

FILED

OCT 30 2003

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT
STATE OF CALIFORNIA

MARY ROMAIDIS
CLERK
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

In the Matter of the Application of)
)
Delta Energy Center, LLC) No. 3438
)
For a Variance from Regulation 2,) ORDER GRANTING INTERIM VARIANCE
Rule 1, Section 307, and Regulation 2,)
Rule 6, Section 307)
_____)

The above-entitled matter is an Application for Interim and Regular Variance from the provisions of Regulation 2, Rule 1, Section 307, and Regulation 2, Rule 6, Section 307, filed on September 30, 2003.

Jeffrey Adkins, Esq., and Gary Rubenstein of Sierra Research appeared on behalf of Delta Energy Center ("Applicant").

Kathleen Walsh, Counsel, appeared for the Air Pollution Control Officer ("APCO").

The Clerk of the Hearing Board provided notice of this hearing on the Application for Interim Variance in accordance with the requirements of the California Health and Safety Code. The Hearing Board heard the request for Interim Variance on October 9, 2003. The Variance application requested Interim and Regular Variance relief for the period September 30, 2003 through March 31, 2004. Interim Variance relief was requested from September 30, 2003, until the Regular Variance is heard but lasting no more than 90 days as required by the California Health and Safety Code. The hearing upon said Regular Variance has been set for 9:35 A.M., Thursday, November 13, 2003.

ARB

1 MFR permit but it was not removed. Applicant has requested that the limit be removed or changed on
2 two other occasions since the MFR permit was issued. Applicant has argued that it has little or no
3 control over fuel gas sulfur content, and that, in any event, it will comply with its stack SO₂ limits at
4 all times. Applicant testified that preliminary results from a September 30, 2003 source test indicate
5 that stack SO₂ emissions were within the MFR permit limits while on the same day the fuel sulfur
6 content was measured as exceeding the MFR permit limit. The Applicant testified that this
7 inconsistency can be due to a number of factors, including the premise that only some fraction of the
8 fuel sulfur is converted to SO₂ during combustion, and the influence of limitations in the accuracies
9 of the sulfur test methods.

10 The APCO did not oppose the Interim Variance, and is working with the Applicant toward
11 resolving this problem. However, in the mean time, the Applicant will be in periodic violation of its
12 MFR permit conditions, and, as a result, Applicant has submitted this request for Variance relief.

13 Applicant has requested a regular Variance from September 30, 2003, through March 31,
14 2004, or until such time when the MFR permit is revised and the Applicant is in compliance,
15 whichever occurs first. This Interim Variance will last until a decision by this Board on the Regular
16 Variance or until December 29, 2003, whichever occurs first.

17 Applicant is not considered a small business as described by California Health and Safety
18 Code Section 42352.5(b)(1). There will be no excess emissions during the Variance period since
19 stack emissions will not exceed the permitted SO₂ limits. The APCO has requested that the
20 Applicant monitor fuel sulfur content at least once each week during the Variance period, and that an
21 emissions test measuring stack SO₂ emissions be conducted for each turbine during the Variance
22 period.

23 SPECIFIC FINDINGS

24 The Hearing Board finds pursuant to Health and Safety Code Section 42351 that good
25 cause exists to issue this Interim Variance, including the following:

- 26 1. The Applicant has filed an application to delete or amend the fuel sulfur limit from its

1 Major Facility Review permit, and this application is now pending before the District.

2 2. The APCO is not opposed to this Interim Variance and is working with the
3 Applicant to resolve this problem;

4 3. The Applicant has exceeded its fuel sulfur limit but has not exceeded its stack SO₂
5 emission limits.

6 4. If this plant were to be shutdown, it would interfere with the efficient delivery of
7 electricity and would have a detrimental effect on the residents of the District.

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9 THEREFORE, THE HEARING BOARD ORDERS:

10 An Interim Variance from Regulation 2, Rule 1, Section 307 and Regulation 2, Rule 6,
11 Section 307, specifically Major Facility Review Permit for Facility #B22095, Conditions 14, 22(g)
12 and 36(e) and Permit to Operate #19414, Conditions 22(g) and 36(e), is hereby granted from
13 September 30, 2003, to and including December 29, 2003, or until a decision by this Board on the
14 regular Variance in this matter, whichever is sooner, subject to the following conditions:

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16 1) Applicant shall conduct fuel sulfur content monitoring at least once each week
17 pursuant to one of the methods contained in 40 CFR Part 60, Subpart GG, on all gas lines
18 supplying natural gas to the facility, and on the combined fuel line to the gas turbine equipment.
19 Applicant shall also record the percent of natural gas fuel being supplied by the various pipelines
20 to the facility, both on an instantaneous basis at the time of the sample and on a daily average basis
21 on the day of the sample.

22 2) Applicant shall conduct a stack emissions source test at each of the three gas
23 turbine stacks during the Interim Variance period for the purpose of measuring stack SO₂ emission
24 rates, and shall submit the test data to the Hearing Board at least ten days prior to the date of the
25 regular Variance hearing.

26 3) Applicant shall prepare an analytical plan, including the results of the source tests

1 required as a condition of this Variance, describing the sampling methods available and proposing
2 alternative methods of demonstrating compliance. The analytical plan shall be submitted to the
3 Hearing Board not less than ten days prior to the date of the regular Variance hearing.

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6 Moved by: Terry A. Trumbull, Esq.

7 Seconded by: Allan R. Saxe, Esq.

8 AYES: Christian Colline, P.E., Julio Magalhães, Ph.D., Allan R. Saxe, Esq.,
9 Terry A. Trumbull, Esq.

10 NOES: None.

11 ABSENT: Thomas M. Dailey, M.D.

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Christian Colline, P.E., Vice-Chair

10/30/03
Date

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