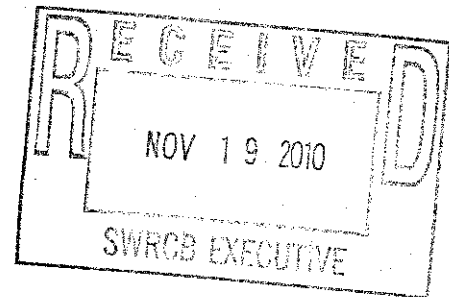




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November 19, 2010

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, CA 95812-0100



RE: *Proposed Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling*

Dear Ms. Townsend:

AES Southland (AES-SL) appreciates the opportunity to provide additional comments on the Board's "Proposed Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling" (Proposed Amendment). AES-SL is the owner of the largest fleet of once-through-cooled (OTC) generating facilities in California. Our portfolio is comprised of the Redondo Beach, Alamitos and Huntington Beach generating stations, which together have over 4,200 MWs of installed capacity and 14 generating units. The facilities are located in the Los Angeles basin Local Capacity Requirement (LCR) area and represent approximately 18% of Southern California Edison's peak demand¹, 33% of the total installed capacity in the LA Basin LCR and 40% of the CAISO's projected LCR need in 2011².

AES-SL understands that one stated objective of this policy is to promote the replacement of the aging coastal gas-fired fleet. AES-SL intends to comply with the policy by ultimately replacing its existing fleet with new technology that dramatically reduces or eliminates OTC. We applaud the Water Board staff's recognition in the Proposed Amendment that for a number of reasons, efforts to replace or repower the OTC plants need to be phased and that some replacements may need to be completed after the proposed

¹ Southern California Edison's all-time peak demand of 22,889 MWs was set on July 25, 2006. AES-SL's total rated capacity of 4,256 MWs represents 18.6% of SCE's all-time peak.

² According to the CAISO's 2011 draft LCR study results, the Total Qualifying Capacity of available generation in the LA Basin LCR is 12,977 MWs and the LCR need for the region is 10,589 MWs.

compliance dates in the Policy. This is especially true for the Los Angeles region as it presents a more complex and challenging set of issues, and therefore more time is needed to study and implement replacement infrastructure solutions.

However, we do not agree with the recommendation in the Proposed Amendment that for those units with an approved implementation date that extends beyond December 31, 2020, the requirement to fund mitigation begins immediately rather than five years after the Policy's effective date. Under the current Policy, the longer a unit using OTC stays in service, the longer the entrainment and impingement impacts of that unit continue, and the longer the mitigation fees will be paid. This is true if the unit runs until December 31, 2020 and subsequently retires or if it has an approved implementation plan, perhaps to support system reliability needs, that allows it operate through December 31, 2021. A unit with a Policy compliance date of December 31, 2020 that subsequently receives a one-year extension to December 31, 2021 does not have an incremental entrainment and impingement impact *immediately*. It only has an incremental impact from January 1, 2021 through December 31, 2021. However, under the Proposed Amendment, the requirement to pay mitigation fees would begin *immediately* after approval of the revised implementation plan. In this example, the unit would begin paying mitigation fees approximately four years (October 2011 – September 2015) sooner than the original Policy would require, even though the compliance date was only being extended by one year. This unit would also begin paying mitigation fees four years sooner than a similar unit that reached compliance on 12/31/2020. This proposed change can only be viewed as punitive in the context of the existing Policy.

Furthermore, for some units, implementation plans are being submitted and approved in 2011 with only a current view that the units will be replaced on some date beyond December 31, 2020. There is no guarantee that the market will ultimately need the replacement of a unit that has an approved implementation date after December 31, 2020. In this case, the owner-operator may well decide to retire the unit prior to the end of 2020. Under the Proposed Amendment, the owner-operator of that unit will have needlessly paid mitigation fees for approximately four years as compared to the current Policy.

For the reasons cited above, AES-SL urges the Board and its staff to reconsider the amendment that would require paying mitigation fees immediately for those units that are granted an approved implementation date after December 31, 2020.

Throughout this process, AES-SL has demonstrated a high level of cooperation and a reasoned, balanced approach to the Policy development process. AES-SL's current Policy objectives are similar to the Water Board's original Policy objectives in that we support a regulation that is reasonably feasible to execute and fairly balances the impact to the California economy, environmental protection and the need to maintain a reliable supply of electricity. However, this Proposed Amendment along with the last-minute changes to the current Policy at the adoption hearing on May 4, 2010, further skew the cost-benefit balance of the Policy, and unfairly target the units that have the least actual entrainment and impingement impacts on an annual basis.

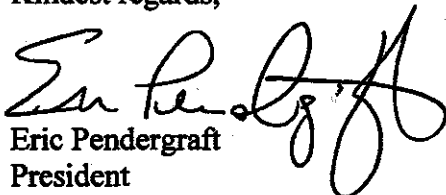
The Final Response to Comments by the Board and the Water Board staff affirmed and supported the use of design flow as the baseline for impact reductions on numerous occasions. Despite this fact, at the policy adoption hearing, the Board and Water Board staff stretched the bounds of its procedural latitude and adopted a last-minute change to the Policy to use actual historical flows as a baseline for Track 2 compliance. This last-minute change makes it nearly impossible for AES-SL to construct a compliance plan that fairly balances the impacts to all stakeholders. Now, under the original Policy and the Proposed Amendment, those units that have the greatest actual entrainment and impingement impacts on an annual basis, due to their high capacity utilization rates (CUR), would be given relief while those that have the lowest actual impacts on an annual basis would be given punitive measures through the earlier application of mitigation fees if the approved implementation plan extends their compliance date past December 31, 2020.

AES-SL urges the Board and the Water Board staff to refocus on the original objective to further a policy that is reasonably feasible to execute and fairly balances the impact to the California economy, environmental protection and the need to maintain a reliable supply of electricity. If a unit that only operates 30 to 45 days a year, when the electricity demand is at its highest, is forced out of service as a result of this Policy, the actual improvements to the marine environment that would be achieved are insignificant. Moreover, an expensive new unit would need to be constructed in its place for capacity, even though the actual electricity may only be needed on limited occasions. This places a significant and unnecessary burden on the California consumers with no corresponding environmental benefit.

AES-SL contends that the most effective and efficient manner the Board and its staff can further its overall objectives is to amend the Policy back to its original form and use design flow as a baseline for reductions. At the same time, the requirement to pay mitigation fees immediately for units that receive extensions to their compliance dates beyond 12/31/2020 is unnecessarily punitive and should be eliminated. Under the current policy, the longer a unit remains in operation, the longer it pays mitigation fees. This alone is sufficient to incent owners to comply with the Policy as quickly as reasonably feasible and it fairly applies the application of mitigation fees across all impacted facilities.

AES-SL appreciates the opportunity to provide these comments. Please do not hesitate to contact me at (562) 493-7855 with any questions.

Kindest regards,



Eric Pendergraft
President
AES Southland

cc: Members of the State Water Resources Control Board
Dorothy Rice, Executive Director, State Water Resources Control Board
Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board