CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY

Consideration of Request to End the Additional Reporting Requirements for Tesla, Inc. Under Resolutions No. 17-SM003, No. 18-SM004, and No. 19-SM008

Tuesday, March 17, 2020

Prepared By: *Ashley Emery, Program Manager*

SUMMARY

Under the Sales and Use Tax Exclusion ("STE") Program, 3 out of over 200 Applicants have extra or ad hoc reporting requirements above and beyond the Program's standard reporting requirements in regulations that have been recommended by CAEATFA staff ("Staff") or requested by the CAEATFA Board for a variety of reasons over time.[1]

Tesla is one of those Applicants, and it recently submitted a request to remove these additional reporting requirements for its series of Model 3 awards (see Attachment A), which are scheduled to end on April 16, 2022.

BACKGROUND

Under three out of the four awards CAEATFA has approved to support Tesla's Model 3 project ($1.2 Billion in equipment, and $98 Million STE over time since 2016), the CAEATFA Board imposed quarterly reporting requirements that are above and beyond the reporting requirements for all other approved Applicants.

Tesla must report in person and in writing every four months for a period of three years after the date of Board approval with regard to the following:
1) Progress in meeting its production goals;
2) Progress in improving the health and safety at its facilities; and
3) Provide an updated Legal Status Questionnaire

These reporting requirements were first imposed in March 2018, with Tesla's first report given in July 2018. Attachment B includes the Staff Report from March 2018, which outlines several of the concerns raised by Board members, and Staff's analysis and review of Tesla's response as part of its evaluation.

At the time the additional reporting was established, Tesla was behind in its production schedule and facing substantive challenges and delays, which was broadly covered in the media, and was reflected in their modified Applications. There were also a number of reports of health and safety issues and unfair labor practices that were raised in Tesla's own Legal Status Questionnaire, as well as reported by various media and raised by labor advocates.

[1] (1) Tesla reports 3x a year, as established in March 2018. (2) Faraday reports 2x a year as required by the Board in April 2018. (3) California Ethanol and Power must report on its progress as required in November 2019, due to project viability concerns.

The reporting requirements were recommended by Staff in response to the various Board members' concerns at the time, which included, but are not limited to:

- Given the overall size of the award, and it being such a substantive amount of financial assistance by the State, the award should have additional oversight and higher standards compared to other awards.
- Delayed production schedule from Tesla's initial application (submitted in 2015), in addition to the substantive media coverage and the financial market's response to Tesla's delays.
- Health and Safety issues raised in the media and by labor advocates.
- Unfair labor practices raised by workers, various media outlets, and labor advocates.
- Tesla's participation and collaboration in various contractor diversity efforts at the California Public Utilities Commission ("CPUC").

Since the reporting requirements began:

- The Model 3 project is up and running, with 100% of the equipment approved under the Model 3 awards being purchased.
- Tesla has demonstrated a stronger commitment and engagement on health and safety issues, noting that mistakes have been made and its goal is continued improvement. Given the complexity and limitations of how health and safety metrics are collected, Staff has not been able to confirm assertions that Tesla's safety record is an outlier in the industry. To address this, Staff is pursuing a Memorandum of Agreement with the California Department of Industrial Relations to help assist in its assessment of disclosures in Applicants' Legal Status Questionnaires as well as other independent data.
- Labor complaints continue to be evaluated by the National Labor Relations Board, with some complaints being dismissed while others have been further investigated and are in the process of being adjudicated. The parties are currently in an appeal phase, and a specific date for resolution is unknown.
- Tesla has reported that it is actively participating in the CPUC diversity efforts.

Staff has identified a few options the CAEATFA Board may consider with regard to Tesla's request to end the additional reporting requirements, including:

1) Terminate the reporting requirements if they are deemed to be no longer necessary.
2) Modify the reporting requirements (e.g. report less frequently or only provide a written report).
3) Retain the reporting through April 16, 2022.

ATTACHMENTS

Attachment A:	Tesla, Inc.'s request to remove reporting requirements under Resolutions 17-SM003, 18-SM004, and 19-SM008
Attachment B:	Staff report for Resolution No. 17-SM003 from the March 20, 2018 Board meeting

Attachment A: Tesla, Inc.'s Request to Remove Reporting Requirements under Resolutions 17-SM003, 18-SM004, and 19-SM008

February 11, 2020

Ms. Deana Carrillo, Executive Director
CAEATFA
915 Capitol Mall, Room 538
Sacramento, CA 95814

Dear Ms. Carrillo:

As you know, Tesla has been providing progress reports to the CAEATFA Board every four months since July 17, 2018, as a condition of our Model 3 Sales Tax Exclusion (STE) award. Tesla is one of only three STE applicants to provide such reports. The topics covered in these updates include:

1. Progress in meeting Model 3 production goals;
2. Progress in improving health and safety at its facilities; and
3. An updated Legal Status Questionnaire.

CAEATFA requested these regular updates during a time when the Model 3 production ramp was at the steep part of the "S" curve and were designed to provide CAEATFA with regular updates on the progress made on this transformational vehicle as well as our progress in ensuring the health and safety of our employees. As evidenced by these reports, Tesla has made remarkable progress in meeting its production goals and continuing to enhance the health and safety of our employees.

As we recently reported during our Q4 earnings call, 2019 was a turning point for Tesla. We produced over 300,000 Model 3s, a 42% increase from 2018, while reducing our injury rate our rate per vehicle produced by more than 50% compared to 2018. Our associates also spent less time away last year from work due to injury or illness. Importantly, a review by the California Division of Occupational Safety and Health of the last five years of Tesla's injury and illness records found a 99% accuracy in our record keeping.

Due to these improvements and the fact that all purchases of qualified property for our Model 3 program have been made, we respectfully request that the progress report that we will provide at the Board meeting on March 17, 2020 be our final report. While we believe there has been some value in presenting this information, we believe Tesla should be treated like the large majority of STE awardees.

Sincerely,

Mark Olson
Senior Director, U.S. Tax

TESLA

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Attachment B: Staff Report for Resolution No. 17-SM003 from the March 20, 2018 Board Meeting

CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY

Request to Approve Project for Sales and Use Tax Exclusion (STE)[2]

Tesla, Inc. (FKA Tesla Motors, Inc.)
Application No. 17-SM003 (Amended)

Tuesday, March 20, 2018

Prepared By: *Melanie Holman, Program Analyst*

SUMMARY

Applicant – Tesla, Inc. (FKA Tesla Motors, Inc.)

Location – Fremont, Alameda County; Palo Alto, Santa Clara County; Hawthorne, Los Angeles County; Lathrop, San Joaquin County

Industry – Electric Vehicle Manufacturing

Project – Expansion of Electric Vehicle Manufacturing Facilities (Advanced Transportation)

Currently Recommended for Approval
Value of Qualified Property – $287,322,328 **Estimated STE Amount[3] –** $24,192,540 **Estimated Quantifiable Net Benefits[4]** – *($398,467)*
Total Project
Value of Qualified Property – $1,169,260,000 **Estimated STE Amount –** $98,451,692 **Estimated Quantifiable Net Benefits** – *($1,621,562)*

[2] All capitalized terms not defined in this document are defined in the Program's statute and regulations.
[3] STE amount is calculated based on the average statewide sales tax rate used by CAEATFA at the time this Application was conditionally approved, 8.42%.
[4] Estimated net benefits are calculated based on the Application scoring parameters used by CAEATFA at the time this Application was conditionally approved. Some of these parameters, including the applicable estimated STE rate, are different than the parameters under which Tesla's Application No. 18-SM004 was scored, which was calculated based on the updated scoring parameters adopted by CAEATFA at the December 19, 2017 Board meeting.

Application Score[5] –

Fiscal Benefits Points:	868
Environmental Benefits Points:	116
Net Benefits Score:	**984**
Additional Benefits Points:	37
Total Score:	**1,020**

Statute limits CAEATFA to granting up to $100 million in sales and use tax exclusion per calendar year. An Application for the same Tesla Model 3 project was first approved at the December 2016 Board meeting. The December 2016 award of $47,229,218 was for the remaining STE available under the $100 million annual limit once all other December 2016 STE Applications were approved. Because the $47,229,218 awarded in December 2016 only represented 48% of Tesla, Inc.'s (FKA Tesla Motors, Inc.) ("Tesla" or the "Applicant") request, the Applicant applied and was approved in January 2017 for 2017 award allocation under the new STE Program regulations, which set a cap of $20 million of STE per project with the possibility to receive additional financial assistance if any STE remained at the end of the calendar year.[6]

On November 14, 2017, the Board voted to make available to qualified applicants any STE remaining from the $100 million statutory cap after all Applications submitted for the 2017 calendar year had been considered, which was $4,192,540 in STE or $49,792,637 in Qualified Property. Tesla was the only applicant that requested additional STE.

On December 19, 2017, the Board conditionally approved Tesla's request to amend the resolution passed January 2017 and increase the amount of Qualified Property to $287,322,328, approximately 24.57% of the total $1.17 billion requested for an estimated STE value of $24,192,540. Staff is now bringing the request to the Board for final approval.

Because Application scoring is linear, Staff estimates the State will receive approximately 24.57% of the fiscal and environmental benefits attributable to the $1.17 billion request. Based on this assumption, the State will receive an estimated -$398,467 in net benefits for this Application. Although the cumulative fiscal and environmental benefits fall short of the estimated STE amount, resulting in a negative net benefit, the Project received additional employment and environmental related benefits that are not quantifiable in fiscal terms, and which increase the Total Score above the qualifying threshold.[7]

Staff Recommendation – Conditional approval, pursuant to conditions outlined under Recommendation

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[5] Point values in the staff summary may not add up correctly due to rounding in the Application worksheet.
[6] California Code of Regulations Title 4, Division 13, Section 10032
[7] California Code of Regulations Title 4, Division 13, Section 10033(c)(6)

THE APPLICANT

Tesla was incorporated in 2003 in Delaware and is headquartered in Palo Alto, California. Tesla designs, manufactures and sells electric vehicles and electric vehicle powertrain components. Tesla's products include the Model S sedan and the Model X crossover, and previously included the Roadster, which concluded production at the end of 2012. Tesla is a publicly traded company on the NASDAQ under the symbol TSLA.

The major shareholders (10.0% or greater) of Tesla, Inc. are:	The corporate officers of Telsa, Inc. are:
Elon Musk	Elon Musk, CEO Deepak Ahuja, CFO Jeffrey B. Straubel, CTO Doug Field, SVP

BACKGROUND

Tesla has benefited from six previous STE awards, the first of which was granted by CAEATFA on October 28, 2009, prior to the establishment of the existing STE Program, for up to $320 million for the equipment and tooling required for the production of its Model S sedan and for powertrain components it manufactured for Daimler AG and, previously, for the Tesla Roadster. This award represented an estimated $29 million in STE. Tesla has since exhausted the entirety of its award, and the agreement terminated on December 31, 2013.

The second Tesla award was granted by CAEATFA on December 13, 2011 for up to $292 million for equipment and tooling required for the development and production of the Tesla Model X and the expansion of manufacturing activities for electric vehicle powertrain components, including those sold to Toyota. This award represented an estimated $24 million in STE. Tesla has since exhausted the entirety of its award, and the purchase agreement terminated on December 31, 2015.

The third Tesla award was granted by CAEATFA on December 17, 2013 for up to $415 million for equipment and tooling required for the expansion of Model S manufacturing capabilities, the expansion of electric vehicle powertrain production, and the continuous development of the Model S program for future electric vehicle development. This award represented an estimated $35 million in STE. Tesla has since exhausted the entirety of its award, and the purchase agreement terminated on December 17, 2016.

The fourth Tesla award was granted by CAEATFA on December 15, 2015 for up to $463,625,000 for equipment and tooling required to expand the production of its Model S and Model X electric vehicles. This award represented an estimated $39 million in STE. Tesla has since exhausted the entirety of its award with a final transaction report submitted to CAEATFA staff on May 15, 2017.

Tesla first submitted an application on November 16, 2015 for the purchase of $1,169,260,000 in equipment and tooling required for the development and production of the Tesla Model 3, the same project under consideration and described below. On December 13, 2016, the CAEATFA Board approved Tesla to purchase up to $560,917,080 in Qualified Property for the Model 3 project. Tesla has since exhausted the entirety of its award with a final report submitted to

CAEATFA staff on January 31, 2018.

Because the December 2016 award only represented 48% of Tesla's request, the Applicant applied for 2017 award allocation under the new STE Program regulations imposing a $20 million in STE cap per calendar year. Tesla was approved by CAEATFA on January 17, 2017 for up to $237,529,691 in Qualified Property. On December 19, 2017, the Board conditionally approved an amendment to this award to increase the amount of Qualified Property to $287,322,328 pursuant to Program Regulation Section 10032(a)(4)(A). Staff is now bringing the request to the Board for final approval.

Additionally, Tesla submitted an Application for up to $239,234,449 in Qualified Property under the 2018 calendar-year award allocation, as $370,813,229 in Qualified Property still remains under the total Model 3 project. This request is up for consideration at this Board meeting under Agenda Item – 4.A.3.

Figure 1: Tesla, Inc. Awards to Date

Board Meeting	Project	QP Amount	QP Purchases Reported	Estimated STE Awarded	Estimated STE Used
10/28/2009	Model S	$320,000,000	$320,000,000	$26,600,262	$26,600,262
12/13/2011	Model X	$292,000,000	$291,889,530.09	$23,652,000	$24,546,044.83*
12/17/2013	Model S Expansion	$415,000,000	$414,840,044.17	$34,735,500	$34,929,531.72*
12/15/2015	Models S and X Expansion	$463,625,000	$463,622,419.75	$39,037,225	$39,037,007.74
12/13/2016	Model 3	$560,917,080	$560,876,583.63	$47,229,218	$46,889,282.34
01/17/2017	Model 3	$237,529,691	$156,099,313.39**	$20,000,000	$13,049,902.60**
	Totals:	**$2,289,071,771**	**$2,207,327,891.03**	**$191,254,205**	**$185,052,031.23**

*Estimated STE Used is greater than the Estimated STE Awarded because the average statewide sales and use tax rate increased from 8.37% to 8.42% in 2014.
**Semi-annual reports for the second half of calendar year 2017 are still under review.

<u>THE PROJECT</u>

Tesla is requesting an STE award to expand its body shop, stamping line, vehicle assembly, plastics shop, production control, tooling, and prototyping to design and manufacture the newest model in Tesla's line of fully electric vehicles, the Model 3 (the "Project"). On March 31, 2016, Tesla unveiled the Model 3, a lower-priced sedan designed for the mass market, with a starting base price of $35,000. Pre-orders for the Model 3 have begun, and the Applicant represents Model 3 deliveries began in July 2017.

Tesla anticipates spending approximately $1.17 billion to support the design, development, and prototyping of the Model 3, primarily to expand its factory in Fremont. Tesla represents the Project will launch the first phase of production on the Model 3 and provide the capacity to produce and deliver approximately 250,000 units per year once the Project is ramped, in addition to its Model S and Model X production. Tesla also represents that production of the Model 3 will support an additional 4,113 new manufacturing jobs. The current projections in the Application are consistent with the most recent information provided to investors.

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases for the total Model 3 project are listed below:

Tooling	$ 49,060,000
Body Shop Equipment	376,000,000
Vehicle Assembly Equipment	284,500,000
Fremont Material Flow	161,000,000
Press Equipment	80,000,000
Paint Shop	85,000,000
Returnable Packaging	14,700,000
Seat Assembly	35,000,000
Manufacturing Test Equipment	32,000,000
Plastic Shop Equipment	24,000,000
Facility Improvements	16,000,000
Seat Frame Welding Line	12,000,000
Total	**$1,169,260,000**

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

Tesla represents that equipment orders began in early 2016 and that application approval would accelerate the pace of investment. The Applicant also represents that Model 3 deliveries to customers began in July 2017. According to the Applicant, the Model 3 has faced delays due to production bottlenecks stemming from issues encountered at the Applicant's Gigafactory 1, where the battery packs for Tesla's vehicles are assembled. Tesla represents that production has been slowing ramping up and it expects to reach a production rate of 5,000 units per week by the end of the second quarter of 2018.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated to be $1,169,260,000 and the total quantifiable net benefits are valued at -$1,621,562 for the Project. Although the cumulative fiscal and environmental benefits fall short of the estimated STE amount, resulting in a negative net benefit, the Project received additional employment and environmental related benefits that are not quantifiable in fiscal terms, and which increase the Total Score above the qualifying threshold.[8] The Project received a Total Score of 1,020 points, which exceeds the required 1,000 point threshold, and a total Environmental Benefits Score of 116 points, which exceeds the 20 point threshold.

A. **Fiscal Benefits (868 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 $85,449,549 resulting in a Fiscal Benefits score of 868 points for the Project.

B. **Environmental Benefits (116 points).** The Project will result in $11,380,582 of total pollution benefits over the life of the Project resulting in an Environmental Benefits Score of 116 points for the Project. These benefits derive from the manufacturing of electric vehicles since these vehicles deliver a net reduction in energy consumption and CO2 emissions relative to a comparable gasoline powered vehicle.

C. **Additional Benefits (37 points).** Applicants may earn additional points for their Total Score. The Applicant submitted information and received 37 additional points.

   1. **Permanent Jobs (30 of 75 points).** The Applicant represents that the Project will support a total of 4,113 permanent jobs at its Facility. CAEATFA estimates that approximately 175 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 30 points for the Project.

[8] California Code of Regulations Title 4, Division 13, Section 10033(c)(6)

2. **Construction Jobs (0 of 75 points).** The Applicant represents that the Project will support zero construction jobs at its Facility.

3. **Non-CA Environmental Benefits (7 of 40 points).** The Applicant's total value of out-of-state non-greenhouse gas pollution benefits are valued at $1,280,266 resulting in a Non-CA Environmental Benefits Score of seven points for the Project.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

Permits and necessary approvals for all four sites have already been obtained.

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.

SUMMARY OF STAFF ANALYSIS SINCE DECEMBER 2017 BOARD MEETING

On December 19, 2017, the Board approved CAEATFA Staff's recommendation of an amendment to Resolution No. 17-SM003 for Tesla's purchase of Qualified Property in an amount not to exceed $287,322,328 anticipated to result in an approximate sales and use tax exclusion value of $24,192,540, subject to the following conditions:

1. The Applicant must clarify the basis for the updated estimated job and production calculations, as well as what factors have contributed to the reduced numbers and what the Applicant is doing to address any production delays, as may be requested by Staff to complete its review of the updated information.

2. Staff must continue its due diligence of the revised legal status questionnaire and make a determination as to whether the disclosures affect the financial viability or legal integrity of the Applicant.

Since the December 2017 Board meeting, the Applicant has responded to all of Staff's inquiries, enabling Staff to complete its review of the Application.

Changes in Job and Production Numbers and Project Timeline

The Applicant has represented to CAEATFA that job and production numbers from the initially submitted November 2015 Application to the November 2016 and January 2017 approved Applications primarily changed because Tesla originally believed the $1.17 billion investment would be able to produce the target rate of 10,000 vehicles per week, but eventually determined that the equipment would enable the company to achieve a production rate of only 5,000 a week, therefore the production numbers, and correspondingly, the job numbers, were reduced. Since the January 2017 Application, the estimated average number of jobs has increased from 3,249 to 4,113. The estimated production numbers have decreased, which Tesla represents is due to production beginning later than originally projected.

Tesla states that, once the company completes Phase 1, it plans to make the investments necessary to implement Phase 2 of the Model 3 program to achieve a production rate of 10,000 vehicles per week.

The Applicant also represents that the recent firings reported by the media were related to annual performance reviews and did not affect the Model 3 job projections as they were irrelevant to the production of the Model 3. The Applicant states that the Model 3 employment positions in the Application are newly created specifically for the Model 3, and are still being filled.

As for production delays, the Applicant states that the primary production delay was due to the battery module assembly line at the Gigafactory 1, where battery cells are packaged into modules. According to Tesla, the combined complexity of module design and its automated manufacturing process has taken this line longer to ramp than expected, primarily as a result of needing to take over and redesign the first two zones of a four zone process, key elements of which were done by manufacturing systems suppliers. The Applicant represents that in the last seven working days of 2017, it made 793 Model 3 vehicles, and in the beginning of January 2018 hit a production rate on each manufacturing line that extrapolates to over 1,000 Model 3 vehicles per week. According to Tesla, the company currently expects to achieve a production rate of 5,000 Model 3 vehicles per week by the end of Q2 2018. While these production estimates may appear to be ambitious in comparison to Tesla's previous models and in light of the Model 3 production delays, the information is consistent with what the Applicant has provided to its investors.

Worker Safety

In its LSQ, Tesla identified several incidents of serious harm and explained the steps taken to prevent these injuries in the future. Tesla represents additional changes to address safety issues have included:

1. Adding a third shift to reduce the overtime burden on team members.

2. Creating a safety team for each department that meets monthly

3. Increasing safety awareness throughout the factory for example, all new manufacturing employees must participate in a week-long training program where they learn the essentials of production, safety, ergonomics, and Tesla teamwork. They are also required to complete a hands-on, simulated training program before working in the factory.

4. Hiring a Vice President of Environmental Health and Safety who will create new programs and lead a team committed to achieving the company's safety goals.

Additionally, according to Tesla, nearly two-thirds of its recordable incidents at the factory involve ergonomic issues caused by repetitive tasks, therefore the Applicant hired its first dedicated ergonomist in 2013 and established an ergonomics team in 2015 that is exclusively focused on improving health and safety and reducing ergonomic risk for current and future production. Tesla also represents that the Applicant has improved the process of building the Model S and X and designing the Model 3 specifically with ergonomics in mind. Tesla represents that an automated rotation system for rotating workers on the assembly floor will be rolled out by mid-2018. The Applicant maintains that this program is a priority.

The organization Worksafe, Inc., wrote about the safety issues at Tesla's Fremont facility in a May 24, 2017 report[9] claiming that the facility had a higher Total Recordable Incidence Rate ("TRIR") and a higher rate of serious injuries compared to the industry-wide standard. Addressing this report, Tesla pointed out that the data used to reach this conclusion is out-of-date, and does not reflect the current reality at the company's factory. According to Tesla, the Applicant has focused on continuous improvement and taken several steps to enhance safety. Tesla represents that, based on its data through the end of the year, the Applicant expects its 2017 TRIR at the Fremont facility to be almost exactly at industry average (based on the latest publicly available industry-wide data). The U.S Bureau of Labor Statistics has not yet released final industry-wide injury rates for 2017 – this report is typically released toward the end of the following year. Additionally, Tesla represents that the factory's 2017 TRIR of 6.2 is less than half of the average TRIR of the NUMMI plant from 2003-2009 of 12.6.

Tesla has represented that it is committed to making improvements and intends to make its facility the safest in the industry. Staff's search of Tesla's California facilities on OSHA's website found only two accidents over the last two years. Tesla has also detailed additional steps the Applicant will be making to improve employee safety, including hiring a new medical director to oversee its expanded 24/7 in-house medical center, and implementing an early intervention program with athletic trainers who will work proactively with employees to address aches and pains before they become injuries.

California Public Utilities Commission Utility Supplier Diversity Program Participation

At the December 19, 2017 Board meeting, Board member Michael Picker, President, Public Utilities Commission ("CPUC"), expressed concern over Tesla's failure to participate in the CPUC's efforts to begin a dialogue with the diversity communities to support the dissemination of contracts to diversified community contractors. Staff requested that Tesla provide an update of its participation efforts. The Applicant states that its new Senior Director for Diversity, Felicia Mayo, is leading the company's work on this effort, and that its gathering data and conducting an internal assessment of the company's existing supplier network to understand the level of diversity and to identify opportunities, including when existing contracts end.

The Applicant further states that in November 2017, Ms. Mayo and a member of Tesla's policy team met with Mr. Picker and his staff about supplier diversity and workforce diversity, and have since followed up with CPUC staff about the supplier diversity program and about how best to communicate with participants in the program about the company's needs and how to include participants in solicitations or procurement opportunities. The Applicant represents that in December 2017, Ms. Mayo and a senior leader in its Finance Department participated in a solar industry-sponsored CFO networking event with finance companies led by diverse individuals. At which connections were made and a follow-up meeting with one participating finance company already has occurred.

Tesla represents that the company has contracts with at least two vendors who participate in the CPUC's Utility Supplier Diversity Program. The Company represents that it is in the process of

[9] See Worksafe, Inc. report dated May 24, 2017

identifying additional vendors and that it plans to schedule the first set of meetings with those vendors by the end of the first quarter of 2018, and that the Applicant will host a supplier diversity day at Tesla in Fremont later this year. In addition, Tesla states that it will be participating in the CPUC-organized supplier diversity event in Long Beach in April 2018.

Unfair Labor Practices, Discrimination and Harassment

In light of recent media reports regarding Tesla and allegations of unfair labor practices, racial and gender discrimination, and sexual harassment, Staff requested information from Tesla regarding these claims. Although these cases generally are not within the scope of the Legal Status Questionnaire unless they may have a material impact on the financial viability of the project, Tesla provided responses to Staff's request for additional information on these allegations.

Tesla represents that several Unfair Labor Practice ("ULP") charges have been filed against the Applicant in the past year, which are pending before the National Labor Relations Board ("NLRB"). According to Tesla, because these matters are being adjudicated by the NLRB, out of respect for the NLRB process, the Applicant cannot comment on the proceedings other than to say that the claims lack merit. The Applicant also maintains that allegations of retaliation against employees who spoke out against the Applicant or engaged in union-related activities during the 2017 annual reviews are untrue. Tesla states that 98% of its employees' performances met or exceeded expectations, and 20% received promotions and advancement, plus opportunities for additional compensation and equity awards. Tesla represents that the vast majority of the departures, which amounted to 700 employees out of a company of 33,000, were from sales and administrative positions, not manufacturing positions at the Fremont facility, and that the overall attrition rate of 2017 was comparable to 2016. Tesla further represents it plans to backfill the majority of the positions. To further assess whether the attrition rates were atypical, Staff asked Tesla to provide information on its attrition rates for previous years. According to Tesla, attrition rates have been within 2% between 2012 and 2017, with the exception of 2013 which was 3% lower than 2012.

Tesla represents that claims of discrimination and harassment are inevitable in a company of over 30,000 employees and that these cases are without merit and has represented to CAEATFA that it intends to dispute these cases in court. The Applicant also represents that it requires all employees to attend anti-discrimination courses and that any allegations or complaints are investigated and addressed by a dedicated team. Additionally, Tesla represents that it has sponsored employee groups made up of female and LGBTQ employees, and has become one of the largest employers of veterans in the State of California. According to Tesla, the company has scored 100% on the Human Rights Campaign's Corporate Equality Index for the past two years.

As the matters regarding alleged unfair labor practices, harassment, and discrimination, as well as the other disclosed lawsuits or investigations are all still pending, and given the concerns over production delays, Staff is recommending conditional approval of Tesla's request, subject to some additional reporting requirements that would be included in the Master Agreement between CAEATFA and Tesla, as further detailed below. Staff has considered Tesla's response to the allegations in making its recommendation, as well as CAEATFA's possible courses of action if the Applicant provided false information to Staff or is ultimately held liable.

Section 5.D. of CAEATFA's template Master Regulatory Agreement used for all approved applicants provides that, following a finding that an applicant has provided false information pursuant to Section 10035(b)(5) of Title 4 of the California Code of Regulations or has otherwise violated the Master Agreement, the Authority may, after written notice to the applicant, rescind the approval resolution and master regulatory agreement, in addition to other remedies. Upon a final decision by the Authority, the approval resolution and Master Agreement shall be rescinded, and notice of the rescission may be provided to the Board of Equalization.

Additionally Section 6.E. states that if the Applicant violates statute, regulations, or the terms of this Master Agreement, the Executive Director may suspend the Master Agreement until the Executive Director certifies that the Applicant is once again in compliance. Purchases made during this suspension will not be excluded from the imposition of sales and use tax.

CAEATFA FEES

In accordance with CAEATFA Regulations,[10] the Applicant has paid CAEATFA an Application Fee of $10,000 and will pay CAEATFA an Administrative Fee up to $350,000.

RECOMMENDATION

Staff recommends conditional approval of an amendment to Resolution No. 17-SM003 for Tesla Motors, Inc.'s purchase of Qualified Property in an amount not to exceed $287,322,328 anticipated to result in an approximate sales and use tax exclusion value of $24,192,540, subject to the following conditions, which will be included in the Master Regulatory Agreement between the Authority and the Applicant:

1. Tesla agrees to update the CAEATFA Board in writing and in person every four months with regards to the following:
    a. Progress in meeting its production goals.
    b. Progress in improving the health and safety at its facilities.
    c. Providing an updated Legal Status Questionnaire.

2. This reporting will be in addition to the Applicant's semi-annual reporting to CAEATFA, with the first report due at the July 17, 2018 Board meeting and subsequent reports due every four months thereafter for three years.

[10] California Code of Regulations Title 4, Division 13, Section 10036

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A MASTER REGULATORY AGREEMENT WITH TESLA, INC. (FKA TESLA MOTORS, INC.)

March 20, 2018

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the "Authority" or "CAEATFA") has received the Application of **Tesla, Inc. (FKA Tesla Motors, Inc.)** (the "Applicant"), for financial assistance in the form of a master regulatory agreement (the "Agreement") regarding tangible personal property utilized to process Recycled Feedstock, or 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 was approved for a Sales and Use Tax Exclusion on January 17, 2017 and has entered into an Agreement on February 2, 2017 to acquire Project equipment with an estimated cost not to exceed $287,322,328 over a period of three years; and

WHEREAS, the Authority approved a resolution to make available at the December 2017 Authority meeting, additional sales and use tax exclusion to Applicants that qualified for additional sales and use tax exclusion but were capped at $20 million of sales and use tax exclusion pursuant to CAEATFA Regulations Section 10032(a)(4)(A); and

WHEREAS, the Applicant has requested the Authority increase the amount of Qualified Property pursuant to CAEATFA Regulations Section 10032(a)(4)(A); and

WHEREAS, $4,192,540 in Sales and Use Tax Exclusion will remain for 2017 calendar year, and no other Applicant requested additional Sales and Use Tax Exclusion; 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 January 17, 2017 Tesla Motors, Inc. Resolution Number 17-SM003 is amended to replace the $237,529,691 of Qualified Property with $287,322,328.

Section 2. The Agreement shall be amended to include a requirement that Tesla update the CAEATFA Board in writing and in person every four months with regards to the following: (1) progress in meeting its production goals; (2) progress in improving the health and safety at its facilities; and (3) an updated Legal Status Questionnaire. This reporting will be in addition to the Applicant's semi-annual reporting to CAEATFA, with the first report due at the July 17, 2018

Board meeting and subsequent reports due every four months thereafter for three years.

Section 3. With the exception of the changes described above, all other provisions, terms, obligations, and covenants contained in the Agreement shall remain in full force and effect.

Section 4. This Resolution is effective immediately and will remain in full force and effect unless the amendment to 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.