

**CALIFORNIA ALTERNATIVE ENERGY AND  
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

**Meeting Date: November 17, 2015**

***Request to Suspend the Acceptance and Consideration of New Applications Under the Sales  
and Use Tax Exclusion Program***

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**Summary.** The California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or the “Authority”) received requests for a total of \$96 million in sales and use tax exclusion (“STE”) awards for applications that would be eligible to be considered at the December 2015 Board meeting, exceeding the 2015 \$100 million STE program award cap by \$74 million.<sup>1</sup> To appropriately handle the unprecedented program oversubscription, staff is recommending:

- (1) Current applications received to date that exceed the 2015 award cap be considered at the January 2016 Board meeting, or at the earliest meeting for which they are prepared;
- (2) the Board suspend acceptance of any new applications immediately until regulations to evaluate projects eligible under AB 199 are approved by the Office of Administrative Law;<sup>2</sup>
- (3) the Board suspend consideration of ~~any new~~ applications, ~~received after approval of the included Authority resolution beyond those set forth on Table 2,~~ until regulations to evaluate projects eligible under AB 199 are approved by the Office of Administrative Law;<sup>3</sup> and
- (4) the Board initially set-aside any remaining funds, not less than \$15 million, under the 2016 annual \$100 million cap for projects eligible under AB 199.

These actions will allow staff to evaluate and improve CAEATFA’s process for handling oversubscriptions through a regulatory process, and provide access to financial assistance to projects eligible under AB 199 (Chapter 768 of Statutes of 2015) in 2016. Staff anticipates completing this process within the first quarter of 2016.

**Background.** When the STE program was launched in 2010 under Senate Bill 71 (Chapter 10 of the Statutes of 2010), the awards, or exclusions, granted were subject to a “soft cap” of \$100 million per calendar year. The “soft cap” required CAEATFA to provide 20-day notice to the legislature if the cap was surpassed, however, the Authority could continue to grant awards beyond the \$100 million cap. When the program was expanded in 2012 by Senate Bill 1128 (Chapter 677 of the Statutes of 2012) to include advanced manufacturers, the legislature changed

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<sup>1</sup> The term “awards” refers to the value of sales and use tax exclusion granted by the Authority Board.

<sup>2</sup> As authorized under the Sales and Use Tax Exclusion Program, California Code of Regulations, Title 4, Division 13, Section 10032(a)(7).

<sup>3</sup> As authorized under the Sales and Use Tax Exclusion Program, California Code of Regulations, Title 4, Division 13, Section 10032(a)(3)

the “soft cap” to a “hard cap” where the Authority could not grant more than \$100 million in awards per calendar year.

In response to the “hard cap,” staff developed regulations in 2013 establishing procedures for program oversubscription: staff would review applications in the order they are received and implement a waiting list limited to \$20 million in awards. To the extent that additional awards become available during the year, applications on the waiting list would be reviewed and considered by the Authority. The waiting list procedure envisioned program oversubscription occurring before the last quarter of the year, where an approved project would not move forward and the previously awarded exclusion could be awarded to an applicant on the waiting list. The waiting list, however, was not intended to carryover from one year to the next or handle award requests greater than \$20 million. Rather, the design of the waiting list reflects historical program trends in which the Authority has approved mostly smaller project sizes and where significant oversubscription was not an issue faced by the Authority (as demonstrated by *Table 1* below).

**Table 1: Total awards granted by calendar year.**

Year	STE Available (\$)	STE Awarded (\$)	STE Used (\$)
2010	\$100,000,000	\$84,500,000	16,800,000
2011	\$100,000,000	\$46,000,000	21,700,000
2012	\$100,000,000	\$18,800,000	10,500,000
2013	\$100,000,000	\$77,700,000	9,900,000
2014	\$100,000,000	\$46,400,000	22,400,000
2015	\$100,000,000	\$77,300,000 <sup>4</sup>	10,200,000

**Program Oversubscription in 2015.** As of November 16~~12~~, 2015, the Authority has received ~~fourteen~~ eleven applications, nine of which would otherwise be eligible to be heard in the 2015 calendar year, totaling ~~\$2.642~~ billion in qualified property and ~~\$222407~~ million in STE. Under the existing procedures, the applications listed in *Table 2* must be considered in the order in which they are listed, as long as they are complete and applicants provide timely responses to enable staff to complete its analysis. Under the current scenario, only projects up to and including a portion of the Atieva application can be considered in 2015 before the Authority exceeds the \$100 million cap.

**Short-term Measures for Program Oversubscription.** To deal with the current oversubscription issue, staff is proposing that the CAEATFA Board consider projects in the order in which they were received until the \$100 million cap is reached for 2015. To the extent the last application considered exceeds the \$100 million cap, staff would recommend awarding the remainder of the 2015 cap and inclusion in the resolution of a provision to award the remainder of the applicant’s STE request from the 2016 cap. This approach would allow CAEATFA to grant its entire 2015 award allocation and prevent the need for an applicant to submit a separate application for 2016.

<sup>4</sup> This figure includes awards granted from January through October of 2015.

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Table 2: Remaining Applications Received in 2015 for Consideration <sup>5</sup>							
	Applicant Name <sup>6</sup>	Month Eligible	Month Proposed	Type of Project	Qualified Property (\$)	Estimated STE (\$)	Remaining STE (\$) <sup>7</sup>
<b>Currently Eligible for Awards under the 2015 \$100 MM Cap</b>							
1	Space Systems/Loral <sup>8</sup>	Nov. 2015	Nov. 2015	Advanced Manufacturing - Aerospace	12,419,000	1,045,680	21,701,684
2	ABEC #2	Dec. 2015	Dec. 2015	Alternative Source	5,990,614	504,409	21,197,275
3	NuvoSun	Dec. 2015	Dec. 2015	Alternative Source	22,500,000	1,894,500	19,302,775
4	Atieva	Dec. 2015	Dec. 2015	Advanced Transportation	<del>616,750,000</del> <u>530,000,000</u>	<del>51,930,350</del> <u>44,689,150</u>	<del>(32,627,575)</del> <del>(25,386.375)</del> <sup>9</sup>
<b>Eligible for Awards under the 2016 \$100 MM Program Cap</b>							
5	Millenium Space	Dec. 2015	Jan. 2016	Advanced Manufacturing - Aerospace	4,284,672	360,769	<del>(32,988,345)</del> <u>74,252,856</u> <sup>10</sup>
6	Tesla	Dec. 2015	Jan. 2016	Advanced Transportation	463,625,000	39,037,225	<del>(72,025,570)</del> <u>35,215,631</u>
7	Gill Aerospace	Dec. 2015	Jan. 2016	Advanced Manufacturing - Aerospace	8,472,000	713,342	<del>(72,738,912)</del> <u>34,502,289</u>
8	Mission Rubber	Dec. 2015	Jan. 2016	Advanced Manufacturing - Rubber pellets	5,100,000	429,420	<del>(73,168,332)</del> <u>34,072,869</u>
9	Kite Pharmaceuticals	Dec. 2015	Jan. 2016	Advanced Manufacturing - Pharmaceuticals	13,763,050	1,158,849	<del>(74,327,181)</del> <u>32,914,020</u>
10	California Safe Soil	Jan. 2016	Jan. 2016	Advanced Manufacturing - Fertilizer	3,750,000	315,750	<del>(74,642,931)</del> <u>32,598,270</u>
11	rPlanet Earth Los Angeles	Jan. 2016	Jan. 2016	Advanced Manufacturing - Recycled Plastic	119,800,000	10,087,160	<del>(84,730,091)</del> <u>22,511,110</u>
12	<a href="#">Escondido Bioenergy</a>	<a href="#">Jan. 2016</a>	<a href="#">Jan. 2016</a>	<a href="#">Alternative Source</a>	<a href="#">1,900,000</a>	<a href="#">159,980</a>	<a href="#">22,351,130</a>
13	<a href="#">Tesla</a>	<a href="#">Jan. 2016</a>	<a href="#">TBD</a>	<a href="#">Advanced Transportation</a>	<a href="#">1,259,345,000</a>	<a href="#">106,036,849</a>	<a href="#">(83,685,719)</a>
14	<a href="#">Gilead Sciences, Inc.</a>	<a href="#">Jan. 2016</a>	<a href="#">TBD</a>	<a href="#">Advanced Manufacturing - Pharmaceuticals</a>	<a href="#">187645674</a>	<a href="#">15,799,766</a>	<a href="#">(99,485,485)</a>
<b>Total</b>					<b><u>\$1,276,454,336</u></b>	<b><u>\$107,477,454</u></b>	<b><u>\$222,232,849</u></b>

<sup>5</sup> The order of these projects is subject to change, applications are still under review for completeness and eligibility, the priority order of these applications are subject to change.

<sup>6</sup> Applicants are listed in the order by which they would be considered by the Authority Board.

<sup>7</sup> The remaining STE column shows the amount of exclusion available [for a calendar year](#) after a proposed project is approved.

<sup>8</sup> Space Systems/Loral's application will be considered by the CAEATFA Board at the November 17, 2015 meeting.

<sup>9</sup> Atieva would receive awards from the 2015 and 2016 award funds.

<sup>10</sup> [Beginning 2016 awards remaining if Atieva is approved in December using awards from 2015 and 2016.](#)

~~This would allow a majority of the remaining applications on Table 2 (and any additional applications received prior to the November 17, 2015, CAEATFA Board meeting) that did not receive awards in the 2015 calendar year would to be heard at the earliest CAEATFA Board meeting in 2016 for which they are prepared. Assuming that the pending applications are considered and approved by the CAEATFA Board, this would leave approximately \$15 million in STE for.~~

~~Given the relatively small amount of remaining award that would be available in 2016, sStaff also recommends that CAEATFA cease accepting new applications for the STE program and stop considering applications after the January 19, 2016 meeting (or the latest date at which these specific applications are considered) until regulations to evaluate projects eligible under AB 199 are approved by the Office of Administrative Law. Additionally, staff recommends setting-aside the remaining 2016 award funds – no less than \$15 million – for projects eligible under AB 199. These actions would preserve the limited awards remaining for 2016 and provide the necessary time for staff to develop regulations to address a competitive program and oversubscription issues in an objective manner and also implement AB 199 (Chapter 768 of Statutes of 2015), which expands CAEATFA’s STE program to include manufacturers utilizing recycled feedstock.~~

~~Staff anticipates implementing an evaluation methodology to evaluate projects eligible under AB 199 through the rulemaking process before revising administrative procedures for program oversubscription through the rulemaking process. This process should take place in the first and second quarter of 2016.~~

~~Staff recognizes that if program activity continues on its current trend, legislation modifying the \$100 million annual will present the best long-term solution. Potential legislative options may include raising or eliminating the award cap or allowing the Authority to roll-forward some or all of the \$248 million in un-awarded STE.~~

**Finding of Public Interest.** On October 11, 2015, Governor Brown signed AB 199 as an urgency statute, which takes effect immediately upon enactment. AB 199 expands the STE program to include manufacturers of recycled feedstock. Staff anticipates that without the suspension of new applications and setting aside at least \$15 million for projects eligible under AB 199, the remaining 2016 award funds would be granted within the first quarter of 2016. This would prevent CAEATFA from providing financial assistance to the AB 199 projects that would be eligible for the STE program, essentially neglecting the purpose of the urgency clause in AB 199.

Staff believes that it is in the public interest and advances the purposes of the program for the Authority to cease accepting new applications in order to preserve funds for AB 199 applicants and meet the needs of the urgency legislation.

**Staff Recommendation.**

Staff recommends Board approval of the following:

- (1) Current applications received to date that exceed the 2015 award cap be considered at the January 2016 Board Meeting, or at the earliest meeting for which they are prepared;
- (2) the Board suspend acceptance of any new applications immediately until regulations to evaluate projects eligible under AB 199 are approved by the Office of Administrative Law;<sup>11</sup>
- (3) the Board suspend consideration of ~~any new~~ applications, ~~received after approval of the included Authority resolution~~ beyond those set forth on *Table 2*, until regulations to evaluate projects eligible under AB 199 are approved by the Office of Administrative Law;<sup>12</sup> and
- (4) the Board initially set-aside any remaining funds, not less than \$15 million, under the 2016 annual \$100 million cap for projects eligible under AB 199.

These actions will allow staff to provide financial assistance to projects eligible under AB 199 and improve the process for handling oversubscriptions.

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<sup>11</sup> As authorized under the Sales and Use Tax Exclusion Program, California Code of Regulations, Title 4, Division 13, Section 10032(a)(7).

<sup>12</sup> As authorized under the Sales and Use Tax Exclusion Program, California Code of Regulations, Title 4, Division 13, Section 10032(a)(3)

**RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY SUSPENDING THE ACCEPTANCE AND CONSIDERATION OF NEW APPLICATIONS UNDER THE SALES AND USE TAX EXCLUSION PROGRAM**

November 17, 2015

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (“Authority”) has received requests for Sales and Use Tax Exclusion (“STE”) awards that exceed the \$100 million cap for the 2015 calendar year;

WHEREAS, the Authority is authorized under the California Code of Regulations, Title 4, Division 13, Section 10032(a)(3) to limit the number of meetings each year at which applications for the STE program will be considered;

WHEREAS, upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may stop accepting new applications as authorized by the California Code of Regulations, Title 4, Division 13, Section 10032(a)(7); and

WHEREAS, suspending the acceptance of new applications will allow the Authority to provide financial assistance to projects eligible under AB 199 (Chapter 768 of Statutes of 2015) – manufacturers that utilize recycled feedstock – which is in the public interest and advances the purposes of the Program.

Section 1. The Authority shall only consider applications received prior to approval of this resolution at the earliest Authority Board meeting for which they are prepared, and will resume consideration of all other applications in 2016 once regulations to evaluate projects eligible under AB 199 are approved by the Office of Administrative Law.

Section 2. The Authority shall immediately cease accepting new applications for awards under the STE program until regulations to evaluate projects eligible under AB 199 are approved by the Office of Administrative Law.

Section 3. The Authority shall set-aside any remaining 2016 sales and use tax exclusion awards, not less than \$15 million, after the January 2016 Authority Board meeting for projects eligible under AB 199.

Section 4. This resolution shall take effect immediately upon its approval.