



# Board Agenda Item 65

DATE: December 3, 2024

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director  
Department of Public Works and Planning

SUBJECT: Second Reading and Adoption of Proposed Ordinance Granting a Non-exclusive Franchise to Toro Energy of California AA, LLC

RECOMMENDED ACTION(S):

- 1. Conduct second reading of a proposed ordinance granting a franchise, up to 25 years, on a non-exclusive basis (the “non-exclusive franchise”), to Toro Energy of California AA, LLC (also referred to as “Toro Energy”) upon annual payment of a franchise fee to the County, to construct, maintain and use pipes and appurtenances for transmitting derived gas from Toro Energy’s landfill-gas-to-energy project (“LFGTE Project”) at the County’s American Avenue Disposal Site (“AADS”) for any and all purposes, as allowed by a County-approved conditional use permit and/or road permit condition, from the LFGTE Project at the AADS at 18950 W. American Avenue, Kerman, in, along, across, upon, and under the following public streets and highways within the unincorporated area of Fresno County: from the County’s AADS, eastward on W. American Avenue for approximately 4 miles, and then southward on S. Madera Avenue for approximately 4 miles, to a PG&E connection location approximately a half of a mile north of W. Manning Avenue, just east of S. Madera Avenue/SR 145, Kerman.**
- 2. Waive reading of the ordinance in its entirety and adopt the proposed ordinance.**

This item is a result of your Board’s adoption of a resolution of intention, on September 25, 2024, to set the public protest hearing, which was held on October 22, 2024, to initiate the process discussed in this item. That hearing did not result in any written protests, including any written objections, made by any interested person against your Board granting the non-exclusive franchise, by ordinance, to Toro Energy. On that same date, your Board then conducted the first reading of the ordinance and set today’s date as the date for your Board’s second reading and consideration of adoption of the proposed ordinance.

The recommended actions comprise a component of a larger project, namely the County’s future sale of landfill gas (also referred to as derived gas) to Toro Energy generated by the LFGTE at the County’s AADS. The proposed pipeline system is eight miles in length, only half of which is within public streets and highways within the County.

The first recommended action will enable your Board to conduct the second reading of a proposed ordinance granting a non-exclusive franchise, up to 25 years, to Toro Energy that would allow Toro Energy, upon annual payment of a franchise fee of two percent (2%) of its gross annual receipts to the County, to construct, maintain and use pipes and appurtenances for transmitting derived gas from Toro Energy’s LFGTE Project at the County’s AADS for any and all purposes, as allowed by a County-approved conditional use permit and/or road permit condition, from the LFGTE Project at the County’s AADS, in, along, across, upon, and under the foregoing public streets and highways, under Division 3, Chapter 2 of the California

Public Utilities Code. A location map is attached to this item as Attachment 1.

The second recommended action will enable your Board to waive the reading of the ordinance in its entirety, and adopt the proposed ordinance. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

If the recommended actions are not approved, Toro Energy will not be able to transmit gas through pipes within the County right-of-way. Toro Energy could elect instead to truck the gas from the County's AADS to the transfer point, and that would eliminate the County's ability to charge a franchise fee for the transmission of the gas.

FISCAL IMPACT:

There will be no net County cost associated with the recommended actions. Toro Energy of California AA, LLC ("Toro Energy") entered into a reimbursement agreement with the County to reimburse the County for all staff time and any other costs associated with these proceedings, including all required publication costs.

The recommended non-exclusive franchise requires that Toro Energy shall annually, commencing on the first date when Toro Energy receives derived gas pursuant to Section 1.26 of the Revenue Agreement (see "Discussion" section below), pay a franchise fee of two percent (2%) of its gross annual receipts (defined below in this "Fiscal Impact" section) to the County, arising from the use, operation or possession of the franchise, plus any surcharges, if applicable to Toro Energy, under the Public Utilities Code, sec. 6350, et seq., successor legislation, or other legislation applicable to franchisee or derived gas enacted by the State of California. In the event such payment is not made, the non-exclusive franchise will be forfeited. The non-exclusive franchise will be for a term not to exceed twenty-five (25) years, as discussed further below.

"Gross annual receipts" means all income received by Toro Energy under the Revenue Agreement without any deductions, offsets or credits described in section 1.25 of the Revenue Agreement, and separate from other payments, reimbursements, or franchise fees payable or paid to the County. "Revenue Agreement" means the Revenue Agreement between the County and Toro Energy, dated April 22, 2022, as it may be amended from time to time, for the County's future sale to Toro Energy of landfill gas as renewable energy at the County's American Avenue Disposal Site, also known as the County's "AADS."

The County currently deposits funds from grants of franchises into the General fund as allowed by Government Code, section 26001.5, and the funds from the recommended non-exclusive franchise, if granted, will be deposited into the General Fund, unless otherwise directed by your Board.

An estimate of the gross annual receipts from the County's future sale of landfill gas was included in an attachment to the Agenda Item for the Revenue Agreement presented to and approved by your Board on April 19, 2022 as well as all the subsequent Agenda items for this matter. That attachment is again included in this item as Attachment A, with the addition of the calculation of the proposed two percent (2%) franchise fee that has been shown in all the subsequent Agenda items after the April 19, 2022 Agenda item. Gross annual receipts are estimated to start at \$9 million in the first year of the project and increase to \$22 million by the 25th year. Two percent (2%) of these amounts means that annual County General Fund revenues would initially be approximately \$185,000 and eventually reach \$440,000.

Separate and apart from the foregoing franchise fee, Toro Energy has agreed under the Revenue Agreement approved by your Board on April 19, 2022, to share 51% of its net receipts from the future LFGTE Project (starting at the fifth year of the LFGTE Project), discussed below, with the County. These net receipts to be paid to the County will be deposited into the American Avenue Landfill Enterprise fund. These net receipts, which are estimated to start at approximately \$200,000 annually (starting at the fifth year of the LFGTE Project) and increase to approximately \$8 million in year 25 of the LFGTE Project, are uneven due to Toro Energy's development costs paid over the first few years of the project.

DISCUSSION:

1. Background.

On April 19, 2022, your Board conducted a public hearing, made certain determinations of public benefits, and adopted an uncodified ordinance to allow for the County's future sale of landfill gas generated by the County's AADS ("LFGTE Project"), under a then-proposed Revenue Agreement with Toro Energy of California AA, LLC ("Toro Energy"), as provided under Government Code section 25515 et seq. The determinations made by your Board are prescribed by statute, and in no way did the determinations involve any sale of the County's AADS. The Revenue Agreement, as approved by your Board on April 19, 2022, contemplates a possible future discretionary project, if realized, which is now the LFGTE Project, but your Board was not being asked to approve, and did not approve, the future LFGTE Project in that item.

The recommended actions in this item comprise a component of a larger project, namely the County's future sale of landfill gas to Toro Energy generated by the LFGTE Project at the County's AADS. A conditional use permit was approved by the Planning Commission on April 25, 2024 as one of the actions necessary for the larger project.

2. Toro Energy's application for the non-exclusive franchise.

Toro Energy submitted a written application requesting a franchise to construct, maintain and use pipes and appurtenances for transmitting derived gas for any and all purposes, as allowed by a County-approved conditional use permit and/or road permit condition, in, along, across, upon, and under public streets and highways within the unincorporated area of Fresno County.

However, the proposed ordinance limits the franchise, on a non-exclusive basis, to transmitting derived gas from Toro Energy's LFGTE Project at the County's AADS at 18950 W. American Avenue, Kerman, in, along, across, upon, and under the following public streets and highways within the unincorporated area of Fresno County: from the County's AADS, eastward on W. American Avenue for approximately 4 miles, and then southward on S. Madera Avenue for approximately 4 miles, to a PG&E connection location approximately a half of a mile north of W. Manning Avenue, just east of S. Madera Avenue/SR 145, Kerman.

The term of the recommended franchise shall be for a period not to exceed twenty-five (25) years from and after the date that, after Toro energy has provided a bond to the County and accepted by the Director, and the County has issued a permit for Toro Energy to commence construction within the franchise area. The franchise, if granted, would be on a non-exclusive basis.

3. Prior Board actions implementing the process in this item.

To enable your Board to consider granting the non-exclusive franchise to Toro Energy, your Board, on September 25, 2024, passed a Resolution of Intention ("ROI") to grant the non-exclusive franchise, by ordinance, to Toro Energy, setting October 22, 2024, when all persons objecting to the granting of the non-exclusive franchise may appear and be heard by your Board, and submit all timely written protest, including written objections.

On October 22, 2024, at the appointed time, your Board conducted the public protest hearing, and notice of such hearing was timely published, in the Business Journal on October 2, 2024, in compliance with Public Utilities Code section 6232.

At the October 22, 2024 public protest hearing, your Board proceeded, under Public Utilities Code section 6234, to hear and pass upon all timely written protest, including written objections, so made by any interested person against your Board granting the non-exclusive franchise, by ordinance, to Toro Energy. Your Board determined that no protests, including objections, in writing were delivered to the Clerk of the

Board of Supervisors (“Clerk”) up to the conclusion of the hearing. Your Board’s decision was final and conclusive, subject to the right of referendum of the people.

As a result, on October 22, 2024, immediately following the conclusion of the public protest hearing, your Board conducted the first reading of the ordinance, and waived further reading of the ordinance at the time of its introduction and passage, as allowed under Government Code, sections 25120 - 25131. At that time, your Board set today’s date as the date of the second reading and proposed adoption of the ordinance.

Notice of your Board’s second reading of the proposed ordinance, today, was timely published in the Business Journal on October 25, 2024.

4. The proposed ordinance.

The Department recommends the proposed ordinance, discussed below.

As stated above, the recommended non-exclusive franchise requires that Toro Energy shall annually, commencing on the first date when Toro Energy receives derived gas pursuant to Section 1.26 of the Revenue Agreement (see “Discussion” section below), pay a franchise fee of two percent (2%) of its gross annual receipts to the County, arising from the use, operation or possession of the franchise, plus any surcharges, if applicable to Toro Energy, under the Public Utilities Code, sec. 6350, et seq., successor legislation, or other legislation applicable to franchisee or derived gas enacted by the State of California. In the event such payment is not made, the non-exclusive franchise will be forfeited. The non-exclusive franchise will be for a term not to exceed twenty-five (25) years, as discussed further below.

Under the proposed ordinance, Toro Energy shall, if granted the non-exclusive franchise, be required to file a bond running to the County of Fresno in the penal sum of \$100,000 at least thirty (30) days before any permit is granted by the County for Toro Energy to commence construction within the franchise area. This bond is separate from the bond for construction.

The proposed ordinance provides that if Toro Energy does not comply with any of the conditions of the franchise for more than thirty (30) days after written demand by County for compliance, then County, by your Board, in addition to all rights and remedies allowed by law, may terminate the franchise. Under the proposed ordinance, if Toro Energy breaches any condition of the franchise, the bond is recoverable by the County.

If adopted, the ordinance will become effective thirty (30) days after its final passage, pending written acceptance of the non-exclusive franchise by Toro Energy. The franchise, if granted, does not become effective until Toro Energy files written acceptance of it with the Clerk and a copy thereof is filed with the Director.

A copy of the proposed ordinance is on file with the Clerk. It is the same as the draft ordinance that was on file with the Clerk when your Board adopted the ROI on September 25, 2024 except for one minor clarification in section 14, Audits, at page 13, line 31, which has been made, as follows prior the first reading of the ordinance on October 22, 2024:

Delete the following text: “This Section 14 survives the termination of this Agreement”

Add the following text: “This Section 14 survives the termination of this ordinance.”

A copy of the proposed ordinance, as clarified above, has been provided to Toro Energy.

5. Other information.

On February 21, 2012, the Board of Supervisors authorized the County’s engaged the law firm of Lozano

Smith, LLP of Fresno (Lozano Smith), as special counsel, under a specialized legal services agreement to assist the Department connection with the LFGTE Project. Lozano Smith, in association with County Counsel's Office assisted the Department concerning this item, which is related to the LFGTE Project.

**California Environmental Quality Act:**

The recommended actions comprise a component of a larger project, namely the LFGTE Project at the County's AADS. The County conducted Initial Study (IS) No. 8380, and the Planning Commission adopted the resultant Mitigated Negative Declaration (MND) (SCH No. 2024030055) along with approval of Conditional Use Permit No. 3762 on April 25, 2024. The recommended actions were contemplated within the scope of the project description and are consistent with any mitigation measures imposed on this project by the MND. Accordingly, the recommended actions comply with the California Environmental Quality Act because they are part of a project which has already undergone environmental review.

REFERENCE MATERIAL:

- BAI # 13, October 22, 2024
- BAI# 42, September 24, 2024
- BAI #65, October 10, 2023
- BAI #8, April 19, 2022

ATTACHMENTS INCLUDED AND/OR ON FILE:

- Ordinance
- On file with Clerk - Ordinance Summary
- Attachment 1 - Location Map
- Attachment A - Future LFGTE Project 25-year Estimated Cash Flow

CAO ANALYST:

Salvador Espino