

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

December 2, 2008

Mr. Robert A. Sturgell
Acting Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

DOCKET	
99-AFC-8C	
DATE	DEC 0 2 2008
RECD.	DEC 0 3 2008

Re: AVIATION SAFETY ISSUE AT THE BLYTHE MUNICIPAL AIRPORT

Dear Mr. Sturgell:

The California Energy Commission requests the assistance of the Federal Aviation Administration in commencing the operation of the Super Automated Weather Observation System (Super AWOS) at the Blythe Airport in Riverside County, California. The Super AWOS has already been installed in connection with a power plant licensed near the airport by the Energy Commission. With your assistance, the Super AWOS would replace (at no cost to the FAA) the Automated Surface Observing System (ASOS) that is currently in operation at the airport. We understand the current system is owned and operated by the FAA, and we would like your assistance in facilitating the transition to the Super AWOS.

Background

The Blythe Airport is a public airport located six miles west of the city of Blythe and is primarily used for general aviation. On March 21, 2001, the California Energy Commission licensed the Blythe Energy Power Plant Project (BEP1), authorizing construction of the power plant approximately one mile east of the Blythe Airport. BEP1 commenced commercial operation in December 2003.

During the course of the original licensing proceeding, an extensive review of the potential adverse impacts on aviation was conducted by Energy Commission staff. Several agencies participated in the environmental review, including the FAA and the California Department of Transportation (CalTrans) Aeronautics Division, and, based on the information available at that time, they concluded that the location of BEP1 would not constitute a hazard to aviation safety.

Over the course of the first fourteen months of operation of BEP1, between June of 2003 and August of 2004, Energy Commission staff received several complaints from pilots regarding a phenomenon that they experienced while flying over the cooling towers and/or the heat recovery steam generator exhaust stacks of BEP1. The staff conducted an investigation into the reports and concluded that, under certain conditions, thermal plumes emanating from the cooling towers and/or the heat recovery steam

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generator exhaust stacks could cause turbulence that could adversely affect aircraft operations.

Energy Commission Staff held a public workshop on October 4, 2004 to develop safety measures to counter the potential impact on aviation safety of the thermal plumes at BEP1. Participants in this workshop included members of the public, the FAA, CalTrans Aeronautic Division, representatives from Florida Power and Light (or FPL, the owner of BEP1), representatives from the City of Blythe, and Energy Commission staff and consultants. This workshop resulted in the agreement that an advisory would be appended to the existing ASOS that is owned and operated by the FAA. The advisory would have warned pilots of the potential hazard of thermal plumes and directed them to avoid overflight of the power plant.

On July 19, 2005, we facilitated a meeting between the FAA, CalTrans Aeronautic Division, representatives from FPL, representatives from the City of Blythe, and Energy Commission staff and consultants. This meeting resulted in the agreement on additional mitigation measures, including the FAA's agreement to issue a Notice to Airmen (NOTAM) regarding the presence of thermal plumes at BEP1 and publish a warning to that effect in the Los Angeles and Phoenix section Aeronautical charts. The FAA confirmed its commitment to append the advisory to the existing ASOS intended to warn pilots to avoid overflight of BEP1.

Based on further discussions, the parties agreed that the Super AWOS would be superior to the ASOS that was currently in operation by the FAA at the airport. FPL agreed to purchase, install, and maintain a Super AWOS at the airport to ensure that the appropriate advisories regarding the power plant would be broadcast to pilots. On February 7, 2006, we sent out a letter to the involved parties summarizing this agreement.

At the direction of the Energy Commission, and in coordination with the Federal Aviation Administration, FPL purchased the automated Super AWOS for the City of Blythe. The Super AWOS was properly installed and successfully operated for five months beginning in October 2006, and provided pilots with the appropriate warnings to avoid overflight of BEP1. Because of the installation of the Super AWOS, no advisory was appended to the existing ASOS. However, the ASOS was not disconnected by the FAA and remained in operation along with the Super AWOS.

In March 2007, at the urging of the airport Fixed Base Operator (FBO) Floyd P. Wolfe, the Federal Communications Commission (FCC) ordered that the Super AWOS be disconnected. Mr. Wolfe had unsuccessfully attempted to induce FPL to pay him to broadcast the necessary safety warnings to incoming aircraft, and claimed in his correspondence to the FCC that the Super AWOS was "interfering" with his Unicom frequency. The FCC ordered the Super AWOS be disconnected. The order was pursuant to a federal regulation (47 Code Fed. Regs., § 87.215(b)) which prohibits the

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operation of more than one automated transmitter at an uncontrolled airport, and was not in response to Mr. Wolfe's claim of "interference." Disconnection of the Super AWOS has resulted in the absence of automated warnings to avoid overflight of the power plant. It also meant that, on nights and weekends, when the FBO is not at the airport, no safety warning information of any kind can be broadcast to pilots from the airport, including the need to avoid overflight of the power plant.

On December 7, 2007, and again on April 18, 2008, the Energy Commission notified the FCC in writing that the disconnection of the Super AWOS meant that safety warnings were no longer being broadcast from Blythe Airport, and requested that the FCC take steps to ensure that the advisory be broadcast. (Copies of those letters are enclosed for your information.) We understand that federal regulation mandates that the FBO provide broadcasts that ensure "the necessities of safe and expeditious operation of aircraft." (47 Code Fed. Regs., § 87.213(b)(1).) Nevertheless, the FBO has advised the FCC that he will not broadcast the required safety advisories unless his demands for compensation are met. The FCC has communicated that it has no plans to address this matter directly and apparently will take no action to halt what we believe is a misuse of the Unicom by the FBO at Blythe.

In June of 2008, the Riverside County Grand Jury issued a report regarding the safety issue at the Blythe Airport. (A copy of the Grand Jury Report is enclosed.) According to the Grand Jury's report, the City of Blythe and the Blythe Airport Manager "must take immediate action to implement the mitigation measures at the Blythe Airport that were directed by the CEC [California Energy Commission] and have been funded by FPL." The Grand Jury directed the city to reactivate the Super AWOS that was purchased by FPL on behalf of BEP1 to notify pilots using the Blythe Airport to avoid direct overflight of the power plant.

The Super AWOS has yet to be reactivated despite the agreements of the parties, but remains available for use at the Blythe Airport.

Action required

In sum, a Super AWOS has been installed at the Blythe airport, in accordance with agreement among several parties who studied the potential hazard of the power plant's thermal plumes and specified certain mitigation measures be implemented. In addition, as noted above, the recent Riverside County Grand Jury has issued a report urging immediate implementation of the agreed-upon measures to warn pilots to avoid direct overflight of the power plant. What remains to be done is action from the FAA to ensure that pilots are, in fact, notified to avoid overflight of the power plant and are given other important safety information. To that end, we request the FAA's direct assistance in reactivating the Super AWOS as soon as possible at the Blythe Airport.

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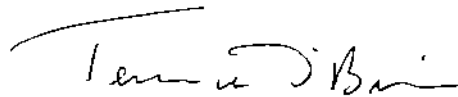
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We further request that the Super AWOS replace the older ASOS that the FAA currently operates at the Blythe Airport. The replacement of the ASOS by the Super AWOS is necessary to implement the agreed-upon safety measures, and will avoid conflict with 47 Code Fed. Regs., § 87.215(b), which prohibits the operation of more than one automated transmitter at an uncontrolled airport. According to Butch Hull, Assistant City Manager of Blythe, the City is willing to turn over ownership and operational control of the Super AWOS to the FAA in exchange for the FAA's agreement to disconnect the ASOS. The Energy Commission has a strong interest in this exchange to ensure the appropriate advisories regarding the power plant will be broadcast to pilots.

I look forward to a response from the FAA regarding our request for its assistance in replacing the ASOS with the Super AWOS at the Blythe Airport. If you have any questions, please do not hesitate to call me at (916) 654-3933, or your staff may contact Energy Commission Senior Staff Counsel Kevin W. Bell at (916) 654-3855.

Sincerely,



TERRENCE O'BRIEN, Deputy Director
Siting, Transmission, and
Environmental Protection Division

Enclosures

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CALIFORNIA ENERGY COMMISSION

1518 NINTH STREET
SACRAMENTO, CA 95814-5512



April 18, 2008

Mr. Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau
Federal Communication's Commission
445 12th Street, SW
Washington, DC 20554

Re: Blythe Municipal Airport Unicom Station WQDX395

Dear Mr. Stone:

The California Energy Commission requests the assistance of your Commission to stop Floyd P. Wolfe, the Blythe Airport Fixed Base Operator (FBO), from misusing his Unicom broadcasting license to block the dissemination of critical safety information to pilots who use the Blythe Airport. (Copies of all correspondence referred to are enclosed for reference.)

As you are aware, Floyd P. Wolfe, the FBO at the Blythe Airport, refuses to broadcast safety information to pilots. Additionally, Mr. Wolfe arranged for the disconnection of the Super AWOS automated system that was purchased for the City of Blythe by the owners of the nearby Blythe Power Plant, FPL, in order to provide an automated warning to pilots to avoid over-flight of the power plant. Loss of the Super AWOS means not only that the power plant over-flight warning is blocked, but also important information such as weather advisories, which the FBO is not qualified to provide. It also means that on nights and weekends, when the FBO is not at the airport, no safety information of any kind can be broadcast to pilots from the airport.

To date, it appears that the FCC has taken no action to ensure that critical safety information is broadcast by the FBO to pilots at the Blythe Airport as required under CFR Section 87.213(b)(1), which mandates that the FBO broadcasts provide "... the necessities of safe and expeditious operation of aircraft." The FBO at Blythe is aware of the potential hazards of over-flight of the power plant, has the means to broadcast warnings, and yet refuses to do so unless his demands for an additional \$6,200 per month are met by FPL. In your letter dated January 25, 2008, you directed the FBO to inform the FCC and other parties within 15 days whether he "currently advises aircraft of the power plant issue" during the station's operations. I must note that in his undated reply (of which the Energy Commission received a copy on February 6), the FBO stated unequivocally that "the answer is no." It is my understanding that despite this admission of malfeasance, the FCC has no plans to address this matter directly. I am surprised

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and dismayed that the FCC would take no direct action to bring to a halt this misuse of the Unicom by the FBO at Blythe.

In your letter dated January 25, you provide several options that the City of Blythe has to resolve this issue themselves. One such option involves having the City "provide Mr. Wolfe with the means to make automated announcements." This has already occurred, however. At the direction of the Energy Commission, and in coordination with the Federal Aviation Administration, FPL purchased an automated Super AWOS system for the City of Blythe to ensure that the appropriate advisories regarding the power plant could be broadcast to pilots. This system was installed and operated for five months beginning in October 2006. Thereafter, the FBO submitted a complaint to Mr. William Zears, FCC Western Region District Director, alleging that the Super AWOS was interfering with his licensed Unicom frequency. Based on the FBO's misrepresentations, Mr. Zears ordered the city of Blythe to disable the Super AWOS information and warning system. It should be noted that there is a lack of an explanation from the FBO as to how the "interference" he alleges to Unicom frequency WQDX395 would be diminished if his demands are met for a monthly payment of \$6,200 from FPL. The FBO has already been provided with the means to provide warnings to pilots around the clock, but refuses to do so absent his unreasonable demands for compensation.

Another option would involve the city applying for a separate Unicom frequency to operate the Super AWOS system during the hours when Station WQDX395 is not in operation due to the absence of the FBO. The Energy Commission does not find this to be an acceptable solution, since the FBO refuses to broadcast advisories regarding the safe operation of aircraft while he is present at the airport despite his legal obligation to do so.

A third option that you have provided would require modification of the FBO's license pursuant to 47 U.S.C. 316. Such a modification would require that he broadcast the safety advisory as a specific term of his license. It appears to have been overlooked that the FBO is already required to broadcast this vital safety advisory pursuant to CFR Section 87.213(b)(1). While the Energy Commission agrees that would be of help to modify the terms of the FBO's license in a manner that would prohibit him from interfering with the operation of the automated Super AWOS in times of his absence, the issue remains that the FBO has already refused to comply with the relevant statutes that mandate the transmission of this critical safety information.

The FCC has an obligation to resolve this issue in the interest of public safety. The California Energy Commission agrees with Terence Boga, the special counsel to the City of Blythe, that the FBO's action to prevent operation of the Super AWOS system constitutes an "egregious breach of his duty to provide the necessities of safe and expeditious operation of aircraft." It is essential that the FCC take the necessary measures to ensure that pilots are notified to avoid direct over-flight of the power plant

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and of other important safety information. To that end, the Super AWOS system must be reactivated, and the FBO must be prohibited from preventing the broadcast of critical safety advisories.

Please let me know what assistance we can provide to help the FCC correct this situation. If you have any questions, please do not hesitate to call me at (916) 654-3933, or your staff may contact Energy Commission Senior Staff Counsel Kevin W. Bell at (916) 654-3855.

Sincerely,

TERRENCE O'BRIEN
Deputy Director for Energy Facilities Siting Division

April 18, 2008

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



December 7, 2007

Mr. Kevin J. Martin, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

LETTER IN SUPPORT OF CITY OF BLYTHE'S EFFORTS TO REINSTATE SUPER
AWOS SAFETY TRANSMISSION AT BLYTHE AIRPORT

Dear Chairman Martin:

I am writing in support of a letter dated October 30, 2007, (copy enclosed) from Mr. Terence Boga, Special Counsel representing the city of Blythe, California, the Blythe Airport owner. I am requesting your assistance to stop the Blythe Airport Fixed Base Operator (FBO) from misusing his Unicom broadcasting license to block the dissemination of important safety information to pilots by means of a Super AWOS automated system that provides information to pilots who use the Blythe Airport. The system was installed to advise pilots to avoid overflight of the Blythe Energy power plant because of the potential hazard from visible and invisible thermal plumes from the plant, located one mile from the end of runway 26, and to provide other safety information.

The California Energy Commission, in coordination with the Federal Aviation Administration, has implemented several measures to warn pilots to avoid direct overflight of the Blythe Energy power plant, the most important being installation of the Super AWOS unit, which operated for five months beginning October 26, 2006. After the installation of the Super AWOS unit, the FBO submitted a complaint to Mr. William Zears, FCC Western Region District Director, alleging that the Super AWOS was interfering with his licensed Unicom frequency. The FBO holds his FCC license on the authorization of the city of Blythe, subject to federal regulatory requirements related to pilot safety. Mr. Zears responded in a letter dated March 9, 2007 (copy enclosed), that he agreed with the FBO's allegation, and ordered the city of Blythe to disable the Super AWOS information and warning system. This order was reluctantly complied with by the city on March 16, 2007.

Loss of the Super AWOS means not only that the power plant overflight warning is blocked, but also significant information such as weather advisories, which the FBO is not qualified to provide. It also means that on nights and weekends, when the FBO is not at the airport, no safety information can be broadcast to pilots from the airport.

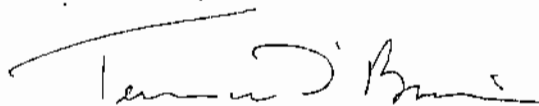
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The Super AWOS unit is specifically designed to complement the Unicom operator's live communications, and the system's design *prevents* the Super AWOS from interfering with the Unicom operator on the same frequency as provided for in Title 47 C.F.R. Section 87.219. The Super AWOS was the only *automated* Unicom system in operation at the Blythe Airport in accordance with Section 87.219(c), and provided both live and recorded information to pilots without conflict with the FBO's manual system. Unfortunately, Mr. Zears' March 9 letter mischaracterizes how the Super AWOS system operates, and the FCC's directive to disable it has enabled the FBO to continue to violate CFR Section 87.213(b)(1), which requires that FBO broadcasts provide "... the necessities of safe and expeditious operation of aircraft." The effect of Mr. Zears' order is to place pilots in danger, while supporting the FBO's actions that compromise pilot safety. Super AWOS units are operating on the Unicom frequency at more than 75 airports in the U.S. (list enclosed) with no interference whatsoever.

We agree with the city of Blythe Special Counsel's statement that the FBO's action to prevent operation of the Super AWOS system constitutes a failure of his responsibility to provide the necessities of safe and expeditious operation of aircraft. The FBO has indicated in correspondence (copy enclosed) to Butch Hull, the airport manager, that he is not willing to allow operation of the Super AWOS unit "without adequate compensation" from the power plant owner, FPL. He states, "Now if FPL would choose to retain my service and the use of the Unicom that is in my name, all they have to do is set up terms with me." We do not understand the basis of the FBO's demands for "additional compensation," but we believe that his actions to block the broadcasting of critical safety information to pilots are improper.

It is essential that the FCC reverse its decision of March 9, 2007, so that the Super AWOS system can be reinstated as expeditiously as possible to ensure that pilots are notified to avoid direct overflight of the power plant and of other important safety information. Please let me know what assistance we can provide to help the FCC correct this situation. If you have any questions, please do not hesitate to call me at (916) 654-3933, or your staff may contact Steve Munro of my staff at (916) 654-3936.

Sincerely,



Terrence O'Brien
Deputy Director for Energy Facilities Siting

cc: Charles Hull, Blythe Assistant City Manager
William Zears, FCC

Enclosures