Agenda Report

March 9, 2020

TO: Honorable Mayor and City Council

THROUGH: Municipal Services Committee (February 25, 2020)

FROM: Water and Power Department

SUBJECT: **AUTHORIZE CONTINUED PARTICIPATION IN CALIFORNIA'S LOW CARBON FUEL STANDARD BY ENTERING INTO THE MULTILATERAL CLEAN FUEL REWARD PROGRAM GOVERNANCE AGREEMENT WITH VARIOUS ELECTRIC UTILITIES**

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed action is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3), the "common sense exemption" in that CEQA applies only to projects which have the potential for causing a significant effect on the environment;
2. Authorize the City Manager or a designated representative to enter into the multilateral Clean Fuel Rewards ("CFR") Governance Agreement, and any other documents, exhibits and Agreements necessary to effectuate and administer the CFR Governance Agreement, without competitive bidding pursuant to City Charter Section 1002 (C) Contracts for labor, material, supplies, or services available from only one vendor;
3. Authorize the City Manager or a designated representative to implement, administer, approve, and sign any amendments to the CFR Governance Agreement (including any and all exhibits and additional Agreements that are part of the Governance Agreement) that may occur from time to time under the terms of the Governance Agreement; and
4. It is further recommended that the City Council grant the proposed contract an exemption from the Competitive Selection process pursuant to Pasadena Municipal Code Section 4.08.049(B) contracts for which the City's best interests are served.

BACKGROUND:

The Low Carbon Fuel Standard ("LCFS") program was established and administered by the California Air Resources Board ("CARB") as a means to reduce greenhouse gas emissions associated with petroleum-based transportation fuels. The LCFS program is a market-based regulation using a cap and trade approach to encourage the use of low-carbon fuel alternatives such as electricity and renewable fuels. Under the LCFS program, CARB issues one LCFS credit for each metric ton of avoided greenhouse gas emissions associated with the use of electricity as a transportation fuel. LCFS credits may be sold on open markets to entities such as refineries that have a transportation related greenhouse gas emission reduction compliance obligation. Electric utilities, such as Pasadena Water and Power ("PWP"), are awarded LCFS credits for reducing transportation emissions through three LCFS programs:

1. The Residential Non-Metered Electric Vehicle ("EV") Program;
2. The Public Access EV Charging Program; and,
3. The Electric Forklift Program.

The City Council authorized PWP's participation in the LCFS program on December 11, 2017. In the seven quarters that PWP has participated in the LCFS program, PWP has received over $2.5 million in revenues from the sale of LCFS credits and has recently earned credits worth another $0.5 million that will be sold in the coming months. Staff anticipates future revenues from the sale of LCFS credits will be about $2-3 million each year. Per the LCFS program rules, these revenues must be used to encourage electric transportation through EV education and public outreach, and similar purposes to benefit current and future EV owners through programs like investment in EV charging infrastructure, EV rebates and EV charger rebates.

CFR "Point-of-Sale" Program

Under the LCFS regulations, CARB has created the CFR program to facilitate a statewide point-of-sale rebate program to encourage consumers to purchase EVs. Point-of-sale rebates have the advantage of appearing on the EV invoice as a credit toward the price when the EV is purchased at the dealer, rather than requiring the consumer to pay the full price of the EV at the time of purchase and apply for a rebate afterwards.

The CFR program will be funded by requiring participating utilities to transfer a portion of the revenues derived from the sale of LCFS credits (20-25% of revenues in PWP's case) to the CFR program administrator that will implement all aspects of the point-of-sale rebate program. To ensure adequate funding, CARB will require that electric utilities participate in the CFR program once it has been implemented in calendar year 2020. Utilities that do not participate in the CFR program will no longer receive any LCFS credits from the Residential unmetered EV program, which accounts for over 85% of PWP's credit awards and associated revenues. In addition, participating utilities will also have to set aside start-up funds for the CFR; this money can come from LCFS revenues. For Pasadena, it is estimated that the one time start-up funds will be approximately $310,000, but this number may vary depending on the number of participants in the program and Pasadena's participant share. All of these expenditures will be funded from revenues derived from the sale of LCFS credits.

CFR Administration and Governance Agreement

The CFR Governance Agreement will be signed by numerous electric utilities in California. It will enable PWP to continue participating in California's LCFS program, and requires PWP to transfer a portion of revenues derived from the sale of LCFS credits to the CFR program administrator. Since CARB is not prepared to handle the complexity of implementing and administering the statewide point-of-sale rebate program, it has designated Southern California Edison ("SCE") to run the CFR program. All electric utilities that wish to participate in the CFR must enter into the multi-lateral CFR Governance Agreement that has been negotiated and drafted by interested parties, including PWP, over the last year. The CFR Governance Agreement specifies how the point-of-sale program will work; how funds will be collected, managed, and used; participant's voting rights; accounting and reporting methodologies; various parties rights and obligations; and so forth.

Risks and Uncertainties with CFR Program

During the course of negotiations, staff has identified and attempted to resolve several areas of potential concern regarding the CFR Governance Agreement. While the parties have worked cooperatively to address many of the issues, there are two key potential risks and uncertainties associated with entering into this agreement:

- Insurance/Liabilities: While SCE must provide insurance to cover their potential liabilities as CFR Program Administrator, they will only procure insurance for the overall CFR program and its participants if such insurance is commercially available. Absent this insurance, there is some possibility that CFR program liabilities unrelated to SCE's performance would ultimately be shared by all CFR participants on a pro-rata basis (PWP's share of such liabilities is estimated to be 0.61% of the program total). It is important to note, that PWP can withdraw from the CFR program at any time, by providing sufficient notice (90 days).
- Voting Rights/Contract Modification: The small and medium CFR participants, such as Pasadena, have a combined voting percentage of 17%. The Governance Agreement allows for an 80% super majority for amendments to major sections of the Governance Agreement (such as insurance, indemnification, liability and termination, to name a few) or 50% majority to modify other sections of the Governance Agreement, rendering the small medium POU voting rights insignificant, on their own. However, if the Sacramento Municipal Utility District ("SMUD") or LADWP were to align with the small and medium POUs, the voting percentage can make a difference.

Staff has determined that these risks are manageable and relatively small compared to the overall benefits. Non-participation in these agreements will prevent PWP from participating in the state LCFS program and lose an estimated $2-3 million per year from our revenue stream.

Timing of the CFR Program

The CFR Program will not become effective until the large five utilities (SCE, Pacific Gas and Electric, San Diego Gas and Electric, SMUD and LADWP) have signed the Governance Agreement. It is projected that all of the signatures will not be gathered until after April 2020. This recommendation will allow Pasadena to sign the Governance Agreement- Joinder Agreement for EDUs that are not the large five utilities, at any time, once City Council approval is received. The Joinder Agreement allows the non-large five utilities to sign on to the Governance Agreement, as the Governance Agreement is tailored for the large five utilities. The first non-large Southern California POU which signs the Joinder Agreement will become the member of the Steering Committee, until more members join. In order to have some control over the program, it is Pasadena's preference to sit on the Steering Committee and sign the Joinder Agreement sooner, rather than later. Pasadena is supportive of the CFR program and staff has been part of the development process for the Governance Agreement.

Best Interest Exemption

Entering into the CFR Governance Agreement is the only means to continue participating in the full scope of the LCFS program. This is in the best interest of the City, as it will enable PWP to participate in the CFR program and continue receiving and monetizing LCFS credits worth $2-3 million annually, to support Pasadena's efforts to reduce GHG emissions from the transportation sector.

COUNCIL POLICY CONSIDERATION:

The proposed resolution is consistent with the City's Climate Action Plan goals in reducing greenhouse gas emissions and increasing the use of clean vehicles, the City Council's Strategic Planning goals to increase conservation and sustainability, and the 2018 Power Integrated Resource Plan goal of a 75% greenhouse gas emissions reduction by 2030. Furthermore, the associated revenues obtained through continued participation in the LCFS program support the City Council's goal of maintaining fiscal responsibility and stability by providing funding for these environmental initiatives.

ENVIRONMENTAL ANALYSIS:

The resolution has been reviewed for compliance with the CEQA and has been determined to be exempt per Section 15061(b)(3), the "common sense exemption" (formerly the general rule) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed resolution is an administrative function and will not cause a change in the environment.

FISCAL IMPACT:

There is no fiscal impact as a result of the recommended actions. The recommended actions will enable the City to continue receiving LCFS credits associated with the Residential EV program. The Residential EV program contributes over 85% of PWP's overall LCFS program credits awards that are expected to generate revenues of $2-3 million annually to fund infrastructure and programs that support electric transportation throughout the City. All expenditures pursuant to the recommended actions, including start-up costs and ongoing transfers of funds to the CFR program administrator, will be funded from revenues derived from the sale of LCFS credits. Funding for the expenditures will be addressed by the utilization of existing budgeted appropriations in Power Operating Fund 401 LCFS Expense Account 44609210-823500.

Respectfully submitted,

GURCHARAN S. BAWA
General Manager
Water and Power Department

Prepared by:

for Mandip Samra
Power Resource Planning Manager

Approved by:

STEVE MERMELL
City Manager