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South Coast Air Quality Management District  
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9  
10 **BEFORE THE HEARING BOARD OF THE**  
11 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

12 In the Matter of  
13 ENERY HOLDINGS LLC,  
14 [Facility I.D. No. 186899]  
15  
16 Petitioner,  
17  
18 vs.  
19 SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT,  
20  
21 Respondent.  
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CASE NO. 6248-3

**SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT'S  
MOTION TO QUASH DEPOSITION  
SUBPOENA FOR PRODUCTION OF  
BUSINESS RECORDS**

Health and Safety Code § 41700 and  
District Rule 402

Hearing Date: July 31, 2025

Time: 9:30 AM

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

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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 **cannot** 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 • modify rules
- 20 • exempt a business from complying with a rule
- 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 • review a violation notice in any way

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.

1 **IV. The Subpoena Seeks Privileged and Confidential Information**

2 Many documents under Enery's second and third requests will likely fall under the  
3 "deliberative process privilege." A privilege where "senior officials ... enjoy a qualified, limited  
4 privilege not to disclose or to be examined concerning not only the mental processes by which a  
5 given decision was reached, but the substance of conversations, discussions, debates,  
6 deliberations and like materials reflecting advice, opinions, and recommendations by which  
7 government policy is processed and formulated." (*Regents of University of California v. Superior*  
8 *Court* (1999) 20 Cal.4th 509, 540.) The requests seek communications with the U.S.  
9 Environmental Protection Agency as well as other California agencies. To the extent Enery's  
10 requests include any of the above-described deliberative processes, the District objects to any  
11 disclosure and moves to quash these requests.

12 Similarly, accounting and disbursement records for NOx credit auctions dating from  
13 RECLAIM's inception could implicate confidential program operations and protected third-party  
14 business information. Compliance would require an extensive privilege review and redaction to  
15 protect these interests, further increasing the burden and delay.

16 **CONCLUSION**

17 The Petitioner's Subpoena should be quashed in its entirety. It seeks information that is  
18 overbroad, irrelevant, and unduly burdensome. It should also be quashed as moot because the  
19 District does not oppose the relief sought in Enery's petition. For these reasons—irrelevance,  
20 undue burden, lack of jurisdiction, deliberative process privilege, and mootness—the District  
21 respectfully requests that the Hearing Board grant this motion and quash the Subpoena in its  
22 entirety.

23  
24 Dated: July 25, 2025

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT  
OFFICE OF THE DISTRICT COUNSEL

25  
26 *John L. Jones II*

27 By: \_\_\_\_\_  
28 John L. Jones II  
Attorney for Respondent

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 25, 2025, I emailed the *South Coast Air Quality Management*  
3 *District's Motion to Quash Deposition Subpoena for Production of Business Records* in Case No.  
4 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](mailto:mmunoz@ches.biz).

5 DATED: July 25, 2025

SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT

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7  
8 By: \_\_\_\_\_

Lucy Tom-Cao