

Clarification on Funding Restrictions Regulatory Language

Assembly Bill 118 (Núñez, Chapter 750, Statutes of 2007) created the Alternative and Renewable Fuel and Vehicle Technology Program. The legislation authorizes the Energy Commission to spend approximately \$120 million per year for over seven years to develop and deploy innovative technologies that will transform California's fuel and vehicle types to help attain the state's climate change policies.

The legislation prohibits funding projects already required to be undertaken pursuant to state or federal or district rules or regulations, herein referred to as "funding restrictions." This document contains the Energy Commission's revised *Funding Restrictions* language and examples of how this language would be applied to potential projects.

Written Comments

Written comments on the revised language must be submitted by 5 p.m. on October 6, 2008. Please include the docket number 08-OIR-1 and indicate Clarification on Funding Restrictions Regulatory Language in the subject line or first paragraph of your comments. Please hand deliver or mail an original to:

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 08-OIR-1
1516 Ninth Street
Sacramento, CA 95814-5512

The Energy Commission encourages comments by electronic mail (e-mail). Please include your name or organization's in the name of the file. Those submitting comments by e-mail should provide them in either Microsoft Word format or as a Portable Document (PDF) to [docket@energy.state.ca.us]. **One paper copy** must also be sent to the Energy Commission's Docket Unit.

Statutory Language

Health and Safety Code Section 44271(c) prohibits the Energy Commission and Air Resources Board from funding projects that are "...required to be undertaken pursuant to state or federal law or district rules or regulations."

DOCKET	
08-OIR-01	
DATE	SEP 25 2008
RECD.	SEP 26 2008

Funding Restrictions Language (proposed on September 9, 2008)

A project shall not be eligible for funding if it is mandated by any local, regional, state, or federal law, rule, regulation, or order or is otherwise required by a legally enforceable document. To the extent a project exceeds what is required for compliance with a legally enforceable requirement; it may receive funding for that part of the project that the applicant demonstrates is not mandated to meet the requirement. For purposes of this section, a legally enforceable requirement refers to any requirement enforceable by a local, regional, state, or federal agency for the purpose of reducing the emission of one or more criteria pollutants, toxic air contaminants, or any greenhouse gas.

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Reference: Section 44271 (c), Health and Safety Code.

Discussion

The statutory language, while simple, introduces a great deal of uncertainty as to where existing laws, rules or regulations end and funding opportunities begin through the Alternative and Renewable Fuel and Vehicle Technology Program.

At the Committee Workshop held on September 9, 2008, the public commented on the proposed language and raised questions as to how the Energy Commission would implement the proposed *Funding Restrictions* language. The revised language and examples of how we would interpret specific potential projects are shown below. Issues regarding the ability of an applicant to obtain and ultimately sell credits or offsets from projects funded through AB 118 have been raised. AB 118 funds are intended to stimulate public and private investments for emerging fuels and technologies that are not currently competitive in the California transportation fuel market. Allowing a project to receive credits from a current or future trading program provides additional potential economic benefit which may increase the number of viable projects. Concerns were expressed that generated credits would eventually be sold to third parties, with an obligation to reduce criteria pollutants or future greenhouse gases, resulting in no net public benefit. Staff believes an appropriate compromise would be to allow applicants to obtain potential credits on a prorated basis.

Revised Funding Restrictions Language

A project shall not be eligible for funding if it is mandated by any local, regional, state, or federal law, rule, or regulation. If a project is one that helps the proposing entity meet a performance requirement mandated by local, regional, state, or federal law, rule, or regulation, the project shall not be eligible for funding. To the extent a project exceeds what is required for compliance with a legally enforceable requirement, it may receive funding for that part of the project that the applicant demonstrates is not mandated to meet the requirement, provided that the excess, in the form of a credit, is not used or sold by the proposing entity to offset a legally enforceable requirement. For purposes of this section, a legally enforceable requirement refers to any requirement enforceable by

a local, regional, state, or federal agency for the purpose of reducing the emission of one or more criteria pollutants, toxic air contaminants, or any greenhouse gas.

(b) Any reductions of criteria pollutants, toxic air contaminants and greenhouses gases generated from a project funded under this program will be available, on a prorated basis, to the proposing entity based on the Energy Commission's share of project funding.

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Reference: Section 44271 (c), Health and Safety Code.

Project Examples and Application of Regulatory Language

1) Company A applies for funding to deploy a digester to make fuel out of soda.

There is no mandate or requirement that company A develop such technology. Company A would be eligible for funding.

2) City A is required by state law to convert diesel buses into CNG buses. City A applies for AB 118 funding to convert the buses.

City A would not be eligible for funds given there is a state law requiring such action.

3) Company A plans to design next generation biodiesel buses which the company intends to sell to City B. City B is required to replace its existing bus fleet with Biodiesel buses.

The mandate to replace the buses is on City B. Company A is under no obligation and Company A's project is not required to be undertaken. Therefore, Company A could receive funding under AB 118.

4) City X is in a non-attainment zone for PM-10. Under no mandate, but in an effort to reduce air pollution generally, City X implements a number of programs to reduce pollution. One program is to replace buses with new electric buses and establish charging stations.

Since City X is not the regulated entity and is not required to purchase electric buses or establish charging stations, but chooses these two projects to reduce air pollution, the projects should be eligible for AB 118 funding.

5) Company X has a proposal to develop solar personal vehicle (PV) recharging stations for PVs in public parking areas. Company X's business model includes grant money from AB 118, along with a power purchase agreement for electricity from the solar PV panels that would be sold to the local load serving entity (LSE). This LSE would presumably use the solar PV-generated power to help fulfill their RPS obligation. Personal vehicle owners using the charging stations would not pay for the electricity.

Company X's project is eligible for AB 118 funding since Company X is under no performance standard nor is the project required. The fact that some power from the project will go towards a utility's RPS does not prohibit funding because the utility is the entity with a compliance obligation.

- 6) Oil Company X is a regulated entity required to meet California's Low Carbon Standard. Carbonlite has a technology that produces low carbon renewable diesel through a project that can be sited at a Company X's facility.

Company X would not be able to apply for AB 118 funding to fund a project to meet the LCFS. Carbonlite is not prohibited from receiving AB 118 funds to make its project more attractive to Company X. Carbonlite is not under any mandate to develop the project nor does Carbonlite have to meet the LCFS. The fact that Carbonlite's project is directly built into the Company X refinery is not relevant. This assumes Carbonlite is free to sell its technology to any company. If Company X has an exclusive deal with Carbonlite and it appears that Carbonlite is acting more as a research division for Company X, then an application from Carbonlite should be treated as an application from Company X and would not be subject to funding.

- 7) Oil Company B is a regulated entity required to meet California's Low Carbon Fuel Standard. WasteEnergy has a technology that produces low carbon ethanol from a municipal solid waste facility. The ethanol will be blended with petroleum from Company B at a blending terminal. AB 118 funding is sought by an independent terminal owner to purchase and install equipment that will blend ethanol and petroleum to create a low carbon fuel.

The independent blender would be eligible because this entity is not under any mandate to develop the project nor does the blender have to meet the LCFS. As long as the blender is separate from the regulated entity, Oil Company B, and can blend fuel for any company, funding would not be contrary to the regulations. If Company B and the blender create a joint venture for purposes of blending ethanol to meet the LCFS, AB 118 funding would be prohibited as Company B would also be considered an applicant.

- 8) FastMotors Auto Company is a regulated entity required to meet California's Zero Emission Vehicle (ZEV) mandate. Battery maker LiPower has an advanced lithium ion battery technology that enables early but costly deployment of carbon-reducing, petroleum-saving plug-in hybrid electric vehicles.

FastMotors, being the regulated entity under the ZEV mandate, would not be able to receive funding for a project to meet the mandate. LiPower, not being under the ZEV mandate, is eligible for funding even if LiPower's battery system is used in FastMotors' ZEVs. The Energy Commission could also provide incentives for consumers to purchase vehicles manufactured by FastMotors.