

MINUTES

California Alternative Energy and Advanced Transportation Financing Authority

**915 Capitol Mall, Room 587
Sacramento, California**

September 27, 2011

1. CALL TO ORDER & ROLL CALL

Bettina Redway, Chairperson, called the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA or Authority) meeting to order at 11:17 a.m.

Members Present: Bettina Redway for Bill Lockyer, State Treasurer
Alan Gordon for John Chiang, State Controller
Jennifer Rockwell for Ana J. Matosantos, Director,
Department of Finance
Paul Clanon for Michael R. Peevey, President,
Public Utilities Commission
Robert B. Weisenmiller, Chair,
California Energy Commission

Staff Present: Christine Solich, Executive Director

Quorum: The Chairperson declared a quorum

2. MINUTES

Ms. Redway asked if there were any questions or comments concerning the August 29, 2011 meeting minutes. There were none.

Ms. Redway asked if there was a motion.

Mr. Clanon moved approval of the minutes; upon a second, the minutes were unanimously approved.

3. EXECUTIVE DIRECTOR'S REPORT

Ms. Solich began her report addressing the abrupt closure and bankruptcy of Solyndra, an applicant under CAEATFA's SB 71 Program.

Ms. Solich advised the Board that Solyndra, a solar photovoltaic manufacturer located in Fremont, CA had filed for bankruptcy on September 6, 2011. Upon hearing about the closure of the facility in the news, Staff immediately tried to reach their contacts at Solyndra but to date have not received a response.

Ms. Solich continued to report that with respect to Senate Bill 71 (SB 71 Program), Solyndra submitted an application in October 2010, for a facility to produce cylindrical module photovoltaic panels in Fremont, CA, where Solyndra planned to create over 700 permanent and 1,363 construction jobs. The project met the eligibility and evaluation criteria established in SB 71 Program regulations and was approved at the November 2010 Board meeting for a maximum of \$381,776,000 in Qualified Property (QP) which equated to approximately \$34.7 million in sales and use tax exclusions (STEs) for the purchase of the QP.

Ms. Solich then reported that to date Solyndra has conveyed/reconveyed \$277,309,757 in QP for approximately \$25.1 million in STEs. The abrupt closure of Solyndra drew an abundance of media coverage as the Department of Energy (DOE) and Federal Bureau of Investigation (FBI) conduct investigations. There have been two Congressional hearings held surrounding due diligence and a \$535 million DOE loan guarantee. Senator Padilla, the author of SB 71 and chair of the Senate Energy, Utilities and Communications Committee, called for a hearing to review the SB 71 program. The hearing is scheduled for October 11, 2011 and is a joint hearing with the Senate Governance and Finance Committee.

Ms. Solich continued to report that CAEATFA Staff had received a number of media inquiries and have been responsive to the inquiries for information and will continue to do so.

Ms. Solich reported that SB 71 legislation was enacted in March 2010 and is effective until 2021. The legislation was enacted to promote the creation of California based manufacturing, California based jobs, reduce GHG, pollution and energy consumption. The purpose of the program is to lower the cost of production and encourage expansion of green manufacturing in the state.

With respect to the background of the SB 71 program, Ms. Solich continued to report that per statute, projects are eligible for a STE on the tangible personal property used for the design, manufacture, production, or assembly of advanced transportation or alternative source products, components or systems. The statute created a tax exemption that applied across the board to particular types of businesses, green manufacturers. Further, projects are evaluated to the extent which the anticipated benefit to the state in terms of fiscal and environmental benefits from the project exceed the projected STE.

Staff undertook an open and transparent program development process, vetted in the public forum, which included holding four public workshops around the state to solicit input in the development of the regulations. Staff interpreted the statute to not include alternative energy generators, but only the manufacturers of component parts; had generators been included it would have significantly increased the size of potential projects that were eligible under the program.

Ms. Solich further reported that the SB 71 Program is different and better than many tax preference programs due to the implementation of a net fiscal and environmental benefits test. It is important to note that this evaluation looks at only the marginal benefit stemming directly from the STE. Essentially the STE lowers the cost of purchasing capital equipment

and allows applicants to purchase more of such equipment which results in increased economic output. The applicants are held to achieve a passing score on just this marginal fiscal and environmental output achieved from the STE.

The program also places limits on types of QP. The program narrowed the eligible property to that directly used in production such as machinery and equipment and allowed only 1% of the award to be used for ancillary property; which is not directly used for design, production, manufacturing or assembly of the product, component or system. There is another requirement that 25% of QP be purchased in the first year and the remaining QP within three years as a readiness test.

Approved applicants must also agree to rigorous reporting requirements on an annual basis. Data such as total payroll, jobs created as a result of the STE, total annual product sales, units sold, anticipated corporate or personal taxes, purchases from CA suppliers, etc., is collected to calculate and measure the fiscal and environmental benefits of the program. Regulations include an ability to rescind the STE in the event of a finding that false information was provided, or there was a violation of the regulatory agreement requirements. More recently, Staff added language to seek recovery of the STE if the QP does not meet the substantial use requirements, or the QP is taken out of California.

Ms. Solich then reported that the regulations were approved by the Office of Administrative Law (OAL) on Oct. 4, 2010 last year and Staff began accepting applications for projects. The application is available on the CAEATFA website; it consists of two parts and requires a narrative description of the project and other information. There is also an excel spreadsheet for the input of required values and other information relating to the project.

With regard to Agenda Item 3, the pipeline report of SB 71 Program applications, Ms. Solich reported that Staff updates the activity in the program monthly for the board and posts it to the CAEATFA website. The report includes information on new projects approved; use of STE by projects approved as well as estimated net benefits and jobs created.

Ms. Solich then reported that in August 2011, as required by SB 71, Staff provided notice to the Legislature that the SB 71Program was reaching \$100 million in approved STE. As well, the Legislative Analyst Office (LAO) is required to report to the Joint Legislative Budget Committee on the effectiveness of the program, on or before January 1, 2019, by evaluating factors, including the number of jobs created by the program, the amount of businesses that have remained in California or relocated to California as a result of the program, the amount of state and local revenue and economic activity generated by the program and the amount of reduction in greenhouse gases, air pollution, water pollution, or energy consumption.

With respect to recovery of the STE that has been avoided by Solyndra, Ms. Solich reported that Staff has talked to legal counsel and the Board of Equalization (BOE) and under current circumstances it does not look like the State will be in a position to recover the avoided STE. However, Staff will continue to monitor the findings in the federal investigations to see if there is a discovery that could support a recovery at the State level. CAEATFA would need to prove a material misrepresentation in the information Solyndra provided. She advised that

Bob Hedrick, CAEATFA's legal counsel, was present to answer questions.

Staff will continue to monitor investigations at the federal level, including bankruptcy proceedings, prepare for the legislative hearing here in California, and consider ways to strengthen the Program going forward. She then advised the Board that on Friday, September 23, 2011 the Treasurer asked the board to consider pausing or suspending the program while Staff reviewed the SB 71 Program and responded to legislative oversight hearings. This would give the board and legislature time to consider whether any program changes are needed. Staff has spoken to most of the applicants currently under consideration and none are coming for Board approval in October. Staff will continue to administer the existing agreements that have previously been entered into and continue to seek Board's direction to strengthen the program. Staff believes the SB 71 program is far better than any other tax break in terms of transparency and accountability but as the Treasurer has noted, even the best government programs are not above improvement.

Ms. Solich advised that Matt Newman, consultant for the SB 71 program, was in attendance and could assist in answering questions in regard to the Program.

Mr. Clanon asked if CAEATFA or the State needed to take any action to establish or maintain standing in the Solyndra bankruptcy case.

Mr. Hedrick explained that at the time the transaction took place between CAEATFA and Solyndra there were not sales for purposes of the sales and use tax law, so no sales taxes were due, and at this point there would not be any basis for a claim.

Mr. Clanon asked if a misrepresentation should surface would CAEATFA be able to petition the court as needed.

Mr. Hedrick advised that if a knowing misrepresentation was made by the applicant at the time the application was filed, then the CAEATFA Board would be in a position to take action to rescind the approval. Following that, the BOE would be able to pursue a claim against Solyndra.

Mr. Clanon stated that he understood that bankruptcy proceedings could become very complex and is appreciative of Staff thinking ahead to possible recovery of the STEs.

Mr. Gordon asked if there was any evidence of any material misrepresentations before the application was voted upon by the Board.

Mr. Hedrick explained that there was no evidence of any misrepresentation at this time. Solyndra's application was filed based on a series of estimates and anticipated benefits consistent with what is stated in the statute and regulations. As far as Staff is aware based on the conveyance/reconveyance documents, Solyndra purchased equipment that was consistent with the project and has used that equipment as described in its application. Staff has not seen anything that suggests that anything in the application that was filed with CAEATFA was in any way a misrepresentation or indicative of fraud.

Ms. Redway asked Ms. Solich if she was aware of the timeline of the bankruptcy hearing.

Ms. Solich explained that it was her understanding that there is a potential sale of the company under discussion and if that does not materialize there will be a liquidation of the company assets in late October 2011.

Mr. Hedrick added that there was a bankruptcy hearing in Delaware. Both Solyndra and the DOE went into the hearing recommending an auction with October 25, 2011 being the final day for bidders to submit their bids and October 27, 2011 being the auction. Smaller creditors opposed the recommendation but it was approved by the bankruptcy judge.

Mr. Gordon asked that since the program is for STEs for purchased equipment if the State lost any money besides what would have come in as sales tax revenue.

Mr. Hedrick confirmed that the program is strictly for STEs and explained that the program structure requires that a company has to have the capital to purchase the equipment in order to realize any benefit from the program.

Mr. Gordon asked if it would be fair to categorize the companies currently involved in the program as start-up or expanding companies.

Ms. Hedrick explained that many of the companies appear to be emerging technology companies in their early growth phase.

Mr. Gordon asked whether the purpose of the program is to wait until there is a significant on-going profit picture for these companies.

Mr. Hedrick explained that there is always a risk with a program like this that underwriting criteria is crafted in such a way that it raises the bar to the point that only companies who may not need the financial assistance will qualify.

Ms. Redway asked if there were any further questions from the Board.

Mr. Clanon commented that even if Solyndra goes under the SB 71 Program is fundamentally sound and still has the promise to bring more than \$40 million overall economic benefits to California.

Mr. Weisenmiller added that California is competing with other states to bring innovative technologies to the State. Though the program needs to be paused at this point to see if it can be better adapted in terms of safeguards, ultimately California needs to be able to compete for a manufacturing base for these types of companies.

Ms. Redway commented that the Treasurer has asked the Board to consider pausing the SB 71 Program until Staff can review the Program and decide whether any changes are needed to the regulatory framework. The Legislative oversight hearing is scheduled for October 11,

2011 and input may be received from Legislators at that point. If it is decided that the Program doesn't need any modifications it can move forward and if changes are necessary there would be time to make adjustments.

Ms. Redway asked the Board if they would like Staff to bring the subject of pausing the program before the Board for a vote at the October meeting.

Mr. Weisenmiller agreed.

Mr. Clanon agreed.

Ms. Redway added that she feels that the SB 71 Program is a very strong program with a lot of public information available and data being monitored to ensure the public benefits are being performed.

Ms. Redway asked if there were any comments from the public. There were none.

4. BUSINESS ITEMS

A. REQUEST TO APPROVE EXECUTIVE DIRECTOR'S RECOMMENDATIONS FOR SPECIFIC PARAMETERS UNDER THE SB 71 SALES AND USE TAX EXCLUSION PROGRAM

Presented by: Deana Carrillo, Program Manager

Staff introduced: Matthew Newman, Consultant, Blue Sky Consulting

The regulations for the SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program (“SB 71 Program”) contain several provisions that require the Executive Director of the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to determine various parameters for approval by the Authority to be used when evaluating applications for the SB 71 Program.

In addition to the adoption of these determined values, these parameters can be recommended by the Executive Director and presented to the Board for approval when the Executive Director determines that an adjustment of parameter(s) will further advance the goals of the SB 71 Program, is required by the regulations, or is otherwise required to improve the accuracy of Application evaluations. The ability to adjust parameters provides CAEATFA with an important tool to respond to the dynamic nature of the technologies and industries served by the SB 71 Program.

In the future, the regulations to be enacted on September 28, 2011 delegate to the Executive Director the authority to modify the parameters as needed; the Executive Director will report to the Board accordingly when parameters are updated. Staff anticipates these parameters will be reviewed and potentially adjusted on an annual basis.

Staff recommended that the CAEATFA Board approve the Executive Director's recommendations for specific parameters regarding evaluation criteria, as set forth in the Staff summary of agenda item 4.A.

Ms. Redway asked if there were any questions or comments from the Board.

Mr. Clanon commented that he appreciated the thorough briefing he received from Staff and Mr. Newman.

Ms. Redway asked if there were any further comments from the Board, or the public. There were none.

Ms. Redway asked if there was a motion.

Mr. Gordon moved approval of the item; upon a second, the item was unanimously approved.

5. PUBLIC COMMENT

Ms. Redway asked if there were any comments from the public. There were none.

6. ADJOURNMENT

There being no further business, public comments, or concerns, the meeting adjourned at 11:40 a.m.

Respectfully submitted,

Christine Solich
Executive Director