

MFCO

10/27/26

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

SOUTH COAST AQMD
CLERK OF THE BOARDS

2026 SEP 10 A 7:29

PETITIONER: ENERY HOLDINGS LLC _____

CASE NO: 6248 -4

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 ZA 90746 _____

1. TYPE OF MODIFICATION REQUESTED

- (a) ☒ **MODIFICATION/EXTENSION OF A FINAL COMPLIANCE DATE:** If you are operating under a variance and will not be in full compliance by the final compliance date, you may request an extension of the variance and a modification of the final compliance date. **A petition requesting such an extension must be filed at least 45 days prior to the existing final compliance date in order to meet the legal notice requirement.** (Hearing will be held approximately 45 days from date of filing--30-day published notice required.)
- (b) ☐ **MODIFICATION OF VARIANCE CONDITIONS:** If you are unable to comply with one or more conditions of an existing variance, you may request a modification of variance conditions. (Hearing will be held approximately 21 days from date of filing--10-day published notice required)
- (c) ☐ **MODIFICATION OF INCREMENTS OF PROGRESS:** If you are unable to comply with one or more increments of progress of an existing variance and additional time is required, you may request a modification of those increments of progress. (Hearing will be held approximately 21 days from date of filing--10-day published notice required.)
- (1) ☐ **INTERIM AUTHORIZATION:** If compliance with an increment of progress cannot be achieved and you are unable to notify the Hearing Board at least 21 days in advance in order to schedule a noticed hearing, the Board can consider granting **one** extension of the increments of progress (interim authorization). **However**, an interim authorization cannot be granted: (1) for more than 30 days; or (2) to extend a final compliance date of an existing variance. (Hearing will be held approximately 2 working days from date of filing or the next available hearing date thereafter.)

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]

(d) ☐ OTHER: Specify:

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

Olivia Goldstein

Compliance

President

Zip

Zip

☎ (406) 544-3326 Ext.

☎ (406) 544 2476 Ext.

Fax ()

Fax ()

E-mail mmunoz@ches.biz

E-mail ogoldstein@ches.biz

3. List the equipment and/or activity that are the subject of this petition, if different from the existing variance. (Attach copy of last minute order regarding this variance)

Equipment/Activity	Application/ Permit No.	RECLAIM Permit/Device No.	Date Application/Plan Denied (if relevant, attach copy of denial letter)
45.765 MW Natural Gas Turbine	186899	D19	

4. List all District rules, and/or permit conditions from which you are requesting variance relief, if different from the existing variance. Attach copies of the Permit(s) to Construct and/or Permit(s) to Operate the subject equipment **only if you are adding** a request for relief from permit conditions. If RECLAIM or Title V facility, attach only the relevant sections of the Facility Permit (for example, showing the equipment or process and conditions that are the subject of this petition).

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

5. Explain the steps taken since the last hearing to achieve compliance, including how you have met each of your existing variance conditions and/or increments of progress.

Enery Holdings initially approached the Hearing Board because our copper line was severed by thieves, and AT&T was unable to restore service. At the Hearing for case no. 6248-3, the Hearing Board ordered ICEGEN to explore the possibility of implementing a fiberoptic modem to its DAHS. Unfortunately, our DAHS does not support a fiber optic modem option. At Enery's petition 6248-4 hearing on 11/04/2025, case no. 6248-4 was granted, with an end date of 10/29/2026. The petition was granted with the condition that the petitioner should provide monthly updates regarding the below four items. Since that date and in compliance with the order, on the 4th or thereabout of every month, Enery Holdings has submitted a monthly status report to the requisite parties. Synopses of the responses from the monthly reports are below, and the monthly reports will be attached as exhibits.

1. Replacement of the CEMS and DAHS system Enery has received several quotes for new CEMS/DAHS systems that do not rely upon the copper wiring from AT&T that was stolen and has made us unable to connect. AT&T has not repaired the issue as of 8/24/2026. Although we now have quotes, no CEMS manufacturer was willing to quote us for the newest and most accurate technology (laser CEMS) because it is not approved by SCAQMD. As Enery explained to the hearing board, the CEMS expenditure is in excess of \$650,000 and we want to install the most updated and accurate technology with the longest useful life. The Environmental Protection Agency (EPA) has approved laser-based continuous emissions monitoring system (CEMS) technology for use under 40 CFR Part 75. Specifically, the EPA's Clean Air Power Division (CAPD) has officially recognized and approved Integrated Path CEMS (IP CEMS)- an in-situ optical monitoring technology that utilizes tunable diode laser (TDL) absorption spectroscopy to measure gas concentrations directly inside a smokestack.
2. The status of CEMS/DAHS application for South Coast AQMD approval Enery has tried multiple ways to discuss the CEMS/DAHS laser technology with SCAQMD. Enery first emailed with Mr. Eckerle and Mr. Welch from the office responsible for certification protocol for TDL or integrated path CEMS under RECLAIM. Mr. Eckerle stated "there are no plans to develop one (protocol for Lasers) at this time". Enery has contacted the Clerk of the Board regarding this application, who directed us to Mr. John Jones. Mr. Jones was contacted by Enery on 12/5/25, 4/7/26, 4/10/26, 4/23/26, 7/25/26 asking for direction on the application or to schedule a meeting with the Executive Office with no meaningful answer.
On 2/24/26 Enery sent certified letters to AQMD Board Members Polidori, Aspell, Katzenstein, Krause, Low, MacMillian, Rees, and Nastri requesting a meeting to determine laser

CEMS/DAHs approval at SCAQMD. Dr. Katzenstein is the Deputy Executive Officer, and leads the Office of Technology Advancement. We have received no answer to any of our U.S. Postal service letters sent to all of these parties. We sent copies of these communications via email to John Jones on 4/23/26, with no answer.

On 6/5/26 Enery attended the Public Hearing for PAR 2011, 2012, and 2015 and made a general statement asking the board to consider directing AQMD to review and approve laser technology as an avenue for continuous emission monitoring systems.

3. **Emails and dates of meetings with South Coast AQMD staff** Emails and dates of communications can be found in our monthly status reports, which will be attached as exhibits to this variance extension request. These reports can be found in Exhibits 2-10.
4. **Purchase and installation of CEMS and DAHS system** Enery has made no purchase orders. We are between a rock and a hard place. SCAQMD staff has stonewalled us so we cannot communicate with them about approving laser CEMS. The only approved systems are 1980's vintage pump sample old technology, which is not as accurate requires constant maintenance, and has a limited lifespan. However, if we do not purchase old technology, we will be out of compliance with the hearing board. We request that the hearing board direct AQMD staff to review and approve laser CEMS.

6. When did you first become aware that you would not be able to comply with the existing variance?

Date: Around 8/15/26

7. What part(s) of the existing variance are you unable to comply with (final compliance date, specific increments of progress, and/or conditions)? For each part with which you cannot comply, provide an explanation.

As a result of our inability to get AQMD staff to communicate about laser CEMS, Enery is unable to comply with the final compliance date.

As ordered by the Hearing Board, we worked with vendors to receive quotes for updated CEMS/DAHS

systems, but they cannot provide us with the most accurate technology because it is not approved by SCAQMD.

During this time we have also coordinated with AT&T to continue to follow up on repair for our copper line, but they have not made the repair.

Without having had dialogue with SCAQMD staff regarding laser CEMS as directed by the Hearing Board, we cannot move forward.

Enery has repeatedly requested discussions with AQMD staff regarding laser CEMS approval, and has been stonewalled at every turn. Until we can have this discussion, we cannot comply with the final order to purchase and install CEMS/DAHS.

8. 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 and/or modifications or process changes to be made, a list of the dates by which the actions will be completed, and an estimate of total costs.

Enery hopes to achieve compliance with the help of the Hearing Board, who we ask to order AQMD to review and approve laser CEMS. As a private party, we have not been able to access any party at AQMD who is responsible for the approval of this technology after reasonable efforts.

1. Enery will continue to comply with all order terms to the best of our ability.
2. Upon submittal of this extension request, Enery requests that the Hearing Board order AQMD to facilitate a meeting regarding laser CEMS and order AQMD to review and approve this technology
3. Upon approval, Enery can receive quotes for laser CEMS technology.
4. Upon receiving quotes, Enery can select the appropriate configuration, purchase, and install.

Enery cannot provide a specific date because the outcome of these steps are dependent upon discussions with AQMD staff and their review and approval of laser CEMS technology.

9. State the date by which you expect to achieve final compliance: 10-29-27

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.

Example:

- Permit application(s) will be submitted to the District by June 1, 2001.
- Contracts for the purchase of emission control systems will be awarded by August 1, 2001.
- On-site construction will be completed by September 8, 2001.

List Increments of Progress here: We have specified the systems, received bids, and budgeted for the expenditure.

10. 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, go to No. 11.

Pollutant	(A)	(B)	(C)*
-----------	-----	-----	------

	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: _____%

11. Show calculations used to estimate quantities in No. 10, or explain why there will be no excess emissions.

Enery Holdings LGHHP_6_ICEGEN power plant operates as a peaker plant. Through the end of August 2026, LGHHP_6_ICEGEN has operated a total of 44.82 hours, generating approximately 44.82 pounds of NOx. Enery Holdings holds 4,850 NOx perpetual credits.

(44.82 x 5lbs/hours= 224.1 lbs)

12. Explain how you plan to reduce (mitigate) excess emissions to the maximum extent feasible. If no excess emissions, skip to No. 13.

Enery's LGHTHP_6_ICEGEN power plant will not generate excess emissions

13. Explain how you will monitor or quantify emission levels from the subject equipment or activity during the variance period and make such records available to the District. **Any proposed monitoring does not relieve RECLAIM facilities from 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.

14. What would be the harm to your business if the variance were not modified/extended as requested?

Economic losses: \$ 6,570,000 (365 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).

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, essentially claiming that Enery Holdings is required to provide NOx credits for run hours where no natural gas has flowed through the LGHTHP_6_ICEGEN facility.

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, , essentially claiming that Enery Holdings is required to provide NOx credits for run hours where no natural gas has flowed through the LGHTHP_6_ICEGEN facility.

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.

AT&T is a California Public Utility. Under California Public Utilities Code Section 451, regulated utilities MUST furnish and maintain safe, adequate, and reasonable service. AT&T has not provided modem service, which Enery Holdings has continued to pay for, since the copper theft. Any fine that AQMD levies on Enery Holdings for failure to communicate its readings over a copper modem line is unjust as Enery Holdings has a legal right to rely on AT&T's modem service. Any fines, penalties, or disciplinary proceedings are a violation of Enery Holding's rights under California Public Utilities Code Section 451.

15. 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.

__John Jones, Senior Deputy District Counsel; jjones@aqmd.gov____ Ext. __909-396-2403__

__Thomas Lee; tlee2@aqmd.gov____ Ext. __909-396-2412__

__Colin Eckerle; ceckerle@aqmd.gove____ Ext. __909-396-2476__

Wayne Nastri, Executive Officer

Aaron Katzenstein, Deputy Executive Officer Technology Advancement Office

Jason Aspell, Deputy Executive Officer Engineering and Permitting

Jason Low, Deputy Executive Officer Monitoring and Analysis Division

Sarah Rees, Deputy Executive Officer Planning, Rule Development and Implementation

Michael Krause, Assistant Deputy Executive Officer Planning, Rule Development, and Implementation

Ian MacMillan, Assistant Deputy Executive Officer Planning, Rule Development and Implementation

Andrea Polidori, Former Assistant Deputy Executive Officer Monitoring and Analysis

16. Have you received any complaints from the public regarding the operation of the subject equipment or activity within the last six (6) months? No X ☐ Yes ☐

Date of Complaint	Number of Complainant(s)	Nature of Complaint

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 9-9-26, at Los Angeles, California


Signature

Olivia Goldstein
Print Name

President _____
Title

17. 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 Regarding Reduced Fee Eligibility

1. The petitioner is

a) ☐ an individual, or

b) X ☐ 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 _____,
California

Signature

Print Name

Position with Company

(Petition for Modification: Revised December 10, 2008)