



April 13, 2010

VIA EMAIL AND U.S. MAIL

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Attn: Members of the State Water Resource Control Board

RE: Comment Letter – Draft Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling

Dear Members of the State Water Resources Control Board:

The California Energy Commission (CEC), the California Public Utilities Commission (CPUC) and the California Independent System Operator Corporation (ISO) appreciate the opportunity to provide comments on the proposed policy of the California State Water Resources Control Board (Water Board) to implement Section 316(b) of the Clean Water Act, 33 U.S.C. § 1326(b), as reflected in the draft *Statewide Water Quality Control Policy for the use of Coastal and Estuarine Waters for Power Plant Cooling* issued on March 23, 2010.

Our comments stem from our conviction that the adopted policy must ensure the continued reliability of electric service in California, while the Water Board pursues its obligations concerning use and quality of water resources. In addition to water quality, the state has a number of environmental and energy policies that the CPUC, CEC and ISO must pursue while assuring electric reliability. You know that our organizations have worked extensively with Water Board staff, and we acknowledge that revisions to

the draft policy issued on March 23, 2010 provide for greater recognition of the ISO's role to ensure electric system reliability by allowing continued operation of existing power plants using once through cooling until replacement infrastructure (generation or transmission) obviates the need for such plants for reliability. We applaud your willingness to engage this issue.

General Comments

We appreciate that the Water Board continues to rely upon the joint CEC, CPUC and ISO proposal to establish and potentially update compliance schedules for specific power plants based on energy infrastructure planning processes to assure reliability. As you are aware, the Federal Power Act requires that the ISO plan and operate the power grid in compliance with federal and regional mandatory reliability standards.¹ These standards require that sufficient resources remain available to operate the electric grid under specific planning and operational conditions.² These federal reliability standards are designed to prevent system instability throughout the western grid and impose strict requirements for compliance on the ISO, with significant potential financial penalties levied in the event of noncompliance. By way of example, the Disturbance Control Performance Standard BAL-002-0 requires the ISO as a Balancing Authority to deploy and utilize its operating reserves to stabilize the power grid and return interconnection frequency to defined limits within 15 minutes after the occurrence of a contingency.³ Having available generating capacity following such a contingency is critical for the ISO to comply with this requirement. The ISO must also plan to operate the electricity grid in a reliable manner under a range of potential

¹ Section 215 of the Federal Power Act; 16 U.S.C. § 824o.

² Reliability standards applicable to the ISO are developed by the North American Electric Reliability Corporation and Western Electricity Coordination Council and approved by the Federal Energy Regulatory Commission. *See generally*, <http://www.ferc.gov/industries/electric/indus-act/reliability.asp>.

³ North American Electric Reliability Corporation [Standard BAL-002-0 - Disturbance Control Performance requires](#) A copy of this reliability standard is available at the following website: <http://www.nerc.com/files/BAL-002-0.pdf>

A complete list of reliability standards adopted by the North American Electric Reliability Corporation is available at the following website: <http://www.ferc.gov/industries/electric/indus-act/reliability/standards.asp>

contingencies that require access to resources in specific locations to address operational limits of transmission facilities.⁴ Without sufficient generating capacity California will face significant challenges in maintaining a stable electric system that complies with these and other federal requirements.

State law also recognizes the obligation for the ISO to adhere to planning and operating requirements. California Public Utilities Code Section 345 provides:

The [ISO] shall ensure efficient use and reliable operation of the transmission grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the North American Electric Reliability Council.⁵

The Water Board's draft policy contains new procedures to allow for the suspension of final compliance dates on a short-term basis as well as modification of the final compliance dates, if necessary, in light of grid reliability. The draft policy also clarifies that regional water boards must follow the direction established by the Water Board in this policy by automatically making changes to National Pollutant Discharge Elimination System (NPDES) permits without reopening all of the conditions for those permits to comment and debate. A general policy of a state administrative agency may not contravene the requirements of federal law or the provisions of a specific state statute. The Water Board must ensure that the application of its procedures or individual NPDES permits does not conflict with the ISO's statutory authority and obligation to operate the electricity grid in support of the public safety, health and welfare of California citizens.

The CPUC and CEC also have critical mandates affected by the Water Board's draft policy. The CPUC's mandate is to ensure that electric utilities' resource planning and

⁴ See e.g. North American Electric Reliability Corporation Standard TOP-002-2 — Normal Operations Planning. <http://www.nerc.com/files/TOP-002-2.pdf>

⁵ The North American Electric Reliability Council is now known as the North American Electric Reliability Corporation.

investment minimizes the cost to society of reliable energy services, while improving the environment and encouraging resource diversity through improvements in energy efficiency and renewable energy resources.⁶ The CPUC must also ensure that ratepayer costs are just and reasonable.⁷ The CEC is mandated to pursue reliable electricity supply⁸ and in its integrated planning responsibilities to pursue energy reliability along with protection of public health and safety, promotion of the general welfare, maintenance of a sound economy, conservation of resources, and preservation of environmental quality.⁹

We believe acceptance of the joint proposal¹⁰, based on compliance through development of replacement electricity infrastructure, is the appropriate mechanism to balance the implementation of environmental and energy policies with assurance of electric system reliability and minimizing costs.

Specific Comments and Proposed Changes to Draft Revised Policy

The CEC, CPUC and ISO provide the following additional comments and proposed clarifications to the revised draft policy. In the context of the entire proposed policy, we believe these limited clarifications will strengthen the proposal even more. Where appropriate, we have proposed language changes to the revised draft policy. Deleted language is shown as strikethrough, while added language is shown as underscore.

Compliance for Combined Cycle Units - The new language of section 2A(2)(d)i2 provides possible benefits to the new combined cycle units that use once through cooling technologies. The CEC will work with the Water Board by providing necessary information concerning the Moss Landing combined cycle units it licensed, with conditions, when making its finding that the mitigated plant satisfied California

⁶ Public Utilities Code Sec. 701.1(a).

⁷ Public Utilities Code Sec. 451.

⁸ Public Resources Code Sec 25001.

⁹ Public Resources Code Sec 25300(b).

¹⁰ The joint recommendations of the CEC, CPUC and ISO for the process to identify, and a preliminary schedule for, replacement electricity infrastructure applicable to existing gas-fired power plants subject to the draft policy are contained in Appendix C of the Substitute Environmental Document.

Environmental Quality Act criteria. The CEC licensed this repowering project in October 2000, and the project entered commercial service in August 2002. The CEC appreciates this consideration of a repowered facility using advanced technology that was proposed and licensed during a period in which new capacity was needed and that met the applicable standard of the day.

Suspension for LADWP Plants - In section 2B(2)(c) of the revised draft policy, a special section has been developed to address suspension of units that are part of the fleet in the LADWP balancing authority area. In light of the independence of the LADWP balancing authority area from that of the ISO, please replace “CAISO” and refer to the Statewide Advisory Committee on Cooling Water Intake Structures (SACCWIS) in the review of LADWP suspension requests.

(c) Suspension of Final Compliance Date for *Existing Power Plants Within Los Angeles Department of Water and Power (LADWP) Service Area.** If the LADWP Commission determines, through a public process, that continued operation of an *existing power plant** operated by LADWP is necessary to maintain the reliability of the electric system in the short-term, LADWP shall provide written notification to the State Water Board, the Regional Water Board with jurisdiction over the *existing power plant**, and the SACCWIS. Within 45 days of receiving a written notice from LADWP, the State Water Board shall conduct a hearing in accordance with paragraph (d) to determine whether to suspend the final compliance date. In considering whether to suspend or amend the final compliance dates the State Board shall consult with the ~~CAISO~~SACCWIS.

Generator Compliance Plans - Section 3.A.(1) of the revised draft policy would require owners or operators of units to describe measures taken to coordinate compliance activities through the appropriate electrical system balancing authority’s maintenance scheduling process. In section 3A(1), we recommend modifying the text to refer to outage coordination as opposed to maintenance scheduling and to include additional requirements for generator implementation plans to provide additional details regarding compliance schedules, including the key uncertainties affecting the length or timing of outages and the nature of permits required to accomplish their chosen compliance alternative.

(1) The implementation plan shall identify the compliance alternative selected by the owner or operator, describe the general design, construction, or operational measures that will be undertaken to implement the alternative, propose a realistic schedule, ~~for implementing these measures that is as short as possible.~~ and discuss key uncertainties such as permits required. The implementation plan shall provide sufficient information for the SACCWIS to evaluate the timing and permitting risks of the proposed measures to achieve the selected compliance alternative. If the owner or operator chooses to repower the facility to reduce or eliminate reliance upon OTC, or to retrofit the facility to implement either Track 1 or Track 2 alternatives, the implementation plan shall identify the time period when generating power is infeasible and describe measures taken to coordinate this activity through the appropriate electrical system balancing authority's ~~maintenance scheduling~~ outage coordination process.

Annual Reliability Studies – Section 3.B.(3) of the revised draft policy provides that the ISO and LADWP provide the SACCWIS with a grid reliability study each year for their respective balancing authority areas. The revised draft policy provides that the grid reliability study must be developed pursuant to a public process and approved by the ISO and LADWP's governing bodies. The CEC, CPUC and ISO request modifications to the text to include a minimum set of requirements for the annual reliability plan. The ISO is willing to provide SACCWIS with an annual grid reliability study that it develops pursuant to a public process. But these results are not subject ISO Board of Governor approval. Accordingly, we recommend the following changes to section 3.B.(3):

The CAISO and the LADWP shall each submit to the SACCWIS by December 31, each year a grid reliability study, for their respective jurisdictions, that has been developed pursuant to a public process. The CAISO and LADWP shall also each make available to SACCWIS any study plans, input assumptions and results associated with their grid reliability studies. ~~and approved by their governing bodies.~~ In order to assure that SACCWIS can provide annual reports to the State Water Board by March 31, the SACCWIS shall promptly meet to consider the reliability studies submitted by CAISO and the LADWP.

Generator Requests for Compliance Date Changes - Section 3.B(5) of the revised draft policy recognizes that an owner or operator of a generating unit subject to the policy may face delays in obtaining required permits to retrofit or repower a unit despite best efforts to secure those permits. The revised draft policy provides a mechanism to extend final compliance dates in such circumstances. The CEC, CPUC and ISO recommend that the SWRCB modify the text to remove the final sentence of section 3.B(5) and create a separate subsection (6) restoring this sentence. While it makes sense for SACCWIS to review such requests and provide its views to the State Board, an owner or operator should be the one responsible to make and support a request for a two year extension based on permitting delays.

(5)The State Water Board shall consider the SACCWIS' recommendations and direct staff to make modifications, if appropriate, for the State Water Board's consideration. In the event that the SACCWIS energy agencies (CAISO, CPUC, and CEC) make a unanimous recommendation for implementation schedule modification based on grid reliability, the State Water Board shall implement the recommendation unless the State Water Board finds that there is compelling evidence not to make the recommended modification and makes a finding of overriding considerations. ~~In the event that (i) an owner or operator is unable to obtain permits required for a facility upgrade to comply with a final compliance date established in this policy, and (ii) the State Water Board finds that the owner or operator used best efforts to obtain the required permits, then the State Water Board shall suspend a final compliance date specified in this policy for a period not to exceed two years.~~

(6) In the event that (i) an owner or operator is unable to obtain permits required for a facility upgrade to comply with a final compliance date established in this policy, and (ii) the State Water Board finds that the owner or operator used best efforts to obtain the required permits, then the State Water Board shall suspend a final compliance date specified in this policy for a period not to exceed two years.

Conclusion

As we have noted before, adoption of this draft policy will create a long-term relationship between the Water Board and the CEC, CPUC and ISO as we identify the necessary infrastructure to allow for implementation on the draft policy and as other

complex issues affecting the need for power plants using once through cooling unfold. Representatives of our respective organizations have invested much effort to develop an appreciation of each other's perspectives about power plants using once through cooling. Implementation of the draft policy through time will require maintaining a close working relationship – through the proposed SACCWIS advisory body and through other mechanisms- to allow the Water Board to satisfy its objectives, while not jeopardizing the reliability of California's electricity grid.

Respectfully submitted,



Karen Douglas
Chair,
California Energy
Commission



Michael Peevey
President,
California Public
Utilities Commission



Karen Edson
Vice President
Policy and Client Services,
California Independent
System Operator Corp.