

**ERRATA SHEET FOR
TENTATIVE ORDER NO. R9-2010-0062 AND
ATTACHMENT 1 TO TENTATIVE ORDER NO. R9-2010-0062-STAFF REPORT**

**AN ORDER TERMINATING 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 following revisions will be made to Tentative Order No. R9-2010-0062 and Attachment 1 to Tentative Order No. R9-2010-0062. Changes/corrections below are shown in underline/~~strikeout~~ format to indicate added and removed language, respectively.

Changes to Order No. R9-2010-0062:

| Errata # | SECTION | REVISION |
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| 1 | Finding 10. Page 3 | The Staff Report, which evaluated all relevant file documents and evidence and <u>written</u> 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 for the remainder of the permit term 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 <u>the permit</u> will not be terminated earlier than the end of the permit term December 31, 2010 or when RMR status for Units 1 and 2 is removed by CAISO, whichever occurs first. |
| 2 | Ordering Paragraph Insert footnote at end of Ordering Paragraph Page 3 | <u>If the CAISO does not release Units 1 and 2 from RMR status before the end of 2010, technically the permit expires on its own terms, simultaneous with termination of discharges. In that circumstance, the permit is not being terminated under 40 CFR section 122.64(a)(3) but will expire at the end of 2010.</u> |

Changes to Attachment 1 to Order No. R9-2010-0062 – Staff Report:

| Errata # | SECTION | REVISION |
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| 3 | Title Page | <p style="text-align:center">STAFF REPORT</p> <p style="text-align:center">Dynegy South Bay, LLC, South Bay Power Plant</p> <p style="text-align:center">Evaluation of Water Intake and Wastewater Discharge Effects on San Diego Bay and Consideration of Termination of Discharge</p> <p style="text-align:center">March 22 May 12, 2010</p> |
| 4 | Background Section 2. Page 4 | <p>Based on Dynegy's supplemental information, NPDES Order R9-2004-0154 was modified on November 9, 2009 (ratified by the San Diego Water Board on December 16, 2009) to incorporate the schedule for flow reduction to 225 mgd by December 31, 2009 and the termination of all discharges with the anticipated shutdown of Units 1 and 2 by December 31, 2010 or on the date CAISO determines that RMR services from Units 1 and 2 are no longer needed, whichever occurs first. Because the modified NPDES Order requires the discharge to terminate no later than December 31, 2010, NPDES Order R9-2004-0154 can not be administratively extended beyond this date. Because the modified NPDES Order requires discharges from Units 1 and 2 to terminate no later than December 31, 2010, and an administrative extension continues only the existing permit terms and conditions, the discharge termination dates established in the modified NPDES Order cannot be administratively extended beyond December 31, 2010, even if the permit itself is administratively extended. If Dynegy proposes to discharge from Units 1 and 2 beyond December 31, 2010, a new report of waste discharge/NPDES permit application would need to be submitted to the San Diego Water Board <u>or State Water Board, as appropriate</u>, and a new NPDES Order will need to be adopted <u>by the San Diego Water Board</u> which protects the beneficial uses of San Diego Bay and complies with all applicable requirements. Consideration of a new permit would be subject to public participation requirements set forth in 40 Code of Federal Regulations (CFR) section 124.10 and the <u>permitting San Diego</u> Water Board would consider whether</p> |

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| | | proposed discharges beyond December 31, 2010, endanger human health or the environment within the meaning of 40 CFR section 122.64(a)(3), serving as a basis to deny an application proposing continued discharges. |
| 5 | Effects of Intake and Discharge Eelgrass (<i>Zostera marina</i>) | <p>Eelgrass beds are considered a critical component of the San Diego Bay food web. Much of the eelgrass primary productivity enters the food web as detritus, and eelgrass beds actively uptake nutrients, produce oxygen, stabilize sediments and slow current velocities. Fish and invertebrates use eelgrass beds as a refuge from predators, as a food source, and as nursery habitat. Eelgrass provides surfaces for egg attachment and sheltered locations for juveniles to hide and feed. Fish and invertebrates produced from these beds are ecologically, commercially, and recreationally important species, both as permanent bay residents and as oceanic species. Waterfowl, especially surf scoter, scaup, and brant are present in high numbers in late fall and winter. Black brant, in particular, rely heavily on eelgrass of central and south Bay as they are one of the few birds that consume it directly.</p> <p>The preclusion of eelgrass from the discharge under current maximum discharge conditions of 225 MGD is unknown, but is certainly expected to be less than the amount caused by flows of 601 MGD or 441 MGD.</p> |
| 6 | Effects of Intake and Discharge Entrainment and Impingement of Marine Organisms Section 3.i Page 23 Evaluation | NPDES Order R9-2004-0154 terminates the discharge from SBPP on December 31, 2010 or the date CAISO determines that RMR services from Units 1 and 2 are no longer needed, whichever occurs first, absent further action by the San Diego Water Board. Because of this termination clause in NPDES Order R9-2004-0154, the NPDES Order can not be administratively extended discharges from Units 1 and 2 cannot continue beyond December 31, 2010 even if that Order is administratively extended. Instead, if the Dynegy proposes to discharge beyond 2010, a new application will need to be submitted which demonstrates compliance with Clean Water Act Section 316(b), likely through the State Board's Policy. |
| 6 | Conclusion Section 4. Page 24 | As discussed above, the SBPP has operated for approximately 50 years. Beginning in 2010, the maximum permitted flow has been reduced by 63 percent. The current permit by its own terms expires requires discharges to terminate at the end of 2010 or earlier if the CAISO determines that Units 1 and 2 are no longer |

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| | | needed for power reliability needs <u>and expires on December 31, 2010</u> . Allowing the discharge (and intake) at SBPP to continue until the permit expires at the end of 2010 does not pose an unacceptable risk to human health or the environment over the short term remaining in the life of the permit. Any proposed discharge beyond 2010 will need to be evaluated to determine whether it endangers human health or the environment in the longer term as well as for compliance with the best technology available requirements of CWA section 316(b) and other applicable legal requirements. |
| 7 | Header | March 22 <u>May 12</u> , 2010 |