



EPACT specifies, in short, statutory requirements aimed at displacing motor vehicles that consume substantial quantities of petroleum products in favor of motor vehicles that consume alternative fuels. Accordingly, Sections 501 and 507(o) of EPACT require certain alternative fuel providers and most State governments to include AFVs in their light duty vehicle fleet acquisitions. The DOE enacted 10 C.F.R. Part 490 in order to implement these statutory requirements.

The DOE regulations generally required State government fleets to include at least 75 percent AFVs in their Model Year 2012 fleet acquisitions. 10 C.F.R. § 490.201(a)(5). However, the DOE's Alternative Fuel Program regulations provide that *under certain specifically enumerated circumstances*, exemption relief may be granted to state fleets.<sup>2</sup> 10 C.F.R. § 490.204.

## **B. The Present Proceeding**

On January 4, 2013, Washington filed a request for an exemption (the RFE) with the AFTP. In its RFE, Washington requested a total of 94 exemptions from the AFV requirements for 2012, contending that alternative fuels that meet the normal requirements and practices of its principal business were not available from fueling sites that would permit central fueling of its vehicles in the areas in which the vehicles were to be operated.

On September 25, 2013, the AFTP issued a determination in which it granted Washington's request for 74 of the 94 exemptions it sought "on the basis of lack of alternative fuel." Determination Letter at 1-2. The AFTP also reduced Washington's light duty vehicle (LDV) acquisition count from 206 to 205 vehicles after finding that Washington had mistakenly included a medium duty vehicle in its acquisition count. The reduction in Washington's LDV count meant that it only needed to acquire an additional 93 instead of 94 AFV's for 2012.

However, the AFTP denied 19 of Washington's RFEs, finding that alternative fuels were available for 20 of Washington's LDVs, specifically those 13 LDV's that were garaged near Olympia, Washington, and seven additional LDVs that were garaged near Spokane, Washington. Specifically, AFTP cited the presence of two retailers of alternative fuels, one located in Olympia, and the other located in Spokane, that sell E-85, an alternative fuel. Determination Letter at 2.

On November 13, 2013, Washington submitted the present appeal to OHA in accordance with the procedures set forth at 10 C.F.R. Part 1003, Subpart C and 10 C.F.R. § 490.204(h). Washington's Appeal requests 20 AFV exemptions contending that (1) it lacks available alternative fuel, and (2) that it purchases "high mileage hybrid vehicles instead [of AFVs] to reduce our fuel consumption and greenhouse gas emissions." Appeal at 1.

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<sup>2</sup> The regulations further provide for a program of marketable credits to reward covered fleet owners who voluntarily acquire AFVs in excess of mandated levels, and allowing the purchase of such credits by other covered fleet owners to demonstrate compliance. 10 C.F.R. Part 490, Subpart F.

10 C.F.R. § 1003.36(c) provides that:

The OHA may deny any appeal if the appellant does not establish that—

- (1) The appeal was filed by a person aggrieved by a DOE action;
- (2) The DOE's action was erroneous in fact or in law; or
- (3) The DOE's action was arbitrary or capricious.

## II. ANALYSIS

Washington's claim that it lacks available alternative fuel for its vehicles is clearly without merit. AFTP's Determination letter specifically identified two retailers of alternative fuel marketing E85 fuel, one in Olympia, Washington, and the other in Spokane, Washington, which are geographically proximate to at least 20 vehicles in Washington's fleet. Washington has not submitted any evidence contradicting the Determination Letter's findings concerning the availability of alternative fuel for these 20 vehicles.

Washington's contention that its purchase of high mileage hybrid vehicles should relieve it of the obligation to purchase AFVs, is similarly without merit. Under the DOE's Alternative Fuel Program regulations, a State fleet must show that *at least one of three specific exemption criteria are met* in order to obtain an exemption. Specifically, Washington must demonstrate that:

- (1) Alternative fuels that meet the normal requirements and practices of the principal business of the State fleet are not available from fueling sites that would permit central fueling of that person's vehicles in the area in which the vehicles are to be operated; *or*
- (2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the State fleet are not available for purchase or lease commercially on reasonable terms and conditions in the State; *or*
- (3) The application of such requirements would pose an unreasonable financial hardship.

10 C.F.R. § 490.204(a) (emphasis supplied). Simply put, Washington's second contention is meritless because it does not pertain to any of the three criteria set forth in 10 C.F.R. § 490.204(a).

Based on the foregoing, we conclude that Washington's Appeal must be denied. As directed by AFTP, Washington must purchase 19 credits under the Alternative Fueled Vehicle Credit Program, 10 C.F.R. Part 490, Subpart F, in order to satisfy its MY 2012 AFV-acquisition requirements.

It Is Therefore Ordered That:

- (1) The Appeal filed by Washington State Fleet Operations on November 13, 2014, Case No. EXA-0001, is hereby denied.
- (2) This is a final Order of the Department of Energy from which Washington State Fleet Operations may seek judicial review.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: February 27, 2014