

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 17, 2003

In Reply Refer To:

Calpine Corporation
Otay Mesa Generating Company, LLC
Docket No. CP03-335-000
Draft Presidential Permit

The Honorable Donald H. Rumsfeld
Secretary of Defense
Washington, D.C. 20301

Dear Mr. Secretary:

1. Pursuant to the provisions of Executive Order Nos. 10485 and 12038 of September 1, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, enclosed herewith for your information and consideration is a copy of an application filed jointly by Calpine Corporation (Calpine) and Otay Mesa Generating Company, LLC (Otay) (collectively "applicants") with the Federal Energy Regulatory Commission on July 15, 2003, in Docket No. CP03-335-000.
2. In the July 15, 2003 filing, the applicants seek to amend the Presidential Permit issued on July 30, 2001, Otay Mesa Generating Co, LLC, 96 FERC ¶ 61,178 (2001), authorizing Otay to operate, maintain, and connect certain natural gas facilities at the United States/Mexican international boundary in San Diego, County, California. Specifically, the applicants request that the Section 3 authorization and Presidential Permit held in the name of Otay be changed to insert Calpine's name in lieu of Otay to recognize the proposed merger of Otay, a wholly owned subsidiary of Calpine, with and into Calpine. The requested new Section 3 authorization and Presidential Permit are to be held by Calpine.
3. Calpine is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 50 West San Fernando Street, San Jose, California, 95113. Otay is a limited liability company also organized and existing under the laws of the State of Delaware, with its principal place of business at 50 West San Fernando Street, San Jose, California, 95113. Otay is an indirect wholly-owned subsidiary of Calpine.

4. Calpine indicates that as part of an internal restructuring of its assets necessary to secure additional financing, Otay and six other Calpine subsidiaries merged on or about July 16, 2003. The merger moves power development assets owned by seven Calpine subsidiaries, including Otay, to the parent corporation in order to facilitate Calpine's sale of approximately \$2.5 billion in bonds. Applicants assert that the bond issue is important to maintain the financial strength of Calpine so that it can continue to be involved in the construction, development, ownership and operation of power generating facilities in the United States.

5. Also enclosed for your consideration is a draft copy of the Presidential Permit to be issued to Calpine, which incorporates terms and conditions you and the Secretary of State have heretofore required in similar cases. Consistent with current Commission policy, there are two substantive differences between the draft permit and the existing permit. Article 3 of the draft permit does not limit the use of the subject facilities to the importation of gas. Thus, the facilities may be used for importation or exportation as consistent with current and future authorizations by the Department of Energy. Article 9, is revised, to state that the permittee is required to defer to the Commission's finding and requirement regarding which authorized facilities should be removed and which should remain in place, in the event that they are no longer used.

6. A similar letter, together with a draft of the proposed Presidential Permit and a copy of the application, is being sent to the Secretary of State. If the Secretary of State should make an unfavorable recommendation or propose any material change in the draft of the permit, the Commission will immediately advise you.

7. The Commission would appreciate receiving your views regarding issuance of the proposed amended permit at an early date. Please do not hesitate to contact me at (202) 502-8400 or Ethel Morgan at (202) 502-8450, if you need any further information.

By direction of the Commission.

Magalie R. Salas,
Secretary.

Enclosures
Copy of Application
Draft Permit

Appendix A

AMENDED PRESIDENTIAL PERMIT AUTHORIZING CALPINE CORPORATION TO OPERATE AND MAINTAIN NATURAL GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN UNITED STATES AND MEXICO

FEDERAL ENERGY REGULATORY COMMISSION Docket No. CP03-335-000

Calpine Corporation and Otay Mesa Generating Company, LLC, corporations organized and existing under the laws of the State of Delaware, filed in Docket No. CP03-335-000 on July 15, 2003, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204-112, seeking an amendment of the Presidential Permit issued to Calpine's wholly owned subsidiary Otay, Otay Mesa Generating Company, LLC, 96 FERC ¶ 61,178, (July 31, 2001), to insert the name of Calpine in lieu of Otay to recognize the merger of Otay, with and into Calpine. In support of this request Calpine and Otay (Permittee) state that the subject facilities will not be altered, activities will not vary from those permitted by the original Presidential Permit and the activities of Calpine will to be consistent with the Commission's previous authorization for the subject facilities.

By letter dated October ----, 2003, the Secretary of State, and by letter dated October----, 2003, the Secretary of Defense favorably recommend that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953 and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, and the Commission's General Rules and Regulations, permission is granted to the Permittee to construct, operate, maintain and connect the natural gas transmission facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy

Regulatory Commission and may be amended by the Federal Energy Regulatory Commission upon proper application.

Article 2. The following facilities are subject to this Permit:

340 feet of 16-inch diameter pipeline at the international boundary between the United States and Mexico near San Diego Gas & Electric Company's metering station. All facilities will be located in San Diego County, California. The capacity of these facilities is limited to 110 MMcf of natural gas per day.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation or exportation of natural gas and in the manner authorized under Section 3 of the Natural Gas Act.

Article 4. The construction, operation, maintenance, and connection of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States for such purposes. The Permittee shall allow officers and employees of the United States, showing proper credentials, of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the aforesaid facilities and connections, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within their power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agree to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas imported or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities and connections, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities and connections used hereunder by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities and connections authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities and connection, and every part thereof, in a condition of repair for the efficient operation of said facilities and connections in the transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. At such time that this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agree that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Secretary

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____, 2003 has caused its name to be signed by _____, [pursuant to a resolution of its Board of Directors duly adopted] on the _____ day of _____, 2003, a certified copy of the record of which is attached hereto.

Calpine Corporation

By _____

(Attest)

Executed in triplicate

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 17, 2003

In Reply Refer To:

Calpine Corporation
Otay Mesa Generating Company, LLC
Docket No. CP03-335-000
Draft Presidential Permit

The Honorable Colin L. Powell
Secretary of State
Washington, D.C. 20520

Dear Mr. Secretary:

1. Pursuant to the provisions of Executive Order Nos. 10485 and 12038 of September 1, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, enclosed herewith for your information and consideration is a copy of an application filed jointly by Calpine Corporation (Calpine) and Otay Mesa Generating Company, LLC (Otay) (collectively "applicants") with the Federal Energy Regulatory Commission on July 15, 2003, in Docket No. CP03-335-000.
2. In the July 15, 2003 filing, the applicants seek to amend the Presidential Permit issued on July 30, 2001, Otay Mesa Generating Co. LLC, 96 FERC ¶ 61,178 (2001), authorizing Otay to operate, maintain, and connect certain natural gas facilities at the United States/Mexican international boundary in San Diego, County, California. Specifically, the applicants request that the Section 3 authorization and Presidential Permit held in the name of Otay be changed to insert Calpine's name in lieu of Otay to recognize the proposed merger of Otay, a wholly owned subsidiary of Calpine, with and into Calpine. The requested new Section 3 authorization and Presidential Permit are to be held by Calpine.
3. Calpine is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 50 West San Fernando Street, San Jose, California, 95113. Otay is a limited liability company also organized and existing under the laws of the State of Delaware, with its principal place of business at 50 West San

Fernando Street, San Jose, California, 95113. Otay is an indirect wholly-owned subsidiary of Calpine.

4. Calpine indicates that as part of an internal restructuring of its assets necessary to secure additional financing, Otay and six other Calpine subsidiaries merged on or about July 16, 2003. The merger moves power development assets owned by seven Calpine subsidiaries, including Otay, to the parent corporation in order to facilitate Calpine's sale of approximately \$2.5 billion in bonds. Applicants assert that the bond issue is important to maintain the financial strength of Calpine so that it can continue to be involved in the construction, development, ownership and operation of power generating facilities in the United States.

5. Also enclosed for your consideration is a draft copy of the Presidential Permit to be issued to Calpine, which incorporates terms and conditions you and the Secretary of Defense have heretofore required in similar cases. Consistent with current Commission policy, there are two substantive differences between the draft permit and the existing permit. Article 3 of the draft permit does not limit the use of the subject facilities to the importation of gas. Thus, the facilities may be used for importation or exportation as consistent with current and future authorizations by the Department of Energy. Article 9, is revised, to state that the permittee is required to defer to the Commission's finding and requirement regarding which authorized facilities should be removed and which should remain in place, in the event that they are no longer used.

6. A similar letter, together with a draft of the proposed Presidential Permit and a copy of the application, is being sent to the Secretary of Defense. If the Secretary of Defense should make an unfavorable recommendation or propose any material change in the draft of the permit, the Commission will immediately advise you.

7. The Commission would appreciate receiving your views regarding issuance of the proposed amended permit at an early date. Please do not hesitate to contact me at (202) 502-8400 or Ethel Morgan at (202) 502-8450, if you need any further information.

By direction of the Commission.

Magalie R. Salas,
Secretary.

Enclosures:

Copy of Application
Draft Permit

Appendix A

AMENDED PRESIDENTIAL PERMIT AUTHORIZING CALPINE CORPORATION TO OPERATE AND MAINTAIN NATURAL GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN UNITED STATES AND MEXICO

FEDERAL ENERGY REGULATORY COMMISSION Docket No. CP03-335-000

Calpine Corporation and Otay Mesa Generating Company, LLC, corporations organized and existing under the laws of the State of Delaware, filed in Docket No. CP03-335-000 on July 15, 2003, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204-112, seeking an amendment of the Presidential Permit issued to Calpine's wholly owned subsidiary Otay, Otay Mesa Generating Company, LLC, 96 FERC ¶ 61,178, (July 31, 2001), to insert the name of Calpine in lieu of Otay to recognize the merger of Otay, with and into Calpine. In support of this request Calpine and Otay (Permittee) state that the subject facilities will not be altered, activities will not vary from those permitted by the original Presidential Permit and the activities of Calpine will to be consistent with the Commission's previous authorization for the subject facilities.

By letter dated October ----, 2003, the Secretary of State, and by letter dated October----, 2003, the Secretary of Defense favorably recommend that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953 and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, and the Commission's General Rules and Regulations, permission is granted to the Permittee to construct, operate, maintain and connect the natural gas transmission facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission upon proper application.

Article 2. The following facilities are subject to this Permit:

340 feet of 16-inch diameter pipeline at the international boundary between the United States and Mexico near San Diego Gas & Electric Company's metering station. All facilities will be located in San Diego County, California. The capacity of these facilities is limited to 110 MMcf of natural gas per day.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation or exportation of natural gas and in the manner authorized under Section 3 of the Natural Gas Act.

Article 4. The construction, operation, maintenance, and connection of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States for such purposes. The Permittee shall allow officers and employees of the United States, showing proper credentials, of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the aforesaid facilities and connections, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within their power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agree to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas imported or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities and connections, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities and connections used hereunder by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities and connections authorized by this Permit remain

substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities and connection, and every part thereof, in a condition of repair for the efficient operation of said facilities and connections in the transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. At such time that this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agree that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Secretary

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____, 2003 has caused its name to be signed by _____, [pursuant to a resolution of its Board of Directors duly adopted] on the _____ day of _____, 2003, a certified copy of the record of which is attached hereto.

Calpine Corporation

By _____

(Attest)

Executed in triplicate