

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**
Meeting Date: February 22, 2011

Sales and Use Tax Exclusion Program for Renewable Energy Generation Projects

Prepared by: *Deana Carrillo, Heather Williams and Tanya Syed*

Summary. At the January 25, 2011 California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) Board meeting, the Board determined to delay its consideration of various alternatives in developing a sales and use tax exclusion program for renewable energy generation projects (“Program”) until the following month.

In September 2010, the CAEATFA Board authorized CAEATFA staff (Staff) to begin the rulemaking process to establish a sales and use tax exclusion (STE) program for renewable energy generation projects (“Program”). Staff, in consultation with interested parties and stakeholders, developed an initial framework for a short-term limited Program of \$50 million of STE awards. The initial Program framework balances the need for a responsible use of the STE resource with the incentive to encourage job creation and economic growth, while advancing the State’s goals for the reduction of emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006 (AB 32). Staff is requesting Board direction on the proposed short-term limited Program.

In addition, during discussions with interested parties and stakeholders it also became apparent that a long-term program would be beneficial to assist additional applicants and to promote a longer lasting incentive to promote these technologies within the State. Staff is requesting Board direction on further exploration and ultimate development of a long-term program.

Background. The Authority is statutorily authorized to provide financial assistance in the form of conveyance and reconveyance agreements that may enable participating parties to take advantage of the STE provided in Revenue and Taxation Code §6010.8 to eligible participating parties of qualified projects as defined by statute. In October 2009, CAEATFA provided its first STE approval for manufacturing of zero emission vehicles, issued to Tesla in a Qualified Property amount of \$320 million (approximate \$29 million in STE). On March 24, 2010, Governor Arnold Schwarzenegger signed Senate Bill 71 (Padilla) into law. SB 71 authorizes CAEATFA to approve sales and use tax exclusions on tangible personal property used for the design, manufacture, production or assembly of advanced transportation technologies or alternative energy source products, components or systems, as specified (“SB 71 Program”).

The SB 71 Program in place does not extend to renewable energy generation projects, however, the passage of SB 71 increased awareness of CAEATFA’s broader statutory authority to grant STE’s for eligible projects in the state. Stakeholders have expressed significant interest in CAEATFA adopting a STE renewable energy generation program.

At the July 28, 2010 CAEATFA meeting, the Board directed Staff to recommend eligibility criteria for a STE program for renewable energy generation projects. At the August 25, 2010 CAEATFA meeting, Staff recommended economic and environmental criteria (unemployment relief and capacity factor) for such a program. In addition, Staff suggested using a net benefits test similar to that which was developed for the SB 71 Program with slight modifications for the purposes of evaluating renewable energy generation. At that time, the Board directed staff to develop a technology neutral program that balanced the prudent use of the STE resources with economic growth while assisting the State in advancing its Renewable Portfolio Standards (RPS) goals. Board directed Staff to obtain input from the California Energy Commission (“Energy Commission”) and the California Public Utilities Commission (“CPUC”) in developing an initial framework for the Program.

Initial Short-Term Limited Program Framework. Under Public Resource Code §26011.6, CAEATFA has the statutory authority to grant STE’s for eligible renewable energy generation projects for the State. In order for a project to qualify under this statute, it must be determined that the project will offer its power to California on a long-term contract basis and further the goals of the California Global Warming Solutions Act of 2006 (Assembly Bill 32), with a preference given to “utility-scale projects that can be rapidly deployed to provide a significant contribution as a renewable energy supply.”¹

Taking into consideration the feedback CAEATFA has received to date, Staff developed an initial framework for the Program. This is a short-term limited Program. The framework balances the need for a responsible use of the STE resource with the incentive to encourage job creation and economic growth, while assisting the State in advancing its Renewable Portfolio Standard (RPS) goals. The framework consists of program limits, project eligibility and required information for the application.

Program Limits

Program limits ensure prudent use of a finite resource during difficult economic times in the State. Project limits are in place to ensure that this Program is accessible to a varied number of applicants and to extend the economic benefits to as many entities as possible.

- Overall Program Maximum: \$50 million in STE over the lifetime of the Program

¹ Public Resources Code §26011.6.

- Individual Project Maximum: Award of \$5 million per project
- Program Sunset: CAEATFA will accept applications until Friday, December 30, 2011 or whenever the total Program STE amount has been awarded, whichever occurs first
- Program Oversubscription: In the event that the Program is oversubscribed there will be a reduction in awarded STE evenly across all applicants approved and considered in a particular application period (i.e., if the Program is oversubscribed by 20% the STE awards will be reduced by 20%)
 - Oversubscription Scenario I – If in the first round of applications the Program is oversubscribed by 20%, the STE awards will be reduced by 20%. Under this scenario, an applicant approved for \$5 million will be awarded \$4 million. An applicant approved for \$2 million will be awarded \$1.6 million.
 - Oversubscription Scenario II – If in the first round of applications the Program is undersubscribed (i.e. \$20 million in STE), all applicants will receive the full amount of award requested (up to the project maximum of \$5 million in STE).

If the second round of applications is oversubscribed, this round of applicants will have their awarded STE amounts evenly reduced. If there are applications for \$60 million in STE and only \$30 million remains, resulting in an oversubscription of 50%, there will be a reduction of 50% for each of the applications in this round. An application for \$5 million in STE would then be awarded \$2.5 million.

Project Eligibility

In order to implement the Program, CAEATFA’s authorizing statute puts into place a number of criteria.² Additional criteria are being considered in an effort to spur economic growth immediately.

- Per statute, CAEATFA shall support the State’s goals for the reduction of emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006 (AB 32) – *Staff believes that technologies which contribute to RPS are the best indicator of projects that meet the State’s goals under AB 32. However, Staff is soliciting further input and public comment on this criterion.*
- Program will be technology neutral
- Per statute, projects shall offer power within California on a long-term contract basis – *Staff believes that a Power Purchase Agreement (“PPA”) is the most appropriate form of a long-term contract. However, Staff is soliciting further input and public comment on this criterion.*

² Public Resource Code §26011.6

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- Projects must have obtained their Energy Commission pre-certification – *Staff believes that the pre-certification serves as an indicator of readiness, however, Staff is aware that not all technologies need to complete a pre-certification and is seeking additional input on other indicators of readiness.*
- Approved Applicants must use the awarded STE within 1 year of execution of the Master Agreement– *This will ensure that Projects are ready to go to immediately spur economic growth and create new jobs in California without delay. CAEATFA modified this criterion from the initial 6 month limit proposed at the Public Workshop.*
- Per statute, CAEATFA is to give preference to utility-scale projects – *Staff is still in the process of exploring the definition of utility-scale and how to give preference to such projects. A definition may be based off of the requirement for a PPA, or be based off of megawatt (MW) size of a project. Staff is soliciting further input and public comment on this criterion.*

Additional Information Required at Application

CAEATFA may request a number of items to be submitted with the Application to record the fiscal and environmental impacts of the Program. These items will not be used as evaluation criteria during the process. Items may include, but are not limited to:

- Description of applicant and project including timeline, permitting and financing
- List of Qualified Property to be purchased
- Job creation information:
 - Number, types and duration of jobs created by the project
 - Timeline of job creation
 - Estimated payroll
- Estimated percentage of goods and services purchased within California
- Anticipated annual California Corporation, Income and other tax liabilities of the entity
- 1-2 page explanation of the project’s fiscal, environmental and other benefits to California

Initial Framework Development. In developing a recommendation, Staff engaged in significant outreach with of the Energy Commission, CPUC, stakeholders, and other interested parties. On January 19, 2011, CAEATFA held a public workshop at which an initial framework for the Program was presented. Staff solicited feedback regarding the proposed Program and framework. Comments were submitted by various interested parties and covered a number of issue areas. Staff has determined that the proposed Program framework balances the needs and

desires of the various interested parties as well as the interest of the State. Key policy issues that arose from the public comments and CAEATFA’s response to such policy issues are outlined below.

Program Limits.

- Overall Program Maximum – Some stakeholders were concerned about the cap on total STE awards. Alternative suggestions include more stringent eligibility criteria, rather than an absolute cap or significantly higher caps. When evaluating these comments, Staff took into consideration Board’s direction to ensure that the Program was consistent with a judicious use of State resources. Staff believes that an overall program maximum of \$50 million in STE awards will contribute to immediate job creation and other economic stimulus while remaining prudent with the resource. Staff recommends keeping the overall program maximum of \$50 million in STE awards.
- Per Project Cap – A number of stakeholders felt that the individual project maximum of \$5 million STE should be reconsidered. Alternative suggestions include evaluation on a per megawatt basis in place of an individual project maximum, or individual project maximums with amounts varying from \$2.5 million to \$10 million or even higher. Staff believes that an individual program maximum of \$5 million balances these varied opinions.
- Duration of the Program – One stakeholder was concerned that the sunset date would make it difficult to get a true reading on the success of the STE program with an application window of less than 12 months and suggested a longer time period. However, as no other stakeholders have commented on this item to date, Staff believes that the Program sunset date is appropriate, given the current proposed Program structure.

Project Eligibility.

- AB 32 Requirements - Numerous stakeholders supported a potential requirement that projects must contribute to Renewable Portfolio Standard (RPS) goals to satisfy the requirement to support AB 32. However, a small number of stakeholders raised concerns that RPS requirements do not extend to every type of renewable energy generation technology. Staff believes RPS is a clear indicator of technologies that support the goals outlined in AB 32, however, in an effort to ensure that the Program remains technology-neutral; Staff is seeking feedback upon technologies outside of RPS that may support AB 32.
- Use of STE Within 6 Months – Numerous stakeholders requested that the requirement that awarded STEs be used within 6 months of execution of the master agreement be lengthened to accommodate potential applicants who are also faced with the challenges of other permitting processes and regulatory requirements. Staff recognizes that a time

period of 6 months may prove difficult for potential applicants, thus Staff is recommending that approved applicants must use the awarded STE within 1 year of execution of the Master Agreement.

Fees. The Authority will establish Application and Administrative Fees to cover the costs of administering the Program. The Application Fee will be .0005 (one-twentieth of one percent) of the total amount of Qualified Property identified in the Application and shall be no less than \$250 or greater than \$5,000. The total Administrative Fee amount shall be .004 (four-tenths of one percent) of the total amount of Qualified Property purchased. The Administrative Fee shall be no less than \$15,000 and no more than \$350,000.

For example, if Applicant “Green Energy Producer” submits an Application with Qualified Property purchases valued at \$30 million, an Application Fee of \$5,000 (.0005 of \$30 million equals \$15,000, but the Application Fee has a maximum of \$5,000) would be submitted. In addition, Green Energy Producer would pay a total of \$120,000 (.004 of \$30 million) in Administration Fees. At the time the Regulatory Agreement (further discussed below) is executed with the Applicant, an initial \$15,000 of the total \$120,000 in Administrative Fees must be submitted. The remainder of the Administrative Fees will be paid during each subsequent conveyance/ reconveyance transactions until all Qualified Property is purchased. If Green Energy Producer’s initial conveyance /reconveyance transaction includes \$5 million in purchases of Qualified Property, Green Energy Producer would submit an Administrative Fee of \$20,000 (.004 of \$5 million). This process would continue until the Applicant has paid the entire \$120,000 in Administrative Fees.

Tentative Timeline. The dates below are tentative and subject to change at any time.

January 19	Public workshop
January 25	CAEATFA Board deferred consideration of program options
February 22	CAEATFA Board considers program options
February/March	Staff Develops Proposed Emergency Regulation
March TBA	Public Workshop on Proposed Emergency Regulations
March 22	CAEATFA Board Considers Proposed Emergency Regulations
March/April	Emergency Rulemaking Process and OAL consideration
April TBA	CAEATFA applications available
May 27	Applications Due for consideration at July Board meeting

- July 26 Initial projects go to CAEATFA Board for approval and first round of STEs are granted
- December 30 Program sunsets on this date or whenever total Program STE has been awarded, whichever occurs first

Long-Term Program. During discussions with various stakeholders it was brought to Staff’s attention that in addition to the Program outlined above that it may be beneficial to establish a long-term program which would have the potential to extend to an even broader range of potential applicants and to incentivize these technologies within the State. If directed, Staff will continue to research and develop this program as it implements the short-term limited Program. A long-term program could include the following:

- Focus on both distributed generation and utility scale projects
- Overall program and individual project caps
- A longer more flexible timeline
- Rigorous fiscal and environmental net benefit evaluations
- Incentives to purchase from California manufacturers and suppliers
- Incentives for new renewable generation projects

Recommendation. Staff has identified four scenarios in which CAEATFA could proceed and is seeking direction from the Board on which course of action to take at this time. The four scenarios are outlined below.

1. **Short-Term Limited Program Only** – CAEATFA would proceed with implementing a short-term limited Program with the framework outlined in this agenda item or with other parameters, as indicated by the Board.
2. **Short-Term Limited Program and Long-Term Program** – In addition to implementing the short-term limited Program, CAEATFA would proceed with developing a long-term program as outlined in this agenda item and consider other eligibility and evaluation criteria as indicated by the Board and through the rulemaking process.
3. **Long-Term Program Only** – CAEATFA would not proceed with the short-term limited Program, and instead would focus on developing a long-term program as outlined in this agenda item and consider other eligibility and evaluation criteria as indicated by the Board and through the rulemaking process.
4. **No Program** – CAEATFA would not move forward with a STE program for renewable energy generation projects at this time.

Attachments:

- Attachment A – Energy Commission and PUC letter
- Attachment B – Public Resource Code §26011.6

ATTACHMENT A

Letter from Energy Commission and PUC

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA ENERGY COMMISSION
1511 Ninth Street Sacramento, California 95814
Main website: www.energy.ca.gov



CALIFORNIA PUBLIC UTILITY COMMISSION
505 Van Ness Avenue San Francisco, CA 94102
Main website: www.cpuc.ca.gov



July 13, 2010

The Honorable William W. Lockyer
Treasurer, State of California
915 Capitol Mall, Room 110
Sacramento, CA 95814

RE: CAEATFA Alternative Energy Policy

Dear Mr. Lockyer:

We write you as President of the California Public Utilities Commission and Chairman of the California Energy Commission. As you know, we are fellow members of the Board of the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), which you chair. It has come to our attention that current CAEATFA policies may preclude CAEATFA from performing a full and complete review and providing informed recommendations to the Board with respect to certain applications by alternative energy projects for CAEATFA sales tax benefits made under prior and existing law.

In 2008, the CAEATFA provided policy direction for staff to review and process applications for zero emission vehicles projects, which permitted the Tesla Motors application to go forward. Building on that positive step, we believe it is also proper for the CAEATFA Board to so act with respect to alternative energy projects, and we hereby request that staff be given the go-ahead by the CAEATFA Board to do so at our upcoming July 28 meeting. Such action by our Board will align well with the broader state directive to achieve an aggressive renewable portfolio standard. We also note that this proposed policy directive is not based on SB 71. That recently-enacted statute neither addresses nor limits CAEATFA's long-standing authority to provide a sales tax exclusion for alternative energy projects.

Alternative energy source projects are defined in Public Resources Code Section 26003(c)(1) to include geothermal, wind, solar, biomass, and other energy projects that

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reduce reliance on fossil and nuclear energy. Such projects, upon receiving authorization from CAEATFA under Resources Code Section 26003(g)(1), are afforded an exclusion from sales taxes under California Revenue and Taxation Code Section 6010.8. To date, the CAEATFA Board has only granted this benefit to the zero emission vehicles project of Tesla Motors. The benefit should be extended to other companies within the clean tech sector to more aggressively assist the state's economic recovery. We request the Board clarify and expand its policies to authorize staff to also review applications made by worthy alternative energy source projects for Board consideration.

We look forward to discussing this issue in more detail at the July 28 Board meeting.

Sincerely,



MICHAEL R. PEEVEY
President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102



KAREN DOUGLAS
Chairman
California Energy Commission
1516 9th Street
Sacramento, California 95814

ATTACHMENT B

Public Resources Code §26011.6

26011.6. (a) The authority shall establish a renewable energy program to provide financial assistance to public power entities, independent generators, utilities, or businesses manufacturing components or systems, or both, to generate new and renewable energy sources, develop clean and efficient distributed generation, and demonstrate the economic feasibility of new technologies, such as solar, photovoltaic, wind, and ultralow-emission equipment. The authority shall give preference to utility-scale projects that can be rapidly deployed to provide a significant contribution as a renewable energy supply. The program established pursuant to this subdivision shall include financial assistance provided pursuant to subdivision (g) of Section 26011.

(b) The authority shall make every effort to expedite the operation of renewable energy systems, and shall adopt regulations for purposes of this section and Section 26011.5 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding the 120-day limitation specified in subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the authority complies with Sections 11346.2 to 11347.3, inclusive, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) The authority shall consult with the State Energy Resources Conservation and Development Commission regarding the financing of projects to avoid duplication of other renewable energy projects.

(d) The authority shall ensure that any financed project shall offer its power within California on a long-term contract basis.

(e) The authority shall ensure that a financed project is limited to resources that the authority determines support the state's goals for the reduction of emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).