

September 14, 2009

Members of the State Water Resources Control Board
State Water Resources
Division of Water Quality
1001 I Street, 24th Floor
Sacramento, CA 95814

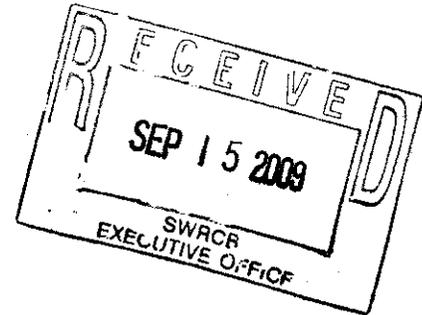
Attn: Jeanine Townsend, Clerk to the Board

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

Dear Members of the State Water Resources Control Board:

The California Energy Commission ("Energy Commission"), 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 ("WRCB") 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*.

Our comments focus on the need for implementing any adopted policy in a manner that ensures the continued reliability of electric service in California. As a result of extensive work with WRCB staff, we believe the draft policy issued on June 30, 2009, contains a satisfactory mechanism to assure electric system reliability by allowing continued operation of existing power plants using once through cooling until replacement infrastructure obviates the need for such plants for reliability. The draft policy and attachment to the substitute environmental document provide a preliminary schedule for the development of replacement infrastructure. The draft policy calls for periodic



updates to this schedule in order to be responsive to delays or changes in energy policy not foreseen at this time.

Reliability

The power plants affected by the draft policy represent approximately 32 percent of the installed capacity in California and have important local, zonal and system reliability benefits. Any adopted policy should accommodate replacement or repowering of at least some of these power plants and the construction of transmission upgrades.

Renewable Integration and other Energy Policy Goals

Many of the affected power plants are those with the operating flexibility necessary to integrate intermittent renewable resources onto the electricity grid. California needs to ensure that compliance with WRCR policy does not compromise its renewable generation goals, which are a key element of state energy policy to achieve greenhouse gas emission reduction targets along with other preferred resources such as energy efficiency, distributed generation, and demand response. While preferred resources will satisfy a portion of California's resource needs, retiring existing plants using once through cooling will require development of replacement infrastructure with comparable operating characteristics. As explained below, this effort presents a challenge given current and possibly future restrictions on air permits for replacement generation in California.

Timing

Any adopted policy must realistically account for the time necessary to provide replacement power in the form of a repowered facility, a replacement facility in the same area, or new transmission to serve load coupled with replacement power procured from elsewhere on the system. Design, permitting and development for generation and transmission is a multi-year process, and current regulatory uncertainty, such as the availability of air emission reduction credits to meet Southern California air quality regulations, increase the uncertainty of these time lines. In addition, experience has taught us that assumptions in the area of energy infrastructure, including but not limited to the plans of existing power plant owners, may change materially during the implementation of any adopted policy. Thus, any adopted policy should provide flexibility to accommodate development and permitting delays as well as other contingencies. The draft policy includes provisions for periodically revisiting the infrastructure replacement schedule, and we urge the retention of such scheduled updates as a key element of a final policy.

Joint Energy Agency Recommendation

The Energy Commission, CPUC and ISO have worked together to develop a proposal for replacing or repowering of fossil plants using once through cooling consistent with maintaining reliability of the electric system and meeting California's environmental policy goals. The key elements of the proposal, which was delivered to the WRCB's staff in mid-May 2009, recommended a regional and phased approach to implementing any adopted policy in order to allow for the necessary planning, procurement, and construction of replacement infrastructure. The Energy Commission, CPUC and ISO are pleased that the WRCB's staff has chosen to incorporate our infrastructure replacement concept into the draft policy. We urge the WRCB to preserve this element in any final policy it adopts.

Elements of the Water Board Draft Policy

The WRCB's draft policy released to the public on June 30, 2009, included the following elements which the Energy Commission, CPUC and ISO agree are critical to implementing any adopted policy in a way that ensures grid reliability:

- A compliance schedule that reflects a phased, regional approach
- Creation of a Statewide Advisory Committee on Cooling Water Intake Structures (Agency Committee), which includes representatives from the Energy Commission, CPUC and ISO. The Committee will review generator implementation plans and schedules and make recommendations regarding compliance dates within one year of the effective date of the policy and every two years thereafter until all plants using once through cooling are in compliance.
- Creation of a Review Committee to provide a public report and study to investigate alternatives to the use of once through cooling at the San Onofre and Diablo Canyon nuclear power plants to meet the requirements of any adopted policy, including the cost of alternative power sources.
- Consideration of less stringent requirements of nuclear-fueled plants and fossil-fueled plants with a heat rate of 8,500 BTU/kWh or less if the owner or operator can demonstrate that the cost of compliance is wholly disproportionate to the environmental benefits to be gained.

The Energy Commission, CPUC and ISO acknowledge the WRCB's consideration of the potential impacts of the draft policy on the reliability of California's electricity system.

We look forward to working with the WRCB as part of both the Agency Committee and the Review Committee to ensure that reliability can be maintained through the implementation of any adopted policy.

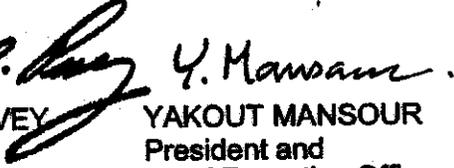
Conclusion

The WRCB's draft policy incorporates a workable schedule and process to implement the WRCB's objectives while considering the need to maintain reliable operation of the electric grid. Adoption of this draft policy will create a long-term relationship between the WRCB and the Energy Commission, CPUC and ISO as we develop more detailed plans for 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 over many years that allows the WRCB to satisfy its objectives, while not jeopardizing the reliability of California's electricity grid.

Sincerely,


KAREN DOUGLAS
Chairman,
California Energy
Commission


MICHAEL PEEVEY
President,
California Public
Utilities Commission


YAKOUT MANSOUR
President and
Chief Executive Officer,
California Independent
System Operator
Corporation