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California Regional Water Quality Control Board San Diego Region

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<http://www.waterboards.ca.gov/sandiego>

NOTICE OF PUBLIC HEARING

In the Matter of

**Dynegy South Bay, LLC
South Bay Power Plant
San Diego County**

Wednesday, March 10, 2010 - 9:00 a.m.

At

**San Diego Regional Water Quality Control Board, Board Meeting Room
9174 Sky Park Court
San Diego, California 92123-4340**

The San Diego Regional Water Quality Control Board (Regional Water Board) is scheduling a public hearing to receive testimony, technical evidence, and supporting documentation relevant to determining:

- 1) 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
- 2) Whether any effects identified in Item 1 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.

I. BACKGROUND

On November 10, 2004, the Regional Water Board adopted Order No. R9-2004-00154, NPDES No. CA0001368 (Order), establishing waste discharge requirements for the South Bay Power Plant (SBPP) located in the City of Chula Vista, south San Diego Bay. (http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2004/2004_0154_Final.pdf) The SBPP facilities are owned by the Port of San Diego (Port). The SBPP is located on San Diego Bay waterfront land conveyed and granted in trust to the Port pursuant to state enabling legislation. Dynegy South Bay, LLC (Dynegy), operator of the SBPP, submitted a NPDES permit application dated April 10, 2009, for the reissuance of the Order. Dynegy updated the NPDES Permit application by letters dated October 16, 2009 and October 19, 2009 regarding the schedule for anticipated shutdown and closure of the South Bay Power Plant. The Order was amended on November 9, 2009, to reflect a schedule for interim flow reduction resulting from the

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shutdown of power generating Units 3 and 4 at the plant, which occurred December 31, 2009, and the eventual shutdown of Units 1 and 2. In accordance with the Order as amended, the discharges from Units 1 and 2 will terminate on the date California Independent Systems Operator (CAISO) determines that RMR services from Units 1 and 2 are no longer needed or December 31, 2010, whichever occurs first, absent further action by the Regional Water Board. The Regional Water Board ratified the Order modification at a public meeting on December 16, 2009.

http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2009/R9_2009_0178_ratification.pdf.

II. STATUTES AND REGULATIONS GOVERNING THE HEARING

The Regional Water Board hearing in this matter will be conducted in accordance with Title 23 California Code of Regulations (CCR) sections 648, et seq., Chapter 4.5 of the California Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code. The hearing will not be conducted pursuant to Chapter 5 of the Administrative Procedure Act (commencing at Government Code section 11500). Title 23 of the CCR can be accessed on the Internet at <http://www.calregs.com> and the Evidence Code and Government Code can be accessed on the Internet at <http://www.leginfo.ca.gov/calaw.html>.

III. HEARING PARTICIPATION

Participants in the Regional Water Board proceedings are either “designated parties” or “interested persons”.

Each designated party to the proceeding may present evidence, call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter relevant to the issues. The scope of cross-examination is limited to testimony presented during direct examination and the evidence and testimony presented by the party. Each designated party may also present non-evidentiary policy statements that may refer to evidence in the record, as part of their submissions. Designated parties may not submit separate policy statements. Requirements for submission of written evidence and exhibits by designated parties are described below.

Interested persons may generally only submit non-evidentiary policy statements or comments. Interested persons are not subject to cross-examination but may be asked to respond to clarifying questions from the Regional Water Board, or others, at the discretion of the Board. Interested persons may not cross-examine other persons participating in the proceedings. Requirements for submission of non-evidentiary written policy statements or comments by interested persons are described in Item V below.

Interested persons may submit technical evidence (e.g., photographs, eye-witness testimony, monitoring data) relevant to the issues in this matter if the evidence is

submitted in accordance with the procedures and deadlines for submitting evidence described in Item V below for designated parties. Interested persons who present evidence may be subject to cross-examination.

Interested persons may request status as a designated party for purposes of this hearing by submitting such request in writing to the Regional Water Board according to the procedures set forth in Item IV below.

IV. PARTICIPANTS DESIGNATED AS PARTIES

The following list identifies participants who are designated parties in the Regional Water Board proceedings on this matter

1. Dynegy South Bay, LLC (the Discharger)
2. No More South Bay Power Plant Coalition (Coalition members include Environmental Health Coalition, San Diego Coastkeeper, South Bay Forum, Southwest Chula Vista Civic Association, Coastal Environmental Rights Foundation, San Diego Audubon Society, San Diego Chapter of the Sierra Club, Surfrider Foundation, San Diego Chapter). The Coalition is expected to represent these participants as a single entity.

All other persons who wish to participate in the proceedings as “designated parties” must request designation by the Regional Water Board. The request must explain the basis for status as a designated party and in particular how the person is affected by the discharge. Interested persons seeking recognition as “designated parties” must submit a written request for designation as a party to the Regional Water Board by **4:00 p.m. on February 1, 2010**. Requests should be addressed to:

Mr. David Gibson
Executive Officer, c/o Brian Kelley
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340.
bkelly@waterboards.ca.gov

Requests for designated party status will be acted upon by the Regional Water Board on or before **February 9, 2010**.

V. TESTIMONY AND OTHER EVIDENCE

Each designated party proposing to submit testimony or other exhibits¹ to be used as evidence, interested person proposing to submit technical evidence, or designated party or interested person proposing to submit non-evidentiary policy or comment statements, for consideration by the Regional Water Board in this proceeding, shall submit all such information in writing to the Regional Water Board in accordance with the deadline dates below. The Regional Water Board will strictly enforce the deadlines and other procedures on written and electronic submissions and exhibits provided below.

Designated Parties

Designated parties to the proceedings shall submit all written testimony, exhibits, evidence, and supporting technical documentation, and any non-evidentiary policy statements to the Regional Board in electronic format by **4:00 p.m. on February 22, 2010**, with 15 paper copies of each document and exhibit for Regional Water Board use.

Designated parties shall serve one copy of their written submittals and exhibits on every other designated party on or before **February 22, 2010**. Designated parties may serve those parties who agree to electronic service with an electronic copy of their written submittals. Designated parties must serve paper copies of submittals, exhibits, and forms on those designated parties who do not agree to electronic service.

Designated parties may submit responses and rebuttal to written submittals in electronic format by **noon on March 3, 2010** with 15 paper copies of each document and exhibit for Regional Water Board use. Designated parties shall serve one copy of their response and rebuttal submittal on every other designated party on or before **March 3, 2010** in accordance with the above procedures.

Interested Persons

Interested persons who are not participating as designated parties to the proceeding shall submit all written non-evidentiary policy statements or comments to the Regional Water Board in paper or electronic format by **noon on February 24, 2010**. Submittals will be accepted by e-mail as long as the total submittal (including attachments) does not exceed five printed pages in length.

Interested persons who wish to submit technical evidence (e.g., photographs, eye-witness testimony, monitoring data) relevant to the issues shall submit the evidence in accordance with the procedures and deadlines for submitting evidence described above for designated parties.

Submittals to the Regional Board

¹ Exhibits include written testimony, technical documentation, factual information, expert opinions, statements of qualifications of expert witnesses, and other documents to be used as evidence.

All written paper copy or disk media submittals to the Regional Board shall be addressed as follows:

Mr. David Gibson
Executive Officer, c/o Brian Kelley
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

Electronic e-mail submittals should be made to Brian Kelley, bkelly@waterboards.ca.gov. Type the words "SBPP Issue Submittal" in the subject line.

Oral Testimony

All designated parties and interested persons may speak at the Regional Water Board meeting, and are expected to orally summarize their written submittals. Oral testimony and cross examination will be limited in time by the Board Chair. Both designated parties and interested persons may be asked to respond to clarifying questions from Board members, counsel staff or others, at the discretion of the Board. Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct. The Order of Proceedings at the hearing will be determined by the Chair, but are expected to follow generally the order set forth in section 648.5 of title 23 of the California Code of Regulations.

Provisions

No tentative order has been prepared and the San Diego Water Board will not take any action at the March 10, 2010 hearing. The San Diego Water Board, upon receiving evidence and testimony, may provide direction to the staff for development of a tentative order that will be scheduled for a future public hearing. There will be an opportunity to comment on any future tentative order.

The record for this matter already includes oral and written comments submitted for the December 16, 2009 Regional Water Board action resulting in ratification of the amendment to the Order. The San Diego Water Board discourages the submittal of oral or written comments that repeat comments already in the record.

VI. CONTACT INFORMATION

Information related to these matters, is currently available and may be reviewed at the Regional Board's office or on the Regional Board's web page at <http://www.waterboards.ca.gov/sandiego>. For information regarding this matter, please contact Ms. Kristin Schwall at (858) 467-2981 or by email at kschwall@waterboards.ca.gov.

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Please bring the above information to the attention of anyone you know who may be interested in this matter.

DAVID W. GIBSON
Executive Officer
January 22, 2010