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Volkswagen Settlement Provides Funding Opportunities for Electric Utilities

Environment & Energy Alert

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09.22.2017

The U.S. District Court for the Northern District of California has recently approved a long-awaited environmental mitigation trust agreement in the Volkswagen "clean diesel" emissions litigation that had been requested by the U.S. Department of Justice.1 The approval of the trust agreement marks a critical milestone in the proceeding and presents a potentially valuable opportunity for cooperatives and municipalities to obtain funding to update fleet vehicles or build charging infrastructure to support the growing adoption of electric vehicles. Those interested in understanding when, where, and how their state intends to use the allocated funds should engage now with state representatives and the lead agency managing the state's share of funds.

Over the next 10 years the trust will provide beneficiary states and territories with access to nearly $2.7 billion in funding dedicated to reducing nitrogen oxide (NOx) emissions in the transportation sector. Funds are allocated to beneficiaries using a formula that gives jurisdictions that had higher sales of Volkswagen and Audi vehicles equipped with illegal emissions defeat devices a proportionately greater share of funds. Each state, and the District of Columbia, is eligible to receive a minimum allocation of $8.13 million. The trust will provide states with the following initial allocations:

Colorado – $68.7 million
Florida – $166.3 million
Kansas – $15.7 million
Louisiana – $19.8 million
Maryland – $75.7 million
Mississippi – $9.9 million
Pennsylvania – $118.6 million
Texas – $209.3 million
Virginia – $93.6 million

Procedurally, the filing of the fully executed mitigation trust agreement with the court, due no later than October 3, 2017, will establish the effective date of the trust and start the clock on actions that beneficiary states must take to access these trust funds. Local governments and businesses should not wait, however, to discuss opportunities with their state representatives.

Funds may be used by beneficiary jurisdictions for NOx reduction in ten categories of programs specified in the mitigation trust agreement. For instance, funds can be used to build zero-emission vehicle charging or fueling station networks. Funds can also be used to repower or replace older-model diesel vehicles and vessels. Trucks, buses, and support equipment deployed at airports, switchyards, and ports that meet program criteria are eligible for repowering or replacement with ones using all electric, cleaner diesel, or alternate fuels such as compressed natural gas, propane, and hybrids.

Vehicles and vessels targeted for replacement may be government-owned or privately owned, with the latter having cost-share requirements. Funds may cover the full cost of replacing or repowering government-owned diesel sources; funds are capped between 25% and 75% of the cost of replacing or repowering privately owned sources. For example, a state may use funds to pay the full cost of repowering or replacing a county-owned fleet of utility bucket trucks. If the vehicle is privately owned, only a portion of the cost is covered by the fund. For the privately owned utility fleet, the trust funds can cover a cost share of up to 25% of a new diesel vehicle, up to 40% of repowering costs for a new diesel engine, or up to 75% of replacement costs for a new, all-electric vehicle.

A state may dedicate up to 15% of its allocated funds to develop charging infrastructure networks for zero-emission electric vehicles. Funds may be used toward the full cost of purchasing, installing, and maintaining Level 1, Level 2, or fast-charging equipment on government-owned property that is open to the general public—*e.g.*, a library or rest stop parking lot. Funds may also be used to pay for a portion of the cost of charging stations located at privately owned multiunit residences and workplaces that are not open to the general public. Another option is to use funds for purchasing, installing, and maintaining equipment to supply hydrogen fuel cell vehicles. The trust agreement specifies in detail the permitted mitigation actions, expenditures, and cost shares.

States must develop a high-level description of the state's intended use for the mitigation funds, called a Beneficiary Mitigation Plan. The plan should describe program goals, types of mitigation actions expected to achieve program goals, and the expected portion of funds to be directed to each mitigation action. The plan should also lay out an expected range of emissions-reductions benefits, particularly impacts on areas that bear a disproportionate share of air pollution burdens. Each state's plan is to be provided to the trustee, but the plan itself is non-binding.

Many draft plans have already been posted for public comment. Those interested in shaping how funds will ultimately be used may want to reach out now to their lead state agency preparing the Beneficiary Mitigation Plan.

The settlement and the resulting trust will present a unique opportunity for utilities, particularly rural electric cooperatives and municipalities, to update aging vehicle fleets or to build infrastructure to accommodate the ever increasing number of electric vehicles. Projections for the growth of electric vehicles continue to increase as more manufacturers, like Chevrolet and Nissan, expand and update their electric vehicle offerings or, like Volvo, commit to convert to electric altogether. Utilities will need to decide how to supply this next generation of vehicles, who will be the provider of that energy—*i.e.*, utility-owned or privately owned charging stations—and how to keep power costs as low as possible for their customers. The trust provides a process and funding for states and utilities to partner in developing a certain amount of infrastructure to meet the needs of the next generation of electric vehicles.

[1]*See* Order Approving Trust Agreements and Establishing Trusts, *United States v. Volkswagen AG et al.*, No. 16-cv-295 (N.D. Cal. Sept. 19, 2017), ECF No. 49.