

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

Request to Approve Project for SB 71 Sales and Use Tax Exclusion¹

**BOWERMAN POWER LFG, LLC
Application No. 10-SM001**

Wednesday, November 17, 2010

Prepared By: *Martha Alvarez*

SUMMARY

Applicant – Bowerman Power LFG, LLC

Location – Irvine, Orange County

Industry – Landfill Gas

Project – New Renewable Power Facility

Value of Qualified Property – \$9,240,000

Estimated Sales and Use Tax Exclusion Amount² – \$840,840

Application Score

Fiscal Benefits Points:	1,199
<u>Environmental Benefits Points:</u>	<u>474</u>
Net Benefits Score:	1,673

<u>Additional Benefits Points:</u>	<u>0</u>
Total Score:	1,673

Staff Recommendation – Approval

THE APPLICANT

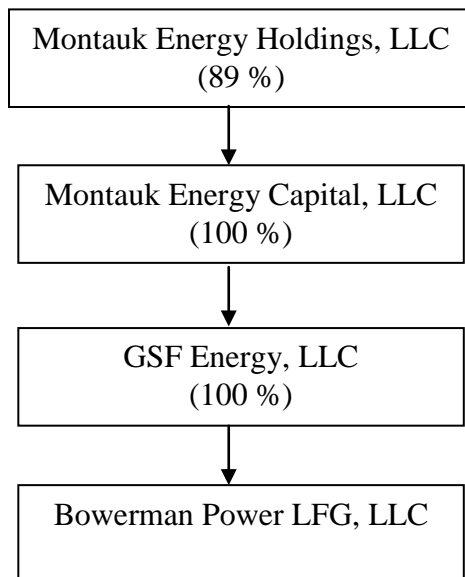
Bowerman Power LFG, LLC (“Bowerman” or the “Applicant”) is a Delaware limited liability company formed in 2008 and qualified to do business in California. Bowerman’s parent company, GSF Energy, LLC (“GSF”) currently holds the gas rights to the Frank R. Bowerman

¹ All capitalized terms not defined in this document are defined in the Program’s statute and regulations.

² This amount is calculated based off of the average statewide sales tax rate of 9.1%.

Landfill (“Landfill”). The Landfill, owned by the County of Orange, is one of the largest landfills in the United States and, according to the Applicant, receives in excess of 2,000,000 tons of waste per year. Montauk Energy Capital, LLC (“Montauk”), who owns 100 percent of GSF’s membership shares, first got involved at the Landfill when it acquired GSF in 1996. According to the Applicant, back then the Landfill was one of seven landfill gas (“LFG”) development projects in California in which Montauk possessed a financial interest. At the Landfill, Montauk, through Bowerman, has plans to develop a major electric generation project that would be one of the largest landfill gas-to-electricity projects in California and the United States, where the plant will process landfill gas into commercial grade natural gas for combustion in a series of electric turbines. The Facility will be operated at the Landfill which is located in Irvine, California.

Chain of ownership of Bowerman Power LFG, LLC is as follows:

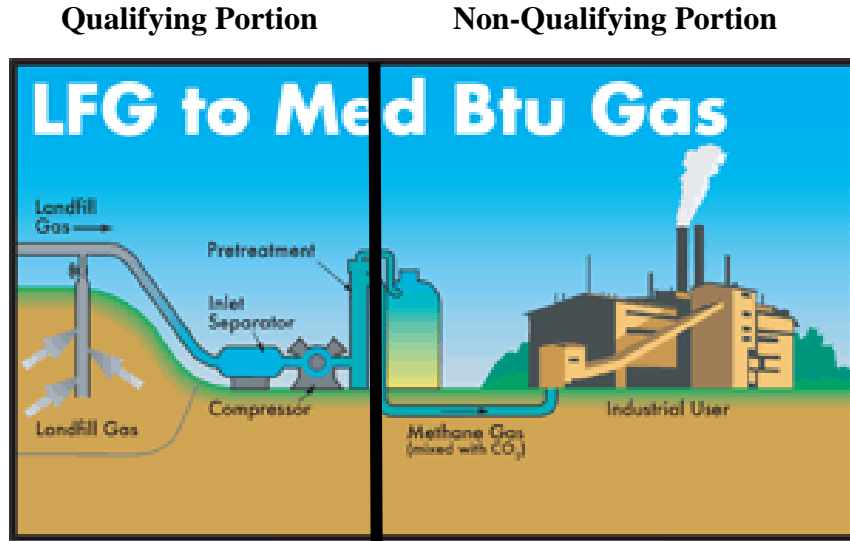


THE PROJECT

Bowerman plans to construct an initial 20 MW renewable power facility using environmentally advanced Solar Mercury 50 generation technology. The Project will be fueled entirely from LFG processed at the Landfill.

The Facility will consist of two unique processes, one being the collection and purification of the LFG, and the second being the actual generation of electricity from this fuel source. The Qualified Property, consisting of equipment to collect and clean raw LFG to a saleable medium British thermal unit (“Btu”) product for electric generation, qualifies as eligible equipment to receive the sales and use tax exclusion. The LFG is collected through a series of wells drilled into the Landfill. These wells are connected to a central header system which is currently diverted to flares for combustion.

As part of the Facility, Bowerman will construct improvements to the LFG collection system to treat the raw LFG resulting in the product meeting required specifications for combustion in the turbines. The Project will be designed to be expandable to accommodate expected substantial increases in LFG production at the Landfill over the coming decades.



Landfill Gas-to-Medium Btu Gas Processing Project at Montauk

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases are listed below:

Gas Compressors	\$3,060,000
Pre-Treatment System	2,805,000
Gas Collection System Enhancement and Piping	1,400,000
Gas Blowers and Coolers	1,390,000
Distribution Control System	510,000
Other Miscellaneous Equipment	<u>75,000</u>
Total	<u>\$9,240,000</u>

Note: The Qualified Property purchases reported in the Application and shown here in staff's report are estimated costs. At the termination of the conveyance/reconveyance agreement a finalized project equipment list will be prepared detailing the value of the Project equipment conveyed and reconveyed and detailing the actual tax benefit realized pursuant to Revenue and Tax Code Section 6010.8. Variations from the costs shown in the Application and in this report may occur prior to the closing due to increased costs of certain components of the Project from original estimates, and other reasons. In addition, such costs may vary after closing due also to

increased costs, as well as common design and equipment modifications during construction, differences in equipment due to future changes in law or regulation or for other reasons.

TIMELINE

Bowerman intends to initiate construction in the third calendar quarter of 2011. Based on current estimates, the Facility will begin commercial operations in the first quarter of 2013.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated at \$9,240,000 and the total net benefits are estimated at \$565,704 for the Project. The Project received a Total Score of 1,673, which exceeds the required 1,000 point threshold, and a total Environmental Benefits Score of 474, which exceeds the 100 point threshold.

- A. **Fiscal Benefits (1,199 points)**. The net present value of the total fiscal benefits over the lifetime of the Qualified Property is derived from the Applicant's projected sales taxes, personal income taxes paid by the Applicant's employees, corporation taxes on profits, property taxes and other indirect fiscal benefits of the Applicant which amounts to an estimated \$1,008,052, resulting in a Fiscal Benefits Score of 1,199 points for the Project.

- B. **Environmental Benefits (474 points)**. CAEATFA staff estimated that the Project will result in an environmental benefits value of \$398,492 over the life of the Facility resulting in an Environmental Benefits Score of 474 points for the Project. These benefits derive from the production of biogas, which offsets the need for use of fossil methane.

- C. **Additional Benefits (0 of 200 points)**. Applicants may earn up to 200 additional points for their final score. The Applicant submitted information and received 0 additional points.
 - 1) **Permanent Jobs (0 of 40 points)**. The Applicant's Project will support a total of 6 permanent jobs at the Facility. CAEATFA staff estimated that approximately 1 of these jobs will be attributable to a marginal increase in jobs created due to the approved sales and use tax exclusion. Zero (0) points were awarded because the marginal increase in jobs created does not meet the required threshold.

 - 2) **Construction Jobs (0 of 20 points)**. The Applicant's Project will support a total of 24 construction jobs at the Facility. CAEATFA staff estimated that approximately 2 of these jobs will be attributable to a marginal increase in jobs

created due to the approved sales and use tax exclusion. Zero (0) points were awarded because the marginal increase in jobs created does not meet the required threshold.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

Bowerman has received its air pollution environmental permit from the South Coast Air Quality Management District and is seeking a water discharge permit in order to begin construction. Prior to commercial operation, the Facility will require storm water, sewer, hazardous waste and storage tank permits.

LEGAL QUESTIONNAIRE

Staff reviewed the Applicant's responses to the questions contained in the Legal Status portion of the Application. The responses did not disclose any information that raises questions concerning the financial viability or legal integrity of this Applicant.

CAEATFA FEES

In accordance with CAEATFA regulations,³ the Applicant paid CAEATFA an Application Fee of \$4,620 and will pay CAEATFA an Administrative Fee of up to \$36,960 if approved for a sales and use tax exclusion.

RECOMMENDATION

Staff recommends approval of Resolution No. 10-SM001 for Bowerman Power LFG, LLC's purchase of Qualified Property in an amount not to exceed \$9,240,000, anticipated to result in an approximate sales and use tax exclusion value of \$840,840.

³ California Code of Regulations Title 4, Division 13, Section 10036

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A TITLE
CONVEYANCE AGREEMENT WITH BOWERMAN POWER LFG, LLC**

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”) has received the Application of **Bowerman Power LFG, LLC** (the “Applicant”), for financial assistance in the form of a conveyance/reconveyance of title agreement (the “Agreement”) regarding tangible personal property for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems (“Qualified Property”) as more particularly described in the staff summary and in the Applicant’s Application to the Authority (collectively, the “Project”); and

WHEREAS, the Applicant has requested the Authority to enter into the Agreement transferring title of Project equipment with a cost not to exceed \$9,240,000 over a period of three years; and

WHEREAS, the Agreement will provide that the Applicant will, prior to any use of the Qualified Property, transfer title at no cost to the Authority from time to time as purchases of Qualified Property are made and the Authority will then transfer title back to the Applicant without having taken possession of the Qualified Property; and

WHEREAS, the Applicant believes that this form of financial assistance will enable it to avail itself of the benefits of an exclusion from sales and use taxes relative to the Qualified Property pursuant to California Revenue and Taxation Code Section 6010.8; and

WHEREAS, approval of the terms of the Agreement and authority for the Executive Director, Deputy Executive Director or Chair of the Authority, to execute the necessary documents to effectuate the Agreement is now sought.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Project constitutes a “project” within the meaning of Public Resources Code Section 26003(g)(2).

Section 2. The requested conveyance agreement constitutes “financial assistance” within the meaning of Public Resources Code Section 26003(e)(2).

Section 3. The Applicant is a “participating party” within the meaning of Public Resources Code Section 26003(f).

Section 4. The Executive Director, Deputy Executive Director, or Chair of the Authority (the “Authorized Signatories”) are hereby authorized for and on behalf of the Authority to approve any changes to the Project as the Executive Director shall deem appropriate, provided

Agenda Item -- 4.B.1
Resolution No. 10-SM001
Application No. 10-SM001

that the amount of the Qualified Property to be purchased may not be increased above the amount approved by the Authority.

Section 5. The proposed form of the Agreement between the Applicant and the Authority, as filed with the Authority prior to this meeting, is hereby approved. The Authorized Signatories are hereby authorized and directed, for and on behalf and in the name of the Authority, to execute, acknowledge and deliver to the Applicant the Agreement in substantially the form filed with or approved by the Authority, with such insertions, deletions or changes therein as the Authorized Signatory executing the same, may require or approve, and with particular information inserted therein in substantial conformance with the staff summary and in the Applicant's Application to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof. The Authority understands and agrees that pursuant to the terms of the Agreement, the obligations of the Applicant may, under some circumstances be carried out or assumed by a successor or assignee entity, or by an affiliate of the Applicant.

Section 6. Each of the Authorized Signatories, acting alone, is hereby authorized and directed to do any and all ministerial acts, including (without limitation) the execution and delivery of any and all documents and certificates they may deem necessary or advisable in order to consummate the Agreement and otherwise effectuate the purposes of this Resolution.

Section 7. The Applicant shall assure CAEATFA that all Qualified Property conveyed pursuant to the Agreement shall be installed, maintained and operated in compliance with all applicable local, state and federal laws.

Section 8. The Agreement shall only apply to Qualified Property that the Applicant certifies will be installed, maintained and operated at facilities within the State of California.

Section 9. The adoption by the Authority of this Resolution for the Applicant shall not be referred to in any application before any governmental agency as evidence of the feasibility, practicality or suitability of the Project or in any application for any required permission or authority to acquire, construct or operate the Project.

Section 10. This Resolution is effective immediately and will remain in full force and effect unless the Regulatory Agreement, as defined in CAEATFA Regulations Section 10035(A), is not executed within thirty (30) days of the date of this Resolution. The Executive Director may extend the thirty days if necessary.