

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:)	Docket No. 99-AFC-5C
)	Order No. 04-0825-05
OTAY MESA GENERATING PROJECT)	
)	
Petition for Proposed Modifications:)	
Delay and Increase \$1.2 Million Air)	COMMISSION ORDER APPROVING
Quality Mitigation Fee)	PROJECT MODIFICATION
_____)	

On June 17, 2003 Otay Mesa Generating Company, LLC petitioned the California Energy Commission to revise the Otay Mesa Generating Project (OMGP) Air Quality Condition of Certification AQ-75 in order to delay and increase the required \$1.2 Million mitigation fee.

At a regularly scheduled Business Meeting on August 25, 2004, the Energy Commission considered staff's analysis and approved the Petition and the proposed revised condition in accordance with Title 20, section 1769(a)(3) of the California Code of Regulations.

COMMISSION FINDINGS

Based on staff's analysis, the Energy Commission concludes that the proposed changes will not result in any significant impact to public health and safety, or the environment. The Energy Commission finds that:

- A. There will be no new or additional unmitigated significant environmental impacts associated with the proposed change.
- B. The facility will remain in compliance with all applicable laws, ordinances, regulations, and standards, in accordance with Public Resources Code section 25523.
- C. The change will be beneficial to the project owner and County of San Diego by allowing a reasonable delay to the mitigation fee while requiring an escalator to be applied to the payment to account for increases in the cost of mitigation.
- D. There has been a change since the Energy Commission certification due to unforeseen delays to the construction phase of the project.

ORDER

The California Energy Commission hereby approves the Otay Mesa Generating Project, LLC, Petition to amend air quality Condition of Certification AQ-75 for modification to the \$1.2

million mitigation fee, and as a result orders the following changes to the Otay Mesa Generating Project:

REVISIONS TO EXISTING CONDITIONS OF CERTIFICATION

Proposed deletions are shown in ~~strikethrough~~ and additions are shown in underline.

AQ-75 The project owner/operator shall provide \$1.2 million, as a mitigation fee, for potential PM10 and PM10 precursor impacts, to the District APCO to provide PM10 and PM10 precursor reductions throughout the District. The amount of the fee shall equal \$1.2 million escalated at a rate equal to the change in the Consumer Price Index (CPI). The payment shall be made no later than 14 months prior to “first fire” of either turbine, or October 31, 2006, whichever comes first. The fees shall be provided to the District, who with guidance from CARB or the CEC, will allocation the funds to programs such as the Lower-Emission School Bus Retrofit Program, the Carl Moyer program, or some other program designed to reduce PM10 and PM10 precursor emission in District.

The District shall preferentially make available the mitigation fee funds to the Sweetwater Union High, the San Ysidro Elementary, the South Bay Elementary, or the Chula Vista Elementary Districts for school bus retrofits. The preference shall be in the form of a first right of refusal given to the above districts for no more than 2 years from the date of the ~~first~~ first fee payment by the project owner. Any mitigation fee funds not used by the above school districts or available after 2 years from the date of the ~~first~~ first fee payment by the project owner shall be made available for other program-appropriate emission reductions through the District's program.

Verification: The project owner/operator shall provide the funds to the District APCO in one payment of \$1.2 million by October 31, 2003. Copies of the payment shall be provided to the CEC CPM. At least 30 days prior to the payment date, the project owner/operator shall provide to the CEC CPM the calculation of the final payment amount for approval. The calculation shall be based on the CPI for San Diego (all urban consumers, all items, not seasonally adjusted) from June 2003 (203.8) until the most recent semiannual San Diego CPI data available prior to the date of the payment. No later than 20 days after delivery of the ~~deposit~~ mitigation fee payment to the District, the project owner/operator shall provide to the CEC CPM a letter (or copy thereof) from the District APCO indicating receipt of the payment.

IT IS SO ORDERED.

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND
DEVELOPMENT COMMISSION

DATE

WILLIAM J. KEESE
Chairman