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Docket Number:	15-OIR-02
Project Title:	Modification of Alternative and Renewable Fuel and Vehicle Technology Program Funding Restrictions
TN #:	203606
Document Title:	Memo To Add Attached Order Instituting Rulemaking From 12-OIR-3 Proceeding to Docket No. 15-OIR-02
Description:	N/A
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Memorandum

To: Docket Unit
California Energy Commission

Date: February 4, 2015

From: Lisa DeCarlo, Chief Counsel's Office
California Energy Commission
1516 Ninth Street
Sacramento CA 95814-5512

Subject: **Request to Add Attached OIR from 12-OIR-3 Proceeding to Docket Number 15-OIR-2**

Please add the attached document, Order Instituting Rulemaking, originally filed in 12-OIR-3, to the 15-OIR-2 Docket.

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

California Energy Commission

DOCKETED

12-OIR-3

TN # 74462

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In the Matter of:)	Docket.	12-OIR-3
)	Order:	12-1114-5
Rulemaking to Consider Modification of)		
Regulation Regarding Funding Restrictions)	ORDER INSTITUTING	
On Projects Under the Alternative and)	RULEMAKING	
Renewable Fuel and Vehicle Technology)		
Program)		
_____)	November 14, 2012	

I. PURPOSE AND SCOPE OF THE PROCEEDING

Pursuant to California Public Resources Code sections 25210, 25213, and 25218(e), and Title 20, California Code of Regulations, section 1222(a), the California Energy Commission (Commission) hereby institutes a proceeding to discuss and, if warranted, implement possible changes to the Commission's regulation concerning Funding Restrictions on projects under the Alternative and Renewable Fuel and Vehicle Technology (ARFVT) Program, title 20, California Code of Regulations, section 3103.

California Health and Safety Code §44271 created the Alternative and Renewable Fuel and Vehicle Technology Program as a publicly-funded investment resource for companies seeking to "develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies." Subsection (c) thereof provides that "For the purposes of both of the programs created by this chapter, eligible projects do not include those required to be undertaken pursuant to state or federal law, district rules or regulations, memoranda of understanding with a governmental entity, or legally binding agreements or documents. For the purposes of the Alternative and Renewable Fuel and Vehicle Technology Program, the state board shall advise the Commission to ensure the requirements of this subdivision are met."

Pursuant to California Health and Safety Code §44271, in 2009 the Commission adopted Section 3103 of the Title 20 Code of Regulations (Regulation 3103) regarding restrictions on eligibility for ARFVT Program funding. Subsection (b) provides in part that "credits that the applicant plans to claim based on the reduction of criteria pollutants, toxic air contaminants, or greenhouse gases may not be eligible for funding unless ... the applicant agrees in the funding agreement to discount emission credits at least in proportion to the amount of funding received." This

provision is generally referred to as the “credit discount provision.” As part of that rulemaking, the Commission also adopted subsection (a) of Section 3103 to implement the funding constraints articulated in Section 44271(c). Subsection (a) of Regulation 3103 disallows ARFVT funding for any project “mandated by any local, regional, state or federal law, rule or regulation . . .” and specifically mentions projects that are undertaken to meet a legally-mandated performance requirement.

In February 2012, the Commission received three letters from various parties representing industries including the natural gas vehicle and biogas and biofuels industries. These letters, which are or will be made publicly available as backup materials to this Order, emphasized these emerging industries’ critical need for full utilization of credits and questioned the justification for Regulation 3103, specifically, the application of the subsection (b) discounting provision to producers of low carbon liquid and gaseous biofuels. Several of these parties also provided testimony at the February 2012 Advisory Committee Meeting for the 2012-13 Investment Plan. These parties have urged the Commission not to apply the credit discount provision to companies and projects that do not have a carbon debt obligation under the Los Carbon Fuel Standard (LCFS), but that are technically classified as “regulated parties” under the LCFS solely in order to enable them to be eligible to sell and trade their LCFS credits from the low carbon fuels they seek to produce.

This raised the issue of whether projects that are instituted in order to meet lawful performance requirements are or should be prohibited from receiving ARFVT funding because they are deemed to be “required to be undertaken pursuant to state or federal law, district rules or regulations, memoranda of understanding with a governmental entity, or legally binding agreements or documents.” California Health and Safety Code §44271 (c).

Commission ARFVT Program staff have recommended that the Commission open a rulemaking proceeding to consider whether revisions to Regulation 3103 to address the above concerns are warranted.

The Commission hereby orders that a rulemaking proceeding be opened to consider whether to revise title 20, California Code of Regulations, section 3103. Specifically, the Commission will consider whether or not to amend Regulation 3103 as follows:

- 1) By striking Subsection (b) of Regulation 3103;
- 2) By evaluating whether all or a portion of subsection (a) of Regulation 3103 warrants being revised or stricken;
- 3) Any other changes to regulation 3103 considered necessary to carry out the requirements of California Health and Safety Code §44271(c).

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II. PUBLIC PARTICIPATION

The Commission encourages full and free public participation in this proceeding. Any person present at any hearing or workshop shall be afforded a reasonable opportunity to make oral comments on the subject matter of the proceeding. Petitions to intervene are not necessary. Any person may file written comments addressed to:

Docket No. 12-OIR-3
Docket Unit, MS-4
California Energy Commission
1516 Ninth Street
Sacramento, California 95814-5512

Alternatively, a person may provide one electronic copy under 5 megabytes to docket@energy.state.ca.us. The Docket Unit will accept Word documents, but please send PDF if possible. Identify all comments with "Docket Number: 12-OIR-3". The Commission will set forth a deadline for the receipt of written comments in a Notice of Proposed Action, which will be published later in the proceeding if it is determined that changes to the regulations are necessary.

The Executive Director, in conjunction with the Public Adviser, shall ensure that this order and notices of hearings and workshops are distributed to all interested persons and that drafts of the regulations are made available sufficiently in advance of workshops, interim hearings, and final adoption by the Commission to allow timely participation.

The Commission's Public Adviser is available to help any person who wants to participate in this proceeding. Please call (916) 654-4489 or toll-free in California at (800) 822-6288, or contact pao@energy.state.ca.us.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the California Energy Commission held on November 14, 2012.

AYE: Weisenmiller, Douglas, Peterman, McAllister

NAY: None

ABSENT: None

ABSTAIN: None


Harriet Kallemeyn Secretariat
California Energy Commission