

MINUTES

**California Alternative Energy and Advanced
Transportation Financing Authority
915 Capitol Mall, Room 587
Sacramento, California
October 25, 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
Pedro Reyes for Ana J. Matosantos, Director,
Department of Finance
Paul Clanon for Michael R. Peevey, President,
Public Utilities Commission
Saúl Gómez for Robert B. Weisenmiller, Chair,
California Energy Commission

Staff Present: Christine Solich, Executive Director
Sherri Kay Wahl, Deputy Executive Director

Quorum: The Chairperson declared a quorum

2. MINUTES

Ms. Redway asked if there were any questions or comments concerning the September 27, 2011 meeting minutes. There were none.

Ms. Redway asked if there was a motion.

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

3. EXECUTIVE DIRECTOR'S REPORT

Ms. Solich began her report with a background on Senate Bill 99 (SB 99). In January 2010, SB 99 became effective; SB 99 is a bill that requires Joint Powers Authorities and conduit bond issuers such as CAEATFA to provide regular financial information. Staff has completed the 2009/2010 audit of the bond program required by the Controller and the fiscal year 2010/2011 Conduit Financing Provider Financial Transactions Report. Both of these reports are posted on CAEATFA's website. Staff is currently working on the fiscal year

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2010/2011 bond program audit and will have that completed within a few months.

Ms. Solich then introduced Martha Alvarez, the lead analyst on the Clean Energy Upgrade Financing Program to provide an update on outreach and program development efforts.

Ms. Alvarez began her report on ABX1 14 (Skinner) by informing the Board that the legislation was signed into law on August 2, 2011. The Clean Energy Upgrade Financing Program is a statewide program that will provide up to \$25 million in financing for energy and water efficiency improvements. The program is set to expire January 1, 2015. Over the last several weeks, CAEATFA has made progress towards designing the program.

Ms. Alvarez reported that the goal of the program is to increase access to credit and reduce overall costs to property owners making energy efficiency and renewable energy improvements to their homes or small businesses. Eligible improvements include energy and water efficiency improvements on real property, installation of distributed generation renewable energy sources, and electric vehicle charging infrastructure if it is part of a project to install energy efficient improvements and distributed generation renewable energy resources and is designed so that the project does not increase peak energy demand. Financial assistance will be provided to the financial institutions that are providing a loan to finance the eligible improvements.

CAEATFA is contemplating developing minimum underwriting criteria such as loan size amounts and will allow participating financial institutions to set more stringent criteria. CAEATFA is proposing to provide at least a 10% loan loss reserve. Eligible improvements include a residential project of three or fewer units or a commercial project that costs less than \$25,000 in total. All improvements financed by the Program must meet quality assurance standards, which includes contractor certification and third-party inspection of a portion of completed projects. CAEATFA is closely working with the California Energy Commission (CEC) and the Public Utilities Commission (PUC) staff to obtain recommendations on quality assurance standards and contractor certification requirements for this program.

Ms. Alvarez then reported that CAEATFA held a public workshop on August 30, 2011. The workshop was well attended, with over 60 participants in person and over the phone. CAEATFA received 13 written public comments from the workshop. Since then Staff has been working on integrating some of those comments into draft emergency regulations.

On October 18, 2011, CAEATFA and CEC staff held a webinar with experts and people in the electric vehicle industry to get specific input on the electric vehicle infrastructure components of the program. Over the next four to six weeks, CAEATFA will be hosting a series of meetings with various stakeholders including lenders, contractors, local governments and utilities to assist in the development of regulations. Staff anticipates releasing draft regulations in December 2011, and will host a second public workshop in January 2012 to solicit comments on lending criteria and structure of the loan loss reserve.

Ms. Alvarez continued to report that the regulation process will include identifying minimum eligibility requirements and the framework and criteria for a program that will maximize the use of the available funds. Staff anticipates bringing final emergency regulations to the Board

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for approval in February, 2012. Staff’s goal is to have effective regulations by March, 2012 and start enrolling and training qualified financial institutions soon after.

As Staff moves forward, they will continue to collaborate with the CEC and PUC to engage local governments, the utilities and contractors, educate consumers, and enroll interested financial institutions as participating lenders.

Ms. Alvarez then asked if there were any questions.

Mr. Clanon asked what the next step in the process is.

Ms. Alvarez advised that the next step is to finalize the emergency regulations. Staff will have 180 days from the time the emergency regulations are presented to the Board to make any necessary adjustments and take those changes back to the Office of Administrative Law (OAL). She added that Staff has been working closely with both the CEC and PUC staff to get their expertise on the quality assurance components of the program as well as the contractor certification requirements and Staff will continue to work with those entities until the final regulations are in place.

Ms. Solich then ended her report.

4. BUSINESS ITEMS

A. APPROVAL OF 2012 MEETING CALENDAR

Presented by: Christine Solich, Executive Director

Month	Day	Time	Date
January	Tuesday	10:30 a.m.	01/17/2012
February	Tuesday	10:30 a.m.	02/21/2012
March	Tuesday	10:30 a.m.	03/20/2012
April	Tuesday	10:30 a.m.	04/17/2012
May	Tuesday	10:30 a.m.	05/15/2012
June	Tuesday	10:30 a.m.	06/19/2012
July	Tuesday	10:30 a.m.	07/17/2012
August	Tuesday	10:30 a.m.	08/21/2012
September	Tuesday	10:30 a.m.	09/18/2012
October	Tuesday	10:30 a.m.	10/16/2012
November	Tuesday	10:30 a.m.	11/13/2012
December	Tuesday	10:30 a.m.	12/11/2012

Staff recommended approval of the above proposed meeting schedule for the calendar year 2012.

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

Ms. Redway asked if there was a motion.

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

B. CONSIDERATION OF TEMPORARY SUSPENSION OF THE SB 71 PROGRAM

Presented by: Deana Carrillo, Program Manager

On September 27, 2011, CAEATFA Chairman, Treasurer Bill Lockyer, requested the CAEATFA Board to consider pausing the SB 71 Program in the wake of Solyndra's bankruptcy. The "pause" on the program would allow CAEATFA staff to continue to monitor the federal investigations into the Solyndra bankruptcy, examine program regulations and processes for reviewing and approving exclusions under the program, prepare for an upcoming legislative hearing on the SB 71 Program, and consider the potential outcome of that hearing. The pause would only impact review and approval of future sales and use tax exclusions under the program, not existing awards.

This agenda item provided the CAEATFA Board with a formal process to consider the need for a temporary suspension of SB 71.

Solyndra submitted an application for the SB 71 Program in October 2010, for its facility to produce cylindrical module photovoltaic panels in Fremont, CA. The Solyndra project met the eligibility and evaluation criteria established in SB 71 Program regulations and was approved at the November 2010 Board meeting, along with eleven other projects, 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).

On September 6, 2011 Solyndra filed for bankruptcy. Upon hearing about the closure of the facility in the news, Staff immediately tried to reach their contacts at Solyndra but have not received a response.

Under the SB 71 Program, Solyndra has purchased \$277 million in equipment from over 350 vendors, utilizing an estimated \$25.1 million in STEs to date.

The abrupt closure of Solyndra drew an abundance of media coverage as the Department of Energy (DOE) and Federal Bureau of Investigation (FBI) began to conduct investigations into Solyndra's conduct. There have been two Congressional hearings held surrounding due diligence of a \$535 million DOE loan guarantee given to Solyndra. Senator Padilla, the author of SB 71 and chair of the Senate Energy, Utilities and Communications Committee, called for a joint hearing with the Senate Governance and Finance Committee to review the SB 71 program. The hearing took place on October 19, 2011.

With respect to recovery of the STE, Staff has confirmed with legal counsel and the Board of Equalization (BOE) and under current circumstances it does not look as

though the State will be in a position to recover the avoided STE. However, Staff will continue to monitor the findings in the federal investigations and the bankruptcy proceedings 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.

Subsequent to Solyndra declaring bankruptcy, State Senator Alex Padilla, author of SB 71, and Senator Lois Wolk called a joint legislative hearing to review the program and discuss potential changes to ensure that the state is prudent with its resources.

At the September 27, 2011 CAEATFA Board meeting, Treasurer Lockyer requested that his fellow CAEATFA board members consider “pausing” or temporarily suspending the review of new applications under the SB 71 program while staff conducted a review of the program and responded to the legislative oversight hearing.

A joint oversight hearing between the Senate Committees on Energy, Utilities and Communications and Governance and Finance took place on Wednesday, October 19, 2011.

The hearing included presentations by: the CAEATFA Chair, Treasurer Lockyer; the LAO; representatives from California solar companies (Stion and Solaria); and the California Tax Reform Association. The hearing included a review of the program from the Legislators, LAO, program users, tax policy advocates, and industry representatives.

Also during this time period, CAEATFA staff reviewed the Program’s regulations, policies and procedures, both widely and specific to the Solyndra Application, and have outlined a number of the safeguards, including reporting requirements, that are in place under the program.

Staff will continually review the program’s regulations to ensure they are appropriate and consistent with the goals of the statute. In addition, Staff will also review media coverage/financial coverage of applicants and will make this information available to the Board when appropriate in its consideration of an application.

As noted above, the SB 71 Program includes several provisions that ensure that the SB 71 financial assistance is provided to eligible companies under the statute, and protects the taxpayers’ dollars. Several of these provisions, some of which were incorporated into the program with the recent enactment of modified regulations on September 28, 2011, include:

- A substantial use test to ensure that the equipment and machinery purchased under the program are used for the intended purposes. This test was recently tightened in the regulations enacted in September 2011 to require the

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equipment be used at least 50% of the time each year and more than 75% of the time on average for eligible equipment.

- A net benefit evaluation to ensure that the environmental and economic benefits to the State outweigh the potential cost to the State (Section 10033 (c)). The net benefit scoring methodology was recently revised to make it more reflective of reality by taking into account the capital intensity of an Applicant's manufacturing process.
- A requirement that the Applicant inform CAEATFA of any material changes in their application. CAEATFA staff is currently considering how it could strengthen the enforcement of this provision.
- A requirement that the Applicant disclose any material legal issues.
- A requirement the equipment be maintained in California for the term of the agreement (half of the useful life of the equipment).
- An Annual Report requirement from each Applicant that requires it provide the following data (for a time period equal to half the useful life of the equipment): total payroll; number of full time equivalent permanent jobs at the Applicant's Facility; number of full time equivalent construction or installation jobs created as a result of the Qualified Property purchases; total annual product sales (in dollars) including the fraction in California; total number of units sold including the fraction in California; anticipated corporate or personal income tax related to the Facility for the preceding calendar year; the amount spent on supplier purchases, including the fraction of such purchases from California Suppliers; the total amount of Qualified Property purchased as of the date specified in the compliance report; a narrative description of the project status and consistency with the timeline contained in the Application; anticipated purchase dates of any additional items of Qualified Property, and an explanation of any material changes to the product or manufacturing process implemented since the approval of the Application; and a statement indicating the fraction of the time that the Qualified Property has been used to make Advanced Transportation or Alternative Source products, components, or systems.
- A mechanism for the Board to rescind the award upon a finding that an Applicant provided false information or has otherwise violated the agreement.
- A provision that enables the recovery of financial assistance in the event an Applicant does not use the equipment for its intended purposes (e.g., manufactures glass for windshields instead of solar panels); or if an Applicant moves the equipment out of state.

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CAEATFA Staff will continue to review the program, work with legislative and LAO Staff on potential program adjustments that may be identified in the future, and provide regular reports to the Board on the status of SB 71 applications.

Ms. Redway asked Ms. Solich if she would like to add any comments on the report.

Ms. Solich added that Staff had completed an in-depth internal review of the SB 71 program including a review of the criteria established in regulations to evaluate and approve applicants/projects, as well as ongoing compliance and monitoring of projects and recovery options if deemed necessary. She believed that Staff has incorporated into the program the intent of the statute with respect to the eligibility of projects and the evaluation and ongoing accountability of projects for both fiscal and environmental benefits to the state.

More recently, as outlined in the staff summary, after several months of experience, Staff has established additional criteria in the regulations to strengthen the program and Staff will continue to propose additional changes in the future as necessary.

Ms. Solich then stated that Staff will continue to work with the Legislature on program modifications that may be proposed in the future and update the board on a regular basis. As the Treasurer has indicated, the SB 71 program is far better in terms of transparency and accountability, but even the best government programs are not above improvement.

With respect to the Solyndra bankruptcy, Staff is following the case and will continue to monitor the situation closely in the event there is an opportunity for CAEATFA to recover any funds. Following the departure of Solyndra's Chief executive Officer (CEO), a restructuring officer has been retained for the company and bids will be accepted through the middle of November for the assets of the company with a winning bid possibly being presented to the bankruptcy court for approval at a hearing scheduled for November 22, 2011. According to reports, Solyndra hopes to find a "turnkey" buyer and there may be a couple dozen parties interested – some of which are strategic partners in the solar industry and others who are looking to pick up inexpensive or undervalued assets.

Lastly, Ms. Solich advised the Board that Staff has also established a system to assist in tracking financial news on applicants as Staff evaluates new applications and monitors existing projects in an effort to keep abreast of this continually changing industry.

Ms. Redway clarified that even though the item to temporarily suspend the SB 71 program was on the agenda, the program has already been paused for a month with the five applicants that were in process having deferred their applications to a later date as a result of the Board's action at the September 27, 2011 meeting. The CAEATFA, LAO and Legislative staffs have done an extensive review of the SB 71 program and there have been changes made to the program in the recent regulatory actions. With the outcome of the legislative hearing being positive it is likely that legislation will be pursued potentially in claw-back provision but there were no

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suggestions made to suspend the program until additional changes had been made. Ms. Redway suggested that the program not be paused any further.

Mr. Reyes concurred with Ms. Redway and added that the SB 71 program is a valuable tool for companies to expand in California. He commended Staff for reviewing the program and looking into ways to make the program better and feels the program has been strengthened. This is an industry where the regulations will need to be monitored and new technologies and issues need to be dealt with as they arise.

Mr. Clanon agreed and expressed that now would be the wrong time to pause a green jobs program that requires net benefits, has the transparency and is as effective as the SB 71 program. He feels it was appropriate to take a month to review the program and see if any improvements were needed. He added that Ms. Carrillo statement in regard to an explanation of the program and why it should continue was well written and should possibly be placed on the website to reassure the public that the program is a good one and that tax dollars are being invested wisely.

Ms. Redway stated that unless there is a motion to pause the program the Board would move to the next item. There was no motion to suspend or pause the program.

Ms. Redway thanked Staff for their hard work and moved to the next item.

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 11:35 a.m.

Respectfully submitted,

Christine Solich
Executive Director