

DOCKETED

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CEC Regulation Title 20 CCR3103-AB118 Funding Restrictions

Additional submitted attachment is included below.



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November 12, 2014

Commissioner Janea Scott
California Energy Commission
1516 Ninth Street, 1st Floor
Sacramento, California 95814

RE: CEC Regulation Title 20 CCR 3103-AB118 Funding Restrictions

Dear Commissioner Scott:

Crimson Renewable Energy LLC ("Crimson") owns and operates a biodiesel production facility in Bakersfield CA. We are currently in the midst of expanding the production capacity of this facility by 10 million gallons per year with the help of AB118 funding awarded to us via PON-13-601 and PON-13-609.

I'd like to first thank you for the opportunity to bring to your attention our deep concerns regarding the interpretation of Title 20 CCR 3103 (the "3103 Regulations") regarding AB118 funding restrictions applicable to AB 118 grant award recipients. My understanding is that this issue first arose as part of the issuance of Biofuels Production Facilities Grant Solicitation PON-11-601. This PON suggested that grantees, even though they do not have any obligation under AB 32 or the Low Carbon Fuels Standard ("LCFS") to specifically reduce carbon output or produce alternative transportation fuels, would have to forgo the value of LCFS credits received for biofuels produced proportionate to the level of grant monies received via AB118 funds.

We urge you and the CEC to reconsider this provision as we believe it is totally contrary to the intent and specific language of AB118, which states that if the grantee:

"...is an obligated party or has opted in ... to a credit generating program such as the LCFS or AB32 initiatives, and plans to claim credits generated by the proposed project, then the applicant will be required to agree to discount the value of those credits at the point of transfer in proportion to the funding received."

Per the California Air Resources Board ("CARB") LCFS regulations, the only way a voluntary producer of a low carbon fuel can participate in the LCFS is by "opting in" as a "regulated party". This is simply CARB terminology but in no way means that an "opt in" regulated party is compelled in any way by CARB to produce a low carbon fuel. It simply means that the "opt in" regulated party may buy and sell LCFS credits or earn LCFS credits via production of a low carbon alternative fuel. It does not mean that an "opt in" regulated party must do the latter. CARB has since specifically clarified in their LCFS regulatory amendments that parties that voluntarily "opt-in" are free to opt out at any time and still produce a low carbon fuel for use in California, *provided that they are not subject to a carbon reduction compliance obligation*,

i.e. the party is not a petroleum based transportation fuel producer or importer. The CEC also needs to recognize this critical distinction.

To our knowledge, no alternative fuel projects awarded AB118 grants prior to PON-11-601 were subject to the 3103 regulation restrictions. Also, our understanding is that:

- (i) the interpretation of 3103 regulation has heretofore always been that it is only applicable to those projects that are "required to be undertaken" pursuant to federal or California law, and
- (ii) CEC AB 118 staff has previously provided consistent guidance that the 3103 regulation only apply to those projects that are required to be undertaken in order comply with federal or state law (i.e. for mitigation purposes), not to those project that voluntarily undertaken to produce alternative fuels and generate and sell LCFS credits to regulated parties who must have those credits. Indeed I specifically had a conversation with CEC staff about the 3103 restrictions prior to submitting our AB118 grant application and was told that 3103 would not apply to our proposed project for the PON-13-601 solicitation for which we were awarded an AB118 grant.

Thus we believe that this restriction was never meant to apply to voluntary producers of low carbon fuels, those who are doing so without any obligation or requirement from any governmental body. To restrict voluntary producers of alternative fuels also goes far beyond the statutory limitation of AB 118 itself, as modified by AB109 (Nunez, 2008). H&SC Section 44271 (c) is the statutory basis, authority and reference for Section 3103 of the AB118 regulations:

"44271(c) For the purpose of both of the programs created by this chapter, eligible project's 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 Technology Program, the state board shall advise the commission to ensure the requirements of this subdivision are met."

We believe this statutory restriction was intended to apply to only those parties who are required to produce alternative fuels as a means of compliance with carbon reduction regulations such as LCFS or AB32 or required as an agreed upon mitigation measure with a local air district (i.e. as part of settlement for excessive emissions). With respect to the LCFS, this statutory provision is only applicable to producers of petroleum based fuels who are the mandated LCFS regulated parties.

To otherwise restrict voluntary producers of alternative fuels who have received AB118 funding would be completely counter to the very goal of the Alternative and Renewable Fuel Technology and Vehicle Program (ARFTVP), one of which is to stimulate the production of low carbon alternative transportation fuels. It is very obvious that limiting the value of LCFS or other carbon credits that can be generated by voluntary producers of alternative transportation fuels would

be a huge disincentive to ever try to produce such alternative fuels. Without the value of the LCFS credits, an alternative fuel production project, even one that received a reasonable percentage of its capital costs via AB118 funds, would simply not work in California. The economic benefit of the LCFS credits are critical to ensuring sufficient operating cash flow and to achieve profitability, which in turn is critical to attracting the equity capital needed for the project even when AB118 funding is part of the equation.

When market conditions become difficult, as they currently are, the economic value of LCFS credits are crucial to the survival of our current operations. As you can see from the figures below reflecting the current biodiesel market conditions and cost structures for our Bakersfield biodiesel plant, even with the value of the LCFS credits (which are substantial representing almost 10% of the total unit revenues), we are currently operating at small loss.

❖ UPDATE:

As of 12/17/14, the operating per gallon cash flow (defined as total unit sales value including all RINs and LCFS credits less total unit raw materials, variable and fixed operating costs, SGA Cost and interest costs) for contracts for January 2015 delivery is negative \$0.38/gallon sold.

The CEC must either modify its 3103 regulation or interpret it in manner consistent with the objectives of AB118 / ARFTVP to allow voluntary producers of alternative fuels to receive the full benefit of carbon reduction programs such as LCFS. For example, CEC could interpret and apply the 3103 regulation as follows:

- Since 3103 uses the term "may" instead of "shall", the CEC could interpret the requirement to proportionally restrict the value of credits as a discretionary authority of the CEC which does not have to be applied to voluntary producers of alternative transportation fuels.
- Subdivision (b) of 3103 is specifically referenced in subdivision (a) regarding the production of excess credits by a mandatory regulated party, i.e. under LCFS this would be a petroleum fuel produce. The language in (a) refers to (b) as a means to restrict the ability of a mandatory regulated party to receive the maximum value of credits under programs such as LCFS. We think the correct way to interpret subdivision (b) is an extension of (a) rather than as a stand-alone subdivision.



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In summary, we strongly urge the CEC to not impose any restrictions on receiving the entire economic benefit of LCFS or other carbon reduction credits for alternative fuels project developed voluntarily (i.e. not required by State or Federal law or other regulatory requirements) with the assistance for AB118 /ARFTVP funding. The 3103 restrictions should only be applied by the CEC to alternative fuel production projects developed by parties who are statutorily required to achieve carbon reductions under LCFS and/or AB32. Thus we request that the CEC continue to interpret the 3103 regulation in manner consistent with the above with respect to the biodiesel plant expansion project we are currently engaged in with funding received under PON-13- 601 and PON-13-609, or otherwise amend 3103 such that it will not impose restrictions on voluntary producers of alternative fuels.

If you have any questions regarding any of the above or require further information, please contact me at (720)-475-5400 or hsimpson@crimsonrenewable.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Simpson", written over a horizontal line.

Harry Simpson
President