



**Unified Port
of San Diego**

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October 27, 2004

*JP 10-27-04
HVC*

Mr. John Robertus, Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attn: Industrial Compliance Unit

Subject: Revised Tentative NPDES Renewal Permit for Duke Energy
South Bay, LLC, South Bay Power Plant,
Tentative Order NO. R9-2004-0154,
NPDES Permit NO. CA0001368 (Code IC: 13-0091.01)

Dear Mr. Robertus:

The purpose of this letter is to clarify the role of the San Diego Unified Port District (Port) and Duke Energy South Bay, LLC (Duke) with respect to the South Bay Power Plant (SBPP).

Background

The SBPP is a fossil-fueled electric power generating station that began operation in 1960 (see attached diagram). The 117-acre, 706-megawatt facility is located at 990 Bay Boulevard in Chula Vista, California, on the southeastern shore of the San Diego Bay. The SBPP is a Reliability Must-Run (RMR) facility under the authority of the California Independent System Operator (CAISO) and cannot be decommissioned until that designation is removed from the facility.

The Port acquired the SBPP and an additional 33.1 acres to the south (the LNG site) from SDG&E in April 1999 and currently leases the plant to Duke. Duke is a Port tenant and the operator of the SBPP. The primary purpose of the acquisition was to allow for the dismantling of the existing plant in its current location beginning in 2010, removing an outdated facility, and freeing up portions of the property for a better use. The \$115 million acquisition was financed through lease revenue bonds that will be fully repaid by Duke by the end of the Lease term.

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Port/Duke Agreements

In addition to the Lease, the Port and Duke have several other agreements related to operating and relocating the facility including a Cooperation Agreement, Environmental Remediation Agreement, Asset Sale Agreement, and the Contract and Permit Rights Assignment and Assumption Agreement. Through these documents the Port assigned over 125 permits and licenses to Duke and Duke assumes full responsibility for all SBPP related permits including NPDES Permit NO. CA0001368.

SBPP Replacement Plant

As a part of the Cooperation Agreement between the parties, Duke is obligated, at its own expense, to use its best efforts to develop, finance, and place into commercial operation, a new power plant that will have a generating capacity at least sufficient to cause the CAISO to terminate the RMR designation at the existing plant on or before the termination of the Lease. After using commercially reasonable efforts and spending up to \$3 million, if Duke is unable to find a viable off-site location to replace the SBPP and the Port does not approve Duke's use of a tidelands location such as the LNG site, Duke's obligation to the Port to replace the existing power plant by the end of the Lease term is relieved. The SBPP will continue operating until its RMR status is removed by some other means (i.e. third party transmission upgrades/new generation capacity); however, Duke's obligation to demolish the existing plant remains. Further, the Port is precluded from discussing power generation on tidelands with any entity other than Duke through the term of the SBPP Lease.

The Port and Duke agreed to a preliminary development milestone schedule for the RGP as part of the Cooperation Agreement in 1998. Subsequently, Duke has submitted to the Port a revised schedule as follows.

- Early 2005 – Duke begins preparing an application for licensing for submission to the California Energy Commission (CEC) a minimum of 6 months will be required to prepare the CEC application
- Late 2005 - Duke files an application for the proposed RGP with the CEC
- Late 2007 – Duke secures approval from the CEC for the RGP; construction begins
- Mid-to-late 2009 – Construction complete
- Late 2009/early 2010 – Commercial operations commence