

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

ORDER NO. R9-2010-0062

**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 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 Dynege 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 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 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 will not be terminated earlier than the end of the permit term.
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 terminate 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 terminate an NPDES permit 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 Order No. R9-2004-0154 is terminated 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

TEMPORARY