



Linda S. Adams
Acting Secretary for
Environmental Protection

State Water Resources Control Board

Office of Chief Counsel

Charles R. Hoppin, Chairman
1001 I Street • Sacramento, California 95814 • (916) 341-5161
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5199 • <http://www.waterboards.ca.gov>



Edmund G. Brown Jr.
Governor

MAR 01 2011

VIA EMAIL & U.S. MAIL

Mark Krause, Director
State Agency Relations
Pacific Gas & Electric Company
1415 L Street, Suite 280
Sacramento, CA 95814
mckd@pge.com

Peter Landreth, Director
California Environmental Policy &
Associate General Counsel
GenOn Delta, LLC
696 West 10th Street,
P.O. Box 192
Pittsburg, CA 94565
peter.landreth@genon.com

Barb Irwin, Director
Environmental West Region Operations
Dynergy, Inc.
6200 Stoneridge Mall Rd., Suite 300
Pleasanton, CA 94588
barb.irwin@dynergy.com

Daniel Thompson, Vice President
Dynergy West Operations
Dynergy, Inc.
4140 Dublin Blvd., Suite 100
Dublin, CA 94568
dan.thompson@dynergy.com

George L. Piantka, Director
Environmental Business
NRG Energy, West
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
george.piantka@nrgenergy.com

Katherine Rubin, Manager
Wastewater Quality and Compliance
Los Angeles Department of Water and Power
1111 North Hope Street, Room 1213
Los Angeles, CA 90112
krubin@ladwp.com

Fred McGuire, Vice President
Engineering, Environment, & Safety
RRI Energy
P.O. Box 3795
Houston TX, 77253
fmcquire@rrienergy.com

Eric Pendergraft, President
AES Southland, LLC
690 North Studebaker Road
Long Beach, CA 90803
eric.pendergraft@aes.com

Michael M. Hertel, Director
Mr. David Asti
Corporate Environmental Policy
Southern California Edison
2244 Walnut Grove Avenue, GO1 Quad 3A
Rosemead, CA 91770
michael.hertel@sce.com
david.Asti@sce.com

Dear Meses. Irwin and Rubin, Messrs. Krause, Landreth, Thompson, Piantka, McGuire, Pendergraft, Hertel, and Asti:

SUBMISSION OF IMPLEMENTATION PLANS FOR ONCE THROUGH COOLING WATER
POLICY: CONFIDENTIALITY ISSUES

California Environmental Protection Agency

At our February 7, 2011 workshop on submission of compliance plans under the State Water Resources Control Board's (State Water Board) Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (Policy), questions were raised regarding potentially confidential information that may be part of these plans. The following information may be helpful to you.

The State Water Board is a "public agency" within the meaning of the California Public Records Act, California Government Code section 6250 et. seq. The Public Records Act generally requires that all records are to be made available to the public upon request. A "public record" subject to disclosure under the Public Records Act includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency. Compliance plans or other technical reports required pursuant to California Water Code section 13383 are public records subject to disclosure unless they are subject to one of the many exemptions contained in the Public Records Act. The State Water Board has posted its guidelines for responding to Public Records Act requests on its website at http://www.waterboards.ca.gov/resources/public_records/public_recordsact_guidelines.pdf.

Certain documents may not be required to be disclosed to the public if they are exempt under the Public Records Act. Because an agency carries the burden of justifying denial of disclosure, persons submitting information and plans in compliance with our requirements must provide very specific information delineating which portions or data are requested to be kept confidential and further provide a statutory basis and rationale for the requested confidential treatment. California Government Code section 6254(k) provides that documents that are exempt from disclosure pursuant to other federal or state laws are not required to be disclosed under the Public Records Act. Commonly claimed exemptions relate to proprietary information and trade secrets, as the latter is defined in California Civil Code section 3426.1. Exemptions for such propriety information may include claims of privilege pursuant to California Evidence Code section 1060.

Once justification is provided, the State Water Board Executive Director will make a determination as to whether confidential treatment is appropriate. If such a request is granted, the information will be kept in a separate file and will not be disclosed to the public when it fits within the parameters of an otherwise-appropriate request pursuant to the Public Records Act. If your justification is not approved, your submission will be returned and you will be notified and given an opportunity to amend.

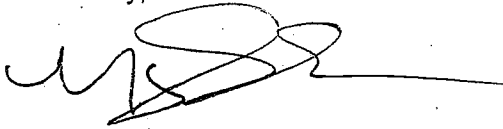
Pursuant to California Government Code section 6254.5(e), records that are exempt from disclosure may be shared with other governmental agencies that agree to treat the materials as confidential. The State Water Board will require that the agencies forming the Statewide Advisory Committee on Cooling Water Intake Structures agree to maintain this confidentiality. The California Independent System Operator (ISO) is not a governmental agency, however, so we would ask that power generators allow State Water Board staff to provide appropriate contact information to ISO staff who can contact you about entering into a nondisclosure agreement. Generators could then submit potentially confidential information directly to the ISO pursuant to such an agreement.

If you choose to ask that certain information be designated as confidential, please provide a separate, written request that identifies the specific information and a justification of why the information should be protected, along with the length of time such protection is sought. Please submit a complete copy of the data you plan to submit, along with a redacted version. On the complete copy, please identify each section of confidential data. Your justification should provide the basis for each category of data for which you seek confidential treatment, as well as indicating which portions of data submitted are subject to each category.

Please include the specific statutory exemption that you assert applies to each category of information for which you seek confidential treatment, with a complete analysis, including citations to relevant authority, of the bases for the asserted exemption for the corresponding categories of information, and the precise portions of the compliance plan that contain information that falls within the categories. Finally, please provide a signed statement from a person with responsibility for the data submitted, attesting that the data comprises information subject to an appropriate Public Records Act exemption.

If you should have any questions, I may be reached at (916) 341-5169.

Sincerely,



Marleigh J. Wood
Senior Staff Counsel