2 3 4 5	OFFICE OF THE GENERAL COUNSEL SOUTH COAST AIR QUALITY MANAGEMEN NICHOLAS A. SANCHEZ, SBN 207998 Assistant Chief Deputy Counsel Email: <a href="maistanchez@aqmd.gov">nsanchez@aqmd.gov</a> JOHN L. JONES II, SBN 225411 Senior Deputy District Counsel Email: <a href="maistanchez@aqmd.gov">jjones@aqmd.gov</a> 21865 Copley Drive Diamond Bar, California 91765 TEL: 909.396.3400 • FAX: 909.396.2961 Attorneys for Petitioner	T DISTRICT
8	South Coast Air Quality Management District	
9	BEFORE THE HEARI	NG BOARD OF THE
10	SOUTH COAST AIR QUALITY	Y MANAGEMENT DISTRICT
<ul><li>11</li><li>12</li></ul>		
13	In the Matter of	CASE NO. 6248-3
14	ENERY HOLDINGS LLC,	SOUTH COAST AIR QUALITY
15	[Facility I.D. No. 186899]	MANAGEMENT DISTRICT'S MOTION TO QUASH DEPOSITION
16	Petitioner, vs.	SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS
17	SOUTH COAST AIR QUALITY	Health and Safety Code § 41700 and District Rule 402
18	MANAGEMENT DISTRICT,	Hearing Date: July 31, 2025
<ul><li>19</li><li>20</li></ul>	Respondent.	Time: 9:30 AM Place: Hearing Board
21		South Coast Air Quality Management District
22		21865 Copley Drive Diamond Bar, CA 91765
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<ul><li>27</li><li>28</li></ul>		
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### INTRODUCTION AND SUMMARY OF ARGUMENT

South Coast Air Quality Management District ("District" or "Respondent") respectfully requests that the South Coast Air Quality Management District Hearing Board quash the deposition subpoena for production of business records ("Subpoena") served by Petitioner Enery Holdings LLC ("Enery" or "Petitioner") upon the District.

By its Subpoena, Petitioner seeks: (i) approximately thirty years of civil penalties under Rule 2012's Missing Data Procedures; (ii) all communications, with no limitation as to time, between the District and other federal and state agencies regarding the District's choice and continued use of its Remote Terminal Unit; and (iii) an accounting of disbursement of funds from the sale of NOx credits, including all auctions, under RECLAIM.

Enery's requests are overly broad, irrelevant, unduly burdensome, and seek documents subject to the deliberative process privilege, which would require numerous redactions. Most importantly, Enery's Subpoena seeks documents that are not material to Enery's July 31, 2025, Petition for Regular Variance. Enery's petition seeks relief from Rule 2012 due to its inability to transmit data to the District due to copper wire theft from AT&T's transmission network. None of the information sought by Enery pertains to that narrow issue and should be quashed on that basis alone. This Motion is based on the separately filed Declaration of John L. Jones II, and the files and records in this action.

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### I. The Subpoena is Moot

On July 2, 2025, the Hearing Board considered Enery's petition for an interim variance. At that hearing, the District stated that it would not be opposed if the Hearing Board granted Enery relief similar to that granted to Harbor Cogeneration Company LLC, Case No. 6257-1. That position remains unchanged.

#### II. The Subpoena Is Overly Broad And Unduly Burdensome

Under Hearing Board Rule 9(a)(4)(C), a subpoena may only be issued if "complying with the subpoena will not impose an undue burden." Enery's Subpoena fails to meet this standard: The Subpoena seeks thirty years of civil penalty data, all interagency communications with no

1	date restrictions, and full financial records for NOx credit auctions and disbursements since		
2	RECLAIM's inception. A broad request of roughly thirty years of data is a massive undertaking		
3	that would require retrieval from multiple archival systems, privilege review, and extensive		
4	redaction of sensitive financial and third-party information. That process could take weeks. This		
5	is not a civil action where the parties will have several months to conduct discovery, but a		
6	discrete administrative proceeding concerning whether Enery should be granted relief due to the		
7	theft of copper wire from AT&T's transmission line.		
8	III. The Requested Information is Irrelevant and Outside the Hearing Board's		
9	Jurisdiction		
10	Enery's variance petition seeks temporary relief from Rule 2012 because copper wire		
11	theft from AT&T's transmission network prevents it from transmitting its CEMS data to the		
12	District. None of the documents in issue address this narrow factual issue. Instead, Enery seeks to		
13	impugn the District's motives, enforcement history, and program design—all subjects outside		
14	this Hearing Board's authority.		
15	The Hearing Board cannot modify rules, review civil penalties, or resolve policy disputes.		
16	The Hearing Board's webpage helpfully summarizes the kinds of relief it <b>cannot</b> grant.		
17	What is the Hearing Board NOT authorized to do?		
18	It is important to note that the Hearing Board is not authorized to:		
19	<ul> <li>modify rules</li> </ul>		
20	<ul> <li>exempt a business from complying with a rule</li> </ul>		
21	• grant a variance from a violation of the public nuisance law, such as one		
22	that creates an odor problem or threatens public health or property		
23	<ul> <li>review a violation notice in any way</li> </ul>		
24	< https://www.aqmd.gov/nav/about/hearing-board, accessed on July 24, 2025>		
25	(emphasis in original).		
26	Therefore, even if Enery's allegations regarding the District's motives were true (which		
27	they are not), this Hearing Board lacks jurisdiction to grant it relief.		

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# The Subpoena Seeks Privileged and Confidential Information IV. Many documents under Enery's second and third requests will likely fall under the 'deliberative process privilege." A privilege where "senior officials ... enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (Regents of University of California v. Superior Court (1999) 20 Cal.4th 509, 540.) The requests seek communications with the U.S. Environmental Protection Agency as well as other California agencies. To the extent Enery's requests include any of the above-described deliberative processes, the District objects to any disclosure and moves to quash these requests. Similarly, accounting and disbursement records for NOx credit auctions dating from RECLAIM's inception could implicate confidential program operations and protected third-party business information. Compliance would require an extensive privilege review and redaction to protect these interests, further increasing the burden and delay. **CONCLUSION** The Petitioner's Subpoena should be quashed in its entirety. It seeks information that is overbroad, irrelevant, and unduly burdensome. It should also be quashed as moot because the District does not oppose the relief sought in Enery's petition. For these reasons—irrelevance, undue burden, lack of jurisdiction, deliberative process privilege, and mootness—the District respectfully requests that the Hearing Board grant this motion and quash the Subpoena in its entirety. Dated: July 25, 2025 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT OFFICE OF THE DISTRICT COUNSEL John L. Jones II

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By:

John L. Jones II

Attorney for Respondent

## CERTIFICATE OF SERVICE I hereby certify that on July 25, 2025, I emailed the South Coast Air Quality Management District's Motion to Quash Deposition Subpoena for Production of Business Records in Case No. 6248-3 to the Clerk of the South Coast AQMD Hearing Board with accompanying email to Mr. Michael Munoz, for Petitioner Enery Holdings LLC, at mmunoz@ches.biz. DATED: July 25, 2025 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT