

Nancy Saracino SBN 179273
Sidney Davies SBN 143072
Andrew Ulmer SBN 184685
151 Blue Ravine Road
Folsom, California 95630
Tel. 916.608.7209
Fax 916.608.7296
Email: aulmer@caiso.com

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

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Attorneys for Petitioner,
California Independent System Operator Corporation

**STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD**

In the Matter of Dynegy South Bay, LLC South Bay Power Plant NPDES Permit No. CA0001368	PETITION FOR REVIEW
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**PETITION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION FOR REVIEW OF ORDER NO. R9-2010-0062 OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
FOR THE SAN DIEGO REGION**

The California Independent System Operator Corporation (the ISO) files this petition for review of Order No. R9-2010-0062 of the California Regional Water Quality Control Board for the San Diego Region (Regional Board) to ensure that the San Diego area has sufficient generating capacity to meet its electric load.¹ The Regional Board's order conflicts with state regulations governing the administrative extension of National Pollutant Discharge Elimination System (NPDES) permits as well as the recently adopted statewide water quality control policy on the use of coastal and estuarine

¹ The ISO files this petition pursuant California Water Code 13320(a) and Title 23, Section 2050 of the California Code of Regulations. The ISO has included information required by 23 C.C.R. § 2050 (a) (1)-(9) in the body of this petition.

waters for power plant cooling. The ISO raised its concerns before the Regional Board in proceedings leading to the adoption of Order No. R9-2010-0062.²

Order No. R9-2010-0062 addresses the NPDES permit of Dynegy South Bay, LLC for the South Bay Power Plant, which currently allows Dynegy to discharge from the power plant's generating units 1 and 2 at a maximum flow rate of 225 million gallons per day.³ Dynegy's NPDES permit provides that discharges shall terminate from these units no later than December 31, 2010, absent further action by the Regional Board.⁴ Under the NPDES program, if a new permit application is pending at the time a permit expires, the conditions of the expired permit continue in force and effect under an administrative extension.⁵ The Regional Board's order, however, prohibits any future administrative extension of Dynegy's NPDES permit.⁶ Specifically, the order finds that Dynegy's NPDES permit "cannot be extended to allow discharges from Units 1 and 2 beyond December 31, 2010."⁷ The order also finds that "[c]ontinued operations would require that a new permit be issued after notice and opportunity to comment and a

² April 21, 2010 letter of the ISO to the Regional Board regarding Tentative Order 2010-0062. http://www.waterboards.ca.gov/sandiego/water_issues/programs/npdes/southbay_power_plant/docs/updates_042210/CAISO.pdf

³ Regional Board Order No. R9-2004-0154 as modified by November 9, 2009 and Regional Board Order No. R9-2009-0178, Attachment 2, Condition 25. http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2004/2004_0154_Final.pdf

⁴ *Id.*, Condition 26.

⁵ 23 C.C.R. § 2235.4

⁶ A copy of the Regional Board's Order No. R9-2010-0062, adopted on May 12, 2010, is attached hereto as Exhibit A.

⁷ Regional Board Order No. R9-2010-0062, Finding 2.

public hearing.”⁸ These findings impermissibly limit the continued operation of the power plant while an application for a new permit is pending.

I. RELIEF REQUESTED

The ISO requests that the State Water Resources Control Board review Order No. R9-2010-0062 and determine that, if Dynegy has a new NPDES permit application pending as of December 31, 2010 for the South Bay Power Plant, Dynegy may continue to discharge beyond that date from generating units 1 and 2 at a maximum flow rate of 225 million gallons per day until the Regional Board or State Board issues an order addressing Dynegy’s new NPDES application. This request would allow Dynegy to continue to discharge from units 1 and 2 at current levels, if the Regional Board or State Board has not issued a NPDES permit by December 31, 2010.

II. BACKGROUND

A. The ISO and reliability must run units

The ISO is a nonprofit public benefit corporation created by the legislature in 1998 as part of the restructuring of California’s electricity industry.⁹ The ISO has the statutory responsibility for short-term and long-term reliability of the electricity grid.¹⁰ Specifically, the ISO is responsible for ensuring “efficient use and reliable operation of the transmission grid consistent with achievement of *planning* and *operating* reserve criteria no less stringent than those established by the Western Electricity Coordinating

⁸ *Id.*

⁹ California Public Utilities Code §§ 330-352.

¹⁰ California Public Utilities Code § 334.

Council and the North American Electric Reliability [Corporation].”¹¹ These two responsibilities mean that the ISO must ensure it maintains reliable *operation* of the transmission grid on a day to day basis and in the near term and also *plan* for the future reliability needs of the transmission grid.

The reliability of the electric transmission grid is dependent on a number of specific power plants located in specific areas. Critical facilities needed for local reliability can be designated as reliability must run units to support the reliable operation of the transmission grid consistent with the terms of a contract approved by the Federal Energy Regulatory Commission. The ISO assesses the continued need for reliability must run units on an annual basis. As part of this process, the ISO determined that operation of the South Bay Power Plant units 1 and 2 is necessary to support reliable electric service in the San Diego area during the calendar year 2010 and designated these units as reliability must run.¹²

B. Dynegy’s existing NPDES permit for the South Bay Power Plant

As referenced above, units 1 and 2 at the South Bay Power Plant rely on intake and discharge of water from the San Diego Bay for cooling purposes under an NPDES permit issued by the Regional Board. On November 10, 2009, the Regional Board’s executive director issued a “minor modification” to Dynegy’s NPDES permit. The minor modification extended Dynegy’s authority to discharge from units 1 and 2 until the date the ISO determines the reliability must run services from units 1 and 2 are no longer

¹¹ California Public Utilities Code § 345. (Emphasis added.)

¹² The South Bay Power Plant has been under a reliability must run contract since the inception of the ISO in 1998.

needed or until December 31, 2010, whichever occurs first.¹³ The Regional Board ratified this minor modification in December 2009 and also stated that it would conduct a hearing to consider rescinding Dynegy's NPDES permit prior to December 31, 2010.¹⁴

The Regional Board accepted testimony and conducted a hearing on May 12, 2010 to determine whether to terminate Dynegy's NPDES permit prior to December 31, 2010. At that hearing, the Regional Board adopted R9-2010-0062, which determines that insufficient grounds exist to terminate discharges from units 1 and 2 prior to December 31, 2010 and that it is not necessary to modify the terms of Dynegy's NPDES permit.¹⁵ But the Regional Board also directed that Dynegy's existing NPDES permit could not be extended and continued operations beyond December 31, 2010 would require a new NPDES permit.¹⁶

C. The need for the South Bay Power Plant beyond 2010 and the harm created by the Regional Board's order

The ISO will make its reliability must run determinations for 2011 in September and October of 2010. If the San Diego area continues to need units 1 and 2 at the South Bay Power Plant to support reliable electric supply beyond December 31, 2010, the ISO will designate them as reliability must run units. The ISO has accordingly requested Dynegy to file an application for a new NPDES permit with the Regional

¹³ Order No. R9-2004-0154, Attachment 2, Condition 25. See, November 9, 2009 Letter from Regional Board Executive Director Mr. John H. Robertus to Mr. Daniel Thompson, Vice President of Dynegy South Bay LLC.
http://www.swrcb.ca.gov/sandiego/public_notices/hearings/npdes_notices/docs/r9_2009_0178/MinorModificationstoOrderR920040154.pdf

¹⁴ Order No. R9-2009-0178.
http://www.swrcb.ca.gov/sandiego/board_decisions/adopted_orders/2009/R9_2009_0178_ratification.pdf

¹⁵ Order No. R9-2010-0062, ordering paragraph.

¹⁶ Order No. R9-2010-0062, Finding 2.

Board. As of this writing, the ISO has been informed that Dynegy is preparing to file that application with the Regional Board on or before June 30, 2010.

The ISO may continue to require Dynegy to operate units 1 and 2 of the South Bay Power Plant beyond December 31, 2010. Based on the directives of the Regional Board's order, however, Dynegy has also informed the ISO that it believes the Regional Board will not allow it to discharge beyond December 31, 2010 pursuant to an administrative extension of its existing permit. The ISO understands that pursuant to the Regional Board's order Dynegy does not intend to operate the South Bay Power Plant as of January 1, 2011, if a new NPDES permit has not issued by that date.

The ISO, acting on its own behalf in light of its statutory responsibility to ensure reliability and on behalf of the citizens of California, is aggrieved by the Regional Board's order. The Regional Board's order effectively terminates intake and discharge operations under Dynegy's NPDES permit as of December 31, 2010. Such action threatens the ability of Dynegy to operate South Bay units 1 and 2 beyond that date absent the issuance of a new permit. The San Diego area may require South Bay Power Plant units 1 and 2 to operate beyond 2010 in order to comply with day to day reliability requirements as well as transmission planning reliability standards.¹⁷ Without this resource, San Diego may face a greater likelihood of electric outages if certain contingencies occur.¹⁸ The ISO, therefore, has an interest in clarifying whether Dynegy

¹⁷ See generally, prepared testimony of ISO witness Dr. Ali Chowdhury. http://www.waterboards.ca.gov/sandiego/water_issues/programs/npdes/southbay_power_plant/docs/updates_022410/CaliforniaIndependentSystemOperator.pdf

¹⁸ See generally, prepared testimony of ISO witness Mr. Gregory Van Pelt. http://www.waterboards.ca.gov/sandiego/water_issues/programs/npdes/southbay_power_plant/docs/updates_022410/CaliforniaIndependentSystemOperator.pdf

may continue to operate South Bay Power Plant units 1 and 2 under its existing NPDES permit.

III. THE REGIONAL BOARD'S ORDER IMPOSES A NEW DIRECTIVE REGARDING DYNEGY'S EXISTING NPDES PERMIT

Order No. R9-2010-0062 purports to be an order that determines no changes are warranted to Dynegy's existing NPDES permit.¹⁹ But a plain reading of the order demonstrates that it limits the effect of Dynegy's NPDES permit by specifying that the permit "cannot be extended to allow discharges ... beyond December 31, 2010."²⁰ This is a new directive. While the ISO recognizes that the Regional Board appropriately may establish an expiration date for Dynegy's NPDES permit, the Regional Board cannot terminate the NPDES permit except under specified conditions.²¹

The minor modification to Dynegy's permit issued in November 2009 did not prohibit Dynegy from obtaining a further administrative extension of its NPDES permit, as long as Dynegy complied with the conditions necessary to obtain such an extension.²² Instead, the minor modification made the termination of discharges from South Bay Power plant units 1 and 2 a condition of the permit.²³ From the findings added to Dynegy's NPDES permit by this modification, it is clear that Dynegy believed

¹⁹ Order No. R9-2010-0062, ordering paragraph

²⁰ Order No. R9-2010-0062 at Finding 2.

²¹ 40 C.F.R. § 122.64.

²² 40 CFR § 122.6 essentially requires the permittee to submit a complete NPDES permit application in order to trigger continuation of a permit set to expire.

²³ Order No. R9-2004-0154 as modified by November 2009 Minor Modification and Order R9-2009-0178, Attachment 2, Condition 26.

that the condition requiring termination of discharges was an expiration date: "Dynergy believes that a NPDES discharge permit that would expire on December 31, 2010 would be sufficient"24 While the termination date for all discharges from South Bay Power Plant is designated a "condition" of the permit, its effect is to terminate the permit entirely. Obviously, it is not a "condition" under which Dynergy may operate South Bay Power Plant units 1 and 2 as they are currently configured. Instead, it provides the end date of Dynergy's NPDES permit, which date necessarily would be stayed by any administrative extension.

Order No. R9-2010-0062 changes this framework by determining that Dynergy's NPDES permit cannot be extended and that continued operations would require a new permit. In making this finding the Regional Board has established its firm position that no further action to extend the permit will be entertained, is a change from the specification in the November 2009 minor modification that provided for a termination date as of December 31, 2010, absent further action by the Regional Board.²⁵ If a new NPDES permit has not issued by December 31, 2010 and the ISO still requires needs South Bay Power Plant to operate to meet the San Diego area's reliability needs, the Regional Board's order would threaten electric reliability in the San Diego area.

²⁴ Order No. R9-2004-0154, Finding 34

²⁵ Order No. R9-2004-0154, Attachment 2, Condition 26.

IV. THE REGIONAL BOARD'S ORDER CONFLICTS WITH STATE REGULATIONS RELATED TO ADMINISTRATIVE EXTENSIONS AND THE CONDITIONS OF DYNEGY' S EXISTING NPDES PERMIT

The Regional Board's order finds that further administrative extensions of Dynegy's current NPDES permit are not allowed.²⁶ This finding is inconsistent with state regulations that allow for an extension of an NPDES permit under specific circumstances. Section 2235.4 of Title 23 of the California Code of Regulations provides "the terms and conditions of an expired permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits are complied with." Federal regulations governing state administered NPDES programs expressly recognize state authority to adopt this regulation.²⁷

The Regional Board's order effectively modifies these regulations by imposing a final expiration date that cannot be extended. The ISO understands that a condition of Dynegy's existing NPDES permit is that Dynegy is to cease discharges by December 31, 2010, but the effect of that condition only serves to establish the expiration date of Dynegy's permit. In other words, an administrative extension would be rendered meaningless if all discharges must cease by December 31, 2010. The ISO maintains that this condition cannot undermine the requirements of state and federal regulations for the continuation of expired NPDES permits. *City of Burbank v. State Water Resources Control Board*, 35 Cal. 4th 613, 626 (2005): "discharge permits issued by

²⁶ Order No. R9-2010-0062 at paragraph 2.

²⁷ 40 C.F.R. § 122.6(d) provides in part: "States authorized to administer the NPDES program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows."

California's regional boards must meet the federal standards set by federal law." Here, state law, as recognized by federal regulations governing state administered NPDES programs, requires the continuation of permits until a new permit issues. The Regional Board has no authority to adopt a permit condition that contravenes this requirement.

The ISO anticipates that proponents of the Regional Board's order may argue that the requirement to terminate discharges from units 1 and 2 was a condition of extending Dynegy's right to discharge through December 31, 2010. Stated otherwise, the termination of discharges from units 1 and 2 as of December 31, 2010 was a condition of the minor modification. This after the fact interpretation, however, is problematic for two reasons.

First, the Regional Board did not make any findings to justify terminating Dynegy's permit as of December 31, 2010, as part of the minor modification to Dynegy's permit. Under applicable federal regulations governing NPDES permits in California, the Regional Board may terminate an NPDES permit only for specific reasons.²⁸ The Regional Board did not make any such findings to justify terminating the permit and should not be allowed to adopt a permit condition to avoid the substantive requirements related to terminating NPDES permits that it must otherwise follow.

Second, Dynegy's permit itself provides that the conditions of Dynegy's NPDES permit will automatically continue after the permit expires, if all the federal NPDES regulations on the continuation of expired permits are complied with.²⁹ This provision extends to Dynegy's permit right to discharge from units 1 and 2 a maximum reduced

²⁸ 40 CFR § 122.64.

²⁹ Order No. R9-2004-0154, Attachment 2 at Condition 16, citing 40 C.F.R. § 122.6; Title 23 C.C.R. § 2235.4.

flow rate of 225 million gallons per day.³⁰ The Regional Board first announced that this condition could not continue under an administrative extension of Dynegy's existing permit as part of its Tentative Order 2010-0062, issued on March 22, 2010. To allow this interpretation to stand would make the application of the NPDES permit administrative extension condition meaningless when applied to the condition that authorizes specific discharges. In contrast, applying an administrative extension to the condition that Dynegy terminate discharges from units 1 and 2 is tantamount to requiring that non-operation of the power plant is a condition of operation. This interpretation does not make sense and should be rejected.

V. THE STATE BOARD SHOULD MODIFY THE REGIONAL BOARD'S ORDER TO CONFORM WITH THE ADOPTED STATEWIDE WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL AND ESTUARINE WATERS FOR POWER PLANT COOLING

This Board adopted a statewide policy on the use of coastal and estuarine waters for power plant cooling on May 4, 2010.³¹ By expressly prohibiting future administrative extensions of Dynegy's NPDES permit, the Regional Board's order creates an unnecessary conflict with the adopted schedule and permitting procedures for power plants like South Bay Power Plant to implement best technology available for power plant cooling under the statewide policy.

Section 3.E of the statewide policy identifies milestones, including a final compliance date of December 31, 2011 for the owner or operator of South Bay Power Plant to implement best technology available as defined by the State Board's policy. In

³⁰ Order No. R9-2004-0154, Attachment 2 at Condition 25,

³¹ State Water Resources Control Board Resolution No. 2010-0020, Attachment 1.

addition, Section 3.C of the statewide policy provides that the State Board, not the Regional Board, "shall reissue, or as appropriate, modify NPDES permits, ... to ensure that the permits conform to the provision of this Policy."

The ISO understands that the statewide policy will not be effective until it is reviewed and approved by the Office of Administrative Law.³² Nevertheless, there is good cause to remedy the conflicts between the Regional Board's order and the adopted statewide policy now. If Dynegy's new NPDES permit application remains pending as of December 31, 2010, the Regional Board's order will conflict with the adopted compliance schedule set forth in the statewide policy. The Regional Board's order could prohibit Dynegy from operating while the statewide policy acknowledges that Dynegy may operate for the remaining 2011 calendar year. As a result, the State Board would need to scramble to modify Dynegy's NPDES permit in advance of December 31, 2010 to allow for continued discharges consistent with provisions of the statewide policy or issue a new NPDES permit once the State Board becomes the NPDES permit issuing authority for all power plants using once through cooling. In contrast, by reversing the Regional Board's directive that Dynegy's existing permit may be extended, the State Board can address this issue in a more deliberate fashion.

VI. SERVICE OF PETITION

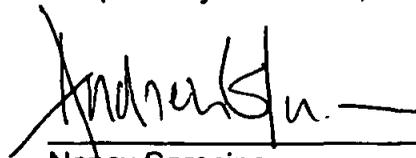
The ISO is serving a copy of this petition on the State Board, the Regional Board as well as Dynegy. In addition, the ISO has served a copy of this petition on the designated parties in the Regional Board's proceeding leading to Order R9-2010-0062.

³² California Government Code § 11353.

VII. CONCLUSION

The ISO requests that the State Board review the Regional Board Order No. R9-2010-0062 because it conflicts with regulations governing the administrative extension of NPDES permits and with the policy recently adopted by the State Board on the use of coastal and estuarine waters for power plant cooling. The ISO asks that the State Board determine that, if Dynegy has a new NPDES permit application pending as of December 31, 2010, Dynegy may continue to discharge beyond that date from the power plant's generating units 1 and 2 at a maximum flow rate of 225 million gallons per day until the Regional Board or State Board issues an order addressing Dynegy's new NPDES application.

Respectfully submitted,



Nancy Saracino
Sidney Davies
Andrew Ulmer
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7209
Fax: (916) 608-7296
aulmer@caiso.com

Attorneys for the California Independent
System Operator Corporation

Dated: June 11, 2010

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ORDER NO. R9-2010-0062

**AN ORDER DETERMINING NO CHANGES ARE WARRANTED TO
ORDER NO. R9-2004-0154
NPDES PERMIT NO. CA0001368**

**WASTE DISCHARGE REQUIREMENTS
FOR DYNEGY SOUTH BAY, LLC
(FORMERLY OWNED BY DUKE ENERGY SOUTH BAY, LLC)**

**SOUTH BAY POWER PLANT
SAN DIEGO COUNTY**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

1. On November 10, 2004, the San Diego Water Board adopted Order No. R9-2004-0154, NPDES No. CA0001368, *Waste Discharge Requirements for Duke Energy South Bay, LLC, South Bay Power Plant, San Diego County* (Order No. R9-2004-0154). Order No. R9-2004-0154 established requirements for the discharge of up to 601.13 million gallons per day (mgd) of heated once-through-cooling water to San Diego Bay.
2. On December 16, 2009, the San Diego Water Board ratified modifications to Order No. R9-2004-0154 to 1) reflect a change in responsible party to Dynegy South Bay, LLC, 2) terminate discharges from Units 3 and 4 as of December 31, 2009, and 3) terminate discharges from Units 1 and 2 as of December 31, 2010 or on the date that the California Independent System Operator (CAISO) determines the units are no longer needed as reliability must-run (RMR) units, whichever occurs first. Order No. R9-2004-0154 cannot be extended to allow discharges from Units 1 and 2 beyond December 31, 2010. Continued operations would require that a new permit be issued after notice and opportunity to comment and a public hearing.
3. A Notice of Public Hearing was issued on January 22, 2010 scheduling a hearing and requesting testimony, technical evidence, and supporting documentation relevant to determining:
 - a) Whether South Bay Power Plant intake and discharge operations endanger human health or the environment and can only be regulated to acceptable levels by NPDES permit modification or termination [see 40 Code of Federal Regulations, section 122.64(a)(3)]; and

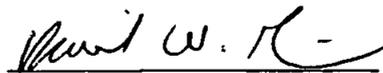
- b) Whether any effects identified in Item a above provide a sufficient basis for the Regional Water Board to require that South Bay Power Plant discharges be terminated earlier than December 31, 2010 and prior to California Independent System Operators (CAISO's) release of Units 1 and 2 from "Reliability Must Run" (RMR) status.
4. Testimony, technical evidence, and supporting documentation in response to the January 22, 2010 Notice of Public Hearing was submitted by the designated parties: Dynegy South Bay, LLC, No More South Bay Power Plant Coalition, CAISO, and the City of Chula Vista. Policy statements were submitted pursuant to the January 22, 2010 Notice of Public Hearing by interested persons: City of Coronado and National Oceanic and Atmospheric Administration.
 5. Testimony, technical evidence, supporting documentation, and policy statements submitted pursuant to the January 22, 2010 Public Notice as well as information in the San Diego Water Board files and in Order No. R9-2004-0154 and Fact Sheet were considered in preparation of the "*STAFF REPORT, Dynegy South Bay, LLC, South Bay Power Plant, Evaluation of Water Intake and Wastewater Discharge Effects on San Diego Bay and Consideration of Termination of Discharge*" dated March 22, 2010 (Staff Report). The Staff Report evaluates the impacts to San Diego Bay and contains the rationale for terminating Order No. R9-2004-0154 on December 31, 2010 or earlier if the CAISO determines that Units 1 and 2 are no longer designated as RMR prior to December 31, 2010. The Staff Report is incorporated as if fully set forth in this order and included as Attachment 1 of this order.
 6. On February 16, 2004 the USEPA published a final rule to implement Section 316(b) of the Clean Water Act. This rule, 40 CFR 125, Subpart J, *Requirements Applicable to Cooling Water Intake Structures for "Phase II Existing Facilities" Under Section 316(b) of the Act* (New 316(b) Rule), establishes location, design, construction and capacity standards, for cooling water intake structures at existing power plants that use the largest amounts of cooling water (i.e. greater than 50 MGD). The new rule went into effect on September 7, 2004.
 7. Order No. R9-2004-0154 identified impacts in San Diego Bay and impaired beneficial uses due to the intake of once-through cooling water and discharge of heated effluent at the South Bay Power Plant.
 8. Order No. R9-2004-0154 incorporated requirements to restore the beneficial uses including 1) an evaluation of changing the intake structure as required by the New 316(b) Rule and 2) a time schedule to change the compliance point for the thermal discharge limitations. Order No. R9-2004-0154 also contains language indicating a need to mitigate for impacts. The New 316(b) Rule was suspended by USEPA on March 20, 2007 following litigation and the San Diego Water Board suspended the requirement for a 316(b) evaluation by letter dated June 1, 2007. The compliance point for the thermal discharge limitations was

changed to the South Bay Power Plant property line as of November 10, 2007. The San Diego Water Board has not considered mitigation for the South Bay Power Plant nor has it required a new best technology available analysis be performed following suspension of the 316(b) rule to date.

9. By letter dated January 11, 2010, Dynegy reported that Units 3 and 4 were permanently shut down as of December 31, 2009, resulting in the reduction of maximum flow rate from 601 mgd to 225 mgd (63 percent reduction) as required by the modification to Order No. R9-2004-0154 approved by the San Diego Water Board on December 16, 2009. While not documented or quantified, the San Diego Water Board understands that this 63 percent reduction in intake and discharge flow results in a similar reduction of adverse impacts to beneficial uses.
10. The Staff Report, which evaluated all relevant file documents and evidence and written testimony from designated parties and comments from interested persons, did not identify any new or additional impacts beyond those already identified and considered in Order No. R9-2004-0154 and concludes that allowing discharges to continue through December 31, 2010 at the latest does not, in the short term, pose an unacceptable risk to human health or the environment within the meaning of 40 CFR section 122.64(a)(3) and therefore the permit will not be terminated earlier than December 31, 2010 or when RMR status for Units 1 and 2 is removed by CAISO, whichever occurs first.
11. Any proposal to operate Units 1 and/or 2 beyond 2010 will require evaluation under 40 CFR section 122.64(a)(3) and any permit to authorize discharges beyond 2010 must meet applicable legal requirements, including use of best technology available to minimize adverse environmental impacts from use of once through cooling structures as required by Clean Water Act section 316(b) applicable to existing power plants.
12. The San Diego Water Board has notified all known interested parties of its intent to consider termination of Order No. R9-2004-0154.
13. The San Diego Water Board, in a public hearing, heard and considered all comments pertaining to the termination of Order No. R9-2004-0154.
14. This action to adopt this Order is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177 pursuant to California Water Code section 13389.

IT IS HEREBY ORDERED that the San Diego Water Board has determined that it is not necessary or appropriate to modify the terms of Order No. R9-2004-0154 and therefore, in accordance with its terms, discharges from Units 1 and 2 at SBPP shall terminate as of December 31, 2010 or on the date that the CAISO determines that Units 1 and 2 are no longer designated as reliability must run units, whichever occurs first.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Board, San Diego Region, on May 12, 2010.



DAVID W. GIBSON

Executive Officer

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the attached service list by US Mail.

Dated at Folsom, California this 11th day of June, 2010.

A handwritten signature in black ink, appearing to read "Jane L. Ostapovich", is written over a solid horizontal line.

Jane L. Ostapovich

SERVICE LIST

DYNEGY SOUTH BAY, LLC South Bay Power Plant

Margaret Rosegay
Pillsbury Law for Dynegy South Bay LLC
50 Fremont Street
San Francisco, CA 94105-2228

Mr. Jonathan Bishop
State Water Resources Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Laura Hunter, Clean Bay Director
No More South Bay Power Plant
Coalition
401 Mile of Cars Way, Suite 310
National City, CA 91950

Bart Miesfeld
City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

Mr. Brian Kelley
San Diego Regional Water Quality
Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Mr. David Gibson, Executive Director
San Diego Regional Water Quality
Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Catherine Hagan, Esq.
San Diego Regional Water Quality
Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Hon. Charles R. Hoppin, Chair
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

Hon. Frances Spivy-Weber, Vice Chair
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

Hon. Arthur G. Baggett, Jr.
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

Hon. Tam M. Doduc, Board Member
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

Hon. Walter G. Petit, Board Member
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100