

1 ELLISON SCHNEIDER HARRIS & DONLAN LLP  
2 CHASE K. MAXWELL, SBN 248023  
3 2600 Capitol Avenue, Suite 400  
4 Sacramento, California 95816  
5 Telephone: (916) 447-2166  
6 Facsimile: (916) 447-3512  
7 Email: [ckm@eslawfirm.com](mailto:ckm@eslawfirm.com)

8  
9  
10 **BEFORE THE HEARING BOARD OF THE**  
11 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

12 **In the Matter of**

13 COLTON POWER, LP – CENTURY

14 Order Granting a Regular Variance

15 Section 42350 of the California  
16 Health and Safety Code

CASE NO. 6167-4

Facility ID No. 182561

Hearing Date: March 26, 2024

Time: 9:30 a.m.

Place: Hearing Board  
South Coast Air Quality  
Management District  
21865 Copley Drive  
Diamond Bar, CA 91765

17 **[PROPOSED] FINDINGS AND DECISION OF THE HEARING BOARD**

18 This Petition for a Regular Variance was heard on the Hearing Board’s Consent Calendar  
19 on March 26, 2024, pursuant to notice and in accordance with the provisions of the California  
20 Health and Safety Code section 40826 and South Coast Air Quality Management District  
21 (“South Coast AQMD”) Rule 510. The following members of the Hearing Board were present:  
22 Cynthia Verdugo-Peralta, Chair; Robert Pearman, Vice Chair; Mohan Balagopalan; Jerry P.  
23 Abraham, MD, MPH, CMQ; and Micah Ali. Colton Power, LP (“Petitioner”), represented by  
24 Jon Boyer, did not appear. South Coast AQMD (“Respondent”), represented by Mary Reichert,  
25 Senior Deputy District Counsel, did not appear.

26 The matter was submitted for consideration on the Consent Calendar. The public was  
27 given an opportunity to testify. The Declaration of Joseph Shephard was received as evidence,  
28 and the [Proposed] Findings and Decision of the Hearing Board was received. The Parties have

1 stipulated by Joint Stipulation to Place Matter on Consent Calendar and to the issuance of this  
2 Order. The Hearing Board finds and decides as follows:

3  
4 **Nature of Business and Location of Facility**

5 Colton Power, LP – Century (Facility ID 182561) (“Facility”) is an electrical power  
6 generation facility comprised of four 10.5 megawatt (“MW”) simple cycle, natural gas-fired  
7 turbines. The Facility provides electricity to the City of Colton during periods of peak electricity  
8 demand. The Facility is located at 671 South Cooley Drive in Colton, California.

9  
10 **Equipment that is the Subject of the Variance Petition**

11 The equipment that is the subject of this petition is comprised of one simple cycle 10.5  
12 MW natural gas-fired turbine, Turbine No. 3, Application/Permit No. 182561, RECLAIM  
13 Device No. D15, hereinafter Unit D15. The turbine generates electricity in times of peak  
14 demand and ensures electrical grid reliability to the City of Colton.

15  
16 **SUMMARY**

17 Petitioner is in violation of South Coast AQMD Rule 1134 (e)(2)(C)(iii), which requires  
18 the Facility to perform an annual ammonia (NH<sub>3</sub>) source test, commonly referred to as a “slip  
19 test,” every calendar year and Rules 203(b), 2004(f)(1) and 3002(c)(1), which require  
20 compliance with permit conditions. The Facility’s Permit to Operate contains a similarly worded  
21 condition (Condition D28.1). Petitioner was unable to conduct the ammonia slip test for the  
22 Facility’s Unit D15 by the end of December 2023 due to insufficient operability of the unit.  
23 Because Petitioner could not operate the unit, the ammonia slip test could not be conducted by  
24 the end of December 2023. Petitioner was previously granted a short variance to allow the  
25 Petitioner to complete repairs and reschedule the ammonia slip test by March 29, 2024. (See  
26 Short Variance Minute Order, Jan. 11, 2024, Case No 6167-4).

27 Unit D15 is scheduled for a Selective Catalytic Reduction (“SCR”) catalyst replacement,  
28 and Petitioner applied to the South Coast AQMD for a RECLAIM/Title V Minor Permit

1 Revision to install a new SCR catalyst for Unit D15 on November 21, 2023. Petitioner  
2 considered installation of a new SCR catalyst among the necessary repairs needed to schedule  
3 the ammonia slip test for Unit D15. At the time Petitioner sought and obtained the short  
4 variance, Petitioner anticipated the permit to construct for the new SCR catalyst would be issued  
5 in sufficient time for the installation of the new SCR catalyst for Unit D15 before expiration of  
6 the short variance deadline. However, it is apparent that the permit to construct for the new SCR  
7 catalyst will not be issued in time for Petitioner to complete SCR catalyst installation and  
8 perform the ammonia slip test by March 29, 2024. Because the Petitioner cannot install the new  
9 SCR catalyst within the short variance timeframe, Petitioner filed a petition for regular variance  
10 on February 12, 2024 for additional time to conduct the ammonia slip test for Unit D15.

#### 11 12 FINDINGS OF FACT AND CONCLUSIONS

13 The following are the facts and conclusions supporting the findings set forth in Health  
14 and Safety Code Section 42352, and corresponding findings set forth in South Coast AQMD  
15 Rule 515, necessary to grant the variance requested. The Executive Officer did not oppose the  
16 granting of the variance.

17  
18 **(a)(1): The petitioner for a variance is or will be in violation of a rule, regulation, or order**  
19 **of the South Coast AQMD.**

20 Petitioner is in violation of South Coast AQMD Rule 1134(e)(2)(C)(iii) and Rules  
21 203(b), 2004(f)(1) and 3002(c)(1), which require compliance with permit conditions, because  
22 Unit D15 could not be repaired in time to perform the required ammonia slip test by the  
23 December 31, 2023 deadline, as set forth in Section D, Condition No. 28.1 of Petitioner's Title  
24 V/RECLAIM Facility Permit to Operate 182561. Further, due to the unanticipated time required  
25 to obtain a permit to construct allowing installation of a new SCR catalyst for Unit D15,  
26 Petitioner has had to reschedule the required ammonia slip test until after the March 29, 2024  
27 short variance deadline.

1  
2 **(a)(2): Non-compliance with South Coast AQMD Rule(s) is due to conditions beyond the**  
3 **reasonable control of the Petitioner.**

4 The annual ammonia slip compliance test, required by South Coast AQMD Rule  
5 1134(e)(2)(C)(iii), was scheduled for December 18-21, 2023. On December 7, 2023, Facility  
6 engineers attempted to operate Unit D15 to confirm it would perform properly for the ammonia  
7 (NH3) slip test. At that time, the engineers and plant operators were unable to keep Unit D15  
8 operating and attempts to repair were unsuccessful. Subsequent extensive efforts in December  
9 2023 by both Facility staff and third-party contractors to tune and repair the unit were  
10 unsuccessful. It was determined that it would not be possible to adequately run the unit during  
11 the scheduled ammonia slip test by the end of December 2023.

12 On December 19, 2023, petitioner was granted an ex parte emergency variance from  
13 South Coast AQMD Rules 203(b), 2004(f)(1) and 3002(c)(1) {from Section D, Condition  
14 No. 28.1 of Title V/RECLAIM Facility Permit to Operate 182561} and Rule 1134(e)(2)(C)(iii)  
15 for Turbine Unit D15. On January 11, 2024, South Coast AQMD granted a short variance from  
16 Rules 203(b), 2004(f)(1) and 3002(c)(1) {from Section D, Condition No. 28.1 of Title  
17 V/RECLAIM Facility Permit to Operate 182561} and Rule 1134(e)(2)(C)(iii) for Turbine Unit  
18 D15. The short variance requires completion of the ammonia slip test by March 29, 2024.

19 In January 2024, outside contractors were able to assess Unit D15 and perform  
20 calibrations and tuning of the combustor. The outside contractor was successful in making the  
21 necessary adjustments to allow Unit D15 to start, however the unit still requires installation of  
22 the new SCR catalyst.

23 Ammonia slip testing must be conducted while the unit is operating under normal  
24 conditions at normal load in accordance with AQMD test methods. Until installation of the new  
25 SCR catalyst, the unit cannot be predictably operated under normal load conditions, and  
26 therefore the ammonia slip test cannot be scheduled.

27 The inability to schedule the ammonia slip test for Unit D15 by the short variance  
28 deadline is due to the recently appreciated timeframe to process the minor permit revision to

1 install new SCR catalyst for Unit D15. The application for permit revision requires the  
2 Environmental Protection Agency (“EPA”) to have a 45-day review period after South Coast  
3 AQMD review, and the EPA review did not begin until on or about February 22, 2024 according  
4 to South Coast AQMD’s online Facility Information Detail tool providing the EPA review  
5 period start date. (See South Coast AQMD Rule 3005(b)(2).) The additional timeframe for EPA  
6 processing of the application was not foreseen at the time Petitioner applied for a short variance.  
7 Considering this, Petitioner has had to reschedule installation of the SCR catalyst and the  
8 ammonia slip testing until after the March 29<sup>th</sup> deadline. Currently, Petitioner anticipates that the  
9 new SCR catalyst will be installed in time for source testing to take place in early May 2024.

10 The ability to install the new SCR catalyst in time for expiration of the short variance is  
11 beyond the reasonable control of Petitioner, as shown by Petitioner’s efforts to seek a permit  
12 revision on November 21, 2023. Petitioner is conservatively requesting a variance until July 30,  
13 2024, to allow petitioner sufficient time to conduct any necessary repairs, complete installation  
14 of the new SCR catalyst, to account for other potential unforeseen delays, and perform the  
15 required ammonia slip test.

16  
17 **(a)(2)(A) and (B): Requiring compliance would result in either (A) an arbitrary or**  
18 **unreasonable taking of property, or (B) the practical closing and elimination of a lawful**  
19 **business.**

20 Unit D15 is not currently operating, but is available to the City of Colton under the most  
21 extreme electrical emergency conditions. Petitioner considers a call to operate Unit D15 prior to  
22 installation of the new SCR catalyst unlikely.

23 If Unit D15 is kept offline, making it unavailable to be called upon during an extreme  
24 electrical emergency, the Facility will incur penalties pursuant to the California Independent  
25 System Operator’s (“CAISO”) Resource Adequacy Availability Incentive Mechanism  
26 (“RAAIM”). RAAIM is a penalty imposed by CAISO where Resource Adequacy Resources,  
27 such as the Facility, do not meet defined availability or performance thresholds. Petitioner  
28 estimates that these penalties would be approximately \$35,000 per month if Unit D15 is kept

1 offline. Furthermore, Petitioner has not been able to procure replacement Resource Adequacy  
2 capacity that may help it avoid RAAIM penalties for the full period prior to anticipated SCR  
3 catalyst replacement, and even if available, Petitioner expects such replacement capacity to be  
4 much more expensive than incurring RAAIM penalties.

5 Requiring compliance is therefore not reasonable in this circumstance considering that  
6 the Facility will be able to conduct the ammonia test once the new SCR catalyst is installed,  
7 which will occur as soon as possible after issuance of the permit to construct is issued for the  
8 new SCR catalyst. Compliance testing for Unit D15 is currently rescheduled for early May  
9 2024, by which time Petitioner is hopeful that a permit to construct will have been issued and  
10 installation of the new SCR catalyst will be complete. Petitioners expect the testing to be  
11 completed within 14 operating days after installation of the new SCR catalyst.

12  
13 **(a)(3): The closing or taking would be without a corresponding benefit in reducing air**  
14 **contaminants.**

15 As Unit D15 is not likely be operated until the new SCR catalyst is installed, there would  
16 be no corresponding benefit in reducing air contaminants resulting from a closing or taking.  
17 Even where there is an electrical emergency and the City of Colton must call upon Unit D15 to  
18 operate prior to the installation of a new SCR catalyst, the turbine’s operation is preferable to an  
19 electrical outage, during which smaller-scale, diesel-fueled, back-up generation may be operated.  
20 Deployment of such smaller scale back-up generation is likely to result in more emissions of air  
21 contaminants than industrial-scale, natural gas fueled electric generation. In the unlikely event  
22 that Unit D15 is called upon to operate in response to an electrical emergency event, the  
23 Continuous Emissions Monitoring System (“CEMS”) for the unit will monitor the exhaust from  
24 Unit D15 and record all required parameters.

25  
26 **(a)(4): The petitioner has given consideration to curtailing operations of the source in lieu**  
27 **of obtaining a variance.**

28 Petitioner did not anticipate that the timeframe for receiving a permit to construct for

1 installation of new SCR catalyst for Unit D15 would extend beyond the short variance period,  
2 and this is the cause of Petitioners request for a regular variance. Until the new SCR catalyst is  
3 installed, Petitioner is not marketing the unit for normal operation, and therefore is taking  
4 measures to avoid unnecessary operation of Unit D15.

5  
6 **(a)(5): During the period the variance is in effect, the petitioner will reduce excess**  
7 **emissions to the maximum extent feasible.**

8 Unit D15 is not likely to be operated until the new SCR catalyst is installed, which will  
9 be followed promptly by ammonia slip testing. Thus, no excess emissions are expected to result  
10 from the granting of the regular variance requested.

11  
12 **(a)(6): During the period the variance is in effect, Petitioner will monitor or otherwise**  
13 **quantify emission levels from the source, if requested to do so by the South Coast AQMD,**  
14 **and report these emission levels to the South Coast AQMD pursuant to a schedule**  
15 **established by the South Coast AQMD.**

16 Petitioner will operate and maintain the CEMS associated with Unit D15 for the duration  
17 of the variance. Records associated with this CEMS can be provided to the South Coast AQMD  
18 upon request. The Facility also maintains a fuel flow meter to Unit D15, and will record the data  
19 to establish non-operation for the duration of the variance or until the unit has been fully  
20 repaired, including new SCR catalyst installation. Petitioner will perform the required ammonia  
21 slip compliance test within 14 operating days of returning Unit D15 to service and installation of  
22 the new SCR catalyst.

23 ///

24 ///

25 ///

26

27

28

1 **ORDER**

2 THEREFORE, good cause appearing, the Hearing Board orders as follows:

3 A. Petitioner is granted a regular variance from South Coast AQMD Rules 203(b),  
4 2004(f)(1) and 3002(c)(1) {from Section D, Condition No. 28.1 of Title V/RECLAIM  
5 Facility Permit to Operate No. 182561} and Rule 1134(e)(2)(C)(iii) for Turbine Unit  
6 D15, commencing March 26, 2024 and continuing through July 30, 2024, the final  
7 compliance date.

8 B. The variance granted herein is subject to the following conditions:

- 9 1. Petitioner shall complete the repair, including installation of new Selective  
10 Catalytic Reduction (“SCR”) catalyst, of Turbine No. 3 (Device No. D15)  
11 expeditiously and provide a notification when the repair is complete to the South  
12 Coast AQMD via email to AQ Engineer Philip Nguyen ([pnguyen2@aqmd.gov](mailto:pnguyen2@aqmd.gov)),  
13 AQ Inspector II Avelino Revilla ([arevilla@aqmd.gov](mailto:arevilla@aqmd.gov)), and Supervising AQ  
14 Inspector Thomas Lee ([tlee2@aqmd.gov](mailto:tlee2@aqmd.gov)).
- 15 2. Petitioner shall conduct the ammonia slip test in accordance with permit condition  
16 D28.1 within 14 operating days after Turbine No. 3 (Device D15) is returned to  
17 service and installation of new SCR catalyst is completed, and before July 30,  
18 2024.
- 19 3. Petitioner shall notify the South Coast AQMD by calling 1-800-CUT-SMOG and  
20 by sending an email to AQ Inspector II Avelino Revilla ([arevilla@aqmd.gov](mailto:arevilla@aqmd.gov)),  
21 Supervising AQ Inspector Thomas Lee ([tlee2@aqmd.gov](mailto:tlee2@aqmd.gov)), and AQ Engineer  
22 Philip Nguyen ([pnguyen2@aqmd.gov](mailto:pnguyen2@aqmd.gov)) at least 24 hours prior to starting the  
23 ammonia slip test.
- 24 4. Petitioner shall submit a complete source test report showing preliminary  
25 compliance with ammonia slip conditions to the South Coast AQMD Source  
26 Testing ([sourcetesting@aqmd.gov](mailto:sourcetesting@aqmd.gov)) and to AQ Inspector II Avelino Revilla  
27 ([arevilla@aqmd.gov](mailto:arevilla@aqmd.gov)) and Supervising AQ Inspector Thomas Lee  
28 ([tlee2@aqmd.gov](mailto:tlee2@aqmd.gov)) within 45 calendar days after the test date.



