Petitioner AES Redondo Beach, LLC (“Petitioner”) petitions the California State Water Resources Control Board (“State Water Board”) to review the Los Angeles Regional Water Quality Control Board (“Regional Water Board”) inaction on December 9, 2021, on Petitioner’s application to extend Time Schedule Order (“TSO”) No. R4-2020-0139, National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0001201, for the Redondo Beach Generating Station (“RBGS”). The TSO expired on December 31, 2021. On October 19, 2021, the State Water Board extended the deadline for Petitioner to comply with the State’s once-through-cooling (“OTC”) Policy from December 31, 2021, to December 31, 2023. The State Water Board approved an additional two-year extension as necessary to support electric system reliability in California. In its TSO application to the Regional Water Board, Petitioner only sought to conform the TSO deadlines to the deadline set by this body for the RBGS under the
OTC Policy.

This matter is important, because RBGS is a critical generation resource located in a load center that is able to support the grid and support electric system reliability during times of high peak demand, transmission constraints, import limits, low hydro flow, or other challenges.

However, while this petition is an urgent matter, Petitioner wishes to work towards a cooperative solution with the Regional Water Board. Hence, pursuant to California Code of Regulations title 23, section 2050.5(d), Petitioner requests that this Petition be held in abeyance temporarily to allow Petitioner to apply to the Regional Water Board for a revised and more narrowly tailored TSO. Petitioner will return to ask the State Water Board to act on this petition if additional relief is still necessary.

I. PETITIONER

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II. REGIONAL WATER BOARD ACTION FOR WHICH PETITIONER SEEKS REVIEW

Petitioner seeks review of the Regional Water Board’s decision not to act on Petitioner’s request to extend the deadlines in TSO No. R4-2020-0139 for NPDES Permit No. CA0001201, as set out in the proposed TSO supported by the Regional Water Board Staff (“Staff”) and submitted to Regional Water Board for its consideration on December 9, 2021 (“Tentative TSO”). Copies of the (1) the Board Agenda Packet, including the Tentative TSO and the Staff’s recommendation, (2) the Staff’s December 9, 2021, presentation slides (3) TSO No. R4-2020-0139, (4) TSO No. R4-2016-0222, (5) the transcript of the Regional Water Board’s consideration of Petitioner’s application, (6) Statewide Advisory Committee on Cooling Water Intake Structures Final
Recommended Compliance Date Extensions for Alamitos, Huntington Beach, Ormond Beach, and Redondo Beach Generating Stations (Jan. 23, 2020), (7) State Water Board Resolution No. 2020-0029 (Sept. 1, 2020), and (8) 2021 Report of the Statewide Advisory Committee on Cooling Water Intake Structures at 30 (Mar. 26, 2021) are attached as Exhibits 1, 2, 3, 4, 5, 6, 7, and 8.

III. DATE OF REGIONAL WATER BOARD ACTION

The Regional Water Board declined to approve a motion to support the Staff recommendation to extend Petitioner’s Tentative TSO on December 9, 2021, to match the State Board’s OTC extension.

IV. STATEMENT OF REASONS WHY THE ACTION WAS INAPPROPRIATE OR IMPROPER

A. Background

Petitioner, AES Redondo Beach, LLC, is part of The AES Corporation, a global leader in renewable energy development and operation in the United States, including California, and in 14 countries around the world. The AES Corporation seeks to accelerate the future of energy, together with customers, communities, and stakeholders through accelerated development of renewable energy, battery energy storage, and other zero carbon energy solutions and is aligned with California’s goal to achieve a 100% carbon-free energy future.

Petitioner owns and operates RBGS, now an 834 MW steam electric generating facility located at 1100 N. Harbor Drive, Redondo Beach, California, operating under NPDES Permit No. CA0001201. For decades, RBGS has been a key resource of the California electricity system, with eight natural gas-fired units serving as essential power generating resources that have provided reliable electricity to meet California’s needs. In fact, 834 MW is approximately the amount needed to cover the electricity shortage anticipated for summer 2022 found in the California Energy Commission (“CEC”) /California Independent System Operator (“CAISO”) summer stack analysis. In recent years, even as units were retired, RBGS has been among the coastal electricity generating resources critical to facilitating the integration of renewable energy in California. RBGS helps ensure electric reliability by being available both to provide ramping energy for those few hours when RBGS units are needed to balance the instantaneous changes to
supply and demand and to operate at full capacity during peak demand periods. Real time
balancing of power supply and demand is necessary to ensure electric system reliability – or more
simply, to avoid rolling blackouts that could leave millions without power during the hottest
summer days.

RBGS’s generating units operate using once-through cooling water drawn from two
submerged intake structures in King Harbor and one submerged intake just outside the King
Harbor breakwater. To comply with the federal Clean Water Act, the State Water Board adopted
its OTC Policy to establish technology-based standards for coastal power plants that use once-
through cooling water. Petitioner chose to comply under “Track 1” of the OTC Policy, which
requires a plant to reduce the intake flow rate. Since 2016, RBGS has operated under a TSO that
contains a schedule for eliminating the discharge of OTC water and effluent limitations for four
other pollutants – temperature, pH, copper, and nickel. A limit on a fifth pollutant, DDT, was
added to the TSO in November 2017. DDT is present in the background conditions due to
historical uses not related to operation of the plant. DDT is not used nor added by RBGS
operations but is present in the discharge only because the compound is in the intake water
necessary to operate the plant. Since the adoption of the OTC Policy, Petitioner has exhibited a
long history of consistently and diligently working toward achievement of the OTC Policy
compliance at all of its three OTC facilities: Redondo Beach, Alamitos, and Huntington.

Petitioner abandoned plans to expand in 2016, and started the process of shutting down entirely,
retiring OTC units at all of its OTC facilities, many of which were retired early, or before the
mandatory retirement date. Petitioner’s early unit retirements, along with other OTC coastal
power plant owners’ early retirements have advanced the goals of the policy and reduced marine
impacts. Indeed, Petitioner alone has retired more than half of its RBGS OTC generating units
before December 31, 2020 – and collectively, OTC flows in California have outpaced
requirements under the OTC Policy.

Petitioner had planned to permanently retire RBGS by December 31, 2020, as allowed
under the OTC Policy. E.g., TSO No. R4-2016-0222, VI.C.6.iii and C.7 at 19 (as of 2016,
Petitioner was “not considering alternatives for continued operation of the Facility,” such as a
conversion to a combined cycle operation and would permanently retire by December 31, 2020).

Petitioner has already retired RBGS Units 1 through 4 and 7 – most recently retiring Unit 7 on September 30, 2019, more than a year ahead of the then deadline. The remaining units – Units 5, 6, and 8 – were on schedule to be retired by December 31, 2020. On March 30, 2020, Petitioner sold the site to a developer and immediately thereafter withdrew its then long-dormant Application for Certification to repower the facility. However, due to the electricity needs of the State of California, Petitioner did not retire RBGS in December 2020. Rather, RBGS is continuing to operate through December 31, 2023, based on the identified grid reliability needs of the State. Petitioner will retire the three remaining RBGS OTC units at that time. Furthermore, in the sale documents for the Redondo Beach facility, AES has committed to a permanent shutdown by December 31, 2023.

The State formed the joint Statewide Advisory Committee on Cooling Water Intake Structures (“SACCWIS”) as an advisory committee convened to advise the State Water Board on how to implement the OTC Policy to ensure that it properly balances environmental objectives with the State’s need for reliable electricity. SACCWIS is a multi-agency effort that includes representatives from the CEC, California Public Utilities Commission (“CPUC”), California Coastal Commission, California State Lands Commission, California Air Resources Board (“ARB”), CAISO, and the State Water Board.

Based on the projected need for energy and concerns for grid reliability in the summer of 2021, on January 23, 2020, SACCWIS recommended to the State Water Board that it revise the OTC Policy to extend the compliance date for RBGS Units 5, 6 and 8 for one year until December 31, 2021. See Statewide Advisory Committee on Cooling Water Intake Structures Final Recommended Compliance Date Extensions for Alamitos, Huntington Beach, Ormond Beach, and Redondo Beach Generating Stations at 12 (Jan. 23, 2020) (“SACCWIS recommends that the State Water Board … extend[] the OTC Policy compliance dates of … Redondo Beach Units 5, 6, and 8 for one year (through December 31, 2021)” which would “be responsive to supporting system-wide grid reliability concerns starting in summer 2021”). On September 1, 2020, the State Water Board considered the SACCWIS recommendation and adopted an amendment to the OTC Policy
that revised the RBGS final compliance date to December 31, 2021. See State Water Board Resolution No. 2020-0029 at 6 (Sept. 1, 2020) (amended the OTC Policy to extend the deadline for RBGS to December 31, 2021 “in order to provide for grid reliability”). Following the State Water Board’s actions, the Regional Water Board amended the TSO on December 10, 2020, to extend Petitioner’s compliance (retirement) date by one year to December 31, 2021.

Again, in March 2021, SACCWIS recommended the State Water Board extend the compliance date for RBGS Units 5, 6, and 8 by two more years to support electric system reliability and address concerns of potential capacity shortfalls in 2022 and 2023. See 2021 Report of the Statewide Advisory Committee on Cooling Water Intake Structures at 30 (March 26, 2021) (“SACCWIS recommends an OTC Policy compliance date extension for Redondo Beach for two years, through December 31, 2023, to address system-wide grid reliability needs”). After extensive review, on October 19, 2021, the State Board amended the OTC Policy in line with SACCWIS’s March 2021 recommendation.

Contemporaneous with the State Water Board’s review, on September 15, 2021, following SACCWIS’s pending recommendation, Petitioner submitted to the Regional Water Board a request to obtain an extension of the TSO from December 31, 2021 to December 31, 2023, consistent with the State Board OTC extension, to ensure continued application of the interim effluent limitations for temperature, pH, copper, nickel, and DDT in line with the timeline to retire RBGS. On November 19, 2021, the Regional Water Board received comments from Petitioner in support of the Tentative TSO providing for the commensurate extension of the interim effluent limitations, as well as comments from Heal the Bay and the City Attorney of the City of Redondo opposed to the Tentative TSO. The Regional Water Board Staff (“Staff”) recommended that the Regional Water Board adopt Petitioner’s proposed revised Tentative TSO. Despite the State Water Board’s adoption of the amended OTC Policy and the Staff recommendation, the Regional Water Board did not take action to extend the Tentative TSO on December 9, 2021.

B. Why the Action Was Inappropriate or Improper

Under California Water Code section 13300: “Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate
requirements prescribed by the regional board … the board may require the discharger to submit
for approval of the board, with such modifications as it may deem necessary, a detailed time
schedule of specific actions the discharger shall take in order to correct or prevent a violation of
requirements.” That is exactly what was before the Regional Water Board – a time schedule order
for Petitioner to comply with interim effluent limits before complying with final limits by retiring
RBGS by the deadline established for its continued operation to be available as needed to support
the reliability of the regional and statewide grid. While RBGS only runs at a fraction of its
potential capacity – less than a 5% capacity factor – the system operator relies on this electric
resource to be available during critical needs periods, when other resources may not be available
or if there is an extended heat storm or other weather event that causes outages, like wildfires or
wind events that impact transmission lines.

The Regional Water Board’s refusal to grant Petitioner’s Tentative TSO was not supported
by the record and past directions by the Regional Board. It has been clearly understood that
compliance with the final effluent limits would be achieved at RBGS by retiring the remaining
units. It is illogical and wholly impractical for the Regional Water Board to expect Petitioner to
have also developed and implemented a second and entirely different plan for RBGS over the past
12 months to meet the final effluent limits, when the plan previously approved unanimously by the
Regional Water Board to comply with the final limits by retiring RBGS has changed only because
the State has determined that RBGS is needed to operate to provide support for the State’s power
grid. Indeed, this inaction by the Regional Water Board is inconsistent with the recommendations
of SACCWIS (collectively, CAISO, CPUC, CEC, ARB, Coastal and State Lands Commission),
and with the State Water Board’s updated OTC Policy, which both recognize the need to keep
RBGS Units 5, 6, and 8 fully operational to support electric system reliability for the next two
years.

The Regional Water Board also did not properly consider the “diligent progress” that
Petitioner is making “toward bringing the waste discharge into compliance with the effluent
limitation.” California Water Code section 13385(j)(3)(C)(i)(II). Petitioner retired Unit 7 in
September 2019, well before the December 31, 2020 deadline to do so, which reduced the
maximum daily once-through-cooling flow by 33%. Indeed, overall RBGS flow has declined by 40% since 2017, which contributes to reduced effluent loadings. Moreover, as noted, and highlighted in the December 9, 2021 board meeting, Petitioner has already been taking steps towards permanently shutting down the remaining Units 5, 6, and 8, as well as the entire facility. Transcript at 29, 40. For example, Petitioner was already in the process of making requisite property transfers in anticipation of closing operations at the end of the OTC Policy compliance deadline. *Id.* at 29, 40, 48.

Given the recommendations regarding grid reliability and Petitioner’s diligent progress toward retiring RBGS in order to bring its water discharge into compliance with the final effluent limitation, the Regional Water Board Staff recommended adopting the Tentative TSO. However, the Regional Water Board declined to follow the Staff’s recommendation. This inaction was against the weight of authority in the record. Petitioner respectfully requests the State Water Board, therefore, to review the Regional Water Board’s decision.

Petitioner has requested that its Petition be held in abeyance and reserves the right to supplement this statement of reasons why the Regional Water Board’s refusal to adopt the Tentative TSO for RGBS was inappropriate or improper at the appropriate time and after the receipt of the administrative record.

V. MANNER IN WHICH PETITIONER IS AGGRIEVED

Petitioner owns and operates RBGS and therefore is subject to regulation under TSO No. R4-2020-0139. Due to background conditions and operational constraints, RBGS has not been able to consistently meet the final effluent limitations in its NPDES permit. Adopting the Tentative TSO would have allowed Petitioner to operate without penalty even during times it was unable to meet those final effluent limitations – and to support electric system reliability, most likely at those times that the energy agencies (e.g., CAISO, CEC, and CPUC) have indicated RBGS is needed most.

VI. ACTION REQUESTED BY PETITIONER

Petitioner respectfully requests that the State Water Board accept this Petition, pursuant to California Water Code section 13320 and California Code of Regulations title 23, section 2050 et
seq, and hold it in abeyance temporarily, pursuant to California Code of Regulations title 23, section 2050.5(d), to provide Petitioner an opportunity to apply to the Regional Water Board for a revised and more narrowly tailored TSO. Petitioner will request the opportunity to return to the State Water Board to act on this Petition if it believes additional relief is still necessary.

VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

Petitioner has requested that its Petition be held in abeyance and reserves the right to supplement its Petition with a detailed statement of points and authorities at the appropriate time and after the receipt of the administrative record.

VIII. STATEMENT THAT COPIES OF PETITION HAVE BEEN SENT TO THE REGIONAL WATER BOARD

A true and correct copy of this Petition was sent via email to the Executive Officer of the Regional Water Board on January 6, 2022.

IX. STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL WATER BOARD

All of the substantive issues raised in this Petition were presented to the Regional Water Board in a letter dated September 15, 2021, in the Tentative TSO, in a comment letter dated November 19, 2021, and in comments made at the board meeting on December 9, 2021.

X. REQUEST FOR HEARING

Petitioner has requested that its Petition be held in abeyance and reserves the right to request that the State Water Board hold a hearing in this matter pursuant to California Code of Regulations, title 23, section 2050.6(b) at the appropriate time.

XI. REQUEST FOR ABEYANCE

Petitioner is required by law to file this Petition in order to preserve its rights to challenge the Regional Water Board’s inaction on Petitioner’s TSO application. However, before proceeding to burden this body with further proceedings concerning RBGS, Petitioner requests that this Petition be held in abeyance pursuant to California Code of Regulations title 23, section 2050.5(d).

Petitioner will expeditiously use this abeyance to determine if it can reasonably modify its
operations to maintain consistent compliance with the final effluent limitations for pH, copper, and nickel in its NPDES permit. If it can, then Petitioner intends to apply to the Regional Water Board pursuant to California Water Code section 13300, for a narrower, modified TSO that would provide interim effluent limitations for the low levels of background DDT and for temperature through December 31, 2023. DDT is present in the water bodies from which RBGS intake structures draw water. DDT is not used in the plant. As a result, DDT is brought in from the source body of water and present in the discharge, even though no DDT is used or added in any way at RBGS. As to the temperature requirements, RBGS is needed more often during extreme heat waves and when the state’s weather patterns in the spring and summer result in higher temperatures.

Petitioner asks that this Petition be held in abeyance to provide Petitioner an opportunity to present to the Regional Water Board a revised and more narrowly tailored TSO application to support RBGS’s continued operations as envisioned to support electric system reliability through December 31, 2023.

**XII. CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that the State Water Board accept this Petition as a protective filing and hold it in abeyance until further notice.

Dated: January 6, 2022

Respectfully submitted,

SIDLEY AUSTIN LLP

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