requirements.

Director Coffin: The EPA Diesel Emission Reduction Act (DERA) has scrappage requirements, it's a major barrier to getting projects done in addition to match requirements. For SB 260, does the legislation require a 1:1 replacement?

Chair Frommer: CDOT has some experience with repowering the diesel Boulder HOP bus with an electric engine. This predated the VW funds. What is the current thinking on repowering diesel buses with electric drive trains?

Michael King: Repower entails having a vehicle that has been running on one fuel, such as diesel; the engine is removed and then it's electrified or uses some other alternative fuel. A conversion occurs right off the line. For example: Lightning E-Motors in Loveland and some other companies nationwide will take delivery of a newly manufactured vehicle to do the conversion. With a repower the vehicle might be 6, 7, or 10 years old. The state is more open to conversions because the vehicle is still essentially a new vehicle. Repowering has caused some concern in terms of safety and having an older vehicle that continues operating. SB 260 does not make any distinction, it talks about electric motor vehicles that were originally powered by fossil fuels, implying conversions and repowering. We recognize that for some vehicle types, particularly cutaways and vans, there are not many OEM-produced versions that you can buy. The only avenue is a company that does a conversion, oftentimes with some explicit endorsement from the original manufacturer. The OEM has programs that certify who is allowed to do conversions, and they vouch for the quality of it.

- Replacement Ratio

Michael King: Other state and federal grant programs often require a 1:1 ratio between new vehicles being funded and old vehicles being replaced. However, early-adopter transit agencies in Colorado have sometimes found that, given range limitations, a single battery electric bus cannot always effectively replace an existing diesel or gasoline vehicle for its entire duty cycle. Some agencies will target a specific route or vehicle for electrification because it can do that 1:1, but other agencies have found that not all their services can be replicated that way. A higher replacement ratio, of 1.5:1 for example, could allow for smoother transition from an operational standpoint, since the agency would probably not have to adjust as many of its schedules. But in that case the CTE would be funding more than one vehicle per award and then, of course, there would be less funding overall to go around. In addition to other issues such as parking, charging, staffing of drivers, and maintenance personnel associated with more vehicles.

Director Averill: I would not assume a 1:1 vehicle or charger ratio. It is all going to boil down to operational considerations at the agency level.

Director Trowbridge: I agree, flexibility is key, let's allow agencies to do what's best for them and really to listen to what they need. A 1:1 charger ratio is not necessary.

Chair Frommer: There is a tendency to overbuild on charging, we are seeing that with home charging. Similarly, if I was a transit agency ordering my first electric bus, I would want to overdo it on the charging, just to make sure that I wasn't left with a partial charge in the morning. One role for this enterprise should be to offer guidance for transit agencies on the charging side, so that we're really optimizing the charging infrastructure. It's very unlikely we're going to overbuild on the charging at such a low level of EV adoption, they will use the chargers in the future.

Michael King: Installing all chargers at the same time is often more cost effective. Is the CTE willing to fund charging without specific buses in mind?

Chair Frommer: Some funding should be allowed for future proofing buildings. I am curious to hear how Charge Ahead Colorado is doing that with fast chargers. Utilities have a key role to play here. If Xcel wants to install a transformer to service a higher number of buses in the future they should be at the table, and we should leverage that opportunity with their Transportation Electrification Plan.

Michael King: The DCFC Corridor program managed by the CEO requires sites to be expandable in the future (space for more vehicles and charging units and existing wiring). A similar approach can be adopted for agencies that are in the initial stages of EV adoption and expect to expand in the future.

Director Averill: It's a balance. I'm all for conduit, just not the charging hardware. I don't think there is a common charging standard between bus manufacturers. I would hate to see infrastructure wasted.

Michael King: This recalls our discussion last month of the potential role of rebates in the CTE Program. If an agency has already upgraded their facility from a conduit, power, and design standpoint, then future charging units might be a good fit for rebates when it comes time to purchase a unit that fits their framework. They can do that with minimal additional review; it would be pre-approved in the sense that they've already completed the planning and just need to buy a charging unit and get it installed.

Director Coffin: I support allowing greater flexibility regarding vehicle replacement ratios. I am also open to a higher charger-to-vehicle ratio to account for operational considerations.

Chair Frommer: It would be helpful to create a catalog of existing EV bus chargers and hardware, and to try to answer the question of which is more efficient: cycling the buses through one 350 kW charging station or build multiple 125 kW units and plug all the vehicles in at once for four hours at a time.

Director Trowbridge: Could the enterprise require a plan to be in place, or we see how this is going to play out which allows us to keep this part flexible.

Michael King: To preemptively address many of these issues, the best practice for any transit electrification transition plan would describe the long-term vision and how this project will scale up.

- Data Reporting Requirement

Michael King: SB21-260 requires the CTE to establish a Public Accountability Dashboard to track projects funded through its programs. It does not explicitly define what data points must be collected and shared via the Dashboard beyond overall expenditures, funding status, and project completion updates. CDOT's Division of Transit & Rail also requires transit agencies to report annual usage data (mileage, condition of vehicle, age of vehicle) for vehicles funded with state or federal grants.

Director Garcia: I like Teresa's comment in the chat about quantifying greenhouse gas measures. That type of requirement would help in this reporting also. Maybe we put it back on the project or applicant to provide that information for us, which then can be uploaded to a dashboard or something to that effect.

Director Takushi: Having the applicant look at the transit emissions dashboard would help integrate these metrics in reporting standards.

Chair Frommer: Transparency, letting the public know how this enterprise is benefiting them, is important. Report GHG emissions and local pollution, especially in the non-attainment area. I want to be careful not to be too onerous on transit agencies and hopefully use as much of the data they are already reporting to the National Transit Database and FTA as possible. We should collect data to inform program design (charging ratios, how is the program working) going forward.

David Averill: Way better to ask for this at the beginning of the program rather than come back later and say we should have been asking for this three years ago.

Michael King: Is there type of data that should be excluded from data collection? (no comments)

Chair Frommer: How do we measure the equity implications of this enterprise? How do we quantify the air quality benefits or ridership for DI communities? Maybe this is a question we pose to the Environmental Justice (EJ) Taskforce at CDPHE.

Michael King: We can investigate this question with the EJ Task Force and with the EV Equity Study from the CEO. We are hoping to have some new tools near the end of this month to support a data driven process.

- Upcoming Stakeholder Engagement Opportunities will be shared with the board on an ongoing basis. This schedule will be sent out to the board.
  - April 20, 2022 - CEVC Transit Subgroup Meeting
  - May 5, 2022 - Transit Monthly Meeting
  - May 13, 2022 - Transit & Rail Advisory Committee (TRAC) Meeting
  - May 18, 2022 - CEVC Transit Subgroup Meeting
  - May 23-27, 2022 - CASTA Spring Conference
  - May 25, 2022 - Clean Transit Enterprise Board Meeting
  - June 1, 2022 - 10-Year Plan Completion Deadline

Director Garcia: have we given enough feedback on the 10-Year Plan topics to move forward?

Michael King: From my perspective, I think that we've heard some consensus on some questions and a general sense of leaving it flexible on others. Between now and the next meeting on May 25th we will develop a draft of the 10-Year Plan that addresses the topics that we've discussed here and the feedback we've gotten from stakeholders for the board's consideration and review. Yes, we have a good amount of feedback, and can schedule an ad hoc meeting, if necessary to discuss this further.

Kay Kelly: We could have an interim check-in early to mid-May for the board to provide any additional input on the 10-Year Plan and hear the consensus of comments that we got from stakeholders.

Chair Frommer: I'd be happy to set up an ad hoc meeting. It seems like we just have a lot to get through. If you can relay the feedback you're hearing from stakeholders on our key questions when you're ready it'd be great to have that information in advance.

Additional Comment on Rulemaking:

- **Public comment on the rulemaking – Time 1:42**

RJ Harrington (National Car Charging): From a rulemaking perspective I am not in a position to say to the board which direction you should take. I've been able to participate in the Clean Fleet Enterprise and Community Access Enterprise stakeholder engagement efforts. The one thing I keep trying to echo is the intersectionality of these three enterprises. On the ground, the challenges that entities such as national car charging run into and full transparency. I've said this in the past and made this transparent statement a little bit too late. Now I'm too late again because I didn't say it on the front end. National car charging does in fact provide electric vehicle charging infrastructure, be they buses, be they light duty, medium duty, heavy duty, etc., and so there is a chance that our organization may in fact benefit financially. I do want to make certain that, as many of these different efforts are happening, as many projects are actually being integrated on the ground, yesterday, today and tomorrow. To board member Averill's comment, having that flexibility is key, as the technology continues to evolve, and standards develop. One of the biggest mistakes Chair Frommer, that you already touched on, is over deployment. Yeah, ok, broad EV adoption is happening faster [referring to over building for charging infrastructure]. We need to be able to keep up with that. By the same token, so is the technology advancing quite rapidly and the last thing any of us want to do is invest dollars in this instance, especially those being collected through fees and then have those assets that are deployed become stranded. We know this 10-Year Plan is a 10-Year Plan. If we remain flexible, we will be able to roll with punches over the years. Most importantly these efforts should be done with as much collaboration as possible. There should be some entity as the focal point to do data sharing after awards are granted. We don't want to be onerous with data reporting requirements, but we don't want to miss anything as well.

- **CTE Lawsuit (Kathryn Young) – Time 1:47:** A lawsuit against the CTE and other enterprises was filed Friday April 8<sup>th</sup>. It has not been served yet. I will send the complaint to the board via email. Plaintiffs: Americans for Prosperity, Michael Fields, Richard Orman, and Jerry Sonnenberg. They have sued a whole host of state actors including the Governor and State Controller. The board members have not been sued, but the CTE has been sued. It's a TABOR Lawsuit and the complaint can be summarized into two buckets. First, that the creation of the enterprises violates Proposition 117, certain Enterprises must be established by a vote of the people. The other allegation is that SB21-260 violated provisions that legislation needs to be a single subject. The Legislature should have adjusted the TABOR Cap downward, instead the TABOR Cap was moved upward. Plaintiff asked for a permanent injunction to nullify the CTE and enterprises and to toss out SB 260. The Attorney General's office is putting together a defense. I expect to go into executive session to have a candid conversation with the board and explain our defense.

## 5. **Wrap Up and Next Step (Kay Kelly) – Time 1:52**

- Next CTE board meeting is May 25<sup>th</sup>. We will likely schedule a meeting before that to review the 10-Year Plan. We anticipated monthly meetings leading up to the 10-Year Plan publication, then plan to settle into more of a every other month or every quarter cadence. We would like the board to think about the meeting cadence for FY23 starting on July 1, 2022.

Director Jones: Will these meetings ever move to in-person, or will they remain virtual moving forward?

Kay Kelly: I think that's at the board's pleasure. We do have members from across the state. However, we have funds in our budget that would allow us to do in person meetings. If we want to establish an in-person meeting once a year, so

that we can have some face-to-face interaction, or if we want to do that more frequently, I think it's at the board's pleasure.

Chair Frommer: Is CDOT planning to do any press around the CTE?

Kay Kelly: I am also excited about the 10-Year Plan, but the communications team at CDOT has advised that project awards or new funding opportunities are more newsworthy events than plans.

**Meeting Adjourned: 3:28 pm**