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April 13, 2010

VIA E-MAIL & U.S. MAIL

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



**RE: Comment Letter – OTC Policy**

Dear Ms. Townsend,

Southern California Edison (SCE) respectfully submits these comments on two documents issued by the State Water Resources Control Board (Board): (1) the revised Draft Final Proposed Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (Policy); and (2) the revised Draft Final Substitute Environmental Document (SED), both dated March 22, 2010.<sup>1</sup> SCE raises the following points for the Board's consideration and review.<sup>2</sup>

**I. The Policy Should Include A Consistent, Statewide Evaluation of Costs, Benefits, and Feasibility For the Nuclear Facilities**

Section 3.D of the Policy would require SCE and Pacific Gas & Electric Company (PG&E) to conduct "special studies" for consideration by the State Water Board. As revised, the Policy adds various factors for the State Water Board to consider when applying a "cost-cost" test to determine if the costs for a nuclear facility to implement Track 1 or Track 2 are wholly out of proportion to the costs considered by the State Water Board in establishing Track 1. If so, then the Policy would require the State Water Board to establish alternative requirements for the nuclear facilities.

As explained in detail in Exhibit A to this letter, if the State Board eliminates the "wholly disproportionate" cost-benefit provision of the Policy, which the Board had included in the June 2009 draft, the Board would be acting arbitrarily and capriciously by setting aside decades of EPA and federal court precedent, which culminated in the U.S. Supreme Court's seal of approval in the *Entergy* decision, and otherwise would be

<sup>1</sup> SCE respectfully requests that the Board consider all prior SCE comments (written and oral), and attachments thereto, on the Policy or prior versions of the Policy, or scoping documents, to be included in the administrative record of this Policy. SCE incorporates those comments by reference.

<sup>2</sup> Exhibit A to this letter is a memorandum explaining the legal basis for SCE's proposed revisions, and disputing the legal validity of the Policy.

proceeding contrary to law. As currently framed, the Policy allows for irrational results and contravenes Clean Water Act Section 316(b) by not including a means to account for extreme disparities between costs and benefits.

Furthermore, the Policy vests unfettered discretion in the State Water Board's Executive Director to select the "special studies" author, despite the fact that the nuclear power industry is highly specialized.

Finally, to show compliance with Track 2, the Policy now makes a special exception for existing power plants with combined-cycle power-generating units (CCGTs). The Policy allows those plants – and only those plants – to count permitted discharges as prior entrainment reductions "where the CEC and/or a Regional Water Board imposed mandatory mitigation requirements (such as expenditures of substantial funds for habitat restoration or enhancement) based upon substantial evidence in the record of the prior proceeding showing that the [agency] required mitigation after a BTA determination . . . and required the mitigation to further offset the entrainment impacts . . ." Policy, § 2.A.(2)(d).

This selective application to CCGTs alone, and not to the nuclear plants, is unsupported by any rational basis to make this distinction. The SED recognizes *both* existing CCGTs *and* nuclear plants as "special cases requiring alternative requirements." SED, p. 93. Yet the SED provides no explanation for why CCGTs will be permitted access to an exception not available to nuclear plants, which also have been subjected to mandatory mitigation requirements imposed by a state agency. *See* SED, pp. 93-94 (no explanation provided for CCGT credit for mandatory mitigation).

Accordingly, SCE proposes the following revisions (in underlined and strikeout text) to Sections 3.D.(2), (7), (8), and (9) of the Policy to address these flaws. The proposed language provides a bare minimum of restraint to the Executive Director's exercise of discretion in selecting the author of the "special studies," re-inserts the State Water Board's own "wholly disproportionate" language from the June 2009 Policy to describe how the Board should substantively consider costs, benefits, and feasibility in relation to the special studies, and fairly accounts for prior mitigation imposed by state agencies on the nuclear facilities.

- (2) The special studies shall be conducted by an independent third party with significant expertise in nuclear engineering and nuclear plant management, selected by the Executive Director of the State Water Board.

\* \* \*

- (7) The State Water Board shall consider the results of the special studies, and shall evaluate the need to modify this Policy with respect to the nuclear-fueled power plants\*. In evaluating the need to modify this Policy,

the State Water Board shall base its decision to modify this Policy with respect to the nuclear-fueled power plants\* on the following factors:

(a) Costs of compliance in terms of total dollars and dollars per megawatt hour of electrical energy produced over an amortization period of 20 years;

(b) Ability to achieve compliance with Track 1 or Track 2 considering factors including, but not limited to, engineering constraints, space constraints, permitting constraints, and public safety considerations;

(c) Potential environmental impacts of compliance with Track 1 or Track 2, including, but not limited to, air emissions;

(d) Environmental benefits of compliance, including:

(i) The reduction of entrainment provided in terms of *habitat production foregone\**, or some other appropriate method approved by the State Water Board;

(ii) The reduction of impingement mortality; and

(iii) The improvement in receiving water quality due to the reduction of thermal discharge.

(e) Any other relevant information.

(8) If the State Water Board finds that the costs for a specific *nuclear-fueled power plant\** to implement Track 1 or Track 2, considering all the factors set forth in paragraph (7), are wholly out of proportion to the costs considered by the State Water Board in establishing Track 1, or are wholly disproportionate to the environmental benefits to be gained, or would result in significant adverse environmental impacts, then the State Water Board shall establish alternate requirements for that *nuclear-fueled power plant\**.

The State Water Board shall establish alternative requirements no less stringent than justified by the State

~~Water Board's findings, wholly out of proportion (i) cost and (ii) factor(s) of paragraph (7). The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.~~

- (9) In the event the State Water Board establishes alternate requirements for *nuclear-fueled power plants\**, the difference in impacts to marine life resulting from any alternative, less stringent requirements shall be fully mitigated. Mitigation required by the CEC, a Regional Water Board, and/or the California Coastal Commission in a prior proceeding to mitigate impacts associated with the cooling water intake or discharge of a nuclear-fueled power plant\* shall be applied to satisfy the requirements of this paragraph to the extent supported by substantial evidence in the prior proceeding. Mitigation required pursuant to this paragraph shall be a *mitigation project\** directed toward the implementation, monitoring, maintenance and management of the State's Marine Protected Areas. Funding for the *mitigation project\** shall be provided to the California Coastal Conservancy, working with the Ocean Protection Council to fund an appropriate *mitigation project\**.

## II. Conclusion

SCE respectfully offers the proposal described above to revise the Policy to meet the needs of the Board, the regulated community, responsible state agencies, the environmental community, and the people of California. If the Board members and staff have any questions regarding this filing, SCE would be happy to continue our effort to inform and assist the staff and the Board.

Very truly yours,



Michael M. Hertel, PhD  
Director, Corporate Environmental Policy

Attachments

cc: Charlie Hoppin  
Frances Spivy-Weber  
Arthur Baggett, Jr.  
Tam Doduc  
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