

MANATT, PHELPS & PHILLIPS, LLP  
MATTHEW WILLIAMSON (CA Bar No. 247627)  
E-mail: mwilliamson@manatt.com  
SIGRID R. WAGGENER (CA Bar No. 257979)  
E-mail: swaggener@manatt.com  
695 Town Center Drive, 14th Floor  
Costa Mesa, California 92626  
Telephone: (714) 371-2500  
Facsimile: (714) 371-2550

ZACHARY J. HOWE (CA Bar No. 343798)  
E-mail: zhowe@Manatt.com  
12730 High Bluff Dr, Suite 300  
San Diego, CA 92130  
Telephone: (619) 205-8500  
Facsimile: (619) 205-8599

C.J. LAFFER (CA Bar No. 260546)  
E-mail: claffer@manatt.com  
2049 Century Park East, Suite 1700  
Los Angeles, California 90067  
Telephone: (310) 312-4000  
Facsimile: (310) 312-4224

Attorneys for Real Party in Interest  
KERN ENERGY

**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT  
SOUTHERN REGION HEARING BOARD**

184 COMMUNITY ACTION GROUP, an  
unincorporated association; COMITÉ  
PROGRESO DE LAMONT, an unincorporated  
association,

Petitioners,

vs.

SAN JOAQUIN VALLEY UNIFIED AIR  
POLLUTION CONTROL DISTRICT,

Respondent.

KERN ENERGY,

Real Party in Interest.

) S.R.H.B. Case No.: S-26-11A

) **REAL PARTY IN INTEREST**  
) **KERN ENERGY'S HEARING BRIEF**  
) **AND JOINDER IN RESPONDENT SAN**  
) **JOAQUIN VALLEY UNIFIED AIR**  
) **POLLUTION CONTROL DISTRICT'S**  
) **HEARING BRIEF**

1       **I.       INTRODUCTION**

2           To advance California’s pollution-reduction, greenhouse-gas-emissions-reduction and  
3 carbon-neutrality goals—and to reduce its environmental footprint—Kern Energy is improving  
4 operations at its existing petroleum and renewable fuels refinery in Bakersfield, California. Part of  
5 Kern Energy’s evolution toward cleaner, lower-carbon energy production entails adding a  
6 purification unit to existing pieces of its refinery equipment to capture hydrogen the refinery  
7 already generates and convert it into electricity to power ongoing refinery operations. That  
8 undertaking does not entail any new or expanded refining activities and does not increase  
9 operational capacity in any way. Kern Energy will simply utilize its existing facilities in a more  
10 efficient manner, which results in real environmental benefits within Kern County.

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12           On April 30, 2026, following notice and an extended opportunity for public comment, the  
13 District determined, based on extensive evidence in the record before it, that Kern Energy’s  
14 proposal to capture and utilize the existing hydrogen satisfied all applicable District, state, and  
15 federal regulations. Based on that determination, the District issued an Authority to Construct  
16 permit (“ATC Permit”) to Kern Energy to implement its proposal. Kern Energy has since  
17 commenced work on its proposal, including obtaining necessary grading and building permits.

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19           Petitioners now seek to overturn ATC Permit issuance on the grounds that: (1) the District  
20 should have used the first of four permitted emissions-measurement methodologies instead of the  
21 third permitted methodology even though the relevant guidance describes the third methodology  
22 as *more* refined and *more* reliable than the first, (2) the emissions-reduction credit certificate  
23 granted to Kern Energy from a *permanently closed* truck-coating operation somehow did not result  
24 in permanent emissions reductions, (3) the District’s review did not account for certain equipment  
25 modifications that Petitioners do not identify, and (4) the District erred when it failed to use a 2006  
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1 best available control technology (“BACT”) standard from a *different* air district. As set forth  
2 below, these claims lack merit and the Board should affirm issuance of Kern Energy’s ATC Permit.

3 **II. BACKGROUND**

4 **A. Kern Energy’s project will purify hydrogen to generate zero-emissions**  
5 **electricity without creating new hydrogen or expanding existing facilities.**

6 Kern Energy’s current permitted refinery operations result in the production of hydrogen.  
7 The project at issue in this appeal will allow Kern Energy to capture that hydrogen and use it to  
8 generate zero-emissions electricity for use in Kern Energy’s existing refinery, which will improve  
9 facility efficiency, reduce the refinery’s environmental footprint, and reduce the refinery’s demand  
10 for electricity from the statewide power grid. Specifically, the project will integrate existing refin-  
11 ery infrastructure with a hydrogen-purification unit, fuel cells, and two liquid reactors to store and  
12 release hydrogen. That equipment will generate electricity onsite using existing sources of hydro-  
13 gen already produced during the refining process. The project will not generate new hydrogen.

14 The hydrogen-purification system removes impurities and returns any hydrocarbons back  
15 to existing fuel systems at the refinery. The purified hydrogen, meanwhile, is directed to seven  
16 new hydrogen fuel cells. Those fuel cells generate three megawatts of electricity per day by  
17 combining hydrogen with oxygen in an electrochemical reaction without any combustion. That  
18 process results in one of the cleanest forms of onsite power generation, as fuel cells produce zero  
19 emissions of nitrogen oxides (NOx), particulate matter (PM), sulfur oxides (SOx), carbon  
20 monoxide (CO), or volatile organic compounds (VOC).  
21

22 Any purified hydrogen not sent to fuel cells for electricity generation is sent to the  
23 “hydrogenation” and “dehydrogenation” systems. Those systems enable Kern Energy to safely  
24 store the purified hydrogen as a liquid in two existing 5,000-barrel storage tanks and use it as  
25 needed. The hydrogen is not stored as a flammable gas. Instead, the project uses a catalytic reaction  
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1 that chemically binds hydrogen into a liquid form that is both safer and easier to store. The process  
2 involves combining purified hydrogen with toluene to create methylcyclohexane, which is a stable  
3 liquid at ambient temperatures that can be safely stored in tanks—like other organic liquids already  
4 stored and handled within the refinery. The result is safe, on-demand clean hydrogen. When that  
5 hydrogen is needed, the methylcyclohexane is simply converted back into hydrogen and toluene  
6 through dehydrogenation. The purified hydrogen can then be used in the fuel cells to generate  
7 zero-emissions electricity while the toluene is returned to the hydrogenation process for reuse.

8  
9 Ultimately, the project will increase the reliability, efficiency, and safety of Kern Energy’s  
10 existing refinery operations by recovering and purifying hydrogen, providing zero-emissions  
11 electricity, and making clean hydrogen readily available for electricity generation. By generating  
12 up to three megawatts of on-site electricity through fuel cells, the project will significantly reduce  
13 demand on the broader electrical grid. The project accomplishes all of that without expanding  
14 existing facilities, increasing refinery capacity, or creating any new health or environmental risks.  
15 Additionally, by leveraging an existing source of hydrogen for purification and electricity  
16 generation, the Project will also eliminate more than 20,000 metric tons of direct and indirect  
17 carbon dioxide (CO<sub>2</sub>) emissions, reduce smog-forming NO<sub>x</sub> emissions, curtail flaring of excess  
18 gases, and reduce chemical imports for fuel blending.  
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21 **B. After notice and comment, the District found that the project satisfied all**  
22 **District, state, and federal requirements and issued an ATC.**

23 On March 12, 2025, Kern Energy submitted an Authority to Construct application,  
24 designated as Project No. S-1251187, to install the project. In evaluating the project, the District  
25 assessed the air-quality effects of potential emissions from the equipment and processes used in  
26 the project’s component parts—*i.e.*, the hydrogen-purification, hydrogenation-dehydrogenation,  
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1 and electricity-generation systems. Those effects are attributed to project piping, valves, seals, and  
2 fittings in the systems and connections that integrate with existing refinery equipment.

3       The District determined that project piping could release *de minimis* amounts of VOC.  
4 While part of the project system carries hydrogen, which is not a regulated air pollutant, the  
5 District’s review and analysis conservatively assumed that all new project system components  
6 could contain VOCs. Based on that assumption, calculations were performed using standard  
7 statewide emission factors, and those calculations estimated that the piping system would have  
8 potential emissions of roughly 1.3 pounds of VOC per day, or 483 pounds per year. To control  
9 those very low potential emissions, the project’s components are obligated to meet all applicable  
10 “best available control technology” requirements for VOC emissions. The project components will  
11 also be routinely inspected for leaks, and any leaks must be repaired quickly under District Rule  
12 4455. Moreover, a project health-risk assessment was completed using conservative, state-  
13 approved methods to evaluate potential health impacts to nearby residents and workers. The  
14 assessment found that the project’s potential emissions are below all applicable state and local  
15 thresholds for cancer risk, chronic health effects, and short-term (acute) health effects.

16       On October 28, 2025, the District opened up the project to a 30-day public comment period,  
17 which occurred concurrently with the EPA 45-day comment period. That comment period was set  
18 to expire on December 1, 2025. Pet. Ex. G (PEXH000288–289). But in response to community  
19 requests, the District extended the public-comment period to January 27, 2026 and voluntarily held  
20 an in-person public meeting on January 12, 2026. Pet. Ex. J (PEXH000311–312). The District  
21 accepted all comments received from October 28, 2025 through January 27, 2026. In total, the  
22 project was available for public comment for 91 days.

23       On April 30, 2026, after reviewing and responding to public comments, the District  
24 determined that the project satisfied all applicable District, state, and federal regulations and was  
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1 categorically exempt from CEQA on multiple grounds. It thus issued Authority to Construct S-37-  
2 178-0 to Kern Energy, authorizing it to construct the proposed project. On May 29, 2026,  
3 Petitioners appealed approval of the ATC Permit to this Hearing Board.

4 **III. ISSUES PRESENTED ON APPEAL**

- 5 1) Did the District properly calculate VOC emissions?  
6 2) Are the banked emissions-reduction credits valid?  
7 3) Did the District review the equipment to be modified by the project?  
8 4) Is the District’s “best available control technology” analysis legally sufficient?  
9

10 **IV. ARGUMENT**

11 Kern Energy was required to obtain a permit from the District before moving forward with  
12 its project. *See* Cal. Health & Safety Code § 42300. To obtain a permit, Kern Energy was required  
13 to show that its project complied with the District’s rules, including District Rule 2201, the rule  
14 governing review of new and modified stationary sources. *See generally* District Rule 2201. Here,  
15 based on the extensive body of evidence before it, the District properly determined that the project  
16 satisfied Rule 2201 and issued the ATC Permit. Petitioners offer no valid basis for overturning the  
17 District’s decision to issue the ATC Permit.  
18

19 **A. This Board reviews whether the District “properly” issued the permit by de-**  
20 **ciding if the District properly interpreted and applied applicable regulations.**

21 “The hearing board serves a hybrid function; it sits in a reviewing capacity in some types  
22 of cases,” including cases involving “permit disputes ... and appeals of emissions reduction credit  
23 banking decisions,” while “it presides over other types of matters directly in the first instance, in  
24 a nonreviewing capacity,” including matters involving “variance applications” and “abatement  
25 proceedings.” *Valero Ref. Co. v. California v. Bay Area Air Quality Mgmt. Dist. Hearing Bd.*, 49  
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1 Cal. App. 5th 618, 625 (2020), *disapproved of on other grounds by Meinhardt v. City of Sunnyvale*,  
2 16 Cal. 5th 643 (2024).

3 When the Board acts in a reviewing capacity, it is charged with deciding whether a permit  
4 or emissions reduction credit was “properly” issued or denied. Cal. Health & Safety Code §§  
5 42302.1, 40713. That entails exercising the Board’s “independent judgment,” which means  
6 “simply determining whether the [District]’s interpretation and application of the applicable  
7 regulations was correct as a matter of law.” *Valero*, 49 Cal. App. 5th at 640; *see also id.* (“[T]he  
8 hearing board is charged with deciding only whether the [District] ‘properly’ enforced the district’s  
9 orders, regulations and rules on the subject. Nothing more.”).

11 In exercising its independent judgment to decide if a permit was properly issued, “[t]he  
12 scope of the Hearing Board’s review is deference to the District’s determination with the burden  
13 on the [Petitioner] to show the District’s action was erroneous.” *Id.*; *see id.* at 642 (“[T]he hearing  
14 board should not lightly disagree with the staff’s determinations. *A hearing board in permit cases*  
15 *is operating analogously to the role of an appellate court reviewing administrative agency action.*”  
16 (citation omitted)); Cal. Evid. Code §§ 660, 664 (“It is presumed that official duty has been  
17 regularly performed,” and that presumption “affects the burden of proof.”); *Bus Riders Union v.*  
18 *Los Angeles Cnty. Metro. Transportation Agency*, 179 Cal. App. 4th 101, 108 (2009) (“It is well  
19 established that ... ‘[a]ll presumptions of law are in favor of the good faith of public officials.’”  
20 (citation omits omitted)).

23 **B. The District properly calculated VOC emissions.**

24 A source’s “potential to emit” is “the maximum capacity of an emissions unit to emit a  
25 pollutant under its physical and operational design.” Rule 2201, § 3.32. The “potential to emit” is  
26 relevant to ATC permitting requirements, like “best available control technology” requirements  
27 and “offset” requirements. *See, e.g.*, Rule 2201, §§ 4.1.1, 4.5.2, 4.5.3. Petitioners claim the District  
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1 improperly calculated the project's potential to emit. Those arguments fail for reasons the District  
2 has already explained, and as further discussed below.

3           1.       *The District properly utilized "Method 3," which—according to CAPCOA*  
4                   *guidelines—is more accurate than "Method 1."*

5           Under District policy, *see* District Policy SSP-2015, § (IV), the District utilizes the  
6 "CAPCOA Guidelines" to calculate a source's potential to emit, *see* California Air Pollution  
7 Control Officers Association (CAPCOA), *California Implementation Guidelines for Estimating*  
8 *Mass Emissions of Fugitive Hydrocarbon Leaks at Petroleum Facilities* (Feb. 1999),  
9 <https://shorturl.at/uoOBK>. Under the CAPCOA Guidelines, there are four methods for calculating  
10 a source's potential to emit. *Id.* "Method 3" is known as the "Correlation Equation Method." In  
11 calculating a source's potential to emit under Method 3, "[organic vapor analyzer]-measured  
12 concentrations (screening values) for all equipment components are individually entered into  
13 correlation equations or counted as either default zeros or pegged components." *Id.* § (IV).<sup>1</sup> The  
14 District subjected the Kern Energy project equipment components to analysis using Method 3 and  
15 carefully reviewed and approved the calculations resulting from that approach in issuing the ATC  
16 permit. Pet. Ex. C (PEXH000171–174, PEXH000201–202).

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21 <sup>1</sup>*See also id.*, § (VIII) ("Correlation Equation: An equation that relates fugitive hydrocarbon mass  
22 emission rates in kilograms/hour, pounds/day, or pounds/year to instrument screening values in  
23 parts per million by volume. Correlation equations are used to calculate emissions from individual  
24 instrument screening values."); *id.* ("Default Zero: An average emission rate to be used for com-  
25 ponents that do not give instrument screening values higher than the background reading."); *id.*  
26 ("Organic Vapor Analyzer (OVA): A portable hydrocarbon monitoring instrument used during the  
27 1993 fugitive emission studies which utilizes the principle of hydrogen flame ionization for detec-  
28 tion and measurement of organic vapors."); *id.* ("Pegged Source: An equipment component with  
fugitive hydrocarbon emissions that cause the monitoring instrument to exceed its maximum use-  
ful range. Because of this, no precise instrument screening value can be obtained for the component  
and it is referred to as a 'pegged source.'"); *id.* ("Screening Value Range Emission Factor: The  
average mass emission rates for components with instrument screening values above an arbitrary  
leak definition (such as 10,000 ppmv) and below that definition.").

1           Petitioners argue that the District should have used “Method 1,” the “Average Emission  
2 Factor Method,” instead of Method 3, to calculate potential VOC emissions. Pet. at 8–9. They  
3 assert that using Method 1 would have led to a higher estimate of potential VOC emissions. *Id.*  
4 Yet, even if Petitioners calculations under Method 1 were correct—and Kern Energy does not  
5 concede that they are—that does not show that the District erred in using Method 3. As Petitioners  
6 concede, “[t]he CAPCOA Guidelines permit[] four methodologies for calculating fugitive VOC  
7 emissions.” Pet. at 9. So does District policy, which states that “[a]ny of the ... generally accepted  
8 emission factors may be used for an emissions unit subject to a BACT requirement” (as this project  
9 was, *see* Pet. Ex. C (PEXH000178–179) “provided permit conditions are included that require  
10 periodic inspection, maintenance, and repair of leaking fugitive components” (as this project was,  
11 *see* Pet. Ex. C (PEXH000167). District Policy SSP-2015, § (IV). Method 3 is also expressly  
12 identified as a more accurate emissions-calculation methodology than Method 1. Indeed, the  
13 CAPCOA Guidelines list the four methods in “order of increasing refinement” and state that, “[i]n  
14 general, a more refined method requires more data and provides more reliable fugitive  
15 hydrocarbon emission estimates.” CAPCOA Guidelines, *supra*, § (IV). Thus, Method 3 is two tiers  
16 above Method 1 in terms of refinement and reliability. Petitioners offer no valid argument for why  
17 the District should have—let alone was required to—use a *less accurate* method to calculate  
18 potential VOC emissions.  
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22           The closest Petitioners come to defending their position is the assertion that the District  
23 should not have used Method 3 since the project was not yet operating and lacked measured  
24 “screening values.” Pet. at 9. But the CAPCOA Guidelines state not only that Methods 2, 3, and 4  
25 may be used when “site-specific screening data are available” for a new project, but also that “[a]  
26 new facility may also use existing [inspections and maintenance] data from similar processes to  
27 estimate emissions provided that the data are accepted by the local districts as being representative  
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1 of the new source.” CAPCOA Guidelines, *supra*, § (IV). That is how the values here were derived.<sup>2</sup>  
2 In responding to public comments, the District also explained why its screening values were  
3 actually *conservative*: “Th[e] assumed values correspond to the applicable leak thresholds used in  
4 the evaluation and thus represent the maximum screening values allowed before a component  
5 would be considered leaking under the applicable requirements. ... [T]his was a reasonable  
6 method for preparing a preconstruction emissions estimate for the proposed unit and ... was  
7 conservative.” *Id.* (PEXH000245); *see id.* (PEXH000249–250). And, of course, as the District  
8 noted, “[t]he new components will be monitored under the facility’s fugitive monitoring program  
9 after installation.” *Id.* (PEXH000245).

11         Petitioners offer no explanation for why that conservative approach was improper. Nor is  
12 one apparent. As noted, District policy says that “[a]ny” of the methods may be used in cases like  
13 this one. District Policy SSP-2015, § (IV) (emphasis added). And the CAPCOA Guidelines say  
14 that “[a] new facility may ... use existing [inspections and maintenance] data from similar  
15 processes to estimate emissions provided that the data are accepted by the local districts as being  
16 representative of the new source,” which is what happened here. CAPCOA Guidelines, *supra*, §  
17 (IV). And no other guidance undermines that plain language. Thus, there is no legal bar to using  
18 assumed values in the Method 3 calculations, and certainly no bar to using *conservative* assumed  
19 values in the Method 3 calculations.  
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24 <sup>2</sup> Kern Energy’s leak-detection-and-repair inspection results from 2022 through 2024 show what  
25 percentage of the 80,000+ components at its refinery were below the minor-leak threshold (*i.e.*,  
26 leaked less than 100–1,000 ppmv, depending on the component), were in the minor-leak range  
27 (*i.e.*, leaked between 100–1,000 ppmv and 10,000 ppmv), or were above that range (*i.e.*, leaked  
28 more than 10,000 ppmv). *See* District Rule 4455, § 3.22. Those results revealed that 90 percent of  
the components were below the minor-leak threshold, that 9.5 percent were within the minor-leak  
range, and 0.5 percent were above that range. Those historical numbers are fully consistent with  
the values used under Method 3 here. *See* Pet. Ex. C (PEXH000202).

1                   2.       *The District’s decision to use Method 3 was sound.*

2           Petitioners cite no authority for their bare assertion that “[u]nder these circumstances...the  
3 District is required to provide a more substantial explanation for relying on [Method 3].” Pet. at  
4 10. Indeed, they point to no District rule and nothing in the CAPCOA Guidelines obligating the  
5 District to make written findings in defense of its selection of one methodology over another. That  
6 is unsurprising, as the CAPCOA Guidelines provide four methods, any one of which may be used  
7 to calculate the potential to emit VOC. *Id.* Still, the District’s rationale for its choice is apparent  
8 here. First, the CAPCOA Guidelines deem Method 1 is the least accurate method and Method 3  
9 the second-most accurate method. *Id.* That Method 3 is *more accurate* than Petitioners’ preferred  
10 method offers a strong rationale for choosing Method 3. Second, the District did in fact specifically  
11 document in multiple places why use of Method 3 was a reasonable choice for this project. Pet.  
12 Ex. C (PEXH000245, PEXH000249–250). Thus, there is no basis for concluding that the District  
13 improperly used Method 3.  
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15                   3.       *The District properly implemented Method 3.*

16           In a final section on the District’s use of Method 3, Petitioners raise largely the same points  
17 while citing the declaration of a former entry-level District staff member as support. Pet. 10–11.  
18 None of the points raised are persuasive.  
19

20           First, the former District staff member concludes that only Method 1 is allowed when using  
21 assumed instead of measured screening values. Pet. Ex. N (PEXH000370–371). But, like  
22 Petitioners in the prior sections of their petition, the staff member offers no citations or authority  
23 to support that point. As explained above, nothing barred using (conservative) assumed screening  
24 values under Method 3, and the District properly rejected that contention.  
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26           Second, the former District staff member says Method 3 “does not allow components to be  
27 grouped together.” *Id.* (PEXH000371). Of course, here, the District evaluated the different types  
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1 of components (valves, pump seals, connectors, flanges, open-ended lines) separately and applied  
2 the proper leak thresholds to each type of equipment. Pet. Ex. C (PEXH000173, PEXH000202).  
3 Those groupings were proper because each component type will have a similar leak performance.  
4 Yet that isn't what the former District staff member means. He means that, under Method 3, the  
5 District should have conducted Method 3 calculations for "every single component" within each  
6 category. Pet. Ex. N (PEXH000371). Doing so would mean performing a calculation with identical  
7 inputs numerous times and summing the results instead of performing the calculation once and  
8 multiplying the result by the number of applicable components. The former District staff members  
9 cites no authority for the notion that the far more onerous process he envisions (which would have  
10 yielded the same result anyway) was required. Instead, the District's approach under Method 3 is  
11 consistent with District policy and long-standing fugitive-emission calculation approaches used in  
12 prior permitting actions. Indeed, Kern Energy has used Method 3 in preparing permit applications  
13 for more than 10 years and the approach is widely accepted within the industry. Kern Energy has  
14 also tracked its fugitive-emissions performance to confirm compliance with emissions limits  
15 imposed through District permitting actions. Nothing about that approach was improper.

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18 Finally, the former District staff member takes issue with the assumed screening values the  
19 District chose. *Id.* (PEXH000372). But as explained, the District used conservative values (which  
20 were consistent with Kern Energy's inspection results). There is no requirement to use "pegged"  
21 values (*i.e.*, leak rates above 10,000 ppmv). The former District staff member offers no regulatory  
22 basis or authority for using that sort of extraordinary number as an assumed screening value in its  
23 Method 3 calculations. Instead, Kern Energy has shown with its monitoring data that using a  
24 conservative screening value of 9,999 ppmv is reasonable for establishing an emissions limit.  
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26 Thus, for the reasons noted above, nothing about the former District staff member's declaration  
27 offers a convincing reason to conclude that the District improperly calculated the potential to emit.  
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1           **C.       The emissions-reduction credits are permanent and valid.**

2           When a company “over-complies” with pollution-reduction requirements, the law allows  
3 it to receive “emission reduction credits,” certified by the District, that it may then “bank” for  
4 future use to offset later emissions or sell to other companies. *See Valero Ref. Co.*, 49 Cal. App.  
5 5th at 626 (discussing emission-reduction credits). As relevant here, the District’s rules state that  
6 “[t]he emission increases for a ... federal major modification shall be offset with ... actual  
7 emission reductions (AERs) that are surplus at the time of ATC issuance.” Rule 2201, § 4.8.1.1.  
8 “An AER selected for use as an emission offset or ERC banking shall also be real, enforceable,  
9 quantifiable, surplus, and permanent.” Rule 2201, § 3.2. The District complied with that rule here.

10           As part of its ATC application, Kern Energy explained its use of an acquired ERC to offset  
11 potential project emissions. Pet. Ex. C (PEXH000226–243). Kern Energy noted that the ERC  
12 (ERC Certificate C-1579-1) was originally issued to Fruehauf Trailer Corporation (later Fruehauf  
13 Trailer Services Inc.) in November 1992 as part of “Project C-92003,” which involved a shutdown  
14 of a truck trailer coating operation and resultant emissions reductions from that shutdown. *Id.*  
15 (PEXH000227). The portion of the reductions Kern Energy obtained amounted to 2,000 pounds  
16 of VOC per quarter, which would be used to fully offset the project’s VOC per quarter.<sup>3</sup> *Id.*  
17 (PEXH000243). The District reviewed and approved that plan. *Id.* (PEXH000180–183).

18           Petitioners allege that the ERC failed the “permanent” requirement in Rule 2201, § 3.2.  
19 Pet. at 11. That requirement, as the name implies, suggests that the emission reduction making up  
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25 <sup>3</sup> A 1.5 “offset ratio” applied, meaning Kern Energy was required to cover 1.5 times the amount  
26 of the potential emissions from the project through its ERC, which ensured that more emissions  
27 were eliminated than would result from the project on net. *Id.* (PEXH000180–183). Thus, the po-  
28 tential to emit 483 pounds of VOC per year was multiplied by 1.5, resulting in 724.5 pounds of  
VOC per year, then divided by four to obtain 181 pounds of VOC per quarter. *Id.* That amount  
was subtracted from the 2,000 pounds of VOC per quarter in Kern Energy’s ERC. *Id.*  
(PEXH000243).

1 the ERC must be lasting and not merely temporary. *Cf. Valero*, 49 Cal. App. 5th at 628 (“to satisfy  
2 the air district’s requirement that emissions reductions be ‘real, permanent, verifiable and  
3 enforceable’ to qualify as an ERC, Valero believed it could not submit a banking application until  
4 the old furnaces had been permanently shut down, the new ones had been built and tested and  
5 Valero had modified its federal operating permit”). But here, as noted, the ERC resulted from the  
6 shutdown of a truck-trailer coating operation, so the reduction met the permanency requirement.  
7 As the District explained in response to public comments, “the original banking action was based  
8 on a manufacturing operation that ceased operation, surrendered its original permit to operate, and  
9 removed the associated equipment from the facility.” Pet. Ex. C (PEXH000247).

11 Without any support, Petitioners suggest that the emissions from the coating operation  
12 could have “shifted to another source.” Pet. 11. But they offer no reason to believe that occurred,  
13 and no authority for the notion that the District had to prove that negative before approving use of  
14 the ERC absent any reason to think a “shift” had occurred. As the District noted in response to  
15 public comments raising the same point, “[t]he District disagrees that the original banking action  
16 failed the permanence requirement merely because similar work could theoretically occur  
17 elsewhere; the banking action was based on the shutdown and removal of the permitted source  
18 operation that generated the reduced emissions.” Pet. Ex. C (PEXH000247); *see also id.*  
19 (PEXH000252) (addressing similar comment). And indeed, since any new, different source would  
20 have to satisfy emissions requirements independently, it is hard to see how that source would affect  
21 the ERC here even if Petitioners had offered any reason to believe that a new source ever arose.

24 **D. The District properly reviewed the equipment modified by the project.**

25 A project is a “single permitting action involving the modification, addition[,] or shutdown  
26 of one or more emissions units.” District Rule 2201, § 3.44. A modification includes “[a]ny change  
27 in ... method of operation of an existing emissions unit” that “would necessitate a change in permit  
28

1 conditions” and “[a]ny structural change or addition to an existing emissions unit” that “would  
2 necessitate a change in permit conditions.” *Id.* § 3.29. Here, consistent with those definitions, the  
3 District thoroughly described and illustrated the scope of the project. Pet. Ex. C (PEXH000170–  
4 171, PEXH000198). Specifically, it noted that “[n]o changes to the components associated with  
5 the Naphtha Reformer Unit (S-37-119) or the Platformer Unit (S-37-4)” (*i.e.*, the petroleum  
6 refining units) “is expected.” *Id.* (PEXH000171). Instead, the project involved installing a new  
7 hydrogen recovery unit consisting of a hydrogen purification unit, hydrogenation system, and  
8 dehydrogenation system, as well as new “zero emissions” fuel cells—all of which would “be  
9 connected to the other equipment at the facility by way of piping.” *Id.* (PEXH000170–171). Then,  
10 after noting that “VOC emissions are expected from leaks in piping components” and that  
11 components were “expected to contain [VOC] in excess of 10% by weight,” the District concluded  
12 that it would “treat all new components as containing VOC” and that they would be “monitored  
13 and controlled” accordingly. *Id.* The District conducted its emissions and BACT analysis  
14 consistent with those conclusions. *See id.* (PEXH000173, PEXH000179). All of that was proper  
15 under the District’s rules.

16  
17  
18       Petitioners argue that “[t]he District[’s] interpretation of ‘modification’ within the context  
19 of ‘project’ is inaccurate and thus excludes numerous emissions units that should have been  
20 evaluated for compliance with District Rule 2201.” Pet. at 12. They appear to mean that the District  
21 misinterpreted “modification” *because* it excluded emissions units that should have been  
22 evaluated. They explain that the District’s diagram of the project did not provide enough details  
23 about “the location and connections to the platformer (S-37-4), chloride scrubber (S-37-4),<sup>4</sup>  
24  
25

26  
27 <sup>4</sup> The application for the chloride-scrubber project was submitted to the District on June 16, 2023.  
28 The application for the hydrogen-recovery project was submitted to the District on March 12,  
2025, almost two years later. Kern Energy would and will install that device independent of this  
unrelated project for the benefits its provides to facility equipment, including eliminating chlorides

1 reformer (S-37-119), and organic liquid storage tanks (S-37-173, S-37-44) ... to determine  
2 operational changes to existing equipment” and that “[c]hanges may include the reversal of  
3 transportation pathways, a change in the substance transported through existing piping, and  
4 changes in connections.” Pet. at 12. But as noted, the District provided a thorough description and  
5 diagram of the project and the components that would and would not be modified. *See id.*  
6 (PEXH000170–PEXH000171, PEXH000173, PEXH000179, PEXH000198). Petitioners offer no  
7 authority for the notion that the District was required to provide additional details in its diagram  
8 of the project. Nor is their bare statement that things the District found would not be modified  
9 might have been modified a valid reason to doubt the District’s findings.

11       The District, drawing on the engineering evaluation of the project, specifically addressed  
12 and convincingly rejected similar critiques in detail when responding to public comments. First,  
13 on the project’s effect on existing storage tanks, the District found “that toluene and methyl  
14 cyclohexane (MCH) will be stored in existing organic liquid storage tanks and that the project does  
15 not change the operation of existing components associated with the refinery units supplying the  
16 hydrogen stream.” *Id.* (PEXH000246). And because the “existing tanks are already permitted  
17 organic liquid storage tanks connected to the refinery’s existing vapor recovery systems, and they  
18 will continue to be used to store organic liquids”—that is, “[b]ecause the tanks will continue to  
19 perform the same storage function and no change to their permitted operation was proposed as part  
20 of this project”—there was no reason to “treat the tanks as modified emissions units.” *Id.*; *see also*  
21 *id.* (PEXH000250) (similar).

24       Second, on the project’s fuel cells, the District noted, “based on manufacturer information,”  
25 that “emissions” from the “PureCell Model 400 units” involved in the project were “zero for NO<sub>x</sub>,  
26  
27  
28 that can cause corrosion, plugging, and equipment damage that reduces refinery capacity and in-  
creases maintenance interruptions to operations.

1 SOx, CO, and VOC.” *Id.* (PEXH000246). And “because emissions are less than 2.0 lb/day for  
2 each pollutant” (because they are zero), “the fuel cells are permit exempt, although they are listed  
3 on the new hydrogen recovery unit permit for clarification purposes.” *Id.* Thus, there is no basis  
4 for concluding that the District’s analysis lacked “sufficient information to address the air  
5 permitting issues presented by the existing tanks and the fuel cells for this project.” *Id.*

6  
7 Third, the District addressed the argument that “[t]he existing permit units that are involved  
8 with the project (platformer, reformer and tanks) should be undergoing a permit modification  
9 under District Rule 2201.” *Id.* (PEXH000250). In rejecting that argument, it noted that “no changes  
10 to the components associated with the Naphtha Reformer Unit (S-37-119) or the Platformer Unit  
11 (S-37-4) are expected as part of this project. The project instead adds a new hydrogen recovery  
12 unit and associated new piping and components, and those new components were evaluated in the  
13 engineering review.” *Id.*

14  
15 Fourth, the District also broadly addressed “the changes to the refinery process and  
16 electrical system that will receive the final products of hydrogen and electricity” and explained  
17 that no changes would occur. *Id.* As it explained, “[t]he District did not identify any modification  
18 to existing refinery process units or the refinery electrical system, other than the addition of the  
19 new hydrogen recovery unit, associated new piping, and the new fuel cells included in this project.”  
20 *Id.* The District stressed that, “[a]s described in the engineering evaluation, existing hydrogen from  
21 refinery processes will be routed by new piping to the hydrogen recovery/fuel cell system, and no  
22 changes to the components associated with the Naphtha Reformer Unit or the Platformer Unit are  
23 expected as part of this project.” *Id.*

24  
25 Finally, the District addressed the argument that “[t]he process description for the new  
26 permit does not detail the interactions between existing permit units nor how the proposed  
27 equipment works, specifically the Hydrogen Purification Unit, Hydrogenation System, the  
28

Dehydrogenation System and the fuel cells.” *Id.* In rejecting that argument, the District noted that “[t]he engineering evaluation describes the project’s two operating modes and explains how hydrogen produced in the existing refinery processes is purified and then either: (1) chemically bound to toluene through the hydrogenation process, stored as methyl cyclohexane (MCH), and later released through the dehydrogenation process for use in the fuel cells or refinery operations; or (2) sent directly from the hydrogen purification equipment to the fuel cells for electricity production.” *Id.* (PEXH000251). Beyond that, “[t]he evaluation also identifies the fuel cells as PureCell Model 400 units and explains that they are used to support refinery power needs. In addition, the evaluation states that no changes to the components associated with the Naphtha Reformer Unit or the Platformer Unit are expected as part of this project.” *Id.*

In short, the project here involves connecting a hydrogen recovery and purification unit to existing infrastructure at an existing refinery. The District thus evaluated the potential emissions from connecting that unit because that was the modification triggering the need for evaluation. As the District disclosed at numerous points, no other equipment in the refinery was modified, so evaluation of other equipment was not required. Petitioners have failed to show otherwise.

**E. The District’s BACT analysis meets all legal requirements.**

Under District rules, “BACT requirements shall be triggered on a pollutant-by-pollutant basis and on an emissions unit-by-emissions unit basis” for certain actions. District Rule 2201, § 4.1. Here, the District found that “BACT is triggered for VOC for all emissions units in the project for which there is an emission increase.” Pet. Ex. C (PEXH000179). Thus, those emissions units were subject to “the most stringent emission limitation or control technique” out of several categories, including—as relevant here—limits “[a]chieved in practice for such class or category of source” or “[a]ny other emission limitation or control technique ... found by the [air pollution control officer] to be cost effective and technologically feasible for such class or category of

1 sources or for a specific source.” District Rule 2201, § 3.10. As relevant here, the District applied  
2 its BACT Guideline 7.2.3, which deems leaks of 500 parts per million (ppm) for pump and  
3 compressor seals the most stringent emission limit. Pet. Ex. C (PEXH000179, PEXH000205).  
4 Petitioners’ arguments that the BACT analysis was inadequate fail.

5         Petitioners argue that the “analysis was deficient because it was not conducted on an  
6 emissions unit-by-emissions unit basis and it relied on inaccurate VOC emissions calculations” for  
7 the same reasons it raises in support of its prior arguments. Pet. 13–14. But as detailed above, Kern  
8 Energy’s project was properly evaluated for its potential to emit VOC using Method 3 from the  
9 CAPCOA Guidelines, and the District properly reviewed the equipment components that would  
10 be modified as part of the project. Thus, Petitioners’ contention that the project’s BACT analysis  
11 is flawed because the District used the wrong methodology and didn’t review all project equipment  
12 fails for the same reasons the related arguments discussed above ail.  
13  
14

15         Beyond that, Petitioners argue that the project’s BACT analysis is flawed because it  
16 considered a VOC emissions limit of 500 ppm for pumps and compressor seals instead of a 100  
17 ppm emissions limit contained in a guideline promulgated by the Bay Area Air Quality  
18 Management District (“BAAQMD”).<sup>5</sup> Pet. at 14. Petitioners broadly claim, without explanation,  
19 that the District’s failure to consider a guideline from a different air district violates District Rule  
20 2201 and District Policy APR 1305. *Id.* Not so. For one, the BAAQMD guideline Petitioners cite  
21 says that the 100 ppmv leak threshold is “technically feasible,” which means a cost analysis must  
22 be done showing that implementing a technically feasible limitation is cost effective. *See also*  
23 District Rule 2201, § 3.10. For this project (and as shown by the District’s own calculations), the  
24  
25  
26  
27

28 \_\_\_\_\_  
<sup>5</sup> The BAAQMD is also known as the Bay Area Air Management District (“BAAD”).

1 100 ppmv limitation for BACT was not cost-effective. Thus, the BACT limit chosen by the District  
2 is appropriate. Petitioners simply do not address the cost-effectiveness issue.

3 Beyond that, the policy Petitioners cite simply requires the District to consult with its  
4 “BACT Clearinghouse” when evaluating applications. APR 1305, § (IV); *see* San Joaquin Valley  
5 Air Pollution Control District, *District BACT Clearinghouse* (last accessed Oct. 6, 2026),  
6 <https://shorturl.at/XMWyh>. Here, the District did that by consulting BACT Guideline 7.2.3, the  
7 guideline in the BACT Clearinghouse that outlines “the most stringent control technique” for  
8 petroleum-refining pumps and compressor seals. Pet. Ex. C (PEXH000205). As noted above, that  
9 guideline deems leaks of 500 ppm the most stringent emission limit. *Id.* Of course, the  
10 clearinghouse may be updated when the District “review[s] applications” or “become[s]” or “is  
11 made aware of” new control techniques or emissions limits. APR 1305, § (VI). But if that does not  
12 occur “on the date the application is deemed complete,” including through “public comments,”  
13 then the District need not apply other standards. *Id.*, § (IV). Here, no public comment cited the  
14 BAAQMD standard. Pet. Ex. C (PEXH000245–258).

15  
16  
17 Second, the District must find that the standard relates to the same class or category of  
18 source by considering “the type of business and the size” and “location of the source,” including  
19 “data on the emissions unit as well as the stationary source.” APR 1305, § (IV)(B)(1). It must also  
20 consider “test or performance data” and “appropriate technical and engineering data to substantiate  
21 technological feasibility for the affected class and category of sources.” *Id.* Here, differences in  
22 the type, size, and location of Bay Area refineries—among other potential differences—may well  
23 mandate different BACT conclusions. Petitioners offer no justification for the blanket statement  
24 that the BAAQMD standard could simply have been adopted and applied here regardless of those  
25 considerations. Thus, for all of those reasons, the District properly declined to consider that  
26 standard in evaluating the ATC application here.  
27  
28

1     **V.     CONCLUSION**

2             Kern Energy respectfully requests that Board deny the appeal and affirm the District's  
3     April 30, 2026 issuance of the ATC permit.

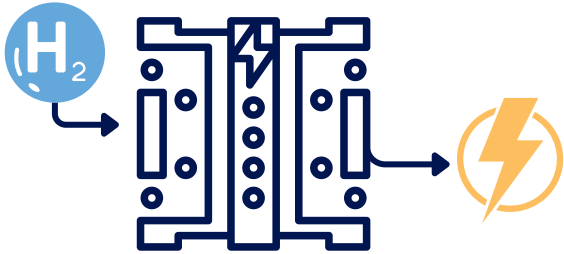
4  
5     Dated: October 9, 2026

MANATT, PHELPS & PHILLIPS, LLP

6             By: Zachary J. Howe  
7             Zachary J. Howe  
8             Matthew D. Williamson  
9             Sigrid R. Waggener  
10            C.J. Laffer  
11            *Counsel for Kern Energy*

# **Exhibit A**

## HYDROGEN CAPTURE & FUEL CELL ELECTRICITY



Innovative system will generate 3 MW of clean electricity utilizing a co-produced hydrogen stream to power fuel cells. By using a liquid hydrogen carrier, this pioneering initiative will ensure the safe storage and on-demand release of hydrogen while reducing emissions and improving refining efficiency.

## PROJECT BENEFITS | At a glance

**3 MW  
Electricity**

**On  
Demand  
Hydrogen**

**Reduced  
Emissions**

**Reliability  
& Efficiency  
Gains**

## FAR-REACHING BENEFITS

Leveraging an existing source of hydrogen, this project:

- Eliminates 19,000 MT CO<sub>2</sub> emissions
- Reduces smog-forming NO<sub>x</sub> emissions
- Curtails flaring of excess gas
- Reduces chemical imports for fuel blending
- Increases production efficiency

## EQUIPMENT & COMPONENTS

Innovative decarbonization and energy storage approach leverages the use of existing refinery infrastructure and new equipment, including:

- Two skids for hydrogenation & dehydrogenation
- Two 5,000-barrel storage tanks for liquid hydrogen carrier
- Seven fuel cells
- Hydrogen purification system

## FUELING THE FUTURE

Kern Energy is evolving operations and production at its 25,000 barrel per day refinery in Bakersfield, CA to embrace the State's clean energy goals. We are modeling an all-of-the-above approach to drive down the environmental footprint of our operations while innovating for the future.



# **Exhibit B**



# **KERN ENERGY**

*We Fuel the Future*

# Project Location

## Ubicación del Proyecto

7 Fuel Cells  
Hydrogenation Skid  
Dehydrogenation Skid  
2 Existing Storage Tanks

Located within existing  
refinery boundary

7 Celdas de Combustible  
Plataforma de Hidrogenación  
Plataforma de Deshidrogenación  
2 Tanques de Almacenamiento  
Existentes

Ubicado dentro de la refinería  
existente

East Side Canal

# Fuel Cell Electricity Project

## Proyecto de Generación de Electricidad a Través de Celdas de Combustibles

Reclaim, Store & Utilize Co-produced Hydrogen  
Recuperar, Almacenar & Utilizar Hidrógeno Co-producido

**3 MW  
Electricity**  
**3 MW  
Electricidad**

**Existing  
Hydrogen  
Source**  
**Fuente de  
Hidrógeno  
Existente**

**Reduced  
Emissions**  
**Reducción de  
Emisiones**

**Safety,  
Reliability &  
Efficiency**  
**Seguridad,  
Eficiencia y  
Confiabilidad**

# Project Safety

## Seguridad del Proyecto



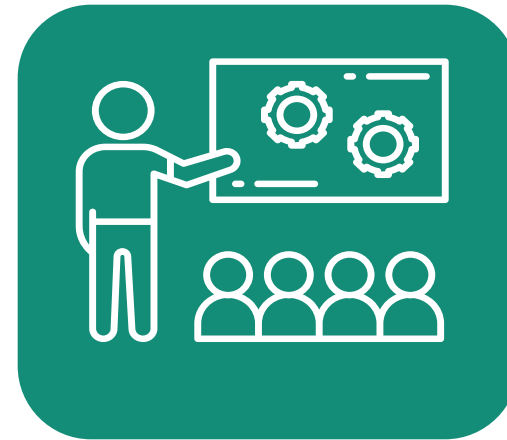
**Advanced  
Monitoring Technology**

**Tecnología Avanzada  
de Monitoreo**



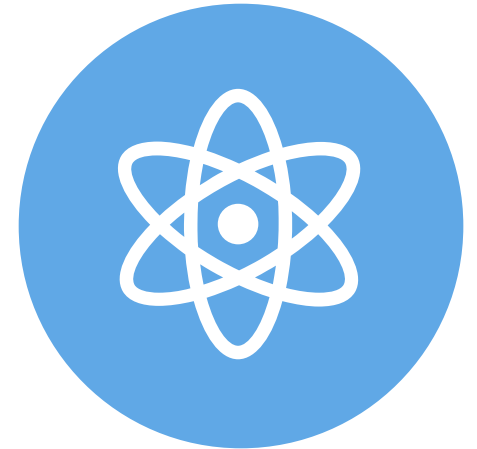
**Real-Time  
Alert System**

**Sistema de Alertas  
en Tiempo Real**



**Extensive Employee  
Training**

**Entrenamiento  
Intensivo para  
Operadores**

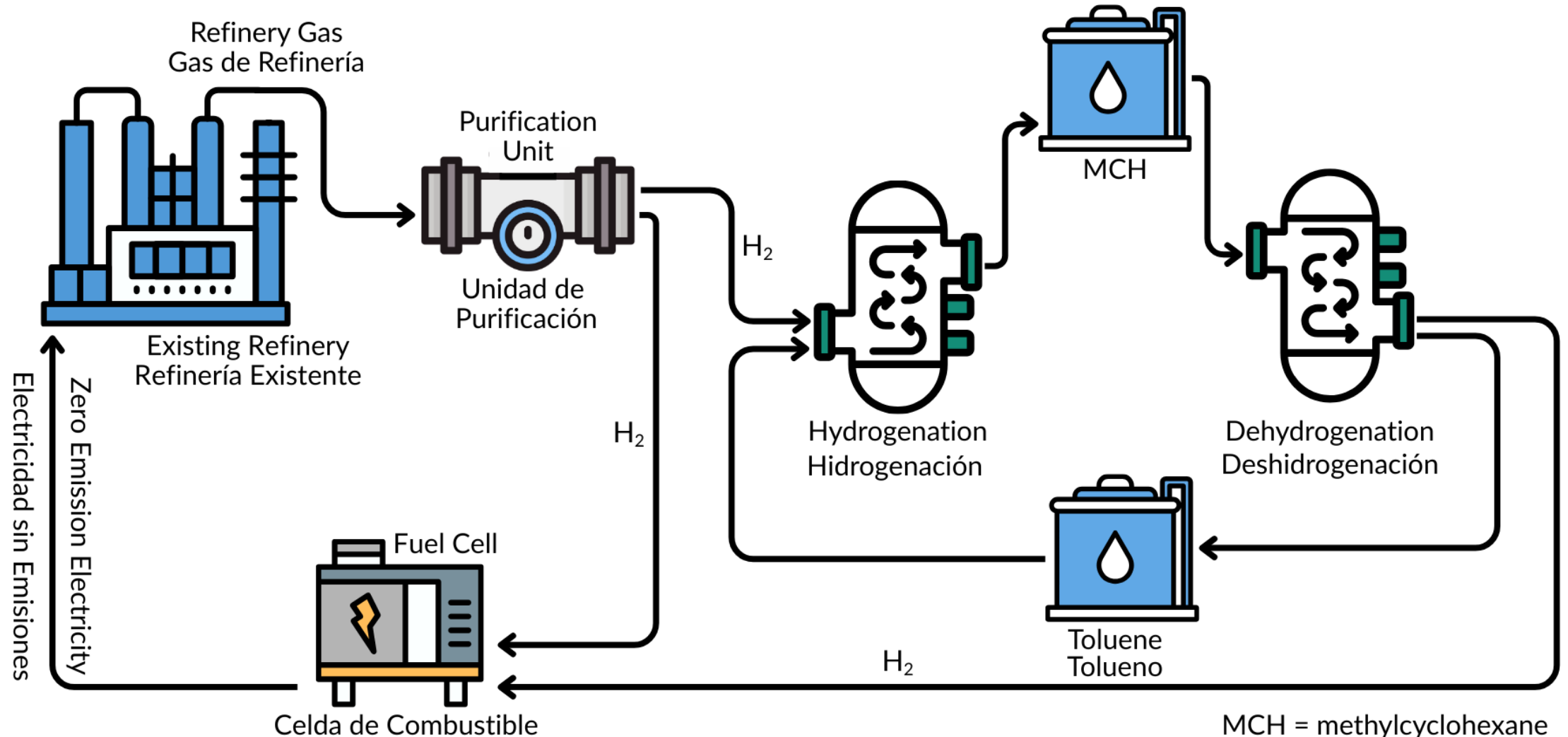


**Hydrogen at  
Low pressure**

**Manejo de  
Hidrógeno a  
Baja Presión**

# Innovative, Simple & Safe

## Innovador, Simple y Seguro



MCH = methylcyclohexane  
MCH = metilciclohexano

# Fuel Cell Electricity Generation

## Generación de Electricidad con Celdas de Combustible

Fully enclosed units

3 MW electricity

Reduces grid demand

Unidades completamente  
encapsuladas

3 MW de generación  
eléctrica

Reducción de demanda de la  
red eléctrica

Existing source of  
hydrogen

Co-product from  
refining process

Fuente existente de  
hidrógeno

Co-producto del  
proceso de refinación

**NO COMBUSTION  
SIN COMBUSTIÓN**



**NO EMISSIONS  
SIN EMISIONES**

# Project Benefits

## Beneficios del Proyecto



**EMISIONES MÁS  
BAJAS**



**MENOS QUEMA  
DE GAS**



**SINDICATO DE  
LA CONSTRUCCIÓN**



**NUEVOS EMPLEOS  
PERMANENTES**



# **KERN ENERGY**

*We Fuel the Future*