

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

Request to Approve Project for SB 71 Sales and Use Tax Exclusion (STE)¹

**ABEC Bidart-Old River LLC
Application No. 13-SM007**

June 18, 2013

Prepared By: *Sarah Taheri and Alejandro Ruiz*

SUMMARY

Applicant – ABEC Bidart-Old River LLC

Location – Bakersfield, Kern County

Industry – Dairy Biogas

Project – New biogas production facility

Value of Qualified Property – \$6,254,045

Estimated Sales and Use Tax Exclusion Amount² – \$523,463.57

Estimated Net Benefits – \$351,188

Application Score³ –

Fiscal Benefits Points:	999
<u>Environmental Benefits Points:</u>	<u>672</u>
Net Benefits Score:	1,671
<u>Additional Benefits Points:</u>	<u>20</u>
Total Score:	1,691

Staff Recommendation – Approval

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

² This amount is calculated based on the average statewide sales tax rate of 8.37%.

³ Point values in the staff summary may not add up correctly due to rounding in the Application worksheet.

THE APPLICANT

ABEC Bidart-Old River LLC (the “Applicant” or “ABEC-OR”) is a special purpose California limited liability company established by California Bioenergy LLC (“CalBio”) specifically to develop a biogas capture plant on the Bidart Family Dairy located on Old River Road in Bakersfield, California. CalBio is a California limited liability company established specifically to design, finance, develop and build California dairy biogas projects and then to own and operate them in partnership with the dairy farmers.

The principal owner of ABEC Bidart-Old River LLC is:

American Biogas Electric Company LLC
(100%)

California Bioenergy LLC (CalBio) is the sole member of American Biogas Electric Company LLC. The major shareholders (10% or greater) of CalBio are:

John Bidart, Owner
(32%)

Unigy Holdings / Ross Buckenham, Owner
(27%)

GO Ventures / Neil Black, General Manager
(27%)

THE PROJECT

ABEC-OR’s biogas production and renewable energy generation facility will be located on the Bidart Family Dairy located in Bakersfield, CA. The Applicant will install two large in-ground heated and mixed lagoon style anaerobic digester systems (“AD”) and two 1 MW Biogas Caterpillar combined heat and power (“CHP”) units (the “Project”). The AD systems will digest dairy cow manure and release biogas. The CHP units will then destroy the methane in the biogas to avoid its release into the atmosphere, and will generate energy in the form of heat for plant processing and electrical power for sale to Pacific Gas & Electric Company (“PG&E”). Waste heat from the CHP will be recovered and used as process heat in the plant.

Consistent with CAEATFA policy, the Qualified Property in this Application will be used to manufacture biogas; the Qualified Property also includes a portion of the power generation equipment used to power the facility. The Project’s equipment will consume 55 percent of the total amount of available energy generated from biogas combustion; therefore 55 percent of the power generation equipment is eligible for a sales and use tax exclusion under SB 71. However, 45 percent of the power generation equipment is not included in this Application, as it represents the proportion of available energy in the form of electricity that will be sold to Pacific Gas & Electric Company.

The CAEATFA Board previously approved an application from ABEC-OR for a similar project on November 17, 2010. The Applicant withdrew the application due to issues with securing project financing. This project differs from the previous project in two significant ways: (1) the combined heat and power (CHP) system is larger (2 MW compared to a previous 1.64 MW), and (2) construction of the facility will be completed through a contractor, whereas previously the Applicant would have completed the construction. These changes have resulted in increased costs for the Applicant, and a greater total value for the Qualified Property.

The Project has also been approved to receive funds through the U.S. Treasury Section 1603 grant program, which provides payment in lieu of a tax credit for specified energy property placed into service.

ANTICIPATED COSTS OF QUALIFIED PROPERTY⁴

The anticipated Qualified Property purchases are listed below:

Anaerobic digester system: liner, cover, mixer, traps, vents, reliefs	\$ 2,888,175
Combined heat and power engines (prorated)	\$ 1,552,133
Electronics: controllers, wires, cables	\$ 574,800
2 nd stage separators and foundation	\$ 343,451
Sand lane and 2 nd stage flush box	\$ 225,008
Air-cooled chillers and dairy equipment	\$ 150,000
Piping	\$ 142,490
Other equipment: utilities, safety, tools, communications, temperature power	\$ 126,806
Electrical building foundation and fencing	\$ 105,154
Slurry heater pad and system	\$ 84,728
CHP system foundation	\$ 23,211
Gas conditioning pad system	\$ 19,155
Buried condensate shafts	\$ 18,936
Total	<u>\$6,254,045</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

⁴ Anticipated costs of Qualified Property may not add up correctly due to rounding in the Application worksheet.

Project construction will commence in June. Construction of the facility and installation of the CHP system are expected to be complete by the end of October 2013. ABEC-OR anticipates that the Project will be online by the end of 2013.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated to be \$6,254,045 and the total net benefits are valued at \$351,188 for the Project. The Project received a Total Score of 1,691 points, which exceeds the required 1,000 point threshold and a total Environmental Benefits Score of 672 points, which exceeds the 100 point threshold.

- A. **Fiscal Benefits (999 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 \$523,038 resulting in a Fiscal Benefits score of 999 points for the Project.
- B. **Environmental Benefits (672 points)**. The Project will result in \$351,613 of total pollution benefits over the life of the Facility resulting in an Environmental Benefits Score of 672 points for the Project. These benefits derive from (a) the production of dairy biogas, which offsets the need for use of fossil fuel derived sources of energy, and (b) a reduction of methane emissions from material that would otherwise be sent to a free-venting open air storage lagoon.
- C. **Additional Benefits (20 of 200 points)**. Applicants may earn up to 200 additional points for their Total Score. The applicant submitted information and received 20 additional points.
 1. **Permanent Jobs (0 of 40 points)**. The Applicant's Project will support a total of nine permanent jobs at its Facility. CAEATFA estimates that approximately one of these jobs will be attributable to a marginal increase in jobs created due to the approved STE. Zero points were awarded because the marginal increase in jobs does not meet the required threshold.
 2. **Construction Jobs (0 of 20 points)**. The Applicant's Project will support a total of nineteen construction jobs at its Facility. CAEATFA estimates that approximately one of these jobs will be attributable to a marginal increase in jobs created due to the approved STE. Zero points were awarded because the marginal increase in jobs does not meet the required threshold.
 3. **Unemployment (20 of 40 points)**: The Applicant's Project is located in Kern County which has an unemployment rate of 14%. This is above 110%

of the statewide unemployment average which is currently 11% resulting in an Unemployment Score of twenty points for this Project.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

ABEC-OR is in the process of securing permits from the San Joaquin Valley Air Pollution Control District and Kern County, and anticipates to have permits issued by the end of June 2013. The Applicant is in the process of obtaining the appropriate water district approvals. Once the facility is constructed, the Applicant will obtain a Permission to Operate (“PTO”) from PG&E.

LEGAL QUESTIONNAIRE

Staff has 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,⁵ the Applicant has paid CAEATFA an Application Fee of \$4,273.00 and will pay CAEATFA an Administrative Fee of up to \$25,016.18.

RECOMMENDATION

Staff recommends approval of Resolution No. 13-SM007 for ABEC Bidart-Old River LLC’s purchase of Qualified Property in an amount not to exceed \$6,254,045 anticipated to result in an approximate sales and use tax exclusion value of \$523,463.57.

⁵ California Code of Regulations Title 4, Division 13, Section 10036

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A TITLE
CONVEYANCE AGREEMENT WITH ABEC BIDART-OLD RIVER LLC**

June 18, 2013

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) has received the Application of **ABEC Bidart-Old River 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 \$6,254,045 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(a)(8)(B).

Section 2. The requested conveyance agreement constitutes “financial assistance” within the meaning of Public Resources Code Section 26003(a)(6).

Section 3. The Applicant is a “participating party” within the meaning of Public Resources Code Section 26003(a)(7).

Agenda Item – 4.A.1.
Resolution No. 13-SM007
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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.