

The DOE regulations generally required State government fleets to include at least 75 percent AFVs in their Model Year 2013 fleet acquisitions. 10 C.F.R. § 490.201(a)(5). However, the DOE's AFTP regulations provide that *under certain specifically enumerated circumstances*, exemption relief may be granted to state fleets.² 10 C.F.R. § 490.204.

B. The Present Proceeding

On June 30, 2014, Washington filed a request for exemptions (the RFE) with the AFTP requesting a total of 278 exemptions from the AFV requirements for MY 2013. The RFE contended that (1) 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, and (2) Washington purchases high mileage hybrid vehicles instead of AFVs in order to reduce its fuel consumption and greenhouse gas emissions.

On November 10, 2014, the AFTP issued a determination in which it granted Washington's requests for 129 of the (278) exemptions it sought "on the basis of lack of alternative fuel." Determination Letter at 1. The AFTP denied 149 of Washington's RFEs, finding that alternative fuels were available for eight vehicles that were garaged at Washington's Arlington, Washington, location and 141 additional vehicles that AFTP deemed to be garaged in Olympia, Washington.³ Specifically, AFTP cited the presence of two retailers of alternative fuels, one located in Olympia, and the other located near Arlington, in Marysville, Washington, that sell E85, an alternative fuel, as evidence of the availability of alternative fuels. Determination Letter at 2.

On December 2, 2014, 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).⁴ Washington's Appeal requests an additional 149 AFV exemptions for MY 2013, contending that (1) alternative fuel is not available, (2) it purchases high mileage hybrid vehicles instead of AFVs to reduce its fuel consumption and greenhouse gas emissions, and (3) the gas station located in Olympia and cited in the Determination Letter, discontinued selling E85 in April 2014. Appeal at 1.

² 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.

³ The Determination Letter states: "Via e-mail communication with DOE, [Washington] stated that [it] does not keep the physical address of where its vehicles are garaged, and as a result, DOE used for the exemption determination the address provided on the fleet's letterhead." Determination Letter at 2. The Appeal does not challenge this finding.

⁴ Washington supplemented its Appeal in an email received by OHA on December 11, 2014.

The DOE regulations at 10 C.F.R. § 1003.36(c) provide 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 lacked available alternative fuel for its vehicles in MY 2013 is without merit. AFTP's Determination Letter specifically identified two retailers of alternative fuel marketing E85 fuel, one in Olympia, Washington, and the other in Maryville, Washington, which are geographically proximate to the 149 vehicles in Washington's fleet for which it is seeking exemptions. The only evidence Washington has submitted to contradict the Determination Letter's findings regarding the availability of alternative fuel for these vehicles is that one of these two service stations discontinued selling E85 in April 2014. However, that service station sold E85 during all of MY 2013, the period for which it is seeking exception relief.

As we have previously held in *Washington State Fleet Operations*, Case Number EXA-14-0001 (2014), Washington's contention that its purchase of high mileage hybrid vehicles should relieve it of the obligation to purchase AFVs, is 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). We find that Washington's second contention is meritless because it does not demonstrate the existence of 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 149 credits under the Alternative Fueled Vehicle Credit

Program, 10 C.F.R. Part 490, Subpart F, in order to satisfy its MY 2013 AFV-acquisition requirements.

It Is Therefore Ordered That:

(1) The Appeal filed by Washington State Fleet Operations on December 2, 2014, Case No. AFV-14-0001, 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: December 18, 2014