

EXECUTIVE OFFICER SUMMARY REPORT
December 16, 2009

- ITEM: 14
- SUBJECT: NPDES Permit Minor Modifications: Dynegy South Bay LLC, South Bay Power Plant Discharge to San Diego Bay, Order No. R9-2004-0154, NPDES No. CA0001368: The Regional Board will consider adoption of tentative Order No. R9-2009-0178 ratifying minor modifications to Order No. R9-2004-0154 made by the Executive Officer by letter dated November 9, 2009. The agenda notice requests that public comments be limited to the November 9, 2009 minor modifications described in tentative Order No. R9-2009-0178. *(David Barker & Brian Kelley)*
- PURPOSE: To consider ratification of minor modifications to Order No. R9-2004-0154 made by the Executive Officer by letter dated November 9, 2009 regarding the schedule for anticipated shutdown and closure of the South Bay Power Plant.
- PUBLIC NOTICE: This item was listed on the December 16, 2009 Board Meeting agenda notice that was mailed to the Regional Board's agenda mail list of interested persons. No other public noticing is required for this item.
- DISCUSSION: Tentative Order No. R9-2009-0178 (Supporting Document 2) will, if adopted, ratify the minor modifications to the South Bay Power Plant NPDES permit, Order No. R9-2004-0154, described in the Regional Water Board Executive Officer's letter dated November 9, 2009. The permit modifications reflect a previous change in operational control of the South Bay Power Plant on April 2, 2007, the interim flow reduction resulting from the shutdown of Units 3 and 4, and the eventual shutdown of Units 1 and 2 based on the schedule described in Dynegy's October 16, 2009 letter.
- The South Bay Power Plant (SBPP) discharge is regulated under NPDES Order No. R9-2004-0154, adopted by the Regional Water Board in November 2004. The NPDES permit contains an expiration date of November 10, 2009. Dynegy South Bay, LLC, the operator of SBPP, has satisfied

the legal requirements for an administrative extension of its current expired NPDES permit by submitting a timely and complete application on April 10, 2009 for the reissuance of the current SBPP NPDES permit.

Dynegy updated the NPDES Permit application by letters dated October 16, 2009 and October 19, 2009 (Supporting Documents 6 and 7) regarding the schedule for anticipated shutdown and closure of the South Bay Power Plant.

Dynegy has requested to continue operation of electrical generating Units 1 and 2 under the current NPDES permit at a reduced maximum flow-rate of 225 million gallons per day (MGD) until December 31, 2010 based on the following considerations:

- The California Independent System Operator (CAISO) has terminated the Reliability-Must-Run ("RMR") contract for South Bay Power Plant electrical generating Units 3 and 4 such that operation of these units, and use of the associated discharge outfalls, will not be required after December 31, 2009; and
- CAISO extended the RMR contract for Units 1 and 2 for the 2010 contract year until December 31, 2010. The conditions that would allow for termination of RMR service for Units 1 and 2, including the addition of new generation and reactive power in the San Diego area, are expected to be achieved in 2010. Consequently, operation of these units, and the use of the associated discharge outfalls, at this time are not expected to be required after December 31, 2010.

Based on these considerations the Regional Water Board Executive Officer acted by letter dated November 9, 2009 (Supporting Document 4) to make modifications to the current NPDES permit, Order No. R9-2004-0154, to incorporate the schedule for both interim flow reduction and eventual plant shutdown as enforceable conditions of the permit. The permit modifications provide for continued operation of the South Bay Power Plant electrical generating Units 3 and 4 until December 31, 2009. The permit modifications also provide for a reduction in the maximum allowable discharge flow rate to 225 MGD after December 31, 2009 consistent with the shutdown of Units 3 and 4. The permit modifications require termination of discharges at Units 1 and 2 when CAISO terminates Reliability-Must-Run

(RMR) status for Units 1 and 2 or December 31, 2010, whichever is earlier. The provision for early (pre-December 31, 2010) termination of discharges from Units 1 and 2 is based on Regional Water Board's understanding of information obtained from CAISO, and from discussions with representatives of Dynegy South Bay and SDG&E, that conditions allowing for the termination of RMR status for these units will likely occur before the end of 2010. Dynegy has consented to all of these modifications. Under this approach Dynegy's current NPDES permit (Order No. R9-2004-0154), including the minor modifications summarized above will remain fully effective and enforceable under an administrative extension until December 31, 2010 absent further action by the Regional Water Board. The Regional Water Board has provided a 30-day comment period for public review of these minor modifications due to the heightened public interest in this matter.

By letter dated November 24, 2009 (Supporting Document 9) the Regional Water Board Executive Officer requested the California Independent System Operator (CAISO) assistance in providing additional specific information about the projected timing for the termination of the South Bay Power Plant reliability must-run (RMR) contract to provide local reliability electricity service. CAISO was requested to provide the supplemental information by December 8, 2009 so that the Regional Water Board members can review and consider the information in advance of the hearing. Copies of the response will be included in the supplemental mailing.

The Regional Water Board has received comment letters from various persons including 1) elected officials representing south San Diego County communities (Supporting Document 8) and 2) the No More South Bay Power Plant Coalition (Supporting Document 10). These letters request the Board to schedule a hearing for the Board to take further actions to prohibit the South Bay Power plant discharge and rescind the NPDES permit by March 1, 2010. The "No Power Coalition" letter requests that the Regional Board use its authority under Water Code Section 13267, to require Dynegy to submit a Workplan to restore and rehabilitate the areas of the San Diego Bay impacted by the power plant discharges. Some of these comments pertain to the minor modifications and others pertain to ancillary issues associated with the restoration and rehabilitation of areas of the San Diego Bay allegedly impacted by the power plant

discharges.

As a separate matter Dynegy is working closely on evaluating the potential environmental impacts associated with the shutdown, demolition and remediation of the South Bay Power Plant with the Unified Port of San Diego (Port), which is the lead agency for purposes of compliance with the California Environmental Quality Act (CEQA). (Supporting Documents 7 and 7.1) Other responsible agencies that may be commenting during this CEQA process include California Department of Fish and Game, National Marine Fisheries Service, the Army Corps of Engineers, U.S. Fish and Wildlife Service and the Regional Water Board. The CEQA process will be initiated with submittal of the Tenant Project Application and Environmental Document on or about December 1, 2009.

Dynegy reports that the Port's review process of Dynegy's environmental document submittals could be up to 90 days, which is followed by the Port Board of Commissioner approval hearing to be held at a public board meeting. This is estimated to occur towards the end of March 2010. At that time, the Port will hire a 3rd Party consultant to work with Dynegy and the Port on the Environmental Impact Report (EIR) for CEQA. This process is projected to take up to eighteen months and the Regional Water Board understands will include performing several studies and surveys defining impacts from the shutdown and demolition of South Bay Power Plant. It is anticipated that a draft Environmental Impact Report will be prepared for the Project for review by the Port and all responsible commenting agencies. The Regional Water Board will continue to participate in this on-going CEQA process.

The Regional Water Board's jurisdiction and potential involvement in other aspects of the shutdown, demolition and remediation of the South Bay Power Plant, including mitigation for alleged impacts to San Diego Bay by the power plant discharge is under evaluation. The Regional Water Board's action at today's meeting is limited to considering adoption of tentative Order No. R9-2009-0178 ratifying minor modifications to Order No. R9-2004-0154 made by the Executive Officer by letter dated November 9, 2009. Regional Water Board staff will make recommendations on addressing other ancillary environmental issues associated with the power plant

shutdown and mitigation for alleged impacts to San Diego Bay by the power plant discharge of the South Bay Power Plant discharge at a future Board meeting as the CEQA process unfolds.

LEGAL CONCERNS: None

SUPPORTING DOCS:

1. Location Map
2. Tentative Order No. R9-2009-0178
3. Transmittal Letter for Tentative Order No. R9-2009-0178 dated November 12, 2009
4. Transmittal Letter for NPDES Permit Minor Modifications dated November 9, 2009
5. CAISO Letter to SDRWQCB dated October 9, 2009
6. Dynegy Letter to SDRWQCB dated October 16, 2009
7. Dynegy Letter to SDRWQCB on South Bay Power Plant Closure Environmental Review Process dated October 19, 2009
- 7.1 Dynegy Letter to SDRWQCB on Environmental Review Process dated November 13, 2009
8. Chula Vista Letter on Op Ed Statement for Union Tribune dated November 11, 2009
9. SDRWQCB to CAISO dated November 24, 2009
10. No More South Bay Power Plant Coalition comment letter w/attachments to SDRWQCB dated November 30, 2009.

RECOMMENDATION: Adoption of Tentative Order No. Order No. R9-2009-0178 ratifying minor modifications to Order No. R9-2004-0154, NPDES No. CA0001368 for the South Bay Power Plant made by the Executive Officer by letter dated November 9, 2009 is recommended.