

State of California
Energy Resources Conservation and Development Commission

In the Matter of:)
)
Rulemaking to Implement the)
Alternative and Renewable Fuels)
and Technology Program)
_____)

Docket No. **08-OIR-1**
Order Number. 09-225-5

ADOPTION ORDER
February 25, 2009

DOCKET 08-OIR-01	
DATE	<u>FEB 25 2009</u>
RECD	<u>FEB 27 2009</u>

I BACKGROUND

On January 2, 2009, the California Regulatory Notice Register published a notice of proposed action (NOPA) announcing the possible adoption of new regulations by the California Energy Commission. The proposed regulations would make specific the process for implementing the California Energy Commission's new funding program under the *California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007* (Act). The proposed regulations would provide clarification and details regarding the following areas: Advanced Vehicle Technology, Sustainability Goals, Funding Restrictions, Advisory Body, and the Investment Plan. The regulations are necessary to provide potential applicants with guidance on the types of projects that will be eligible for funding and to clarify the objectives and criteria by which the Commission will evaluate applications and fund those projects consistent with the goals and objectives of the Act.

The Energy Commission's authority stems from AB 118, which was enacted in October 2007, and subsequent legislation, AB 109, which was enacted in September 2008. AB 109 added sections 44270 to 44274 to the Health and Safety Code. The Commission is authorized to adopt regulations pursuant to Public Resources Code sections 25213 and 25218(e). Available for public review with the publication of the NOPA has been the text of the proposed regulations and the initial statement of reasons describing the rationale for each proposed section.

On February 25, 2009, the Commission held a hearing to consider the adoption of the proposed regulations. Based on the published NOPA and the lack of comments to the contrary, the Energy Commission makes the findings that are consistent with the NOPA and adopts the regulations as proposed.

II ENERGY COMMISSION FINDINGS

A. SMALL BUSINESS IMPACTS

The proposed regulations would not directly affect small businesses. No small business would be legally required to comply with the regulations nor would any small business necessarily derive a benefit or incur a detriment as a result of these regulations being adopted. The statute, coupled with the proposed regulations, creates a funding program for alternative and renewable fuels and technologies. Proposals for funding would be voluntary. Under the proposed regulations no entity is required to apply for funding. For those businesses that do apply, there will potentially be costs associated with the application process and any reporting requirements during the life of the project.

B. BUSINESS AND REPRESENTATIVE PRIVATE PERSON COST IMPACTS

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur as a result of the proposed action being approved.

C. LOCAL MANDATE DETERMINATION

If adopted, the proposed regulations would not impose a mandate on local agencies or school districts.

D. COST/SAVINGS ESTIMATE

There would be no cost or savings to any state agency as a result of the regulations being adopted. Nor would there be any cost to local agencies or school districts as a result of the regulations being adopted and, thus, no cost that is required to be reimbursed under Government Code section 17500 et seq. There would be no cost or savings in federal funding to the state if the regulations are adopted and implemented. Further, there would be no nondiscretionary costs or savings imposed upon local agencies. Under the proposed regulations no entity is required to apply for funding.

E. STATEWIDE ECONOMIC IMPACT ON BUSINESSES

Adoption of the proposed regulations would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the following facts (1) the proposed regulations are part of a funding program that would apply only if an entity voluntarily chooses to submit a project proposal to participate in the program; (2) the proposed regulations have no provisions that would require, mandate, or impose anything directly affecting business in the state; and (3) the potential administrative costs incurred for voluntarily applying for funding are minimal compared to the amount of funding that could be received and would only impact entities that choose to apply for funding.

Although the specific costs to a small business applicant for funding is unknown at this time, it is assumed that successful applicants will incur costs of preparing an application, monitoring and reporting as required by a funding agreement, complying with sustainability requirements, and, where applicable, obtaining a permit for a project.

F. ASSESSMENT REGARDING JOBS AND BUSINESSES

The proposed regulations would specify rules for a funding program that awards funds to selected applicants who voluntarily apply for funding. If selected, the applicant would receive funds for a specific transportation-based project, which has the potential for a positive effect on maintaining or creating California jobs or maintaining, expanding, or creating a business within the state. Funded projects may also produce significant indirect or long term benefits including: (1) fuel cost savings; (2) reduction in the state's cost of petroleum dependence; (3) greenhouse gas emissions reduction; and (4) development of new industries with associated job creation.

G. IMPACT ON HOUSING COSTS

The regulations proposed for adoption will have no effect on housing costs.

H. CONSIDERATION OF ALTERNATIVE PROPOSALS

The Energy Commission has considered reasonable alternatives in the course of developing the proposed regulations. Since publication of the NOPA, no alternative has been brought to the Commission's attention. Accordingly, the Commission has determined that there is no alternative that would be more effective or less burdensome than the proposed regulations, given the statutory requirements and objectives of the funding program.

III CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Commission finds that the adoption of these regulations is not subject to the California Environmental Quality Act (Pub. Resources Code section 21000 et seq). Under Title 14, California Code of Regulations, section 15061(b)(3), a project is exempt from the California Environmental Quality Act where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. In addition, the regulations do not amount to a "project" as defined by Title 14, California Code of Regulations, sections 15378(a) and 15378(b)(4). Specifically, a "project" does not include the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

These regulations are part of a government funding mechanism which will provide funding for currently unidentified and unspecified projects. These regulations clarify details of the funding program and set forth administrative procedures of process, selection and stake holder participation but the regulations do not direct any specific activity, task or project which would cause direct or indirect impacts on the environment.

IV ADOPTION OF REGULATIONS

Having considered comments received during the public review period beginning January 2, 2009, and the discussion at the February 25, 2009, business meeting, the Energy Commission hereby adopts the regulations that are attached and that have been available for public review with the publication of the NOPA in the California Regulatory Notice Register. We take action under the authority of sections 25213 and 25218(e) of the Public Resources Code for the purpose of implementing and making more specific sections 44270 to 44274 of the Health and Safety Code.

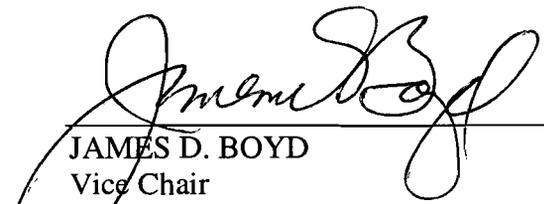
The Commission authorizes the Executive Director to prepare the final documents to complete the rulemaking file for submittal to the Office of Administrative Law. The Commission authorizes the Executive Director to make corrections and nonsubstantive changes as may be requested by the Office of Administrative Law for approval.

Dated: February 25, 2009

STATE ENERGY RESOURCES
CONSERVATION AND
DEVELOPMENT COMMISSION

(Absent)

KAREN DOUGLAS
Chairman



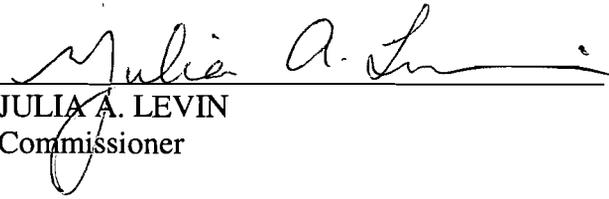
JAMES D. BOYD
Vice Chair

(Absent)

ARTHUR H. ROSENFELD
Commissioner



JEFFREY D. BYRON
Commissioner



JULIA A. LEVIN
Commissioner