

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

***Request to Approve a Time Extension for the
Initial Term of the Regulatory Agreement¹***

**CalBioGas Kern LLC
Application No. 18-SM026**

Tuesday, March 21, 2023

Prepared By: *Stefani Wilde, Program Analyst*

SUMMARY

Applicant – CalBioGas Kern LLC

Location – Bakersfield, Kern County

Industry – Dairy Biogas

Project – New Cluster of Dairy Biogas Production Facilities (Alternative Source)

Total Amount Qualified Property Approved – \$31,909,025

Estimated Sales and Use Tax Exclusion Amount at Approval² – \$2,667,595

Amount of Time Requested –

- Requesting a two-year extension, until April 16, 2025, for the Initial Term of the Regulatory Agreement (a total of six years and six months from the date of initial CAEATFA Board approval of October 16, 2018)

Staff Recommendation – Approval

¹ All capitalized terms not defined in this document are defined in the Sales and Use Tax Exclusion Program's statutes and regulations.

² This amount is calculated based on the average statewide sales tax rate at the time of initial approval, which was 8.36%.

REQUEST

On October 16, 2018, the CAEATFA Board approved a sales and use tax exclusion (“STE”) for CalBioGas Kern LLC (the “Applicant”) for the purchase of up to \$31,909,025 in Qualified Property to build covered lagoon digester systems that will produce dairy biogas at a cluster of six or more dairies in Kern County and a central upgrading plant that will process the dairy biogas into renewable natural gas (“RNG”) (the “Project”). The Regulatory Agreement (“Agreement”) initial term provided the Applicant with three years from the date of CAEATFA Board approval to utilize its STE award.³ On September 21, 2021, the CAEATFA Board approved the Applicant for a one-year and six-month extension, to April 16, 2023, for the initial term of the Agreement from its original termination date of October 16, 2021, to accommodate delays caused by the COVID-19 pandemic.

As of June 30, 2022, the Applicant has used the STE award to purchase approximately \$18.4 million of Qualified Property (58% of the total Qualified Property approved). The Applicant is requesting to extend the Agreement initial term to April 16, 2025, an additional two years, to accommodate prolonged pandemic related delays that affected the Project’s construction and procurement timelines.

The Applicant states that the effects of the COVID-19 pandemic continue to significantly impact the Project schedule. According to the Applicant, one of its necessary manufacturers is located in Canada, and travel and shipping between California and Canada have been impacted by pandemic-related restrictions. Specifically, travel restrictions delayed the completion of several essential drawings such as process flow diagrams, piping and instrumentation diagrams, and skid layout drawings for the Project. The Applicant states its vendors for piping, heat exchanges, blowers, and gas analyzers were also impacted by pandemic-related restrictions and supply chain delays. In addition, the Applicant states it is undergoing engineering studies to better understand power production of the dairy cluster.

The initial term of the Agreement can be extended by the Board upon a finding that an extension is in the public interest and advances the purposes of the STE Program.⁴

THE APPLICANT

The Applicant, a wholly owned subsidiary of CalBioGas LLC, is a California limited liability company established in June of 2018 for the purpose of producing renewable conditioned natural gas (“R-CNG”) from dairy biogas.

The major shareholders (10.0% or greater) of CalBioGas LLC are:
CalBio Investors I LLC (35%)
Chevron USA Inc. (56%)

The company officers of the Applicant are:
N. Ross Buckenham, Chief Executive Officer
Neil Black, President
Abdulla Kagalwalla, Chief Financial Officer

³ California Code of Regulations Title 4, Division 13, Section 10035(b)(1)

⁴ California Code of Regulations Title 4, Division 13, Section 10035(b)(1)(B)

THE PROJECT

The Applicant received an STE to build covered lagoon digester systems that will produce dairy biogas at a cluster of six or more dairies in Kern County and a central upgrading plant that will process the dairy biogas into RNG to sell directly or indirectly through distributors as R-CNG for vehicle use. According to the Applicant, it is in final negotiation with multiple parties for the purchase of the gas, and one key provision of the agreements will be that all gas production will be used as vehicle fuel in the state of California. Additionally, the Applicant represents its R-CNG generates Low Carbon Fuel Standard credits and is categorized as D3-RIN under the Federal Renewable Fuel Standard Program.

The Project has received grants for digester-related expenses from the California Department of Food and Agriculture in the amount of up to \$14.3 million under the Dairy Digester Research and Development grant program, and a grant for the biomethane upgrading-related expenses for up to \$3 million from the California Energy Commission under the Community-Scale Advanced Biofuels Production Facilities grant solicitation.

AGREEMENT INITIAL TERM EXTENSION REQUEST

The Applicant has requested that the initial term of the Agreement be extended from April 16, 2023 to April 16, 2025, in order to accommodate the long-term effects of the COVID-19 pandemic that affected the Project timeline.

Staff Evaluation

The Applicant states travel delays affected its gas conditioning skid manufacturer in Canada and prevented staff from traveling between California and Canada. Moreover, additional delays within the supply chain derailed the Project timeline, as several vendors were unable to receive necessary items for manufacturing final products to be shipped to the Applicant for the Project. According to the Applicant, the Project is in the process of economic evaluations to determine the most economically feasible way to move the Project forward. Specifically, the Applicant is working with Pacific Gas & Electric Company (“PG&E”) to perform engineering studies related to repurposing and repowering the upgraders that use power produced from the dairy cluster. Those evaluations are scheduled to be completed by the end of 2023, and the Project is set to move forward thereafter.

Based on this information, Staff believes extending the initial term of the Agreement will allow for the Project to be completed, and is, therefore, in the public interest and advances the purposes of the STE Program.

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 STE Program regulations,⁵ the Applicant has paid an additional fee of \$2,000 because extending the initial term qualifies as a modification to the Applicant's Agreement.

RECOMMENDATION

Staff recommends that the Board approve the Applicant's request to extend the initial term of the Agreement by two years to April 16, 2025, as it is in the public interest and advances the purposes of the STE Program.

Attachments

Attachment A: CalBioGas Kern LLC's letter requesting waiver (January 13, 2023)

Attachment B: CalBioGas Kern LLC's staff summary at the time of approval

⁵ California Code of Regulations Title 4, Division 13, Section 10036(c)(1)(B)

**RESOLUTION APPROVING A TIME EXTENSION FOR
CALBIOGAS KERN LLC'S INITIAL TERM FOR
THE REGULATORY AGREEMENT**

March 21, 2023

WHEREAS, on October 16, 2018, 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 \$31,909,025 of Qualified Property for **CalBioGas Kern LLC** (the "Applicant"); and

WHEREAS, within three (3) years of approval by the Authority, the Applicant must make all Qualified Property purchases (STE Program regulations Section 10035(b)(1)); and

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 all purchases of Qualified Property be made within three (3) years of Application approval (STE Program regulations Section 10035(b)(1)(B)); and

WHEREAS, the Applicant previously had requested a waiver of the requirement to purchase all of the Qualified Property within three (3) years due to unexpected delays in the Project timeline, extending the term by one (1) year and six (6) months to April 16, 2023; and

WHEREAS, the Applicant has requested a waiver of the requirement to purchase all of the Qualified Property by April 16, 2023, due to unexpected delays in the Project timeline, extending the term by two (2) years to April 16, 2025; 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 in accordance with the law, 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 extend the Applicant's initial term of the Regulatory Agreement to April 16, 2025.

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

Attachment A: CalBioGas Kern LLC's Letter Requesting Waiver (January 13, 2023)



Plugging dairies into a renewable future.

January 13, 2023

Dear CAEATFA Board,

California Bioenergy and the CalBioGas LLC affiliates have greatly appreciated support from the CAEATFA STE program. The program is essential to the financial viability of our capital-intensive projects.

We are pleased that our programs continue to gain momentum including expansion opportunities.

Our gas conditioning skid manufacture is in Canada. Covid travel restrictions made it impractical to travel from California to Canada. Early on, this delayed the completion of the basic project definition drawings Process Flow Diagrams (PFDs), Piping and Instrumentation Diagrams (P&IDs) and Skid layout drawings. Additional delays occurred as vendors for stainless steel piping, heat exchangers, blowers and gas analyzers were unable to ship their respective products to the skid fabricator as planned. These delays resulted in an extension in the delivery schedule for the completed skids.

Schedule impacts have been variable across the projects. CalBioGas and its affiliates are a network of over 25 partners comprised of the dairies we serve. Critical path management, because of supply chain delays, presented unexpected schedule delays. We continue to move forward. We have been making necessary improvements and expansions across the projects which we anticipate to take about 12 to 18 months.

CalBioGas Kern would like to request a 24-month extension and CalBioGas West Visalia would like to request a 36-month extension of the 04/16/2023 deadline for spend of all QP.

Below, please see a summary of approval and claims through the most recent reporting period.

Cluster	ST Exclusion Approved	ST Exclusion Claimed as of 06/30/22
CalBioGas Kern	\$31,909,025.00	\$18,412,719.73
CalBioGas West Visalia	\$22,172,277.00	\$12,058,254.44

Thank you for the consideration and continued support.

Sincerely,

Abdulla Kagalwalla
CFO, California Bioenergy LLC

Attachment B: CalBioGas Kern LLC’s Staff Summary at the Time of Approval

**Agenda Item – 4.A.2
Resolution No. 18-SM026
Application No. 18-SM026**

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

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

**CalBioGas Kern LLC
Application No. 18-SM026**

Tuesday, October 16, 2018

Prepared By: *Xee Moua, Program Analyst*

SUMMARY

Applicant – CalBioGas Kern LLC

Location – Bakersfield, Kern County

Industry – Dairy Biogas

Project – New Cluster of Dairy Biogas Production Facilities (Alternative Source)

Value of Qualified Property – \$31,909,025

Estimated Sales and Use Tax Exclusion Amount² – \$2,667,595

Estimated Quantifiable Net Benefits – \$4,025,838

Application Score –

Fiscal Benefits Points:	2,374
<u>Environmental Benefits Points:</u>	<u>135</u>
Net Benefits Score:	2,509
<u>Additional Benefits Points:</u>	<u>85</u>
Total Score:	2,594

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 8.36%.

**Agenda Item - Item Number 4.A.1
Resolution No. 18-SM026-02**

**Agenda Item – 4.A.2
Resolution No. 18-SM026
Application No. 18-SM026**

THE APPLICANT

CalBioGas Kern LLC (“CalBio Kern” or the “Applicant”), a wholly owned subsidiary of CaliBioGas LLC, is a California limited liability company established in June of 2018 for the purpose of producing renewable conditioned natural gas (“R-CNG”) from dairy biogas.

The major shareholders (10.0% or greater) of CalBioGas LLC are:
California Bioenergy LLC (56%)
Bidart Dairy II, LLC (33%)

The corporate officers of CalBio Kern are:
N. Ross Buckenham, Chief Executive Officer
Neil Black, President

THE PROJECT

CalBio Kern is requesting a sales and use tax exclusion to build covered lagoon digester systems that will produce dairy biogas at a cluster of six or more dairies in Kern County and a central upgrading plant that will process the dairy biogas into renewable natural gas (“RNG”) to sell directly or indirectly through distributors as R-CNG for vehicle use (the “Project”). According to the Applicant, it is in final negotiation with multiple parties for the purchase of the gas, and one key provision of the agreements will be that all product gas will be used as vehicle fuel in the state of California. Additionally, CalBio Kern represents its R-CNG generates Low Carbon Fuel Standard credits and is categorized as D3-RIN under the Federal Renewable Fuel Standard Program.

The Project has received grants for digester-related expenses from the California Department of Food and Agriculture in the amount of up to \$14.3 million under the Dairy Digester Research and Development grant program, and a grant for the biomethane upgrading-related expenses for up to \$3 million from the California Energy Commission under the Community-Scale Advanced Biofuels Production Facilities grant solicitation.

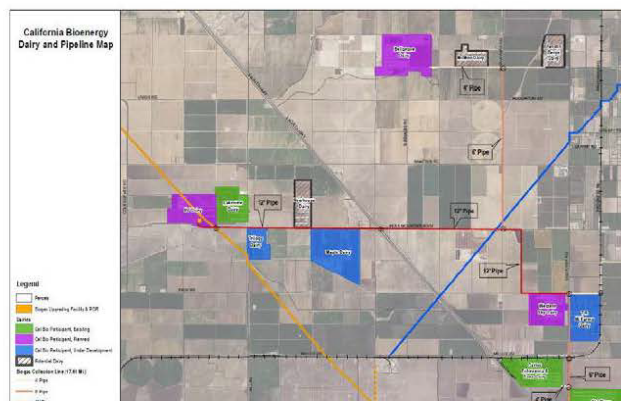


Figure 1: Dairy and Pipeline Map for Kern Cluster

**Agenda Item - Item Number 4.A.1
Resolution No. 18-SM026-02**

**Agenda Item – 4.A.2
Resolution No. 18-SM026
Application No. 18-SM026**

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases are listed below:

Pond Liners and Cover Systems	\$ 4,568,532
Pipes, Pumps and Drains	1,995,528
Electrical/Mechanical Tools and Equipment	4,224,186
Construction Materials	2,097,004
Separation Systems	949,110
Compressors and Generators	4,948,856
Carbon Vessels	411,735
Membrane Skid	2,091,735
Vent Stack	491,735
Collection Line	5,951,343
Blowers and Exchangers	3,807,527
Gas Analyzer	371,734
Total	<u>\$31,909,025</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

According to CalBio Kern, the preliminary engineering and discretionary permitting are complete and detailed engineering is expected to be complete in Q1 2019. The Applicant represents that the site preparation and construction of the dairy digesters will begin Q4 2018, and construction of the on-dairy gas conditioning equipment, the gas gathering lines, the centralized biogas to biomethane upgrader plant and utility interconnect will commence and proceed throughout 2019, with system start-ups taking place in the first half of 2020.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated to be \$31,909,025 and the total quantifiable net benefits are valued at \$4,025,838 for the Project. The Project received a Total Score of 2,594 points, which exceeds the required 1,000 point threshold, and a total Environmental Benefits Score of 135 points, which exceeds the 20 point threshold.

**Agenda Item - Item Number 4.A.1
Resolution No. 18-SM026-02**

**Agenda Item – 4.A.2
Resolution No. 18-SM026
Application No. 18-SM026**

- A. Fiscal Benefits (2,374 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 \$6,333,623 resulting in a Fiscal Benefits score of 2,374 points for the Project.
- B. Environmental Benefits (135 points).** The Project will result in \$359,810 of total pollution benefits over the life of the Project resulting in an Environmental Benefits Score of 135 points for the Project. These benefits derive from the production of dairy biogas, which offsets the need for use of fossil methane and the avoidance of methane emissions that would otherwise be released by the manure.
- C. Additional Benefits (85 points).** Applicants may earn additional points for their Total Score. The Applicant submitted information and received 85 additional points.
- 1. Production Jobs (0 of 75 points).** The Applicant represents that the Project will support a total of four production-related jobs at its Facility. CAEATFA estimates that none 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 (35 of 75 points).** The Applicant represents that the Project will support a total of 96 construction jobs at its Facility. CAEATFA estimates that approximately eight 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 35 points for the Project.
 - 3. Unemployment (50 of 50 points).** The Applicant’s Project is located in Kern County which has an average annual unemployment rate of 9.8 %. This is above 110% of the statewide average annual unemployment rate which was 5.1% in 2017, the dataset used in the application. This results in an Unemployment Score of 50 points for this Project.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

The Applicant states it is currently working with Kern County, Central Valley Regional Water Quality Board, San Joaquin Valley Air Pollution Control District, PG&E, SoCal Gas, and BNSF RR to receive all necessary permits and/or approval for installing its dairy digesters, collection lines, utility interconnection, and facility upgrades. CalBio Kern represents that most permits, such as air/water, planning, and buildings permits, have already been received or are in progress, and that all permits will be secured by Q3 2019.

**Agenda Item - Item Number 4.A.1
Resolution No. 18-SM026-02**

**Agenda Item – 4.A.2
Resolution No. 18-SM026
Application No. 18-SM026**

LEGAL QUESTIONNAIRE

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

CAEATFA FEES

In accordance with CAEATFA Regulations,³ the Applicant has paid CAEATFA an Application Fee of \$10,000 and will pay CAEATFA an Administrative Fee of up to \$127,636.10.

RECOMMENDATION

Staff recommends approval of Resolution No. 18-SM026 for CalBioGas Kern LLC’s purchase of Qualified Property in an amount not to exceed \$31,909,025 anticipated to result in an approximate sales and use tax exclusion value of \$2,667,595.

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

**Agenda Item - Item Number 4.A.1
Resolution No. 18-SM026-02**

**Agenda Item – 4.A.2
Resolution No. 18-SM026
Application No. 18-SM026**

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A MASTER
REGULATORY AGREEMENT WITH CALBIOGAS KERN LLC**

Tuesday, October 16, 2018

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) has received the Application of **CalBioGas Kern 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 \$31,909,025 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 - Item Number 4.A.1
Resolution No. 18-SM026-02

Agenda Item – 4.A.2
Resolution No. 18-SM026
Application No. 18-SM026

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.