

RV 11/04/25

PETITION FOR VARIANCE
BEFORE THE HEARING BOARD OF THE
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

2025 SEP 30 PM 2:14

PETITIONER: ENERY HOLDINGS LLC _____

6248-3

CASE NO: _____

FACILITY ID: 186899 _____

FACILITY ADDRESS: 17171 S. Central Ave. _____
[location of equipment/site of violation; specify business/corporate address, if different, under Item 2, below]

City, State, Zip: Carson, CA 90746 _____

1. TYPE OF VARIANCE REQUESTED (more than one box may be checked; see Attachment A, Item 1, before selecting)

☐ INTERIM ☐ SHORT ☒ REGULAR ☐ EMERGENCY ☐ EX PARTE EMERGENCY

2. CONTACT: Name, title, company (if different than Petitioner), address, and phone number of persons authorized to receive notices regarding this Petition (no more than two authorized persons).

Michael Munoz, Compliance _____

_____ Zip _____

☎ (406) 544-3326 Ext. _____

Fax () _____

E-mail mmunoz@ches.biz _____

_____ Zip _____

☎ () _____ Ext. _____

Fax () _____

E-mail _____

3. RECLAIM Permit ☒ Yes ☐ No Title V Permit ☒ Yes ☐ No

Persons with disabilities may request this document in an alternative format by contacting the Clerk of the Board at 909-396-2500 or by e-mail at clerkofboard@aqmd.gov.

If you require disability-related accommodations to facilitate participating in the hearing, contact the Clerk of the Board at least five (5) calendar days prior to the hearing.

[ALL DOCUMENTS FILED WITH CLERK'S OFFICE BECOME PUBLIC RECORD]

4. **GOOD CAUSE:** Explain why your petition was not filed in sufficient time to issue the required public notice. (Required only for Emergency and Interim Variances; see Attachment A, Item 4)

This petition is filed with more than 30 days notice- This is a request for extension.

5. Briefly describe the type of business and processes at your facility.

Enery Holdings is a Federal Energy Regulatory Commission (FERC) regulated Public Utility with an identification number of GID0002712. Enery Holdings LLC has a Wholesale Generator Agreement (EG23-51-000) on file at FERC. Enery Holdings owns the ICEGEN power plant, located at 17171 Central Ave., Carson, CA 90746. The ICEGEN power plant is a 55.765 MW combined cycle power plant built in 1989. The ICEGEN power plant is a peaker power plant, providing electrical power to the California electrical grid when ordered to do so by the California Independent System Operator (CAISO). The CAISO manages roughly 80% of California's electrical grid. Failure to execute an order to generate electricity when ordered to do so by the CAISO may result in civil and criminal penalties. ICEGEN is regulated by 22 local, state and federal entities. One of these regulating entities is the South Coast Air Quality Management District (SCAQMD). SCAQMD regulates ICEGEN's nitrous oxide emissions.

6. List the equipment and/or activity(s) that are the subject of this petition (see Attachment A, Item 6, Example #1). **Attach copies of the Permit(s) to Construct and/or Permit(s) to Operate for the subject equipment. For RECLAIM or Title V facilities, attach *only* the relevant sections of the Facility Permit showing the equipment or process and conditions that are subject to this petition. You must bring the entire Facility Permit to the hearing.**

Equipment/Activity	Application/ Permit No.	RECLAIM Device No.	Date Application/Plan Denied (if relevant)*
45.765 MW Natural Gas Turbine	186899	D19	

*Attach copy of denial letter

7. Briefly describe the activity or equipment, and why it is necessary to the operation of your business. A schematic or diagram may be attached, in addition to the descriptive text.

The ICEGEN power plant produces electricity by combusting natural gas in a 45.765 MW General Electric LM6000 gas turbine. The 45.765 MW General Electric LM6000 gas turbine is the single piece of equipment that drives the generation of electricity at ICEGEN. Without the LM6000 D19 gas turbine, ICEGEN cannot fulfill the dispatch orders of the CAISO and generate electricity for the California electrical grid. Failure to generate electricity to a CAISO order is a violation of the CAISO FERC Tariff and constitutes a violation of the Fair Powers Act, a federal law governing utilities in the United States. Enery is a FERC regulated Public Utility and is subject to civil and criminal penalties for failing to generate when ordered to do so.

8. Is there a regular maintenance and/or inspection schedule for this equipment? Yes ☒ No ☐

If yes, how often: Daily, Weekly, Monthly, Semi-Annually, Annually

Date of last maintenance and/or inspection 9/30/2025

Describe the maintenance and/or inspection that was performed.

Each morning the on shift power plant Operator checks the CEMS modem line for tone. Every evening the on shift power plant Operator checks the CEMS modem line for tone. A project manager regularly checks the AT&T service ticket status.

9. List all District rules, and/or permit conditions [indicating the specific section(s) and subsection(s)] from which you are seeking variance relief (if requesting variance from Rule 401 or permit condition, see Attachment A). Briefly explain how you are or will be in violation of each rule or condition (see Attachment A, Item 9, Example #2).

Rule	Explanation
Rule 2012 (c)(3)(A)	ICEGEN does not have modem connectivity to transmit daily CEMS data to the AQMD PCN communication line

10. Are the equipment or activities subject to this request currently under variance coverage? Yes ☒ No ☐

Case No.	Date of Action	Final Compliance Date	Explanation
6248-3	7/31/2025	10/29/2025	We are seeking an extension of the Order through 7/31/2026

11. Are any other equipment or activities at this location currently (or within the last six months) under variance coverage? Yes ☒ No ☐

Case No.	Date of Action	Final Compliance Date	Explanation
6248-2	12/18/2024	Pending RATA	Inability to conduct RATA

12. Were you issued any Notice(s) of Violation or Notice(s) to Comply concerning this equipment or activity within the past year? Yes ☒ No ☐

If yes, you must attach a copy of each notice.

P79477

13. Have you received any complaints from the public regarding the operation of the subject equipment or activity within the last six months? Yes ☐ No ☒

If yes, you should be prepared to present details at the hearing.

14. Explain why it is beyond your reasonable control to comply with the rule(s) and/or permit condition(s). Provide specific event(s) and date(s) of occurrence(s), if applicable.

The Hearing Boards Order in case 6248-3 requires ICEGEN to explore the possibility of implementing a fiber optic modem on its DAHS. Unfortunately, ICEGEN's DAHS does not support a fiber modem. To connect a fiber modem, ICEGEN will likely have to replace its DAHS with a new manufacturer's DAHS. A new manufacturer's DAHS will likely not be compatible with ICEGEN's current CEMS. If we replace the CEMS, we will go to the most advanced technology CEMS, which is a laser CEMS. Although laser CEMS are approved in some jurisdictions, ICEGEN has been unable to determine if laser CEMS are approved in South Coast. We have asked South Coasts program manager Mr. Eckerle for a meeting, but since 9/6/2025 Mr. Eckerle has not responded to our request. We subsequently asked AQMD counsel Mr. Jones to assist in making Mr. Eckerle available on 9/20/2025, but Mr. Jones has not responded. ICEGEN does not have enough time to confirm approved engineering specifications, budget, purchase and install a new CEMS and DAHS prior to the ending of the Hearing Boards Order in case 6248-3 on 10/29/2025.

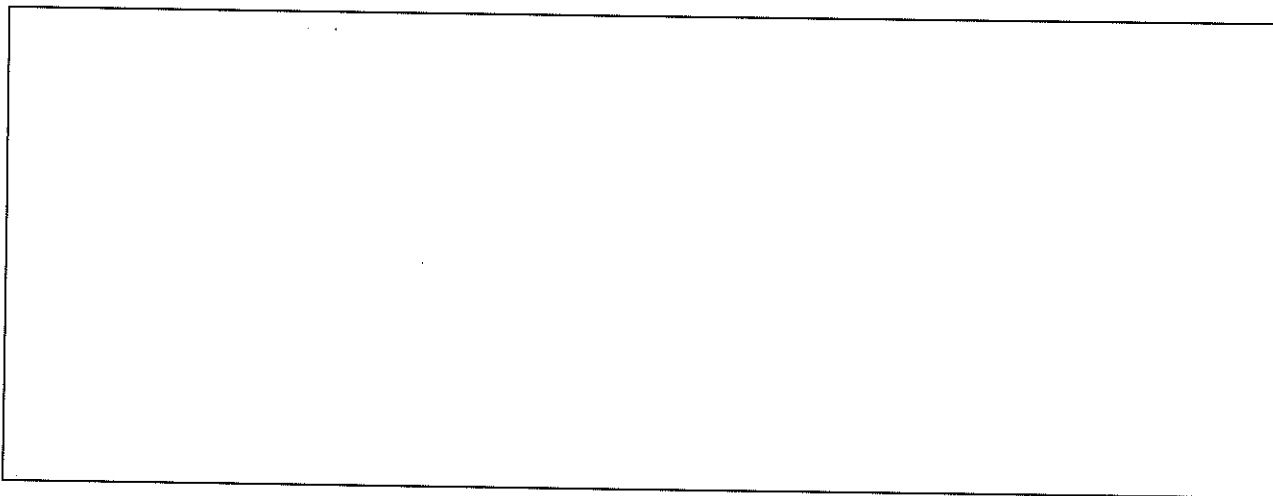
The Hearing Boards Order in case 6248-3 requires ICEGEN and AQMD to meet and confer about an alternate method of importing ICEGEN's CEMS data beyond a copper line modem. Mr. Thomas Lee has not responded to ICEGEN's 9/6/2025 request to meet and confer. ICEGEN does not know what progress, if any, AQMD has made in being able to receive data in a format other than copper line modem.

SCAQMD's Rule 2012 only allows a single method to transfer data from a RECLAIM facility to AQMD's Private Data Network (PDN) system. That single method is the unsecure, antiquated and problematic copper line modem interface abandoned by most businesses 20 years ago. AQMD has chosen not to modernize its data systems away from copper line modems. Upon information and belief, the U.S. Environmental Protection Agency has communicated its desire for SCAQMD to modernize its data interface away from copper line modems. AQMD has failed to upgrade to modern technology.

AT&T provides copper line modem service to Enery's ICEGEN power plant. The copper lines run underground through a manhole system. In March 2025 copper thieves cut miles and miles of subterranean copper line. This theft was reported on 5/5/2025 in the Los Angeles Times in the article "Copper thieves cut phone service to seniors in South L.A.". Appendix 1.

Despite constant pressure on AT&T, they have been unable to repair the service over the last seven months. AT&T reports that there are few technicians who understand the old copper system, as most systems are now fiber optic. AT&T reports that there are limited repair resources as most systems are now fiber optic. AT&T reports that there are limited field maps showing the copper wires that have been in place since the 1950's.

Enery has asked SCAQMD to accept our data in an AQMD approved database form transmitted digitally. AQMD Enforcement inspector Thomas Lee (tlee2@aqmd.gov) said "Per our rules, the data can only be transmitted through the RTU/modem system to the District Central Station".



15. When and how did you first become aware that you would not be in compliance with the rule(s) and/or permit condition(s)? Provide specific event(s) and date(s) of occurrence(s).

The Hearing Board issued an Order dictating that ICEGEN:

1. Attempt to install a fiber optic modem to its CEMS server to bypass the AT&T copper line- In order to execute the installation of a fiber modem, ICEGEN will likely have to replace its CEMS and DAHS. ICEGEN has contacted AQMD's Mr. Colin Eckerl to determine if laser CEMS have been approved for use. Mr. Erckel has not responded to ICEGEN's request for help since 6 September 2025. ICEGEN cannot plot a technological path without an understanding of AQMD's approved CEMS technology.
2. Meet and confer with AQMD to determine if a method other than modem could be used to transfer data- Since 6 September 2025, AQMD has not responded to ICEGEN's request to meet and confer concerning alternative methods of transferring data beyond a copper line modem

As a result of ICEGEN's inability to get AQMD staff to communicate, we will be unable to meet a 10/29/2025 Order deadline.

16. List date(s) and action(s) you have taken since that time to achieve compliance. That the Petition Form HB-V, and any related instructions, include requirement that the Petitioner include a timeline in suitable, chronological format to address the events, dates, and actions called for by Questions 15 and 16, including the dates of communication with the South Coast AQMD to notify them of the occurrence(s) giving rise to the requested variance.

Enery has backwards engineered the CEMS and DAHS that would have to be replaced in order to use a fiber optic modem.

On 9/6/2025 Enery asked SCAQMD CEMS program manager Mr. Eckerle to confirm the use of laser (Most Advanced Technology) to measure pollutants. This request has not been answered by Mr. Eckerle or AQMD counsel Mr. Jones.

On 9/6/2025 Enery has asked AQMD enforcement Thomas Lee to conduct a meet and confer teleconference. Mr. Lee has not responded to Enery's request

17. What would be the harm to your business during **and/or after** the period of the variance if the variance were not granted?

Economic losses: \$1,656,000 - (92 days*24 hours/day*30lbs/hour*\$25/lbs Cycle 1 Coastal Credit)_____

Number of employees laid off (if any):5_____

Provide detailed information regarding economic losses, if any, (anticipated business closure, breach of contracts, hardship on customers, layoffs, and/or similar impacts).

As described in our answer to Question 5, Enery is a FERC regulated public utility. Enery's ICEGEN power plant must fulfill the dispatch orders of the CAISO and generate electricity for the California electrical grid. Failure to generate electricity to a CAISO order is a violation of the CAISO FERC Tariff and constitutes a violation of the Fair Powers Act, a federal law governing utilities in the United States. Enery is a FERC regulated Public Utility and is subject to civil and criminal penalties for failing to generate when ordered to do so.

By generating power to comply with a CAISO run order, Enery will be subject to AQMD Enforcement's use of Missing Data Procedures as it will be unable to transmit its emissions data within 24 hours. Enery will view these MDP actions as a violation of its rights:

Abrogate right of Due Process under the California and United States Of America Constitutions- AQMD will violated Enery's rights by taking Enery's NOx credits without Due Process.

Violate the Takings Clause of the Constitution of the United States Of America- AQMD will violated Enery's rights by taking Enery's NOx credits without just compensation.

Violate Enery's rights under the Excessive Fines Clause of the California Constitution- The functionality of AQMD's analogue modem PDN system and the AT&T copper wires that support it are outside of the control of Enery, the permit holder. As such, any fines accruing from the unavailability of AQMD's antiquated analogue PDN system is a violation of the "Excessive Fines" clause of the California Constitution. Specifically, AQMD has made no provision for an alternative method of data delivery. Further, the application of MDP that equates untimely data = missing data and seeks to quadruple actual emissions and fines is a violation of this clause.

18. Can you curtail or terminate operations in lieu of, or in addition to, obtaining a variance? Please explain.

Enery's ICEGEN's power plant is under jurisdiction of the California Independent System Operator (CAISO). ICEGEN must run when ordered to run or face civil and criminal penalties.

19. Estimate excess emissions, if any, on a daily basis, including, if applicable, excess opacity (the percentage of total opacity above 20% during the variance period). If the variance will result in no excess emissions, insert "N/A" here and skip to No. 20.

	(A)	(B)	(C)*
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Pollutant	Total Estimated Excess Emissions (lbs/day)	Reduction Due to Mitigation (lbs/day)	Net Emissions After Mitigation (lbs/day)
NOx	0	0	0

* Column A minus Column B = Column C

Excess Opacity: _____ %

20. Show calculations used to estimate quantities in No. 19, or explain why there will be no excess emissions.

Enery Holdings owns two times as many NOX Credits as its typical annual emissions; See Appendix 4

21. Explain how you plan to reduce (mitigate) excess emissions during the variance period to the maximum extent feasible, or why reductions are not feasible.

Enery's ICEGEN power plant will not generate excess emissions.

22. How do you plan to monitor or quantify emission levels from the equipment or activity(s) during the variance period, and to make such records available to the District? **Any proposed monitoring does not relieve RECLAIM facilities from applicable missing data requirements.**

Per the Hearing Commissions Order in Case 6248-3, Enery's ICEGEN power plant will record run hours and use Missing Data Procedures (MDP) for each run hour to compute emission levels.

23. How do you intend to achieve compliance with the rule(s) and/or permit condition(s)? Include a detailed description of any equipment to be installed, modifications or process changes to be made, permit conditions to be amended, etc., dates by which the act ons will be completed, and an estimate of total costs.

Enery will have to replace its CEMS and DAHS with units that allow the use of fiber optic modem.

24. State the date you are requesting the variance to begin: 11/5/2025 _____; and the date by which you expect to achieve final compliance: 7/31/2026 _____.

If the regular variance is to extend beyond one year, you **must** include a **Schedule of Increments of Progress**, specifying dates or time increments for steps needed to achieve compliance. See District Rule 102 for definition of Increments of Progress (see Attachment A, Item 24, Example #3).

List Increments of Progress here:

25. List the names of any District personnel with whom facility representatives have had contact concerning this variance petition or any related Notice of Violation or Notice to Comply.

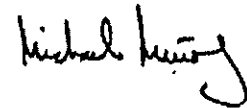
Thomas Lee (tlee2@aqmd.gov) _____ Ext. (909) 396-2412
Colin Eckerle (CEckerle@aqmd.gov) _____ Ext. 909-396-2476
John L. Jones II (JJJones@aqmd.gov) _____ Ext. 909-396-2403

If the petition was completed by someone other than the petitioner, please provide their name and title below.

Name	Company	Title
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The undersigned, under penalty of perjury, states that the above petition, including attachments and the items therein set forth, is true and correct.

Executed on 9/30/2025 _____, at Humacao, Puerto Rico



Signature

Michael Munoz_____
Print Name

Title: Compliance

26. SMALL BUSINESS and TABLE III SCHEDULE A FEES: To be eligible for reduced fees for small businesses, individuals, or entities meeting small business gross receipts criterion [see District Rule 303(h)], you must complete the following:

Declaration Re Reduced Fee Eligibility

1. The petitioner is
a) ☐ an individual, or
b) ☐ an officer, partner or owner of the petitioner herein, or a duly authorized agent of the petitioner authorized to make the representations set forth herein.

If you selected 1a, above, skip item 2.

2. The petitioner is
a) ☐ a business that meets the following definition of Small Business as set forth in District Rule 102:
SMALL BUSINESS means a business which is independently owned and operated and meets the following criteria, or if affiliated with another concern, the combined activities of both concerns shall meet these criteria:
(a) the number of employees is 10 or less; **AND**
(b) the total gross annual receipts are \$500,000 or less or
(iii) the facility is a not-for-profit training center.

-OR-

- b) ☐ an entity with total gross annual receipts of \$500,000 or less.

3. Therefore, I believe the petitioner qualifies for reduced fees for purpose of filing fees and excess emission fee calculations, in accordance with Rule 303(h).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, at

[YOU MAY ATTACH ADDITIONAL PAGES IF NECESSARY]