

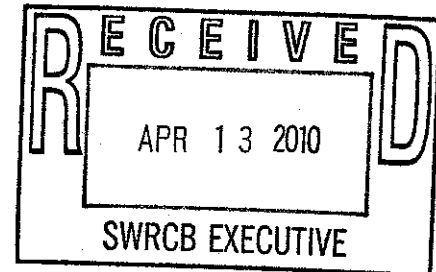
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DYNEGY

April 13, 2010

Via E-Mail

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



**Re: Comment Letter - OTC Policy
Comments on the March 22, 2010 Proposed Draft Final Policy and
Draft Final Substitute Environmental Document**

Dear Ms. Townsend:

Dynegy Inc. (Dynegy) submits these comments on the State Water Resources Control Board's March 22, 2010 proposed draft final "Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling" (Draft Final Policy) and draft Final Substitute Environmental Document (Draft Final SED).

The Draft Final Policy, while in many ways an improvement over the previous draft, requires several critical modifications as outlined herein to be viable and administrable. The State Water Resources Control Board (Board) must make these modifications before adopting a final once-through cooling (OTC) policy if California is to reasonably accommodate environmental, economic, and electric reliability concerns and achieve consistency in making best technology available (BTA) determinations.

Most importantly, the Draft Final Policy continues to fail to account for the numerous and variable site-specific considerations that determine the feasibility and impacts of cooling water intake technologies at a particular site. For example, the Draft Final Policy continues to ignore site-specific findings made in recent years through extensive California Energy Commission (CEC) permitting proceedings for Dynegy's Moss Landing and Morro Bay facilities regarding the infeasibility of closed-cycle cooling and the absence of significant adverse environmental impact from OTC at each of those facilities, as well as CEC findings that closed-cycle cooling at Morro Bay would cause greater overall environmental harm than continuing the use of OTC. In the case of Moss Landing, these findings were reached after extensive site-specific evidentiary hearings (including by the Regional Water Board) and were based upon the recommendations of a Technical Working Group comprised of many of the

same neutral experts whom the Board is relying upon in developing this OTC Policy (e.g., Dr. Ramondi and Dr. Caillet). For the OTC Policy to be workable, it is essential that the Board allow consideration of relevant site-specific factors in determining BTA. As stated in our prior comments, each power plant and aquatic community has unique issues that cannot be addressed by a “one-size-fits-all” BTA standard.

Specifically, the Board must make the following changes to the Draft Final Policy:

- Define Track 2 in terms of an achievable level of reduction in impingement and entrainment mortality to be determined by site-specific evaluation, including the use of sound science to evaluate site-specific environmental harm of OTC, the environmental impacts of alternative technologies, and adverse environmental impacts associated with closed-cycle cooling, and apply a wholly disproportionate cost-benefit standard to all facilities
- Clarify the compliance option for replacement combined-cycle units -- Section 2.A(2)(d)(i) -- to include impingement reductions in the methodology for counting prior reductions in intake flows and discharges with mandated after-BTA mitigation
- Define “ichthyoplankton” to focus Track 2 compliance monitoring on larvae size (and larger) life stages
- Revise Track 2 implementation by providing that:
 - Entrainment sampling using 200 micron mesh is discretionary with the Regional Water Board
 - 200 micron mesh sampling is used only for qualitative characterization purposes, and not for compliance determinations
 - Where flow reduction is the sole compliance approach, flow reduction is determined over an annual period and the compliance standard is a “comparable level” of entrainment reduction relative to Track 1 (i.e., 90% of Track I, and not 93% as stated in the Draft Final Policy)
- Prohibit Regional Water Boards from imposing more stringent BTA requirements than those in the Policy

In addition, the Draft Final SED’s analysis of the environmental impacts of the proposed Policy does not fully comport with the requirements of the California Environmental Quality Act (CEQA). Notably, the Draft Final SED continues to ignore significant and reasonably foreseeable negative environmental impacts that would result from implementation of the proposed Policy, including increases in air pollutant emissions, noise, and impairment of scenic views. By failing to provide sufficient information regarding these impacts, Board staff has undercut informed public participation and the Board’s ability to make a reasoned decision on the proposed Policy. Before the Board adopts an OTC policy, the Draft Final SED must be

revised to meet the minimum requirements of CEQA.

Part I of our comments addresses changes from the November 23, 2009 version of the draft Policy. Part II addresses the revised Draft Final SED. Because many of the deficiencies in the Draft Final Policy and Draft Final SED are identical or very similar to the deficiencies Dynegy identified in its comments on prior drafts of the Policy and SED, we incorporate by reference our prior comments.¹

I. COMMENTS ON THE DRAFT FINAL POLICY

A. **The Draft Final Policy Lacks a Sound Scientific Basis and Inappropriately and Unlawfully Excludes Site-Specific Cost-Benefit Considerations in Determining BTA**

The Draft Final Policy aims to phase out the use of OTC, require expensive retrofits, or shut down existing electric generating units to the exclusion of all other considerations, including whether closed-cycle cooling will result in any environmental benefit or whether a power plant's OTC system is causing adverse environmental impact to the affected water body. In the absence of sound scientific studies that determine the adverse impact of OTC on the aquatic environment and the benefits of the policy, the Draft Final Policy is legally arbitrary and unreasonable.

Ignoring plant-specific CEC determinations made after extensive proceedings, including public review, the Draft Final SED summarily concludes that OTC causes, without exception, unacceptable aquatic/environmental impacts at all coastal power plant locations in California. The fatal flaw in this conclusion -- and, thus, the Board's justification for adopting an OTC policy -- is that impingement and entrainment impacts are meaningful only in a site-specific context. OTC has been employed at numerous locations throughout California for decades, yet there is no substantial evidence in this record of specific harm to species populations attributable to such use at any site.² Moreover, the Board staff has failed to demonstrate that the significant economic, environmental, and social costs imposed by the Draft Final Policy would appreciably benefit California's coastal and estuarine biological resources.³ Simply put, the Board's justification for the Draft Final Policy is unsupported given

¹ Dynegy's comments on prior versions of the draft Policy and draft SED are dated May 20, 2008, September 30, 2009 (one letter addresses the draft Policy, a second addresses the draft SED), and December 8, 2009. All documents cited in this comment letter, as well as in Dynegy's prior comment letters, are public records that the Board should include in the rulemaking record by administrative notice. A copy of any cited document will be provided to the Board upon request.

² Species populations in locations where OTC is employed do not differ substantially from similar locations where it is not employed. Testimony of John Steinbeck, Tenera Environmental, at State Water Resources Control Board Public Hearing on Proposed Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (Sept. 16, 2009).

³ EPRI, *Assessment of Once-Through Cooling System Impacts to California Coastal Fish and Fisheries*, at vii (Dec. 2007) (the empirical evidence "suggests that should use of OTC be eliminated immediately, no significant benefits to California's coastal fisheries may occur"). The EPRI study, at 5-1, further concludes that, "The [Board] has not provided any quantitative technical information to support the nature of the fishery improvements that

its failure to develop scientific support regarding the adverse impacts of OTC.

Importantly, many OTC plants will not be able to meet the proposed Track 1 or Track 2 standards, thereby forcing shutdown of those plants. Indeed, in recent years State of California permitting authorities have rejected closed-cycle cooling at Moss Landing (Units 1 & 2) and Morro Bay as infeasible for numerous reasons. Dynegy believes that significant reductions in impingement and entrainment are likely attainable at many OTC plants, but that the required reduction must be determined based on further site-specific evaluation, and not over simplistic “one-size-fits-all” percentage reduction standards. In short, the Draft Final Policy needs additional site-specific flexibility for determining BTA.

For the many power plants where Track 1 is infeasible,⁴ it remains questionable whether Track 2’s minimum 84 percent reduction in impingement mortality and entrainment can be realistically achieved. The performance of any individual cooling water intake technology can vary greatly depending on site-specific factors.⁵ For example, all known mitigation technologies were examined and rejected during the CEC siting process for both Moss Landing Units 1 & 2 and the replacement plant at Morro Bay.⁶ Thus, for those power plants where Track 1 is infeasible, there is no known technology that would necessarily meet the Track 2 standards. Through a combination of various operational restrictions and technologies to reduce the flow of cooling water, certain facilities may be able to approach the Track 2 reduction standard, but not necessarily reach it. Moreover, even if some combination of controls is expected to achieve 84 percent reduction, actual monitoring after implementation of Track 2 measures may show otherwise through no fault of the power plant.

Given the State of California’s site-specific determinations in recent years that OTC did not have significant adverse environmental impacts requiring replacement of OTC (e.g., Moss Landing and Morro Bay, as detailed in our prior comments), the Draft Final Policy’s failure to

would be achieved by the [Policy] despite the availability of a significant amount of recently collected and existing data documenting the magnitude of impingement and entrainment losses.”

⁴ Dynegy’s comments dated May 20, 2008 and September 20, 2009, as incorporated herein by reference, explain in detail the previous determinations by the State of California’s permitting authorities that closed-cycle cooling was neither feasible nor preferable to OTC at Moss Landing or Morro Bay.

⁵ Tetra Tech, *California’s Coastal Power Plants: Alternative Cooling System Analysis*, at I-19 and J-35 (Feb. 2008) (explaining “the effectiveness of other technologies commonly used to address [impingement and entrainment] impacts could not be conclusively determined for use at [the specific facility]. As with many existing facilities, the site’s location and configuration complicate the use of some technologies that might be used successfully elsewhere.”).

⁶ At Moss Landing, the CEC rejected screens, nets, aquatic microfiltration barriers, and fish pumps because they were not expected to substantially reduce impingement or entrainment. Commission Decision, Application for Certification Moss Landing Power Project, Docket No 99-AFC-4, at 158 (Nov. 2000). Further, the NPDES permit proceeding rejected wedgewire screens, fine-mesh screens, and aquatic microfiltration barriers as not being demonstrated technologies for reducing entrainment at Moss Landing and/or not demonstrated for the environment at Moss Landing. California Regional Water Quality Control Board Central Coast Region, *Staff Report, Duke Energy Moss Landing Power Plant, Units 1 and 2*, NPDES Permit Order No. 00-041, at 5-8 (Apr. 10, 2003). At Morro Bay, the CEC rejected each of the alternative technologies as impractical, experimental, only having minor benefit regarding impingement, and/or not benefiting entrainment. CEC, *Staff Report, Morro Bay Power Plant Project, Final Staff Assessment - Part 3*, at 2-33 to 2-37 (Apr. 2002).

allow for consideration of site-specific costs and benefits in determining BTA is unworkable. Without that needed flexibility, the Policy will result in installing closed-cycle cooling at extreme cost or plant shutdown where there is no or de minimis environmental benefit from installing such technology or shutting down the plant.

Furthermore, the Board's exclusion of cost considerations in determining BTA contradicts the California Water Code. A key policy of the Porter-Cologne Water Quality Control Act to which a Board-adopted policy must conform is that water quality "shall be regulated to attain the highest water quality *which is reasonable, considering all demands* being made and to be made on those waters and *the total values involved*, beneficial and detrimental, *economic* and social, tangible and intangible." Cal. Water Code § 13000 (emphasis added). Thus, the Board cannot lawfully adopt an OTC policy that forbids any consideration of economic values, and in doing so, creates unreasonable results. The flexibility to consider cost on a site-specific basis is particularly needed in determining possible compliance alternatives for those OTC plants for which Track 1 compliance is physically or legally impossible and for which the Track 2 minimum performance standard is approachable but not necessarily attainable. By excluding consideration of cost-benefit in such cases, the Draft Final Policy will "bring about irrational results", as foreseen by Justice Breyer's concurring opinion in *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. ___, 129 S. Ct. 1498, 1513 (2009) (upholding USEPA's wholly disproportionate cost test in determining that cost-benefit analysis is permissible under Section 316(b)).

Accordingly, to ensure that the OTC Policy is viable, the Board must allow existing power plants to determine BTA on a site-specific basis considering cost and benefits. To that end, Dynegy continues to support the inclusion of a wholly disproportionate cost-benefit standard as an alternative to Track 1 and Track 2 for all existing OTC power plants.

B. The Section 2.A(2)(d)(i) Compliance Option for Replacement Combined-Cycle Units Must Be Clarified to Include Impingement Reductions in the Methodology for Counting Prior Reductions in Intake Flows and Discharges with Mandated After-BTA Mitigation

The Draft Final Policy appropriately includes in Section 2.A(2)(d) alternate compliance requirements for efficient combined-cycle units installed prior to the effective date of the Policy. While Dynegy strongly supports new Section 2.A(2)(d), the Board must clarify the language in Section 2.A(2)(d)(i) to include impingement reductions in the prescribed methodology for counting prior reductions in intake flows and discharges with mandated after-BTA mitigation requirements.

As currently drafted, the first sentence of Section 2.A(2)(d)(i) explicitly allows the owner/operator of replacement combined-cycle power-generating units to "count prior reductions in impingement mortality and entrainment" resulting from the replacement towards meeting Track 2 requirements for the entire power plant. To ensure statewide consistency and avoid imposing additional burdens on Regional Water Boards, the remainder of Section

2.A(2)(d)(i) specifies how those prior reductions are to be counted (*i.e.*, NPDES permitted flow rates before and after installation of the combined cycle units, and discharges with after-BTA mandatory mitigation requirements). However, the prescribed methodology for counting such prior reductions is limited to “entrainment” and does not address counting prior reductions in “impingement mortality”.

The failure in Section 2.A(2)(d)(i) to specify that prior reductions in “impingement mortality” are counted in the same manner as prior reductions in entrainment contradicts the Draft Final SED, as well as purposes stated by the Board for adopting a statewide OTC Policy. First, as recognized by the Draft Final SED, “[a]lthough entrainment reductions are the primary achievement when intake flow is reduced, impingement rates are likely to decrease, largely due to a substantially smaller intake volume that is withdrawn through the same intake structure, *i.e.*, reducing through-screen velocity.” Draft Final SED at 60; *id.* at 68 (recognizing that “entrainment (and to some extent, impingement) is proportional to the volume of water withdrawn”). Because reductions in flow reduce impingement mortality, it is reasonable in the limited context of Section 2.A(2)(d)(i) to treat entrainment and impingement in the same manner. Second, the failure to recognize impingement reductions in the context of Section 2.A(2)(d)(i) will needlessly impose additional burdens on the Regional Water Boards by forcing them to resolve how to count impingement mortality benefits in prior reductions from replacement combined cycle units. Third, not including impingement mortality in the context of Section 2.A(2)(d)(i) calculations promotes inconsistency in statewide implementation as the Regional Water Boards will need to make site-specific determinations regarding impingement mortality credit associated with prior reductions. The imposition of additional burdens on Regional Water Boards and inconsistent statewide BTA implementation directly contradict the Board’s stated purposes in adopting an OTC Policy.

Additionally, in the case of Moss Landing, the facility owners have recently spent many millions of dollars altering the OTC system and funding habitat enhancements in reliance upon the CEC and Regional Water Board decisions. Importantly, the CEC explicitly concluded that impingement impacts at Moss Landing Units 1 and 2 would not be significant.⁷ Despite that finding, if Section 2.A(2)(d)(i) does not include impingement reductions in the same manner as entrainment reductions, Moss Landing may still be required to reduce impingement mortality by at least 90 percent of that achieved under Track 1. Put another way, the Draft Final Policy would essentially reverse the prior decisions of the CEC and Regional Water Board without any contrary site-specific evidence and without acknowledging that the facility owners reasonably relied upon the prior decisions in funding mitigation. Such a result would be not only inappropriate but also unlawful.

⁷ Commission Decision, *supra* note 6, at 188 (Finding 12) and 180 (“All witnesses [including the Technical Working Group, which included representatives of the Central Valley Region Water Quality Control Board] judged impingement impacts to be insignificant.”). Moreover, the benefits of Moss Landing’s required after-BTA mitigation project extend beyond entrainment losses. *Id.* at 185 (recognizing that the mitigation project’s improvements to the Elkhorn Slough habitat directly benefits all other species in the slough and not just those entrained).

Thus, it is both reasonable and appropriate for Section 2.A(2)(d)(i) to calculate both reductions in entrainment and impingement mortality as the difference in NPDES permitted flows (before and after installation of the combined cycle units) and based on evidence in the record of prior CEC and/or Regional Board proceedings of after-BTA required mitigation to offset impacts of the permitted intake cooling water. The Board can accomplish this by simply revising Section 2.A(2)(d)(i), as follows (deleted text is ~~struckthrough~~):

(i) The owner or operator may count prior reductions in impingement mortality and entrainment resulting from the replacement of steam turbine power-generating units with *combined-cycle power-generating units**, towards meeting Track 2 requirements for the entire power plant where those units are located. Reductions in ~~entrainment~~ shall be based on reductions in intake flows, calculated as the difference between:

1. the maximum permitted discharge (expressed as million gallons per day (MGD)) for the entire power plant as identified in the plant's prior NPDES permit that authorized the steam turbine power-generating units which were subsequently replaced with the *combined-cycle power-generating units** and
2. the maximum permitted discharge (expressed as MGD) for the entire power plant, including the combined cycle units, as identified in the plant's NPDES permit authorizing the *combined-cycle power-generating units**.

The owner or operator may also count as prior entrainment reductions any permitted discharges from the *combined-cycle power-generating units** for which 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 CEC and/or Regional Water Board required mitigation after a BTA determination for the *combined-cycle power-generating units** and required the mitigation to further offset the entrainment impacts of the permitted intake cooling water.

C. The Definition of Ichthyoplankton Must Be Revised Consistent with Track 2 Monitoring Requirements

Track 2 entrainment monitoring focuses on larvae. Section 4.B(1) provides that "a new baseline entrainment study shall be performed to determine *larval* composition and abundance

in the source water” and that “[b]aseline entrainment sampling shall provide an unbiased estimate of *larvae* entrained” (Emphasis added.) See also Draft Final Policy, Section 5 (defining “proportional mortality” in terms of “larvae”). Despite this focus on “larval” forms of fishes, Section 4.B(1)(a) provides that entrainment impacts shall be based on “sampling for all *ichthyoplankton*”, a term defined to include both larval forms and “pelagic eggs”.

This disconnect in Track 2 monitoring (*i.e.*, larval forms v. pelagic eggs) has important implications and must be corrected. Because the ocean environment is not static, there is a potential to entrain eggs from different species not currently present that can become the majority of entrained species resulting in a skewed comparison to any baseline results. Potential screen mesh sizes of 2 mm would not capture those eggs, but would still count during pre- and post-implementation monitoring as used to determine a facility’s compliance with Track 2 standards.

To resolve this disconnect and to avoid confusion, the reference to “pelagic eggs” in the definition of “*ichthyoplankton*” should be deleted. By limiting compliance monitoring to a life stage size no smaller than larvae, life stages of organisms would be defined in terms of the size of screening technology that is operationally feasible. Thus, if eggs were excluded, there would be no issue with monitoring using a mesh size at 335 (or larger) microns. Accordingly, the Section 5 definition of “*Ichthyoplankton*” should be revised, as follows (deleted text is ~~struckthrough~~):

Ichthyoplankton – Refers to the planktonic early life stages of fish (*i.e.*, the pelagic eggs and larval forms of fishes).

D. The Track 2 Entrainment Monitoring Provisions Should be Clarified

Under new Section 4.B(1), if the Regional Water Board requires a new baseline entrainment study, samples must be collected using 200 micron mesh. Rather than require sample collection using 200 micron mesh in each such instance, sample collection using 200 micron mesh should -- like the requirement to perform a new baseline study -- be discretionary with the Regional Water Board and the results be used within an informational database rather than used to measure compliance. In addition, because 200 micron mesh would be used for the limited purpose of a broader characterization of entrained meroplankton (and not for compliance determinations), the “qualitative” purpose for requiring use of a 200 micron net should be expressly stated. Specifically, Section 4.B(1) should be revised, in relevant part, as follows (deleted text is ~~struckthrough~~; new text is double underscored):

If the Regional Water Board determines that a new baseline entrainment study shall be performed to determine larval composition and abundance in the source water, representative of water that is being entrained, then samples must be collected using a mesh size no larger than 335 microns. At the discretion of the Regional Water Board, Additional samples shall also be collected

using nets with 200 micron mesh to provide a broader, qualitative characterization of invertebrate *meroplankton** entrained.

Furthermore, because 200 micron mesh entrainment sampling is not required for each facility and is only intended to provide a broader characterization of other meroplankton entrained, it should not be required at all facilities after Track 2 controls are implemented. Simply put, for certain facilities, 200 micron mesh entrainment sampling data will not be needed. Accordingly, Section 4.B(2) should be revised, as follows (deleted text is ~~struckthrough~~):

After the Track 2 controls are implemented, to confirm the level of entrainment controls, another entrainment study (with a study design to the Regional Water Board's satisfaction, with samples collected using a mesh size no larger than 335 microns ~~and with additional samples also collected using a 200 micron mesh~~) shall be performed and reported to the Regional Water Board.

E. The Track 2 Entrainment Standard for Plants Relying Solely on Flow Reductions is Not Viable

Under new Section 2.A(2)(b)(i), Track 2 plants relying solely on flow reductions may comply with the entrainment requirements by recording and reporting reductions in monthly flows and achieving a minimum 93 percent reduction in terms of design flow. Additional flexibility is needed to make this a viable compliance option. Specifically, like the other entrainment compliance option in Track 2, the entrainment compliance standard for flow only reductions should be a "comparable level" to Track 1, *i.e.*, a level that achieves at least 90 percent of the reduction achieved in Track 1, and not a minimum 93 percent reduction. In addition, reductions in flow should be considered on an annual (or at least quarterly) basis to ensure that electricity production is not limited during periods of greatest need. Finally, the Board should confirm that compliance with the reduction in flow standard may be demonstrated by calculations only and does not require monitoring of actual flow.

F. The Draft Final Policy Should Explicitly Preclude Regional Water Boards from Imposing More Stringent BTA Requirements

New Section 1.N provides that nothing in the Policy precludes Regional Water Boards from regulating discharges for existing power plants through NPDES permits consistent with water quality standards. To ensure statewide consistency in BTA implementation, the Board should also expressly prohibit Regional Water Boards from imposing more stringent BTA requirements than those established in the Policy. For example, Regional Water Boards should be precluded from imposing more stringent Track 1 or 2 performance standards or ignoring the alternate compliance options for combined-cycle units. Without such an express prohibition, the certainty needed for compliance planning and statewide consistency in implementation of the Policy will be jeopardized.

II. COMMENTS ON THE DRAFT FINAL SED

Dynegy previously submitted detailed comments (dated September 30, 2009, and incorporated herein by reference) identifying numerous legal and other deficiencies in the initial draft Substitute Environmental Document. The revised Draft Final SED does not correct those deficiencies. Table 1, attached to this letter, summarizes the deficiencies Dynegy identified in its previous comments on the initial draft SED and how the Draft Final SED remains deficient.

Two additional errors in the Draft Final SED must be corrected. First, the Draft Final SED includes inaccurate information regarding the South Bay Power Plant.⁸ In accordance with South Bay's NPDES permit, Dynegy permanently removed Units 3 and 4 from service on December 31, 2009. The permanent shutdown of Units 3 and 4 reduced the plant's maximum cooling water intake flow rate by 63 percent. The Draft Final SED fails to recognize that fact, thereby inaccurately identifying impacts. Second, the Draft Final SED (p. 83) incorrectly states that BTA for Moss Landing "was met, in part," by mitigation. As decided by the Regional Water Board and affirmed by the courts, mitigation at Moss Landing was imposed after BTA was determined and separate and apart from BTA requirements. The erroneous statement in the Draft Final SED that BTA "was met, in part," by mitigation must be corrected.

In short, significant revisions to the Draft Final SED are still needed to satisfy the statutory requirements of the CEQA lead agency and provide the public and the Board a clear understanding of the environmental impacts and trade-offs associated with the Policy.

* * * * *

Overall, the Draft Final Policy and Draft Final SED require the further critical changes outlined herein if the Board is to adopt a workable OTC policy that reasonably accommodates environmental, economic, and electric reliability concerns and meets CEQA requirements.

Thank you for considering Dynegy's comments. If you have any questions concerning our comments, please contact Barb Irwin, Director Environmental West Region Operations, at 925-803-5121.

Sincerely,



Daniel P. Thompson
Vice President
Dynegy West Region Operations

⁸ Dynegy operates South Bay under the terms of lease with the plant's owner, the Unified Port District of San Diego.

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Attachment – Table 1

cc: Office of the Governor
California Energy Commission
California Public Utilities Commission
California Independent System Operator

Table 1: Summary of Dynegy's Comments on Draft Final SED

Deficiency/Issue in Initial Draft SED	Draft Final SED Deficiency
CEQA Deficiencies	
Failure to Satisfy CEQA's Minimum Requirements	The Draft Final SED does not quantify the impacts to marine resources; decisions makers will not be able to properly judge the relative environmental trade-offs of implementing the proposed Policy.
Omission of an Alternatives Analysis	The Draft Final SED still does not evaluate a reasonable range of alternatives that would reduce or avoid environmental impacts.
Reasonably Foreseeable Alternative Means of Compliance	The Draft Final SED continues to be unclear regarding whether "front of pipe" technologies and seasonal operation are intended to satisfy alternative means of compliance.
Mitigation	The Draft Final SED fails to identify impacts or, in other cases, does not adequately analyze reasonably foreseeable impacts from the proposed Policy. In addition, there are other reasonably foreseeable alternative means of compliance with the proposed Policy that were not analyzed.
Cumulative Impacts	The Draft Final SED has a single conclusive statement regarding cumulative impacts (p. 121). This single sentence does not meet the statutory requirements for a cumulative impacts analysis.
Economic Considerations	The Draft Final SED evaluation of economic impacts and compliance costs fails to analyze fully and accurately the costs of reasonably foreseeable compliance methods. It also fails to evaluate the cost of repowering, is limited to the cost of wet cooling retrofits, and does not include the costs of CO2 emissions.
Tiered Environmental Analysis	Since the sites that will be subject to the proposed Policy are known, the Draft Final SED should have included more site-specific analyses in its Tier 1 environmental document. The Draft Final SED is deficient in that it defers more detailed analysis to a later date and therefore fails to identify significant effects of the proposed Policy.
Environmental Checklist	For several subject areas the Draft Final SED states that because no impacts were identified, no detailed discussion is included (p. 105). As indicated in <i>City of Arcadia</i> , this is an inadequate approach. In addition, because the Draft Final SED concludes there are no significant impacts in areas where there may in fact be, the checklist contains factual errors that must be corrected.

Deficiency/Issue in Initial Draft SED	Draft Final SED Deficiency
<p><i>Deficiencies in the Environmental Analysis</i></p> <p>Air Quality</p>	<ul style="list-style-type: none"> • Inadequate impact analysis of increases in criteria pollutants and air toxics emissions • Absence of cooling tower PM2.5 emission analysis • Underestimation of the availability of PM10 ERCs • Lack of assessment of NSR • Errors in the CEQA Checklist
<p>Greenhouse Gases</p>	<ul style="list-style-type: none"> • Incomplete GHG emission inventory (omission of methane) • Insufficient analysis of GHG emission impact • Lost carbon sequestration opportunities
<p>Freshwater Resources</p>	<ul style="list-style-type: none"> • Does not quantify the additional freshwater resources needed to comply with the proposed Policy • Does not evaluate the impacts of the proposed Policy on desalination plants in California, including the resulting diminished freshwater resources • Using reclaimed water for make-up water, if available, will be expensive • Errors in the CEQA check list
<p>Aesthetics</p>	<ul style="list-style-type: none"> • Conclusions gloss over the significant impacts of placing large cooling towers in communities and underestimate local opposition to cooling towers that can make building them infeasible • Cooling towers at several locations potentially conflict with local laws, ordinances, regulations, and standards (LORS) protecting scenic views and areas • Failure to analyze impacts of night time light and glare • Errors in the CEQA checklist
<p>Noise</p>	<ul style="list-style-type: none"> • Underestimation of noise impacts • Errors in the CEQA checklist

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Deficiency/Issue in Initial Draft SED	Draft Final SED Deficiency
Utilities	<ul style="list-style-type: none"> • Analysis is overly simplistic and optimistic and downplays the potential negative impacts of the proposed Policy on grid stability • Errors in the CEQA checklist
Land Use	<ul style="list-style-type: none"> • Does not identify any impacts to land use and directly contradicts the findings of the CEC, the City of Morro Bay, and the previous owner of Moss Landing and Morro Bay (Duke Energy) • Errors in the CEQA checklist
Agricultural Resources	<ul style="list-style-type: none"> • Does not acknowledge salt drift from seawater closed-cycle wet cooling towers as a potentially significant adverse environmental impact on agricultural resources
Traffic	<ul style="list-style-type: none"> • Does not discuss the potential public safety impacts of visible water vapor plumes crossing nearby grade-level or elevated roadways • Errors in the CEQA checklist
Terrestrial Biology and Cultural Resources	<ul style="list-style-type: none"> • Does not identify any impacts to terrestrial biology or cultural resources (p. 105) even though many of the OTC facilities have environmentally sensitive habitat on or adjacent to their site and/or cultural resources on their site that must be identified and any impacts mitigated to avoid any potential conflicts with LORS • Errors in the CEQA checklist