

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

***Consideration of Ameresco Forward LLC's Request to Waive a 25% Purchase Requirement
under the SB 71 Program***

Tuesday, December 13, 2011

Prepared By: *Cheryl Ide*

SUMMARY

Applicant – Ameresco Forward LLC

Location – Manteca, San Joaquin County

Industry – Landfill Gas

Project – New Landfill Gas Capture and Production Facility

Value of Qualified Property – \$2,227,596

Estimated Sales and Use Tax Exclusion Amount¹ – \$202,711

Amount of Time Requested: August 1, 2012

SUMMARY

Ameresco Forward LLC (“Forward or the “Applicant”) was approved by the CAEATFA Board on December 15, 2010 for the purchase of \$2,227,596 in Qualified Property for a landfill gas facility in Manteca, San Joaquin County. The SB 71 Program (“Program”) requires that Forward purchase 25% of the total approved Qualified Property (\$556,899) within the first year (Regulation Section 10035(c)(1)), the “25% Purchase Requirement.” This requirement serves as an indicator of readiness and assists in incentivizing timely economic activity. The 25% Purchase Requirement can be waived by the Board upon a finding that a waiver is in the public interest and advances the purposes of the program. (Regulation Section 10035(c)(1)(A)).

As of December 1, 2011 Forward had not conveyed any qualified property. On September 21, 2011, CAEATFA staff sent the Applicant a courtesy reminder of the 25% Purchase Requirement. Forward responded by requesting an extension of the 25% Purchase Requirement to August 1, 2012 to accommodate unforeseen delays due to the Project’s interconnection costs and permitting process (Attachment A).

About the Applicant

Ameresco Forward LLC is a Delaware limited liability company formed in May 2010 and qualified to do business in California. While Ameresco Forward LLC is a wholly owned

¹ This amount is calculated based on the average statewide sales tax rate of 9.1% at the time the Application was approved by the Board. The current anticipated STE is \$180,435, calculated at 8.1%.

subsidiary of Ameresco, Inc., all contracts, operational responsibility, and revenue rest with Forward.

Project Description

Forward's Application approved by the CAEATFA Board was for the construction of a project that will be used to process and manufacture raw landfill gas ("LFG") into a "green" renewable gas suitable for the purpose of producing electricity at the Forward Landfill in Manteca, California.

There are two major technology components of the process: the processing and conditioning of landfill gas to turn it into biogas, and the combustion of the biogas in either a turbine or an internal combustion engine to produce electricity. However, the sales and use tax exclusion will only be applied to eligible equipment comprising the first portion of the process. This includes piping, valves, vessels, gas skid and other items required for the processing of biogas. The LFG must be cleaned up and processed to remove water, particulates, siloxanes, and other contaminants to produce a clean "green" gas before it can be used to generate electricity for sale.

Waiver Request

Forward has requested a waiver of the 25% Purchase Requirement due to permitting delays. According to the Applicant, an air permit application to the San Joaquin Air Pollution Control District was submitted and completed in May 2011. However, the permit was delayed due to newly implemented regulations. The Applicant's planning permit has also been delayed and is still waiting to receive comments on the final language.

Forward anticipates that it will receive its Authority to Construct permit in January 2012 and is also finalizing negotiations with PG&E for the necessary interconnection agreement. The Applicant plans to order equipment and move the project at an accelerated pace once the permit issues are resolved.

Staff Evaluation

According to the Program's evaluation process at the time of Board approval, the Project is anticipated to produce a net benefit of an estimated \$112,281 with an anticipated fiscal benefit of \$277,169 and anticipated environmental benefit of \$37,823 over the life of the equipment (weighted average of 19.87 years). The approved project is anticipated to support a total of 1.2 permanent jobs and 10.25 temporary construction jobs².

The Applicant has represented the time extension will allow the project to move forward. Forward has further represented that the permitting delays were unanticipated and could not be reasonably avoided, however the Project remains the same as it was at the time of initial Board Approval. Based on the foregoing, staff believes that extending the 25% Purchase Requirement

² The partial jobs noted reflect positions that share their time between several facilities in the region.

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is consistent with the intent of the Program, is in the public interest, and advances the purposes of the Program.

Staff Recommendation: Staff recommends that the Board find it is in the public interest and advances the purposes of the Program to extend the 25% Purchase Requirement to August 1, 2012 pursuant to Regulations Section 10035(c)(1)(A).

Attachments

Attachment A: Ameresco Forward LLC's Letter Requesting Waiver

Attachment B: Staff Summary/Project Description approved by the CAEATFA Board on December 15, 2010.

**A RESOLUTION OF
CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
FINANCING AUTHORITY APPROVING A TIME EXTENSION OF THE 25%
PURCHASE REQUIREMENT**

December 13, 2011

WHEREAS, on December 15, 2010 the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”), a public instrumentality of the State of California, approved a Sales Tax Exclusion (“STE”) in the amount of \$2,227,596 of Qualified Property for **Ameresco Forward LLC** (the “Applicant”); and

WHEREAS, within one year of approval by the Authority, the Applicant must make purchases of Qualified Property totaling not less than twenty-five percent (25.0%) of the total amount listed in the approval resolution (Regulations Section 10035(c)(1));

WHEREAS, upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that the Applicant purchase at least twenty five percent (25.0%) of Qualified Property within one year of Board Approval (Regulations Section 10035(c)(1)(A)); and

WHEREAS, the Applicant has requested a waiver for the requirement to purchase 25% of Qualified Property within one year to address unanticipated and unavoidable, and extend the term from December 15, 2011 to August 1, 2012; and

WHEREAS, granting the waiver will allow the project to proceed and the state to receive the anticipated environmental and economic benefits that justified the initial approval of the project, thereby advancing both the public interest and the purposes of the program.

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

Section 1. The Authority finds that it is in the public interest and advances the purposes of the Program to waive the requirement that the first year purchases of Qualified Property are at least twenty-five percent (25.0%) of the total amount listed in the approval resolution, and extend the term to August 1, 2012.

Section 2. This resolution shall take effect immediately upon its passage.

Attachment A: Ameresco Forward LLC's Letter Requesting Waiver



October 10, 2011

Christine Solich
Executive Director
California Alternative Energy & Advanced Transportation Financing Authority
(CAEATFA)
915 Capitol Mall, Room 457
Sacramento, CA 95814

Subject: Extension Request for SB71 Expenditure Obligation of Ameresco's
Forward Landfill Gas Project:

Dear Ms. Solich:

In accordance with your letter dated September 21, 2011, Ameresco and its limited liability project entities for the subject projects hereby formally requests an extension of our Expenditure Obligations contained in the Master Regulatory and Title Conveyance the Master Regulatory Agreements for the subject projects .

We have addressed the required items below:

A request for a time extension which includes an anticipated schedule for conveying the remainder of the Qualified Property

We request a time extension to August 1, 2012 for expending a minimum of 25% of the Qualified Property amount. Attached is an updated project schedule.

An explanation for why the extension is necessary

Ameresco submitted the air permit application to San Joaquin Air Pollution Control District (SJVAPCD) in April 2011. It was deemed complete by SJVAPCD on May 5, 2011. However, the permit has been delayed due to issues with newly implemented PM2.5 regulations. The district has spent months trying to resolve the issue and has just begun working on the draft Authority to Construct (ATC). We anticipate that we will receive our ATC in January 2012.

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The air district has also delayed our Planning Permit as they have not provided their required comments to San Joaquin County in a timely manner. Final language for the Planning Permit is waiting on SJVAPCD comments.

An explanation for how the requested timeline will be met

Two of the major milestones in development of landfill gas-to-energy (LFGTE) projects are the electrical interconnection agreement and air permitting. Ameresco is currently finalizing negotiation of the interconnection agreement with PG&E. We are working closely with SJVAPCD and thus expect to have the ATC in January. As these major milestones are met we will begin to order equipment and move forward at an accelerated pace. Ameresco plans to begin ordering equipment late this year.

Any additional information to support Board approval of waiver of the Expenditure Obligation

Ameresco has continued to meet schedule milestones which are within our control including submittal of permit applications. Permitting and interconnection items are out of our direct control (in terms of timing) once submitted to permitting agencies or utilities.

We appreciate your consideration of our request for extension. Please feel free to contact me at 704.708.6048 or lnugent@ameresco.com with any questions.

Regards,



Linda Nugent
Senior Project Developer
Ameresco Inc.

Attachment B: Staff Summary at Board Approval

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

Request to Approve Project for SB 71 Sales and Use Tax Exclusion³(STE)

**AMERESCO FORWARD LLC
Application No. 10-SM022**

Wednesday, December 15, 2010

Prepared By: *Martha Alvarez*

SUMMARY

Applicant – Ameresco Forward LLC

Location – Manteca, San Joaquin County

Industry – Landfill Gas

Project – New Landfill Gas Capture and Production Facility

Value of Qualified Property – \$2,227,596

Estimated Sales and Use Tax Exclusion Amount⁴ – \$202,711

Estimated Net Benefits – \$112,281

Application Score –

Fiscal Benefits Points:	1,367
<u>Environmental Benefits Points:</u>	<u>187</u>
Net Benefits Score:	1,554

<u>Additional Benefits Points:</u>	<u>32</u>
Total Score:	1,586

Staff Recommendation – Approval

³ All capitalized terms not defined in this document are defined in the Program's statute and regulations.

⁴ This amount is calculated based on the average statewide sales tax rate of 9.1%.

THE APPLICANT

Ameresco Forward LLC (“Forward” or “Applicant”) is a Delaware limited liability company formed in May 2010 and qualified to do business in California. While Ameresco Forward LLC is a wholly owned subsidiary of Ameresco, Inc., all contracts, operational responsibility, and revenue rest with Forward.

The Forward project will be constructed at the Forward Landfill, located in Manteca, California, and will be used to process or manufacture raw landfill gas (“LFG”) into a “green” renewable gas suitable for combustion in an internal combustion engine or turbine for the purpose of producing electricity.

Forward is 100 percent owned by Ameresco, Inc. (“Parent Company”).

The major shareholders (10.0% or greater) of the Parent Corporation are:

George P. Sakellaris
CEDE & Co.

The corporate officers of the Parent Corporation are:

George P. Sakellaris – President & CEO, Chairman
David J. Anderson – EVP, Business Development & Director
Michael T. Bakas – Senior VP, Renewable Energy
David J. Corrsin – EVP, General Counsel/Secretary & Director
William J. Cunningham – Senior VP, Corporate Government Relations
Joseph P. DeManche – EVP, Engineering & Operations
Keith A. Derrington – EVP & GM, Federal Operations
Mario Iusi – President, Ameresco Canada
Louis P. Maltezos – EVP & GM, Central Region
Andrew B. Spence – CFO, VP

THE PROJECT

The Forward Landfill also consists of an older landfill, the Austin Road Landfill. Combined, the two landfills are now owned and operated by Republic Services, who is the owner of the land. Forward has a twenty-year site lease agreement for use of the property at the Forward Landfill site. The site has a 200-well active collection system, collecting upwards of 1,500 cubic feet per minute (“cfm”) of LFG expected to increase to 1,900 cfm with the addition of gas collection wells in the near future.

There are two major technology components of the process: the processing and conditioning of landfill gas to turn it into biogas, and the combustion of the biogas in either a turbine or an internal combustion engine to produce electricity. However, the sales and use tax exclusion will only be used to finance the equipment required for the first portion of the process. This includes

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pipng, valves, vessels, gas skid and other items required for the processing of biogas. The LFG must be cleaned up and processed to remove water, particulates, siloxanes, and other contaminants to produce a clean “green” gas before it can be used to generate electricity for sale.

Forward has a Gas Purchase Agreement with Republic Services, the landfill owner, for the rights to the landfill gas for a minimum of twenty years. Forward has also executed a long term Power Purchase Agreement with Silicon Valley Power for purchase of the renewable energy.

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases are listed below:

Gas blowers, rotary lobe design & discharge silencer	\$ 257,847
Gas dehydration skid-design, cooler, reheater, separator	257,329
Gas blower VFD	23,299
Gas compressor skid	447,349
Siloxane pretreatment	827,792
Air cooled glycol chiller	78,472
Gas flow metering	5,178
Glycol tank	3,179
Plant control panel and software	93,198
Methane detectors	15,533
Plant ventilation, AC equipment	75,000
Gas chromatograph and calibration gas	36,244
Plant manual and control valves	47,634
Condensate knockouts V1 and V2 with demister	25,888
V2 condensate pumps	7,766
Control integration with flare	25,888
Total	<u>\$2,227,596</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

The Applicant anticipates procuring the Qualified Property between December 2010 and August 2011. The construction phase of the Project will be from November 2011 through July 2012, with an expected commercial operation date of October 2012.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated at \$2,227,596 and the total net benefits are valued at \$112,281 for the Project. The Project received a Total Score of 1,586, which exceeds the required 1,000 point threshold, and a total Environmental Benefits Score of 187, which exceeds the 100 point threshold.

- A. Fiscal Benefits (1,367 points).** The net present value of the total fiscal benefits over the lifetime of the Qualified Property is derived from the Applicant's sales taxes, personal income taxes paid by the firm's employees, firm taxes on profits, property taxes and other indirect fiscal benefits of the Applicant which amounts to \$277,169, resulting in a Fiscal Benefits score of 1,367 points for the Project.

- B. Environmental Benefits (187 points).** The Project results in \$37,823 of total pollution benefits over the life of the Facility resulting in an Environmental Benefits Score of 187 points for the Project. These benefits derive from the production of biogas, which offsets the need for use of fossil methane.

- C. Additional Benefits (32 of 200 points).** Applicants may earn up to 200 additional points for their Total Score. The applicant submitted information and received 32 additional points.
 - 1. Permanent Jobs (0 of 40 points).** The Applicant's Project will support a total of 1.2 jobs⁵ at its Facility. CAEATFA estimates that none of these jobs will be attributable to a marginal increase created due to the approved STE. Therefore, the Applicant received 0 points for this section.

 - 2. Construction Jobs (5 of 20 points).** The Applicant's Project will support a total of 10.25 construction jobs⁶ at its Facility. CAEATFA estimates that approximately 1 of these jobs will be attributable to a marginal increase in jobs created due to the approved STE, resulting in a Construction Jobs Score of 5 points for the Project.

⁵ This is a fraction of 1 job since one full-time operator and a supervisor share their time between several plants in the region.

⁶ In addition to the ten construction jobs, there is a fraction of 1 job since there will be a health and safety officer working on a quarter time basis.

3. **Unemployment (27 of 40 points)**. The Applicant's Project is located in San Joaquin County which has an unemployment rate of 17 percent. This is above 110 percent of the statewide unemployment average which is currently 12.4 percent, resulting in an Unemployment Score of 27 points for this Project.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

The air permit application for this Project was submitted to the San Joaquin Air Quality Metropolitan District in October 2010, as was the interconnection application submitted to the Pacific Gas & Electric Company.

LEGAL QUESTIONNAIRE

Staff reviewed the Applicant's responses to the questions contained in the Legal Status portion of the Application. The Executive Director, in consultation with legal counsel, has determined that the legal issues disclosed do not affect the financial viability or legal integrity of the Applicant.

CAEATFA FEES

In accordance with CAEATFA regulations,⁷ the Applicant has paid CAEATFA an Application Fee of \$1,114 and will pay CAEATFA an Administrative Fee of \$15,000.

RECOMMENDATION

Staff recommends approval of Resolution No. 10-SM022 for Ameresco Forward LLC's purchase of Qualified Property in an amount not to exceed \$2,227,596 anticipated to result in an approximate sales and use tax exclusion value of \$202,711.

⁷ California Code of Regulations Title 4, Division 13, Section 10036

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A TITLE
CONVEYANCE AGREEMENT WITH AMERESCO FORWARD LLC**

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) has received the Application of **Ameresco Forward 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 an estimated cost not to exceed \$2,227,596 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).

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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 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 conveyance 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.