

## DOCKETED

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<b>Project Title:</b>	Otay Mesa Compliance
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<b>Document Title:</b>	Otay Mesa Energy Center Response to Staff Analysis
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# OTAY MESA ENERGY CENTER, LLC

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December 17, 2015

Dale Rundquist  
Compliance Project Manager  
California Energy Commission  
Dockets Unit, MS-4  
Docket No. 99-AFC-5C  
1516 Ninth Street  
Sacramento, CA 95814-5512

Subject: Otay Mesa Energy Center (99-AFC-5C): Response to Staff Analysis

Dear Mr. Rundquist:

On May 26, 2015, Otay Mesa Energy Center, LLC, submitted a petition for a staff approved modification, for replacement of certain combustion turbine components (“Petition”) for the Otay Mesa Energy Center. On November 17, 2015, the Commission Staff issued its Analysis of the Petition (“Staff Analysis”). The Staff Analysis recommends approval of the Petition, with the addition of two new Conditions of Certification.

The Project Owner filed a petition for staff approved modification at the request of the Staff.<sup>1</sup> The Staff Analysis finds that the proposed replacement of certain combustion program components set forth in the Petition met all of the criteria for a staff approved modification. However, Staff did not approve the modification. Instead, the Staff Analysis proposes two new Traffic and Transportation Conditions of Certification to “provide pilots with warning of potential aviation hazards.” Staff’s newly proposed conditions relate to the thermal plumes and the exhaust stacks, not the replacement of the combustion turbine components raised in the Petition.

Petitioner notes that the proposed new conditions are not required by the Federal Aviation Administration (“FAA”), which has exclusive jurisdiction over issues governing aviation safety. Further, the Project Owner does not agree with the premise of the Staff Analysis that the Project poses any risk to air navigation. The Otay Mesa Energy Center has been operating for over six years and there have been no reported aviation incidents or concerns raised by the FAA related to the facility.

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<sup>1</sup> Project Owner does not believe that the replacement of components should require any Petition at all. The replacement does not modify the design or operation of the facility, and marginally improves the performance. Under the California Environmental Quality Act (“CEQA”), the replacement of parts is categorically exempt from CEQA if the new components will have substantially the same purpose and capacity as the components replaced. (*See* CEQA Guidelines, §15032). Moreover, the replacement of these parts requires no changes in the terms of the license for the facility.

Nevertheless, the Project Owner does not oppose the new conditions TRANS-7 and TRANS-8 if the conditions of certification are revised as set forth in Attachment A hereto.

The Project Owner proposes changes in the two proposed Conditions for the following reasons:

1. Conditions TRANS-7 and TRANS-8, as proposed by Staff, would each require the Project Owner to undertake certain actions “Within 60 days after Energy Commission approval of the Petition to Amend”.

Typically, when conditions of certification that are adopted by the Commission, the effective date of the Condition relates to when construction of the project or the project modification commences or is completed and the obligations imposed by the Condition become effective only if, and when, the project changes are undertaken.

Therefore, the Project Owner requests that the Verification Language of proposed conditions TRANS-7 and TRANS-8 be revised to read “Within 60 days after the Project Owner completes replacement of the Advanced Gas Path components. . .”

2. The reference to the “FAA requirements” in TRANS-7 should be deleted because the citations are incorrect.

FAA Advisory Circular 70/7460-1K was cancelled by the FAA on December 4, 2015. But even if it had not been cancelled, it would not have been applicable to the Otay Mesa Energy Center. This Advisory Circular sets forth standards for marking and lighting obstructions that have been deemed to be a hazard to navigable airspace. The FAA has not deemed the Otay Mesa Energy Center to be a hazard to navigable airspace. Therefore, the advisory – even if it had not been cancelled – is not applicable.

Similarly, FAA Safety Alert for Operators (SAFO) 09007 advises operators utilizing night vision goggles that that certain LED lighting systems fall outside the combined visible and near-infrared spectrum of NVGs. This alert is not related to lighting of exhaust stacks.

3. Portions of the verification language of TRANS-8 should be deleted because this language would require the Project Owner (1) to make repetitive requests of the FAA; (2) to file appeals with the FAA if this Federal agency does not act on the Project Owner’s requests; and (3) to generally monitor the charts and publications of the FAA.

The FAA has the exclusive authority to revise or update its notices, charts and publications with respect to the Otay Mesa Energy Center, or otherwise, if the FAA believed it was necessary to do so. While the Project Owner does not object to submitting the Staff proposed requests to the FAA, Project Owner should not be burdened with making repetitive requests to the FAA if the agency refuses to act. If the

FAA does not act upon a request for any reason, the Project Owner certainly should not be compelled to appeal an FAA determination.

In conclusion, while Project Owner does not believe that proposed TRANS-7 and TRANS-8 are necessary or appropriate, with the revisions to the proposed conditions set forth above, the Project Owner will not oppose the imposition of revised conditions TRANS-7 and TRANS-8.

*MB* Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MB' followed by a flourish and the initials 'kcp'.

Barbara McBride  
Director, Environmental Services  
Calpine Corporation  
On Behalf of Otay Mesa Energy Center, LLC

## ATTACHMENT A

### Otay Mesa Energy Center (99-AFC-5C) Project Owner's Revisions to Staff's Proposed Conditions of Certification TRANS-7 and TRANS-8

#### **TRANS- 7 Obstruction Marking and Lighting**

The project owner shall install obstruction marking and lighting on the exhaust stacks consistent with FAA requirements, ~~as expressed in the following documents:~~

- ~~FAA Advisory Circular 70/7460-1K~~
- ~~FAA Safety Alert for Operators (SAFO) 09007.~~

Lighting shall be operational 24 hours a day, 7 days a week for the life of project operation. Upgrades to the required lighting configurations, types, location, or duration shall be implemented consistent with any changes to FAA obstruction marking and lighting requirements.

Verification: ~~No later than Within~~ 60 days after the project owner completes replacement of the ~~Advanced Gas Path components~~ Energy Commission approval of the ~~Petition to Amend~~, the project owner shall submit to the CPM for approval final design plans that depict the required air traffic obstruction marking and lighting. Within 60 days after CPM approval of the final design plans, the project owner shall install permanent obstruction marking and lighting consistent with FAA requirements and shall inform the CPM in writing within 10 days of installation that the lighting is ready for inspection.

#### **TRANS-8 Pilot Notification and Awareness**

The project owner shall initiate the following actions, ~~to ensure pilots are aware of the project location and potential hazards to aviation:~~

- Submit a letter to the FAA requesting a Notice to Airmen (NOTAM) be issued advising pilots of the location of the Otay Mesa Energy Center and recommending avoidance of overflight of the project site below 2,000 feet AGL. The letter should also request that the NOTAM be maintained in active status until the Los Angeles Section Chart and Airport Facility Directories (AFDs) identified below have been updated;
- Submit a letter to the FAA requesting a power plant depiction symbol be placed at the Otay Mesa Energy Center site location on the Los Angeles Sectional Chart with a notice to "avoid overflight below 2,000 feet AGL";
- Submit a request to ~~and coordinate with~~ the Brown Field Municipal Airport Manager to add a new remark to the Automated Surface Observing System (ASOS) identifying the location of the Otay Mesa Energy Center and advising pilots to avoid direct overflight below 2,000 feet AGL as they approach or depart the airport; and
- Request that Southern California Terminal Radar Approach Control (TRACON) and/or the San Diego Air Traffic Control Center submit aerodrome remarks describing the location of the Otay Mesa Energy Center and advising against direct overflight below 2,000 feet AGL to the:

1. FAA Airport/Facility Directory – Southwest U.S.,
2. Jeppesen Sanderson Inc. (Airway Manual Services - Western U.S. Airport Directory),  
and
3. Pilot's Guide to California.

Verification: ~~No later than 60 days after the project owner completes replacement of the Advanced Gas Path components~~ Within 60 days after Energy Commission approval of the Petition to Amend, the project owner shall submit draft language for the letters of request to the FAA (including Southern California TRACON) and Brown Field Municipal Airport to the CPM for review and approval. Within 60 days after CPM approval of draft language for the letters of request to the FAA (including Southern California TRACON), the project owner shall submit the required letters of request to the FAA (including Southern California TRACON) and Brown Field Municipal Airport, ~~and request that Southern California TRACON submit aerodrome remarks to the listed agencies.~~ The project owner shall submit copies of these requests to the CPM. A copy of any resulting correspondence shall be submitted to the CPM within 10 days of receipt. ~~If the project owner does not receive a response from any of the above agencies within 45 days of the request, the project owner shall follow up with a letter to the respective agency or agencies to confirm implementation of the request. A copy of any resulting correspondence shall be submitted to the CPM within 10 days of receipt. The project owner shall notify the CPM within 10 days if notified that any or all of the requested notices cannot be implemented. Should this occur, the project owner shall appeal such a determination, consistent with any established appeal process and in consultation with the CPM. A final decision from the jurisdictional agency denying the request, as a result of the appeal process, shall release the project owner from any additional action related to that request and shall be deemed in compliance with that portion of this condition of certification. The project owner should provide the CPM copies of the correspondence with the FAA regarding changes to the applicable charts and AFD, the Jeppesen Sanderson Airway Manual Western U.S. Airport Directory, and the California Pilot's Guide as well as any responses which could include when the applicable changes will appear in future editions of these publications. The project owner shall acquire these publications when they become available and provide the CPM copies of the relevant portion of the charts and publications to verify that the changes have been made. In addition, the project owner must advise the CPM when the remark about avoiding direct over flight of the Otay Mesa Energy Center has been added to the Brown Field Municipal Airport ASOS.~~