

Tesla (Mal Skowron)

Please see attached the comments of Tesla, Inc. regarding the Clean Transportation Fuel Program.

September 22, 2025

New Mexico Environment Department
Attn: EIB Administrator
Harold Runnels Building, PO Box 5469
Santa Fe, NM 87502
Submitted electronically

RE: EIB 25-23(R): In the Matter of Proposed Adoption of 20.2.92 NMAC – Clean Transportation Fuel Program

Dear Members of the New Mexico Environmental Improvement Board and Environment Department Staff,

Thank you for the opportunity to review and comment on 20.2.92 NMAC, the proposed rule for the New Mexico Clean Transportation Fuel Program (CTFP). Tesla¹ strongly supports New Mexico's effort to incentivize low-carbon fuels and to reduce pollution associated with transportation. We applaud New Mexico's leadership as the first non-coastal state to implement a clean fuels program. Not only will the CTFP accelerate the market for electricity as a vehicle fuel in New Mexico, it will serve as a leading example to other states seeking to reduce the carbon intensity of transportation fuels.

Tesla shares the state's vision for a robust market for electricity as vehicle fuel, and we are engaging in this rule review as potential participants in the CTFP to accelerate the pace of Supercharger openings and advance the state's goals. In the interest of ensuring the state will reap full benefits from the CTFP, we propose two simple revisions related to the administering of fuel supply equipment (FSE) credits:

1. FSE pathways should not be limited to one applicant per fuel type per vehicle duty type per zip code; strike 20.2.92.304(C)(1).
2. FSE pathway applications should be able to be submitted for sites that are already open, so long as the site opened after the CTFP program launched; amend 20.2.92.303(A)(5) to allow FSE pathway applications to be submitted for projects that open on or after August 1, 2026.

We respectfully request the Environmental Improvement Board adopt these changes and adopt the proposed rule.

¹ Tesla's mission is to accelerate the world's transition to sustainable energy. To accomplish its mission, Tesla designs, develops, manufactures, and sells high-performance fully electric vehicles and energy generation and storage systems, installs, and maintains such systems, and sells solar electricity. Tesla has also invested in its growing network of retail stores, vehicle service centers, electric vehicle charging stations, and advanced manufacturing facilities. Tesla is the largest operator of DC fast charging (DCFC) in New Mexico operating 162 Supercharging stalls across 18 locations.

Recommendation 1: FSE pathways should not be limited to one applicant per fuel type per vehicle duty type per zip code; strike 20.2.92.304(C)(1).

Section 302 establishes a methodology to calculate fuel supply equipment (FSE) credits. FSE credits are generated based on a project's capacity to dispense electricity as fuel. The purpose of FSE credits is to accelerate investment in new clean fuels, such as EV charging, in areas where chargers may be initially under-utilized. As utilization increases, the number of FSE credits decreases to account for the greater volume of clean fuels dispensed. The effect is to stabilize credit generation for participants even at low utilization and to create certainty in program benefits in a manner that drives charger deployment ahead of demand. The inclusion of FSE credits is an important aspect of the CTFP program design, as utilization is a key driver of the financial viability of an EV charging station.

However, the proposed rule includes a restriction that will undermine the benefit of funding certainty for all potential FSE pathway applicants. Section 304 allows only one pathway per fuel type per duty type to be awarded capacity credits for each zip code.² Pathway applicants will be required to enter a queue managed by the Environment Department for each zip code, and FSE credit eligibility will be awarded on a first-come, first-served basis.³

The result is funding uncertainty. For example, if two competitors serving light duty EV charging are interested in deploying infrastructure in a certain zip code, only one (the first mover) would be eligible to generate FSE credits. This restriction is not included in other states' clean fuels programs, is unnecessary to achieve the objective of widespread benefits, is likely to undermine fair competition in the clean fuels market, and will be counterproductive to the CTFP's goals.

1. Zip code-based program restrictions are not necessary to ensure statewide program benefits.

Utilization is key to financial viability of a charging station. As a result, charging station operators generally avoid co-location with other providers to maximize utilization. It is good business to fill gaps in the charging network, rather than duplicating investments and splitting customers (and therefore utilization) across co-located stations. This dynamic is visibly reflected in New Mexico's network, which is pictured in Figure 1 and shows DCFC distribution across the state even at this early stage of EV adoption.

² 20.2.92.304 (C)(1): To receive FSE credits each quarter, an FSE pathway shall: (1) Not be in a zip code containing an FSE pathway of the same FSE vehicle duty type and FSE fuel type the department has already awarded credits to that quarter;

³ See 20.2.92.304(B)

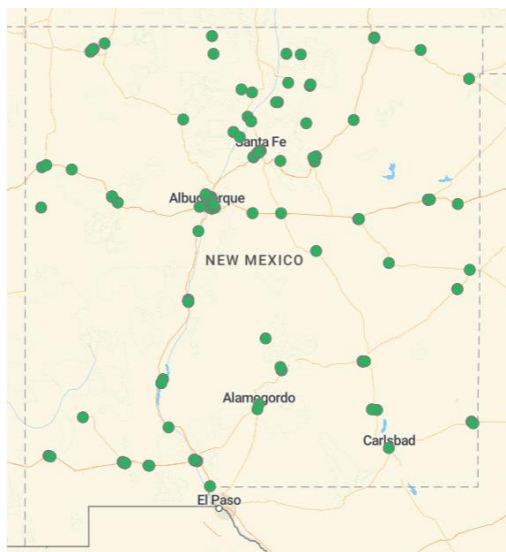


Figure 1: Map of DC fast charging locations in New Mexico from the Alternative Fuels Data Center (AFDC)

According to the Alternative Fuels Data Center, there are 463 DCFC stalls at 142 locations in New Mexico.⁴ The 142 locations are distributed across 68 zip codes, half of which contain more than one charging location. While more DCFC locations will advance the EV market, chargers are not over-concentrated in a small number of zip codes in a manner that justifies 20.2.92.304(C)(1).

Tesla appreciates that the intent of the zip code restriction may be to encourage investment in clean fuels in rural areas, rather than urban areas with higher concentrations of EV drivers. However, it is worth noting that, even in this relatively early stage of the market, the majority of DCFC infrastructure in New Mexico is located in rural areas. According to station location data from AFDC, only about 1/3 of New Mexico's DCFC stations are sited in the state's largest cities of Albuquerque, Las Cruces, Santa Fe, Roswell, Farmington, Hobbs, Carlsbad, Alamogordo, and Clovis.⁵

2. Where it does occur, co-location is likely to be in the best interest of drivers.

Operators must consider many different factors in site selection, including proximity to competition, access to amenities, expected growth in EV adoption, utility power capacity, and driver convenience. If an operator is willing to risk low utilization via co-location with a competitor, there must be a compelling reason to do so related to project feasibility or customer experience.

For example, bathrooms and amenities are often clustered along highway corridors located in large rural zip codes. Under the proposed rule, operators would likely be forced to choose between optimal sites (such as those with nearby amenities) and FSE credit

⁴ <https://afdc.energy.gov/stations>, as of July 30, 2025

⁵ <https://afdc.energy.gov/stations>, as of July 30, 2025

eligibility. It would be against the best interests of EV drivers to complicate site selection and inhibit co-location via the zip code restriction.

3. A first-come, first-served approach for FSE credits will produce market-distorting effects to the detriment of EV driver experience.

Under the zip code restriction, the first mover to submit a pathway application in any zip code will have the distinct advantage of funding via FSE credits, an advantage that will not be available to competitors in the same area. This has the potential for anti-competitive and market-distorting effects, where stations with poor customer service or low reliability remain unchallenged by other operators that choose to prioritize zip codes where FSE eligibility is still available. Competition in the same zip code is an important and positive force for the development of a robust clean fuels market, and CTFP should not discourage competition by providing a significant first-mover advantage via FSE credits.

4. Other clean fuels programs do not include similar geographic restrictions on pathway eligibility.

It is instructive to consider the clean fuels programs in California and Washington as an example. Like New Mexico, these two states have higher concentrations of EV drivers in metropolitan areas relative to their rural communities. However, their Low Carbon Fuel Standard (LCFS) and Clean Fuel Standard programs do not have zip code-based eligibility restrictions for capacity credits, nor have such restrictions been proposed.

Recommended Amendment

Strike 20.2.92.304 (C)(1):

To receive FSE credits each quarter, an FSE pathway shall: (1) Not be in a zip code containing an FSE pathway of the same FSE vehicle duty type and FSE fuel type the department has already awarded credits to that quarter;

Recommendation 2: Eliminate the requirement that sites must not be open at the time of FSE pathway application to the department; strike 20.2.92.303(A)(5).

Section 303 includes a time-based application restriction for FSE credit eligibility that will unintentionally introduce administrative complexity: FSE applicants may not submit a pathway site application for a site that is operational. Pathway applications will be accepted only before a site opens.⁶ However, in Tesla's experience as a project developer, sites often undergo multiple iterations throughout project development, including changes in post count or equipment, which would necessitate minor changes to a pathway application.

⁶ 20.2.92.303(A)(5): FSE pathway applications shall not include any FSE units that are operational on or before the date an FSE pathway applicant submits the FSE pathway application to the department.

1. The proposed rule will lead to repeated resubmissions of FSE pathway applications, wasting time and resources.

Under the current language, any project changes will lead to repeated resubmissions for pathway application, wasting time and resources on the applicants' side and the Department's side for review. Tesla experienced this issue with the California Low Carbon Fuel Standard (LCFS) Program and found that the flexibility to submit an FSE pathway application for an open site is advantageous because it eliminates the potential for multiple pathway application resubmissions. In California, there are no LCFS rule restrictions that prevent staff from reviewing pathway applications for open sites.

2. The proposed rule threatens funding certainty and creates opportunities for gamification.

The benefits of amending 20.2.92.303(A)(5) are especially significant given complications associated with the zip code eligibility restriction outlined in Recommendation 1. If the site opening date must be in the future to qualify for FSE credits, FSE credit generation is limited to one pathway per zip code, all submissions are reviewed on a first-come, first-served basis, and sites undergo multiple iterations, it is unclear how pathway applications would be handled if a first-in-queue applicant must make a change to their proposal:

- If application changes disqualify a project from queue: Any minor change could threaten funding certainty for a project that is relying on CTFP to be viable, which undermines the purpose of FSE credits.
- If application changes do not disqualify a project from queue: This program design encourages applicants to submit projects for CTFP regardless of project readiness, which would waste both staff time and allows for gamification of the CTFP. Further, if a pathway applicant is first in the queue, it is possible they occupy that space for many months or years for a project that never materializes. This would discourage investment in that area by another interested fuel operator later in the queue, undermining the benefits of funding certainty that the CTFP is intended to provide.

Recommended Amendment

Tesla agrees that a time-based restriction to FSE credit eligibility is necessary to avoid awarding FSE credits to projects that intended to open without FSE credits. However, this objective can be achieved with language that clarifies projects must be open after a certain date to be eligible. Tesla suggests the Department accept pathway applications for stations that are open on or after August 1, 2026, six months after the effective date of the rule. Another date in 2026 or 2027 may also be reasonable.

Amend Section 20.2.92.303(A)(5) NMAC:

(5) FSE pathway applications shall not include any FSE units that are operational on or before the date an FSE pathway applicant submits the FSE pathway application to the department August 1, 2026.

Conclusion

We greatly appreciate the Environmental Improvement Board for considering our recommendations. We look forward to the rule's adoption and to participating in the CTFP to advance New Mexico's clean fuels program.

Sincerely,

A handwritten signature in black ink, appearing to read "Mal Skowron". The signature is fluid and cursive, with the first name "Mal" and last name "Skowron" clearly distinguishable.

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