

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

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

**Bowerman Power LFG, LLC
Application No. 14-SM022**

Tuesday, December 16, 2014

Prepared By: *Ashley Bonnett*

SUMMARY

Applicant – Bowerman Power LFG, LLC

Location – Irvine, Orange County

Industry – Landfill Gas Capture and Production

Project – New Landfill Gas Capture and Production Facility

Value of Qualified Property – \$7,030,000

Estimated Sales and Use Tax Exclusion Amount² – \$591,926

Estimated Net Benefits – \$773,589

Application Score³ –

Fiscal Benefits Points:	1,844
<u>Environmental Benefits Points:</u>	<u>462</u>
Net Benefits Score:	2,307

<u>Additional Benefits Points:</u>	<u>60</u>
Total Score:	2,367

Staff Recommendation – Approval

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

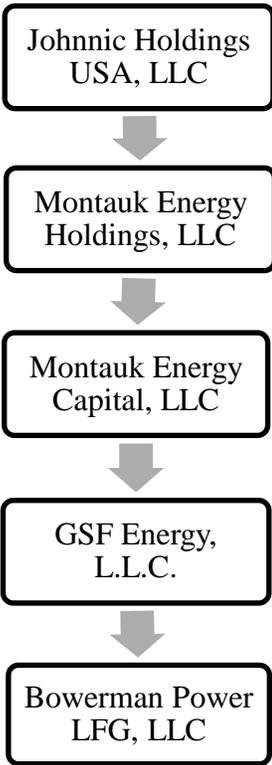
² This amount is calculated based on the average statewide sales tax rate of 8.42%.

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

THE APPLICANT

Bowerman Power LFG, LLC (“Bowerman” or the “Applicant”) is a Delaware limited liability company that organized in 2008 for the purpose of developing, constructing, and operating an electric generation facility at the Frank R. Bowerman landfill (the “Bowerman Landfill”) in Irvine.

The chain of ownership of Bowerman Power LFG, LLC is as follows:



The corporate officers of Bowerman Power LFG, LLC are:

- David R. Herrman, President
- Sean F. McClain, Chief Financial Officer
- Martin L. Ryan, Vice President and Secretary
- George R. O’Mahony, Vice President
- Christopher A. Davis, Vice President
- Scott E. Hill, Vice President

The Applicant previously received a STE award from the CAEATFA Board on November 17, 2010, for a landfill gas capture and production facility at the Bowerman Landfill. In order to accommodate delays in permitting related to a threatened species inhabiting the project site, the Board approved a one-year extension of the requirement that applicants purchase 25% of the total approved Qualified Property within the first year (“25% Purchase Requirement”)⁴. On November 13, 2012, the Board approved a second extension of the 25% Purchase Requirement from November 17, 2012 to September 30, 2013, and also extended the three year purchase requirement from November 17, 2013 to December 31, 2013 as a result of unexpected delays in negotiating and executing a power purchase agreement. The Applicant’s Master Agreement was terminated on October 3, 2013, because the Bowerman project was not moving forward and did

⁴ Former regulation Section 10035(c)(1).

not meet the 25% Purchase Requirement, due to the lack of an executed power purchase agreement.

THE PROJECT

The Applicant plans to construct an initial 20 MW renewable power facility at the Bowerman Landfill, one of the largest landfills in the United States. The Applicant represents that the Bowerman Landfill receives more than 2,000,000 tons of waste per year, and that the landfill gas is currently collected through a series of wells drilled into the landfill and then combusted through a system of flares pursuant to South Coast Air Quality Management District (“SCAQMD”) regulations. The Applicant plans to make improvements to the existing landfill gas collection system to maximize gas recovery and then divert the landfill gas from the flares to a new treatment system that will remove pollutants and particulates from the raw landfill gas to produce landfill gas suitable for combustion in engines (the “Project”). The landfill gas produced by the Project will be combusted to produce electricity that will be sold to the City of Anaheim under a power purchase agreement that the Applicant represents was executed in March 2014 and will remain in effect for 20 years after commercial startup.

Consistent with CAEATFA policy, the Qualified Property in this Application will be used to produce landfill gas. The Project will be fueled entirely by the landfill gas produced by the Project. None of the facility’s power generation equipment is included in this Application as the electricity generated will be sold to the City of Anaheim.

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases are listed below:

Gas Compressors and Chillers	\$ 3,455,000
Sulfur Removal System	1,250,000
Siloxane Removal System	1,875,000
Gas Monitoring Equipment	250,000
Facility Improvement Equipment	<u>200,000</u>
Total	<u>\$ 7,030,000</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 master regulatory agreement a finalized project equipment list will be prepared detailing the value of the Project equipment acquired and detailing the actual tax benefit realized pursuant to Revenue and Tax Code Section 6010.8. Variance 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) over 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 represents that initial project development began in April 2014, and that after final air permits were secured and construction financing closed in October 2014, orders for the long lead-time equipment have been released. The Applicant anticipates site construction and equipment installation to begin between December 2014 and January 2015, with commercial operation to commence by December 2015.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated to be \$7,030,000 and the total net benefits are valued at \$773,589 for the Project. The Project received a Total Score of 2,367 points, which exceeds the required 1,000 point threshold and a total Environmental Benefits Score of 462 points, which exceeds the 100 point threshold.

- A. **Fiscal Benefits (1,844 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 \$1,091,792 resulting in a Fiscal Benefits score of 1,844 points for the Project.

- B. **Environmental Benefits (462 points)**. The Project will result in \$273,723 of total pollution benefits over the life of the Facility resulting in an Environmental Benefits Score of 462 points for the Project. These benefits derive from the production of biogas, which offsets the need for use of fossil methane.

- C. **Additional Benefits (60 points)**. Applicants may earn additional points for their Total Score. The applicant submitted information and received 60 additional points.
 - 1. **Permanent Jobs (20 of 75 points)**. The Applicant's Project will support a total of six 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 resulting in a Permanent Jobs Score of 20 points for the Project.

 - 2. **Construction Jobs (40 of 75 points)**. The Applicant's Project will support a total of 24 construction jobs at its Facility. CAEATFA estimates that approximately two 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 40 points for the Project.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

The Applicant represents that the SCAQMD air pollution environmental permit has been secured. The Applicant anticipates receiving the required grading permit by the end of December 2014 and the building permit in early 2015. The Applicant expects to obtain the remaining permits, including storm water, sewer, hazardous waste and storage tank permits, by December 2015.

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,⁵ the Applicant has paid CAEATFA an Application Fee of \$3,515 and will pay CAEATFA an Administrative Fee of up to \$28,120.

RECOMMENDATION

Staff recommends approval of Resolution No. 14-SM022 for Bowerman Power LFG, LLC’s purchase of Qualified Property in an amount not to exceed \$7,030,000 anticipated to result in an approximate sales and use tax exclusion value of \$591,926.

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

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A MASTER
REGULATORY AGREEMENT WITH BOWERMAN POWER LFG, LLC**

December 16, 2014

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) has received the Application of Bowerman Power LFG, LLC (the “Applicant”), for financial assistance in the form of a master regulatory agreement (the “Agreement”) regarding tangible personal property utilized in an Advanced Manufacturing process or 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 to acquire Project equipment with an estimated cost not to exceed \$7,030,000 over a period of three years; 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 master regulatory 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).

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.

Agenda Item – 4.A.1
Resolution No. 14-SM022
Application No. 14-SM022

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 listed in the semi-annual reports 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.