

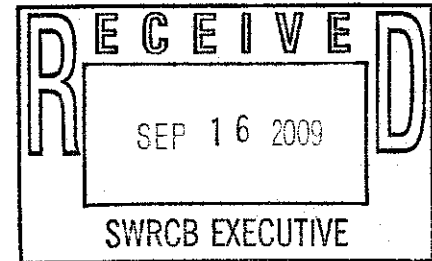
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September 16, 2009



Mr. Charles Hoppin  
Chairperson  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

**RE: Remarks to SWRCB regarding Once Through Cooling Policy under CWA Section 316(b) and Related Substitute Environmental Document, as Presented at September 16, 2009 SWRCB Informal Hearing**

Dear Mr. Hoppin:

These comments are submitted on behalf of our client, RRI Energy (RRI). RRI recognizes and appreciates the efforts made by State Water Resources Control Board (SWRCB) staff, other agency staff, and stakeholders to develop a Policy for Once Through Cooling (OTC Policy) that effectively implements Section 316(b) of the Clean Water Act consistent with the State's need for reliable and affordable power and consistent with the requirements of the California Environmental Quality Act (CEQA).

RRI remains concerned, however, that the proposed OTC Policy is unnecessarily restrictive and does not yet adequately reflect the site-specific flexibility contemplated in Section 316(b) of the Clean Water Act and proposed in USEPA'S federal regulations (which has been upheld by the federal courts on most of the key issues). The proposed Policy also departs from the standards upheld by the California Court of Appeal in *Voices of the Wetlands v. SWRCB*, 137 Cal.App.4<sup>th</sup> 1268 (2007). In its current form, the proposed Policy would inappropriately shift final decisions concerning a substantial portion of the State's power production and electrical supply reliability from the agencies responsible for those decisions to the State and Regional Water Boards.

RRI specifically recommends that the SWRCB modify the proposed policy to more specifically account for:

- **Site-specific feasibility criteria**, including cost-benefit considerations that realistically account for the practical implications of the Policy at the affected facilities. All facilities affected by the Policy must be allowed to demonstrate that the cost of compliance is unreasonable and/or wholly disproportionate to the benefits derived from compliance. By way of example, the SED recognizes that cooling

towers are infeasible at one RRI's plant sites, yet the policy would provide no option for RRI to comply, much less comply at a cost that is not significantly above the benefits of compliance. This scenario is inconsistent with the requirements and purpose of Section 316(b).

- **Site-specific environmental criteria**, including consideration of the environmental implications of various compliance options. For example, the environmental impact for RRI's plants is an insignificant fraction of the total anthropogenic impact to coastal fish and wildlife resources, yet the policy would require expenditure of over \$200 million to comply with the proposed Policy. The Policy should be tailored to address and minimize environmental impacts as required in Section 316(b).
- **Fair and reasonable thresholds and compliance options** that allow facilities to implement economically feasible technologies to minimize environmental impacts.
- **Avoidance of rigid timelines** that do not reasonably reflect electric grid reliability needs.

RRI submits that the framework proposed in the EPA's Phase II regulations provide a good starting point for the California OTC Policy.

RRI also is concerned that the Substitute Environmental Document (SED) supporting the proposed OTC Policy does not adequately comply with the requirements of CEQA. Specifically:

- The SED fails to analyze the reasonably foreseeable impacts from the proposed Policy, including but not limited to green house gas and other air emissions, use of fresh water supplies for make-up water, lack of reclaimed water infrastructure, available air credits, and visual and aesthetic impacts of large cooling towers.
- The SED does not consider a reasonable range of alternative policy options that could feasibly be implemented under Section 316(b).
- The SED does not fully consider the feasibility, regulatory hurdles, and the economic impacts of constructing replacement transmission and generation necessary to offset the loss of the affected facilities.
- The SED does not fully consider the importance of low capacity factor units to grid reliability and achievement of California's renewable portfolio targets.

The statewide and local implications of the proposed OTC Policy are significant.

- The CAISO has determined that billions of dollars in transmission would have to be built to provide reliability if the affected plants are shut down, with \$4.5 billion needed in the Los Angeles area alone. Statewide cost of replacement has been estimated to be in excess of \$11 billion.

- The CAISO has suggested that the transmission build out would take 5 to 10 years or more, while Southern California Edison has indicated that it may take decades in the Los Angeles area. The Policy and the SED do not accurately account for the regional impacts of the Policy in southern California.
- There would be significant impacts to electric supply and reliability should 30% of the State's generation capacity be retired prematurely, as could result from implementation of the proposed Policy in its current form.
- The Policy's move to reduce the use of seawater for plant cooling creates potential conflicts with other State policies designed to reduce use of freshwater and other sources of water.
- The Policy relies on an untested advisory process that involves multiple agencies and regulatory objectives.

Given the significance of the OTC Policy, it is critical that the SWRCB thoroughly consider all relevant factors in the development of the Policy. Although the SWRCB has been discussing and evaluating a Section 316(b) Policy for some time now, the current version of the Policy and SED were released just over two months ago. The owners and operators of the facilities affected by the Policy have not had adequate time to evaluate the Policy and SED and comment on those documents. Under these circumstances, it would be reasonable and appropriate for the SWRCB to provide the affected parties additional time to review, analyze and comment on the Policy and the SED. We are recommending and requesting an additional 30 days. RRI will use this additional time to prepare and provide specific comments on the SED and recommendations for amendments and revisions to the proposed Policy.

Again, RRI wants to thank SWRCB staff for its efforts to develop this Policy and work with the affected parties towards that end.

Yours truly,



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