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November 10, 2008

TO: California Energy Commission Commissioners and Staff

FROM: John Boesel, President and CEO

RE: Docket Number 08-OIR-1 – CALSTART Comments on Revised Regulatory Language

We are pleased to see the Energy Commission making progress with regard to the sustainability goals and other issues related to the implementation of the Alternative and Renewable Fuel and Vehicle Technology Program under AB 118. CALSTART believes this is an extremely important program for helping the state meet its economic and environmental goals, and we look forward to the timely release of final rules and solicitations.

The recently released proposed draft regulatory language contains one change from previous versions of the draft language that we believe may complicate implementation. The change in question is part of Section 3103 – Funding Restrictions, and relates to the availability of funding for projects that generate credits for emissions reductions.

The earlier version of the draft regulations stated that "any reductions of criteria pollutants, toxic air contaminants and greenhouse 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." This proposed system is straightforward and fair, allowing applicants to claim credits for the portion of a project that is not funded under AB 118, but precluding any "double dipping" by ensuring that applicants cannot claim credits for reductions generated through the use of state funding.

The new proposed language is more limiting and imposes additional restrictions on applicants and requirements on the commission: under the newly proposed regulations, projects that generates credits which the applicant plans to claim are not eligible for funding "unless the commission's solicitation document for a given solicitation explicitly allows such projects to seek funding," in which case the credits must be discounted "at least in proportion to the amount of funding received." The requirement that the commission decide on a solicitation by solicitation basis whether or not to allow prorated funding for credits generated by emissions reductions projects imposes an additional requirement on the commission. Furthermore, this restriction is likely to discourage applicants from undertaking projects that result in valuable reductions in criteria pollutants, toxic air contaminants, and greenhouse gases because it limits their options for recouping the portion of their investment that is not covered by AB 118 funds.

CALSTART understands the desire of the commission to prevent the "gaming" of the system for private gain and agrees that AB 118 funds should not be used to generate credits for private entities. However, the proportionality rules proposed in the prior version of the draft regulations addresses this problem in a fair and straightforward manner. We believe that the new regulations are unnecessarily strict and will serve to slow the process down and discourage the implementation of beneficial projects.

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