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7 California Tower, Inc.

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

10 CALIFORNIA TOWER, INC.;

CASE NO. 6262-1

11 Petitioner,

FINDINGS AND DECISION AND ORDER
GRANTING REGULAR VARIANCE

12 vs.

13 SOUTH COAST AIR QUALITY
14 MANAGEMENT DISTRICT,

Hearing: September 11, 2024
Time: 9:30 a.m.
Place: Hearing Board
South Coast Air Quality
Management District
21865 Copley Drive
Diamond Bar, CA 91765

15 Respondent.

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20 This Petition for a Regular Variance was heard on the Hearing Board’s Consent Calendar on
21 September 11, 2024, pursuant to notice and in accordance with the provisions of the California Health
22 and Safety Code section 40826 and South Coast Air Quality Management District (“District”) Rule
23 510. The following members of the Hearing Board were present: Micah Ali, Chair; Robert Pearman,
24 Vice-Chair; Mohan Balagopalan; Jerry P. Abraham, MD; and Cynthia Verdugo-Peralta. California
25 Tower, Inc. (“Petitioner”), represented by Eoin L. Kreditor, did not appear. South Coast Air Quality
26 Management District (“Respondent”), represented by Mary Reichert, Senior Deputy District Counsel,
27 did not appear.
28

1 The matter was submitted for consideration on the Consent Calendar. The public was given an
2 opportunity to testify. The Declaration of Angela Robertson and the Declaration of Jennifer Mulkern
3 were received as evidence, and the [Proposed] Findings and Decision of the Hearing Board was
4 received. The Parties have stipulated by Stipulation to Place Matter on Consent Calendar and to the
5 issuance of this Order. The Hearing Board finds and decides as follows:

6 **Nature of Business and Location of Facility**

7 Petitioner operates a wireless telecommunications facility at 6427 Oak Canyon Road, Irvine,
8 California 92618 located at Facility No. 194435 (the “Facility”). The facility runs on commercial
9 electric power, but the facility utilizes a diesel-fired emergency generator to provide power during
10 times of commercial power loss, maintenance and testing.

11 **Equipment and Permit to Construct/Operate**

12 The equipment subject of this petition consists of an emergency generator internal combustion
13 engine (“ICE”) operated pursuant to Permit to Operate No. G65553. The ICE is used to provide power
14 when there is an interruption of commercial electric power by Southern California Edison (“SCE”).
15 The ICE provides emergency backup power in the event of a power outage, which allows the Facility
16 to continue uninterrupted to provide cellular service to its customers.

17 **SUMMARY**

18 Petitioner is in violation of District Rule 203(b) and Condition No. 4 of its Permit to Operate and
19 will achieve compliance when the renewal period begins on January 1, 2025, and the engine’s annual
20 operation time allocation starts over.

21 **FINDINGS OF FACT**

22 Following are the facts and conclusions supporting the findings set forth in Health and Safety
23 Code Section 42352 necessary to grant the variance. The Executive Officer did not oppose the
24 granting of the regular variance.

25
26 **1. The petitioner for a variance is, or will be, in violation of Section 41701 or of any rule,
regulation, or order of the District.**

27 The Petitioner is in violation of District Rule 203(b), which requires compliance with permit
28 conditions, because petitioner has exceeded its annual permitted operating limit of 200 hours

1 (including no more than 50 hours in any one year and no more than 4.2 hours in any one month for
2 maintenance and testing purposes) for its engine as specified in Condition No. 4 of Petitioner’s Permit
3 to Operate No. G65553.

4 **2. Non-compliance with District Rule(s) is due to conditions beyond the reasonable control of**
5 **the petitioner, and requiring compliance would result in either (A) an arbitrary or**
6 **unreasonable taking of property, or (B) the practical closing and elimination of a lawful**
7 **business**

8 **A. Non-compliance with District Rule(s) is due to conditions beyond the reasonable control**
9 **of the petitioner.**

10 The subject non-compliance was beyond the reasonable control of Petitioner because there was an
11 equipment malfunction concerning the transfer switch. This resulted in 178 hours of malfunction
12 runtime between March 11, 2024 and March 19, 2024 and 260 hours of emergency runtime between
13 March 22, 2024 and April 1, 2024.

14 **B. Requiring compliance would result in either (A) an arbitrary or unreasonable taking of**
15 **property or (B) the practical closing and elimination of a lawful business.**

16 Denial of the variance would cause significant harm to the Petitioner, as well as the public, and
17 would create an unreasonable safety risk to the public. Petitioner would not be able to provide a
18 service it is contractually required to provide, which will expose it to financial liability and
19 obligations. Further, cellular service to the area in the case of an emergency would be materially and
20 adversely impacted, including the ability to make 911 and other calls vital to public safety.

21 **3. The closing or taking would be without a corresponding benefit in reducing air**
22 **contaminants.**

23 The Board determined that the significant harm to Petitioner and public would outweigh the
24 benefit to air quality if the emissions associated with the variance request were eliminated as a result
25 of denying the variance.

26 **4. The applicant for the variance has given consideration to curtailing operations of the source**
27 **in lieu of obtaining a variance.**

28 Curtailment or shutdown of the ICE would not bring Petitioner into compliance because
Petitioner has already exceeded the 200-hour operating limit for calendar year 2024. Curtailing further
operations is not a feasible option because the resumption of the usage of the ICE is necessary to

1 ensure Petitioner’s customers can provide uninterrupted cellular coverage and 911/emergency
2 response communications.

3 **5. During the period the variance is in effect, the applicant will reduce excess emissions to the
4 maximum extent feasible.**

5 During the period of the variance, Petitioner will reduce excess emissions to the maximum extent
6 feasible. All non-emergency usage of the ICE will be limited to required testing and maintenance. In
7 addition, all emergency usage of the ICE will be limited to power loss and rotating outage for the
8 remainder of 2024.

9 **6. During the period the variance is in effect, the applicant will monitor or otherwise quantify
10 emission levels from the source, if requested to do so by the district, and report these
11 emission levels to the district pursuant to a schedule established by the district.**

12 Petitioner shall maintain a monthly operating log for the emergency ICE and shall send the
13 records to the South Coast AQMD by email to AQ Inspector Daniel Hernandez
14 (dhernandez@aqmd.gov) on the first Tuesday of each month beginning October 1, 2024. The
15 operating log shall list all engine operations in the following areas: (a) Date and hours of emergency
16 operation and specify the cause of the emergency; (b) Date and hours of maintenance and testing
17 operations; and (c) Date and hours of any other non-emergency operation.

18 **ORDER**

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

20 Petitioner is granted a regular variance from Rules 203(b), for an Internal Combustion Engine
21 (“ICE”) from Condition No. 4 of Permit to Operate No. (“PO”) G65553 for the period commencing
22 September 11, 2024, and continuing through December 31, 2024, the final compliance date.

23 The variance granted is subject to the following conditions:

24 1. Petitioner shall limit the operation of the Internal Combustion Engine (“ICE”), as described in
25 Permit to Operate (“PO”) No. G65553, to emergency usage, and the ICE shall operate no more than
26 1.0 hour per month total for maintenance and testing time.

27 2. Petitioner shall continue to maintain a monthly operating log for the emergency ICE and shall
28 send the records to the South Coast AQMD by email to AQ Inspector Daniel Hernandez
(dhernandez@aqmd.gov) on the first Tuesday of each month beginning October 1, 2024. The
operating log shall list all engine operations in the following areas:

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- a. Date and hours of emergency operation, and specify the cause of the emergency;
- b. Date and hours of maintenance and testing operations; and
- c. Date and hours of any other non-emergency operation.

3. Petitioner shall pay all applicable fees to the Clerk of the Board or the variance shall be invalidated pursuant to Rule 303(k), except for excess emissions fees, which shall be paid within fifteen (15) days of notification in writing that the fees are due, unless otherwise ordered by the Hearing Board. Petitioner shall calculate, record, and report all excess emissions during the variance period, and pay appropriate excess emission fees to the Clerk of the Board.

4. Except as otherwise permitted in variance condition #1, Petitioner shall cease operation of the ICE (PO No. G65553)

FOR THE BOARD: _____

DATE SIGNED: _____