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Supporting Document No. 19
Item No. 13
May 12, 2010

NOTICE OF PUBLIC HEARING

In the Matter of

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

Wednesday, May 12, 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 (San Diego Water Board) will consider Tentative Order No. R9-2010-0062 and will hold a 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 (CFR), section 122.64(a)(3)]; and
- 2) Whether any effects identified in Item 1 above provide a sufficient basis for the San Diego 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 San Diego 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

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November 9, 2009, to reflect a schedule for interim flow reduction resulting from the 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 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 San Diego Water Board. The San Diego 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.

Tentative Order No. R9-2010-0062 finds that there is insufficient basis to support termination of the SBPP discharges earlier than December 31, 2010 and prior to CAISO's release of Units 1 and 2 from RMR status. The Tentative Order concludes, based upon a review of the record in this matter, including written materials submitted by the designated parties and interested persons, that allowing the discharge at reduced flow to continue until the Order expires on or before December 31, 2010, does not pose an unacceptable risk to human health or the environment within the meaning of 40 CFR section 122.64(a)(3). Thus, the staff recommendation would terminate the Order and the discharges from Units 1 and 2 at the Dynegy South Bay Power Plant on the date that the CAISO determines that RMR services from Units 1 and 2 are no longer needed or December 31, 2010, whichever occurs first, in parallel with the expiration date of Order No. R9-2004-0154.

II. STATUTES AND REGULATIONS GOVERNING THE HEARING

The San Diego 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

A. Designated parties and other participants:

As a result of the process set forth in the January 22, 2010, hearing notice issued in this matter, the San Diego Water Board identified four designated parties to this proceeding. The designated parties are:

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.
3. California Independent System Operator Corporation
4. City of Chula Vista

All other participants in the San Diego Water Board proceedings are interested persons. Interested persons are not subject to cross-examination but may be asked to respond to clarifying questions from the San Diego Water Board, or others, at the discretion of the Board. Interested persons may not cross-examine other persons participating in the proceedings.

B. Testimony, Other Evidence, and Comments

The January 22, 2010, hearing notice established deadlines for submittal of evidence, rebuttal evidence, and non-evidentiary policy statements. All of the materials previously submitted will be included in the record and provided to the San Diego Water Board members and need not be resubmitted. No new evidence shall be submitted.

All participants, whether designated parties or interested persons, may comment on Tentative Order No. R9-2010-0062. Written comments on the tentative order may be submitted on or before noon on April 21, 2010. Commenters shall provide comments in electronic format with 15 paper copies to the San Diego Water Board. Submittals will be accepted by e-mail as long as the total submittal (including attachments) does not exceed 5 pages in length. All written paper copy or disk media submittals to the San Diego Water 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.

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. Designated parties may offer non-expert witness testimony. San Diego Water Board staff is presenting a recommendation as set forth in the Tentative Order and is serving as an advisor to the San Diego Water Board. Thus, San Diego Water Board staff is not a designated party to this proceeding. The Board Chair may allow questions of staff concerning staff's recommendation.

On or before 5 p.m. on April 28, the Designated Parties should disclose to other designated parties and the San Diego Water Board who they intend to call as witnesses at the hearing.

C. Presentations

All designated parties and interested persons may speak at the San Diego 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 will likely be in the following order:

- Presentation by San Diego Water Board staff
- Testimony by Dynegy
- Testimony by CAISO
- Testimony by No More South Bay Power Plant Coalition
- Testimony by City of Chula Vista
- Interested Persons
- Closing statements by Designated Parties (if necessary)
- Summary by San Diego Water Board staff
- Recommendation by Executive Officer
- Close Public Hearing
- Deliberation and Vote

IV. POSSIBLE BOARD ACTIONS

San Diego Water Board staff have prepared Tentative Order No. R9-2010-0062 based upon a review of the evidence in the record to date, including evidence submitted by the Designated Parties on February 22, and March 3, 2010, pursuant to the deadlines established in the January 22, 2010 hearing notice.

The Board may adopt Tentative Order No. R9-2010-0062 as proposed by staff. Alternatively, the Board may decide, after hearing all of the evidence and testimony, it is appropriate to terminate the Order earlier than its expiration date, notwithstanding staff's recommendation.

Finally, the Board may decide that no action is required.

V. CONTACT INFORMATION

Information related to these matters, is currently available and may be reviewed at the San Diego Water Board's office or on the San Diego Water Board's web page at <http://www.waterboards.ca.gov/sandiego>. For information regarding this matter, please contact Ms. Kristin Schwall at (858) 467-2345 or by email at kschwall@waterboards.ca.gov.

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

DAVID W. GIBSON
Executive Officer
March 22, 2010