

**Monterey Bay Air Resources District****HEARING BOARD MEETING****MICHAEL GUTH, CHAIR****THURSDAY, AUGUST 18, 2022 - 11:00 A.M.****(Following the Special Hearing Board Meeting)**

REMOTE MEETING ONLYLink to meeting: <https://us02web.zoom.us/j/81138788167>**Webinar ID: 811 3878 8167****By Phone (audio only, Webinar ID required): 1-669-900-6833**

On September 16, 2021, Governor Newsom signed AB 361. This legislation amends the Brown Act to allow meeting bodies subject to the Brown Act to meet via teleconference during a proclaimed state of emergency in accordance with teleconference procedures established by AB 361 rather than under the Brown Act's more narrow standard rules for participation in a meeting by teleconference. The Monterey County Health Officer has issued a recommendation for social distancing in legislative body meetings, so the first meeting after September 30, 2021, may be held without making findings. If the Hearing Board desires to continue to meet remotely via teleconference after that first meeting, the Hearing Board is required to make certain findings under AB 361 no later than 30 days after the first teleconference meeting held pursuant to AB 361, and every 30 days thereafter. Members of the public that wish to participate in a meeting may do so by joining the Zoom Webinar ID. Should you have any questions, please contact Sirie Thongchua, Executive Assistant, at 831-718-8028 or by email at sirie@mbard.org.

To Provide Public Comment via Zoom teleconference/video conference: During the meeting live verbal public comments may be made by members of the public joining the meeting via Zoom. Zoom access information is provided above. Use the "raise hand" feature (for those joining by phone, press *9 to "raise hand") during the public comment period for the agenda item you wish to address. Members of the public participating via Zoom will be muted during the proceedings and may be unmuted to speak during public comment after requesting and receiving recognition by the Chair. Please clearly state your full name for the record at the start of your public comment.

Before the Meeting: Persons who wish to address the Hearing Board for public comment of an item not on the agenda are encouraged to submit comments in writing to Sirie Thongchua, Executive Assistant, at sirie@mbard.org by 5:00 p.m. on Tuesday, August 16, 2022. Comments received will be distributed to the Hearing Board prior to the meeting.

Summary of Actions

1. CALL TO ORDER – **The meeting was called to order by Chair Guth at 11:11 a.m.**
2. ROLL CALL – **Present** Hearing Board: Michael Guth, Daniel Dodge Jr., Anne Hall.
Representative for the Hearing Board: Sean M. Collins, Counsel. Representatives for the District: Sandy Hartunian, Amy Clymo, Teresa Sewell, Armando Jimenez. Representatives for the Petitioner: Paul Mansfield, Rich Tanguay, Kenda Brown.
3. PUBLIC COMMENT FOR ITEMS NOT ON AGENDA – **None.**
4. PUBLIC HEARING - To consider a Petition for Short Term Variance to allow operation of natural gas fueled microturbines out of compliance with the permit condition 3 on three permits: PTO-21-00022, PTO-21-00023, PTO-21-00025.

Docket Number	Variance Type	Petitioner	Address
22-001	Short-Term	DBW Power Company LLC	100 Don Bates Way King City

- a. Administration of Oath: Chair Guth administered oath to all persons who provided testimony for Docket 22-001: Paul Mansfield, Director of Facilities, Vertis Group, Petitioner. Rich Tanguay, Vice President of Facilities, Vertis Group, Petitioner. Kenda Brown, President, Cal Microturbine, Representative for Petitioner. Amy Clymo, Engineering and Compliance Manager. Teresa Sewell, Supervising Air Quality Inspector. Armando Jimenez, Air Quality Engineer III. Sandy Hartunian, Air Quality Inspector II.
 - b. Public Comment Related to Docket 22-001 – **None.**
 - c. Hearing Board Decision - Hearing held. Following testimony, the Hearing Board discussed the request, asked questions, and voted. **Motion:** *Accept the findings of Docket No. 22-001 Short Term Variance draft order with language added to Condition 6 (b). Last sentence added to Condition 6 (b) paragraph: CIRCUMSTANCES ARE BEYOND A REASONABLE CONTROL OF THE PETITIONER AS THEY HAVE TAKEN ALL RECOMMENDED MAINTENANCE AND MONITORING STATS AT ALL POINTS AND WERE UNABLE TO FORESEE THIS CIRCUMSTANCE.* **Action:** Approve. **Moved by** Daniel Dodge Jr., **Seconded by** Anne Hall. **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 3). **Yes:** Michael Guth, Daniel Dodge Jr., Anne Hall.
5. ADJOURNMENT – **The meeting adjourned at 12:05 p.m.**

Sirie Thongchua
Clerk to the Hearing Board

NO REGULAR MEETING SCHEDULED

BEFORE THE HEARING BOARD OF THE
MONTEREY BAY AIR RESOURCES DISTRICT
STATE OF CALIFORNIA

IN THE MATTER OF)	DOCKET NO.: 22-001
THE APPLICATION OF)	
)	CONDITIONAL ORDER
DBW POWER COMPANY INC.)	GRANTING SHORT TERM VARIANCE
100 DON BATES WAY)	
KING CITY)	
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INTRODUCTION

On August 3, 2021, Petitioner, DBW Power Company (hereinafter referred to as "Petitioner") filed with this Hearing Board an application for a Short Term Variance. Petitioner requested that the Hearing Board grant a variance from Condition No. 3 on three (3) Monterey Bay Air Resources District (hereinafter referred to as MBARD) Permits to Operate. The Petitioner is requesting to operate some of their natural gas microturbines out of compliance with the NOx emission limit of 9 parts per million (PPM) at 15% O₂.

NOTICE OF HEARING

Notice of the application and the hearing of August 18, 2022 at 11:00 a.m. have been given pursuant to the provisions of the California Health and Safety Code Section 40825. The request and MBARD's staff report were presented orally to three present members of the Hearing Board: Michael Guth, Chair; Anne Hall and Daniel Dodge, Jr. MBARD was represented by Sandy Hartunian, Amy Clymo, and Teresa Sewell, Compliance Division. The Petitioner was represented by Rich Tanguay, VP of Facilities Vertis and Paul Mansfield, Director Facilities for DBW Power Company, Inc. and Kenda Brown, President of Cal Microturbine.

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NATURE OF BUSINESS AND LOCATION OF FACILITY

Petitioner is a stand-alone power plant that provides all the power and HVAC for a 100,000 square foot cannabis grow operation. Petitioner's facility is located at 100 Don Bates Way, King City, California.

EQUIPMENT THAT IS THE SUBJECT OF THE SHORT TERM VARIANCE

The subject of this variance is the request of the Petitioner to operate natural gas fueled microturbines in violation of conditions 3, 5, and 6 on Permits to Operate PTO-21-000022, PTO-21-00023, and PTO-21-00025 which are essential to the operation of providing power to an industrial facility (permits attached).

FINDINGS OF FACT

1. Pursuant to Health and Safety Code 42352 the following findings have been made:

(a) THE PETITIONER IS OR WILL BE, IN VIOLATION OF SECTION 41701 OR OF ANY RULE, REGULATION, OR ORDER OF THE DISTRICT.

Petitioner will be in violation of conditions on Permits to Operate PTO-21-000022, PTO-21-00023, and PTO-21-00025, as follows:

Condition No. 3	The emission concentration of oxides of nitrogen, as NO ₂ , in the turbine exhaust to the atmosphere, shall not exceed 9 ppmv dry, calculated at 15 percent O ₂ . [Basis: District Rule 207 and 40 CFR 60, Subpart KKKK]
Condition No. 5	DBW Power, Inc. must operate and maintain equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction. [Basis: 40 CFR 60, Subpart KKKK]
Condition No. 6	Continuous compliance with the NO _x emission limit of Condition No. 3 shall be determined by performing an annual performance test. The performance test shall be conducted in accordance with the requirements of 40 CFR 60, Subpart KKK, Section 60.4400. [Basis: 40 CFR 60 Subpart KKK and District Rule 404] A complete test protocol shall be submitted to the District no later than thirty (30) days prior to testing, and District notification at least ten (10) days prior to

<p>1 2 3 4</p> <p>Condition 6 (continued)</p>	<p>the actual date of testing shall be provided so that a District observer may be present. DBW Power Company, Inc. shall furnish the District written results of such performance tests within sixty (60) days of the test completion. Performance test records shall be kept for a period of five (5) years.</p>
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5 (b) DUE TO CONDITIONS BEYOND THE REASONABLE CONTROL OF THE PETITIONER
6 REQUIRING COMPLIANCE WOULD RESULT IN EITHER (1) AN ARBITRARY OR UNREASONABLE
7 TAKING OF PROPERTY, OR (2) THE PRACTICAL CLOSING AND ELIMINATION OF A LAWFUL
8 BUSINESS. CIRCUMSTANCES ARE BEYOND A REASONABLE CONTROL OF THE PETITIONER AS
9 THEY HAVE TAKEN ALL RECOMMENDED MAINTENANCE AND MONITORING STATS AT ALL
10 POINTS AND WERE UNABLE TO FORESEE THIS CIRCUMSTANCE.

11 Petitioner needs to generate electricity to provide power to the
12 connected facility. If Petitioner is not able to continue to operate the
13 microturbines to generate electricity, product in nurseries and grow rooms
14 would be lost and employees may lose their jobs. Petitioner will be working
15 with the turbine manufacturer authorized service provider to determine cause,
16 remedy, and test compliance within 1-2 weeks from submittal of Petitioner's
17 variance application. Petitioner has explored, but not found, an alternative
18 to obtaining a short term variance without the practical closing of the
19 business. Petitioner has been operating with competent service personnel
20 using state of the art equipment and nonetheless they went out of
21 specification, and that was out of their reasonable control because they had
22 reasonably acted to follow guidelines. Accordingly, the conditions requiring
23 the variance are beyond the reasonable control of Petitioner. Denial of the
24 short variance would cause significant economic harm to Petitioner because
25 the facility's operations would not be possible without sufficient
26 electricity.

27 (c) THE CLOSING OR TAKING WOULD BE WITHOUT A CORRESPONDING BENEFIT IN
28 REDUCING AIR CONTAMINANTS.

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1 Without the variance, Petitioner would not be able to perform the
2 needed repairs to the fuel injectors and replacement or cleaning. As a
3 result, denial of Petitioner's variance request provides no benefit to air
4 quality and poses a risk of greater emissions if Petitioner delays the
5 repair. Significant harm to Petitioner outweighs the benefit to air quality,
6 and the closing or taking would be without a corresponding benefit in
7 reducing air contaminants.

8 (d) THE PETITIONER FOR THE VARIANCE HAS GIVEN CONSIDERATION TO
9 CURTAILING OPERATIONS OF THE SOURCE IN LIEU OF OBTAINING A VARIANCE.

10 Petitioner has considered curtailing operations; however, curtailment
11 would not avoid the need for a variance. Petitioner will only run failed
12 microturbines to supply load as needed and should only have to run six of the
13 failed 11 microturbines. MBARD rules and Petitioner's Permit conditions do
14 not allow for continued operation in violation.

15 (e) DURING THE PERIOD THE VARIANCE IS IN EFFECT, THE PETITIONER WILL
16 REDUCE EXCESS EMISSIONS TO THE MAXIMUM EXTENT FEASIBLE.

17 Petitioner will reduce excess emissions to the maximum extent feasible
18 by running a limited amount of failed turbines until retest and compliance is
19 achieved, during the period of the variance.

20 (f) DURING THE PERIOD THE VARIANCE IS IN EFFECT, THE PETITIONER WILL
21 MONITOR OR OTHERWISE QUANTIFY EMISSION LEVELS FROM THE SOURCE, IF REQUESTED
22 TO DO SO BY THE DISTRICT, AND REPORT THESE EMISSION LEVELS TO THE DISTRICT
23 PURSUANT TO THE SCHEDULE ESTABLISHED BY THE DISTRICT.

24 Petitioner will have the turbine manufacturer authorized provider on
25 site to make the repairs and monitor the NOx emissions after repairs with a
26 hand-held analyzer. Upon completion of the repairs, Petitioner will schedule
27 a source test to demonstrate compliance with permit conditions 3 and 6.
28 Emissions will be reported to MBARD if required to do so by this Order.

2. A nuisance as defined in Rule 402 of the MBARD Rules and Regulations is not expected to occur as a result of this variance and continued operation is not likely to create an immediate threat or hazard to public health and safety.

ORDER

NOW THEREFORE, THE HEARING BOARD ORDERS that DBW POWER COMPANY, INC. is granted a Short Term Variance from Permits to Operate PTO-21-000022, PTO-21-00023, and PTO-21-00025, as follows:

Condition No. 3	The emission concentration of oxides of nitrogen, as NO ₂ , in the turbine exhaust to the atmosphere, shall not exceed 9 ppmv dry, calculated at 15 percent O ₂ . [Basis: District Rule 207 and 40 CFR 60, Subpart KKKK]
Condition No. 5	DBW Power, Inc. must operate and maintain equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction. [Basis: 40 CFR 60, Subpart KKKK]
Condition No. 6	Continuous compliance with the NO _x emission limit of Condition No. 3 shall be determined by performing an annual performance test. The performance test shall be conducted in accordance with the requirements of 40 CFR 60, Subpart KKK, Section 60.4400. [Basis: 40 CFR 60 Subpart KKK and District Rule 404] A complete test protocol shall be submitted to the District no later than thirty (30) days prior to testing, and District notification at least ten (10) days prior to the actual date of testing shall be provided so that a District observer may be present. DBW Power Company, Inc. shall furnish the District written results of such performance tests within sixty (60) days of the test completion. Performance test records shall be kept for a period of five (5) years.

1. Compliance with this Order will not relieve Petitioner from liability under MBARD's Rules for any violation thereof, unless specifically permitted by this Order, and will not preclude MBARD from pursuing remedies in accordance with the Health and Safety Code in the event of any violation.

2. Any modification of the final compliance date of this Variance Order must be brought before the Hearing Board.

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1 3. The failure to abide by any condition of this Decision and Order
2 will subject the party receiving the variance to penalties as set forth in
3 Health and Safety Code Section 42402.

4 4. Each day during any portion of which a violation occurs is a
5 separate offense.

6 5. Under Section 42362 of the California Health and Safety Code, the
7 State Board may revoke or modify any variance granted by a district if, in
8 its judgment, the variance does not require compliance with a required
9 schedule of increments of progress or emission standards as expeditiously as
10 practicable, or the variance does not meet the requirements of Article 2,
11 Chapter 4, Division 26, of the California Health and Safety Code.

12 6. Petitioner shall retain the obligation to comply with all other
13 local, state, and federal regulations not specifically referenced in this
14 variance order. Note that the United States Environmental Protection Agency
15 does not recognize California's Variance Program; therefore, this variance
16 does not protect Petitioner from federal enforcement actions.

17 CONDITIONS AND REPORTING REQUIREMENTS

18 1. Said variance is effective from August 3, 2022 to August 30, 2022.

19 2. Petitioner will pay an excess emission fee of \$1,588.00 no later
20 than August 30, 2022. (Based upon the Hearing Board Fee Rule 309)

21 3. Petitioner will notify MBARD inspector Sandy Hartunian
22 (shartunian@mbard.org) upon completion of the microturbine source test to
23 document compliance with the permitted NOx emission limit.

24 4. Petitioner will submit applications to MBARD before the end of the
25 variance term to add a permit condition to require monitoring of the
26 microturbine NOx emissions with a handheld analyzer on a more frequent basis
27 than annual performance testing. This condition shall be added to all four
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1 microturbine permits PTO-21-000022, PTO-21-00023, PTO-21-00024, and PTO-21-
2 00025.

3 5. Within 10 days of the termination of this variance and within 10
4 days of the achievement of an incremental step or final compliance date
5 specified in this Variance Order, the Petitioner will immediately notify the
6 MBARD of its compliance or non-compliance with this Order's requirements and
7 the reasons for compliance or non-compliance. This reporting requirement is
8 in addition to those specified as conditions to this order.

9 6. If delay is anticipated in meeting any requirement of this Variance
10 Order, the Petitioner will immediately notify the MBARD by telephone and in
11 writing of the anticipated delay and the reasons for such delay.
12 Notification to the MBARD of an anticipated delay does not excuse the delay.
13 Notification is not to be misconstrued as an extension of this variance.

14 7. Petitioner will report immediately to the MBARD staff and the
15 Hearing Board, in writing, its failure to meet any date or condition set
16 forth in this Order or in any schedule established pursuant to this Order.
17 Any such violation will constitute a violation of this Order.

18 8. All submittals and notifications to the MBARD pursuant to this
19 Variance Order will be made to:

Sandy Hartunian, Air Quality Inspector II
MONTEREY BAY AIR RESOURCES DISTRICT
24580 Silver Cloud Court
Monterey, CA 93940
shartunian@mbard.org

23 AYE/NAY/ABSENT

24 Michael Guth, Chair AYE

25 Daniel Dodge Jr. AYE

26 Anne Hall AYE

27 Dated Signed: 9/8/2022

Agenda Item No. 5

Michael Guth

Michael Guth, Chair, HEARING BOARD
MONTEREY BAY AIR RESOURCES DISTRICT

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ATTACHMENTS: PTO-21-00022, PTO-21-00023, AND PTO-21-00025