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DYNEGY

December 8, 2009

Via E-Mail
Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov

Re: Comment Letter - OTC Policy
Comments on the November 23, 2009 Revised Draft OTC Policy

Dear Ms. Townsend:

Dynegy Inc. (Dynegy) submits these comments on the State Water Resources Control Board's (Board) November 23, 2009 revised draft "Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling" (Revised Draft Policy).

While Dynegy appreciates the Board's and staff's efforts to address the many varied comments it received on the June 30, 2009 version of the draft policy, the Revised Draft Policy still contains numerous fundamental flaws that we identified in our prior comments.[1] Moreover, in certain important respects, the Revised Draft Policy is a significant step backwards in terms of achieving a viable once-through cooling (OTC) policy that reasonably accommodates environmental, electric reliability, and economic concerns. The Board must correct these deficiencies before it adopts the final Policy.

The following comments address revisions in the November 23, 2009 draft and concerns raised by the Board and staff's statements at the December 1, 2009 workshop on the Revised Draft Policy.

A. Elimination of the Wholly Disproportionate Alternative and Exclusion of Cost as a Feasibility Consideration is Inappropriate and Unlawful

The Revised Draft Policy eliminates the "Wholly Disproportionate Demonstration" alternative that was included as Section 4 of the June 30, 2009 draft and for the first time expressly excludes cost as a consideration in determining feasibility. Each of these revisions is

[1] Dynegy incorporates by reference herein its two previously submitted comment letters (dated September 30, 2009) on the June 30, 2009 version of the draft policy, rather than restating those comments in their entirety.

by itself a huge step backward from achieving a workable OTC policy. Taken together, these revisions prohibit any consideration of cost in determining Best Technology Available (BTA) for existing power plants. That result contradicts the California Water Code, is inconsistent with Section 316(b) of the federal Clean Water Act, and ultimately renders the Policy unreasonable.

Dynegy strongly supports the inclusion of a wholly disproportionate alternative standard to Track 1 and Track 2. A wholly disproportionate alternative should be available to all OTC power plants and, at the absolute minimum, to OTC power plants that installed efficient combined cycle units before the Policy's effective date.

The Board's authority to adopt a state policy for water quality control, such as this Policy, derives from the Porter-Cologne Water Quality Control Act, which expressly limits the Board's authority by mandating that any such policy "shall be in conformity with the policies set forth in Chapter 1 (commencing with Section 13000)." Cal. Water Code § 13140; *see also* Cal. Water Code § 13001 (directing that any exercise of power by the Board "shall conform to and implement the policies of this chapter"). A cornerstone policy of the Porter-Cologne Water Quality Control Act is that water quality "shall be regulated to attain the highest water quality *which is reasonable, considering all demands* being made and to be made on those waters and *the total values involved*, beneficial and detrimental, *economic* and social, tangible and intangible." Water Code § 13000 (emphasis added). Thus, the Board cannot lawfully adopt a policy that categorically forbids any consideration of economic values, and in doing so, creates unreasonable results. That is, however, precisely what the Revised Draft Policy would do by eliminating the wholly disproportionate alternative and prohibiting consideration of cost in the definition of "Not Feasible", particularly in the absence of an overall cost-benefit analysis to support adoption of the Policy. Accordingly, adoption of the Revised Draft Policy would be unlawful.

Eliminating the wholly disproportionate alternative and prohibiting consideration of cost also is inappropriate as neither revision is supported (or required) by Section 316(b) of the Clean Water Act. In *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. __, 129 S. Ct. 1498 (2009), the United States Supreme Court upheld USEPA's long-standing wholly disproportionate cost test in determining that cost-benefit analysis is permissible under Section 316(b). Given the lack of site-specific considerations under Track 1, the wholly disproportionate alternative is particularly needed as a possible compliance alternative for those OTC plants for which Track 1 is not feasible and the Track 2 minimum performance standard is approachable but not attainable, i.e., those plants for which compliance with Track 1 and 2 is physically or legally impossible. As noted in Justice Breyer's concurring opinion in *Entergy*, "an absolute prohibition" on cost-benefit analysis in determining BTA "would bring about irrational results." 129 S. Ct. at 1513. Yet, that is exactly what the Revised Draft Policy would do by eliminating the wholly disproportionate alternative and prohibiting consideration of cost in determining feasibility. Thus, the Revised Draft Policy is unreasonable.

Moreover, the Revised Draft Policy's (§ 2.A.(2)(d)) attempt to recognize efficient replacement combined cycle units -- such as Dynegy's Moss Landing Units 1 and 2 -- by allowing credit for impingement & entrainment reductions from such units under Track 2 is an inadequate substitute for the wholly disproportionate alternative it would replace. It does nothing for combined cycle units with respect to Track 1 -- which applies to *each unit* -- and will not provide sufficient reductions to make Track 2 a viable option. Nor is it clear how those reductions would be counted or even that Regional Water Boards must count such reductions towards meeting Track 2 requirements.

The Revised Draft Proposal thus fails to recognize the recent and substantial investments that have already been made at the combined cycle facilities and the environmental benefits that have occurred because of these investments. Moreover, with regard to Moss Landing, in doing so the Revised Draft Policy inexplicably ignores findings made in recent years by the California Energy Commission (CEC) and the Central Coast Regional Water Quality Control Board regarding the absence of significant adverse environmental impact from OTC. These findings were reached after extensive site-specific evidentiary hearings and were based upon the recommendations of a Technical Working Group comprised of many of the same neutral experts being relied upon by the Board in this proceeding (for example, Dr. Ramondi and Dr. Caillet). In the case of Moss Landing, owners of the facility have spent many millions of dollars altering the OTC system and funding habitat enhancements in reliance upon the CEC and Regional Water Board decisions. The Revised Draft Policy would essentially reverse these findings without any contrary site-specific evidence and without even acknowledging that the facility owners reasonably relied upon the prior decisions in funding mitigation. That is both inappropriate and unlawful.

Accordingly, the Board must, at a minimum, add an alternative compliance provision to the Policy that would allow power plants with efficient combined cycle units, such as Moss Landing, to determine BTA on a site-specific basis considering cost and other feasibility factors, rather than requiring compliance with Track 1 or Track 2. We stand willing to work with the Board and staff in the next few days to craft such language.

Finally, elimination of the wholly disproportionate alternative and the new exclusion of cost in determining feasibility in the Revised Draft Policy are material revisions that were not adequately considered by the June 30, 2009 Draft Substitute Environmental Document (DSED). Consequently, and in addition to the numerous other DSED deficiencies identified in our September 30, 2009 comments, the DSED fails to satisfy the requirements of the California Environmental Quality Act.

B. The 12/31/2012 Final Compliance Date for the South Bay Power Plant Should Not Be Accelerated

The Revised Draft Policy, like the June 30 draft, identifies the final compliance date for

the South Bay Power Plant (South Bay) as December 31, 2012.[2] At the December 1, 2009 workshop, a commentor requested that the final compliance date for South Bay be moved up to year end 2010 and, in response, a Board member suggested that staff should consider changing South Bay's compliance date to be within one year of adoption of the Policy.

In accordance with Dynegy's contractual obligation with the California Independent System Operator (CAISO) to use its best efforts to oppose permit conditions that could make continued operation of South Bay illegal, uneconomical or otherwise impractical,[3] Dynegy strongly opposes any acceleration of the proposed December 31, 2012 final compliance date. Given South Bay's limited remaining operating life as explicitly set out in and made enforceable through its current NDPES permit, an accelerated date is unwarranted and inappropriate and would only serve to unnecessarily create potentially severe future burdens, including litigation, for the Board, Regional Water Board, and CAISO in the unexpected event that CAISO determines South Bay Units 1 and/or 2 are needed for electric reliability purposes beyond December 31, 2010 (or one year of adoption of the Policy).

Since 1999, CAISO has designated the South Bay generating units as Reliability Must Run (RMR) units because South Bay's generating capacity is needed to ensure reliable electric service in the San Diego area.[4] The terms of South Bay's lease provide, in relevant part, that the plant must be permanently retired three months after CAISO terminates the plant's RMR obligations. On October 9, 2009, CAISO informed Dynegy that the RMR contract for South Bay Units 3 and 4 had been terminated, as the operation of those units will not be required after December 31, 2009 for reliability purposes. CAISO also extended the RMR contract for South Bay Units 1 and 2 thru year end 2010, but informed Dynegy that it may terminate that RMR contract prior to the conclusion of 2010. While we expect at this time that Units 1 and 2 will not be needed for reliability purposes beyond -- at the latest -- December 31, 2010, it nevertheless remains possible that CAISO will designate Units 1 and/or 2 as RMR units for a limited period of time after 2010 due to conditions entirely beyond Dynegy's control.

On October 16, 2009, Dynegy updated South Bay's pending NPDES renewal application to reflect CAISO's recent RMR determinations regarding Units 3 and 4 and Units 1 and 2. On November 9, 2009, the Regional Water Board issued a minor modification to South Bay's NPDES permit under which the discharges of: 1) Units 3 and 4 must terminate on or before December 31, 2009, and 2) Units 1 and 2 must terminate on the date that CAISO determines that RMR services for Units 1 and 2 are no longer needed, or December 31, 2010,

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[2] Dynegy operates South Bay under the terms of lease with the plant's owner, the Unified Port District of San Diego (Port). San Diego Gas & Electric Company owned and operated South Bay until April 22, 1999, at which time the plant was conveyed to the Port, which then leased it to a subsidiary of Duke Energy. In May 2006, LS Power Generation, LLC (LS Power) acquired all of the indirect interests in the plant held by Duke Energy. In April 2007, Dynegy acquired those interests from LS Power.

[3] Under the terms of its Must Run Service Agreement for South Bay with the CAISO, Dynegy is required "to use its best efforts to renew and keep effective its licenses and authorizations and to oppose conditions or modifications which would make continued operation illegal, uneconomical or otherwise impractical." Service Agreement, § 2.2(b)(v).

[4] For contract year 2003, Unit 4 was not designated RMR by the CAISO.

whichever occurs first, absent further action by the Regional Board. Furthermore, the minor modification reduces the plant's maximum cooling water intake flow rate by 63 percent consistent with the required shutdown of Units 1 and 2. (A copy of the minor modification is enclosed as Attachment A.[5]) Thus, a substantial reduction in permitted intake flow will occur with the mandatory shutdown of Units 3 and 4 by December 31, 2009, and Units 1 and 2 are already subject to enforceable permit terms that limit their operating life to no later than December 31, 2010, absent further action by the Regional Water Board.

In light of these developments, accelerating the Policy's final compliance date for South Bay would serve no purpose. It would accomplish nothing, except create additional burdens for the Board to act immediately in the unexpected event CAISO were to extend the RMR requirements of Unit 1 and/or 2 beyond December 31, 2010. Accelerating the compliance date to December 31, 2010 (or one year of adoption of the Policy) also would not fit the Policy's schedule for proposing implementation plans and obtaining SACCWIS input. Moreover, given the current expectation that Units 1 and 2 will not be needed for reliability purposes beyond -- at the latest -- December 31, 2010, forcing the investment of significant resources needed to comply with the Policy's requirements at South Bay, including review by the Board, SACCWIS, and Regional Water Board, for a brief period of time beyond December 31, 2010 – in the unexpected event that Units 1 and/or 2 are still needed for reliability purposes – is imprudent. In short, South Bay's final compliance date under the Policy should remain December 31, 2012, as has been proposed since the June 30, 2009 draft.

C. The New Language that Compliance Schedules in Permits be "as Short as Possible" Should be Deleted

Section 3.C.(1) of the Revised Draft Policy includes new language that apparently is intended to clarify the requirement set out in the June 30 draft that compliance schedules in permits require compliance as soon as possible. The new language, however, creates needless confusion and uncertainty regarding the factors to be considered in establishing a compliance schedule. For example, it places undue emphasis on construction activities without mentioning the time needed to develop and complete required baseline monitoring. As a result, more administrative burdens (and, likely, litigation) will be created for the Board and Regional Water Boards. The new language also seems to suggest that a facility for which compliance with Track 1 and Track 2 is not possible must immediately shutdown, a result that would be arbitrary and unlawful, and contrary to any prior Board explanations of the Policy's intent. Moreover, the Revised Draft Policy's interim mitigation requirements already create a sufficient incentive to comply as soon as possible, as well a backstop for those plants that need extended periods of time to comply. Rather than attempting to identify select relevant factors and create confusion, the Policy should – as in the June 30 draft – simply state that compliance must be as soon as possible but no later than the dates specified in Table 1, thus leaving all relevant and appropriate factors for consideration in the first instance by owners and operators and, then, the SACCWIS.

[5] The San Diego Regional Water Quality Control Board has scheduled a public hearing on December 16, 2009 to consider adoption of an Order ratifying the minor modification.

The uncertainty regarding the final compliance schedule is extremely troublesome in terms of ability to plan for the future. Given the substantial and complex planning effort that will be needed to comply, power plant owner/operators -- as well as the State's energy planning agencies -- need certainty in the final compliance date. If the Regional Water Boards have the discretion to accelerate a plant's compliance schedule once the SACCWIS has made its recommendations, that needed certainty is lost, which will both disrupt the intricate planning upon which grid reliability decisions were based and delay a plant's commencement and completion of compliance activities. In short, power plant owners/operators should propose final compliance schedules that achieve compliance as soon as possible but no later than the deadlines specified in Table 1, SACCWIS should make its recommendations in light of overall grid reliability considerations and the plant's proposal, and the Regional Water Boards should accept the decided upon dates without further adjustments.

D. The Revised Definition of Zooplankton Needs Further Clarification

The Revised Draft Policy (Section 5) defines the term "Zooplankton" as: "For purposes of this Policy, refers to those planktonic invertebrates larger than 200 microns". At the December 1, 2009 workshop, Dominic Gregorio, Environmental Scientist, Division of Water Quality, State Water Resources Control Board, explained that the reference to "200 microns" in the definition of "zooplankton" pertained to the size of entrainment sampling nets and was <u>not</u> applicable to intake screening devices. This distinction is very important because the 200 micron size essentially eliminates any reasonable means of compliance under Track 2 since there are no existing technologies that can screen out 200 micron organisms. However, the Revised Draft Policy does not clearly make that distinction. The Board must make that distinction explicit in the Policy given its importance to compliance determinations. We suggest that a size of 2 mm or greater be applied to screening devices based on consideration of reducing fouling opportunities and a mesh size that would meet with the intentions of the Policy.

* * * * *

In sum, important concerns remain in the Revised Draft Policy that must be resolved if the Board is to adopt a workable OTC policy.

Dynegy appreciates the Board's consideration of our comments. If you have any questions concerning these comments, please contact Barb Irwin, Director Environmental West Region Operations, at 925-803-5121.

Sincerely,

Daniel P. Thompson

Daniel P. Thompson
Vice President
Dynegy West Region Operations

Attachment

cc: Office of the Governor
California Energy Commission
California Public Utilities Commission
California Independent System Operator

California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

November 9, 2009

CERTIFIED MAIL
7008 1140 0002 4285 4107

In reply refer to:
257829: DBarker
WDID: 9 000000091

Daniel P. Thompson
Vice President
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Dear Mr. Thompson:

Subject: NPDES PERMIT MINOR MODIFICATIONS - WASTE DISCHARGE REQUIREMENTS FOR ORDER NO. R9-2004-0154, NPDES NO. CA0001368, DYNEGY SOUTH BAY, LLC, SOUTH BAY POWER PLANT DISCHARGE TO SAN DIEGO BAY

The San Diego Regional Water Quality Control Board (Regional Water Board) received Dynegy's letters dated October 16, 2009 and October 19, 2009 regarding the schedule for anticipated shutdown and closure of the South Bay Power Plant. The Regional Water Board understands that these letters were submitted to update Dynegy's previously submitted April 10, 2009 Report of Waste Discharge in application for the reissuance of the current National Pollutant Discharge Elimination System (NPDES) Order No. R9-2004-0154 for South Bay Power Plant.

Dynegy is requesting 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:

1. California Independent System Operator (CAISO) has terminated the 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

2. 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.

As a separate matter the Regional Water Board also understands that 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). 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, and 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 anticipates that consideration of any potential environmental effects associated with shutdown of the South Bay Power Plant discharge will be addressed in the CEQA process.

Based on the foregoing, the proper course for the Regional Water Board at this time is 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. Under this approach Dynegy's current NPDES permit (Order No. R9-2004-0154), including the attached minor modifications, will remain fully effective and enforceable under an administrative extension until December 31, 2010 absent further action by the Regional Water Board.[1]

The attached 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 Regional Water Board understands that Dynegy has consented to all of these modifications.

The attached modifications are considered "minor modifications" under the applicable federal regulations for NPDES permits contained in Title 40, Section 122.63. Included in the list of allowable minor modifications are:

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[1] Applicable state regulations in 23 California Code of Regulations (CCR) Section 2235.4 provide that the terms and conditions of an expired NPDES permit are administratively continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits are complied with. The applicable federal regulations governing the continuation of expired NPDES permits are contained in 40 CFR 122.6. The key essential requirement is that Dynegy needs to have filed a timely NPDES application which is "complete" in advance of the permit expiration date in order to satisfy the requirements for continuance of the permit past November 10, 2009. Dynegy has satisfied the requirements by submitting a complete Report of Waste Discharge dated April 10, 2009, as updated by Dynegy's October 16, 2009 and October 19, 2009 letters to the Regional Water Board, in application for the reissuance of the NPDES Permit for South Bay Power Plant. The Regional Water Board notified Dynegy on July 20, 2009 that Order No. R9-2004-0154 will be administratively extended upon its expiration on November 10, 2009.

1. Allowing for a change in ownership or operational control of a facility where it is determined that no other change in the permit is necessary [2]; and

2. Deleting a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits. [3]

Minor modifications such as those described above may be made without a draft permit or public review.[4] Accordingly, the attached minor modifications to Order No. R9 2004-0154 for South Bay Power Plant are immediately effective. A redline version of the entire Order No. R9 2004-0154 showing the minor modifications is also attached. The redline version showing the changes to the permit on the affected pages and a final clean copy will be available on-line and available for viewing at the Regional Water Board office.

The Regional Water Board is providing a 30-day comment period for public review of these minor modifications due to the heightened public interest in this matter. A public hearing will be conducted at the Regional Water Board's regularly scheduled meeting on December 16, 2009 for the Board to consider ratification of the minor modifications of Order No. R9-2004-0154. The Board meeting begins at 9:00 am and will be held at the following location:

San Diego Regional Water Quality Control Board
Regional Water Board Meeting Room
9174 Sky Park Court
San Diego, California 92123

The public comment period will remain open until 5:00 p.m. on Tuesday, December 8, 2009. Written comments received after 5:00 p.m. on Tuesday, December 8, 2009 will not be provided to the Regional Water Board members prior to the hearing.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact David Barker at (858) 467-2989 or by e-mail at dbarker@waterboards.ca.gov.

Respectfully,

John H. Robertus
Executive Officer

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[2] See 40 CFR 122.63 (d)
[3] See 40 CFR 122.63 (e)(2)
[4] See 40 CFR 122.62

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San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, Ca 92108-4402

Order No.	R9-2004-0154
File No.	13-0091
GeoTracker Nu.	
NPDES No.	CA0001368
CIWQS Place ID	257829
WDID	9 000000091
Reg. Measure No.	133117
Party ID	
Person ID	

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

MINOR MODIFICATIONS
TO
ORDER NO. R9-2004-0154
NPDES PERMIT NO. CA0001368

WASTE DISCHARGE REQUIREMENTS
FOR
DUKE ENERGY SOUTH BAY LLC
SOUTH BAY POWER PLANT

SAN DIEGO COUNTY

Except as modified or superseded by the permit modifications set forth below, all of the findings, prohibitions, provisions and other requirements of Order No. R9-2004-0154 remain in full force and effect. The following minor modifications of Order No. R9-2004-0154 are hereby incorporated and immediately effective:

Findings added to Order No. R9-2004-0154

32. Dynegy South Bay, LLC (Dynegy) assumed responsibility for compliance with Order No. R9-2004-0154 on April 2, 2007.

33. By letter dated October 9, 2009 the California Independent Systems Operator Corporation (CAISO) informed the Regional Board that the "Reliability Must Run" agreement for Units 3 and 4 will terminate at midnight on December 31, 2009. CAISO also reported that the RMR agreement for Units 1 and 2 was extended through the 2010 contract year. CAISO will require RMR services for Units 1 and 2 until such time as replacement capacity within the San Diego Gas and Electric service area is available. CAISO reports that it will continue to work with all stakeholders in finding a way to allow the South Bay Power Plant to close while maintaining the electrical system reliability needed in the San Diego local area.

34. By letters dated October 16, 2009 and October 19, 2009, Dynegy provided information regarding the schedule for shutdown and closure of the South Bay Power Plant. These letters were submitted to update Dynegy's previously submitted April 10, 2009 Report of Waste Discharge in application for the reissuance of the current National Pollutant Discharge Elimination System (NPDES) Order No. R9-2004-0154 for South Bay Power Plant. Dynegy reported that electrical generating Units 3 and 4 at South Bay Power Plant will not be operated after December 31, 2009. Based on available information and on a CAISO request to provide a provision in the 2010 RMR contract that would allow the CAISO to terminate the contract for Units 1 and 2 prior to December 31, 2010, Dynegy believes that a NPDES discharge permit that would expire on December 31, 2010 would be sufficient to meet the CAISO's stated reliability requirements.

Dynegy requested to continue operation of 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 absent further action by the Regional Board.

Prohibition added to Order No. R9-2004-0154

14. After December 31, 2009, the combined discharge to San Diego Bay from the South Bay Power Plant in excess of 225 MGD is prohibited.

Provisions added to Order No. R9-2004-0154

23. All references to Duke Energy South Bay, LLC in Order No. R9-2004-0154 shall henceforth refer to Dynegy South Bay, LLC as the entity subject to regulation under Order No. R9-2004-0154. Dynegy South Bay, LLC is liable for any violation on and after the transfer date of April 2, 2007.

24. The discharges from electrical generating Units 3 and 4 at the South Bay Power Plant shall be terminated on or before December 31, 2009 absent further action by the Regional Board. The termination of these discharges shall not result in the discharge of pollutants from other outfalls except in accordance with this Order. References to flows from Units 3 and 4 point source outfalls in Order No. R9-2004-0154 are deleted upon termination of these discharges.

25. After December 31, 2009, Order No. R9-2004-0154 shall apply only to the discharges from electrical generating Units 1 and 2 at a maximum reduced flow rate of 225 MGD.

26. The discharges from Units 1 and 2 shall terminate on the date CAISO determines that Reliability Must Run (RMR) services from Units 1 and 2 are no longer needed or December 31, 2010, whichever occurs first, absent further action by the Regional Board.

27. The Regional Board will conduct a public hearing to consider rescinding Order No. R9-2004-0154 upon termination of all discharges from the South Bay Power Plant.

I, John H. Robertus, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of minor modifications to Order No. R9-2004-0154 executed on November 9, 2009.

JOHN H. ROBERTUS
Executive Officer