

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU
ENVIRONMENTAL PROTECTION BUREAU

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IN THE MATTER OF

DYNEGY INC.,

Respondent.

**ASSURANCE OF
DISCONTINUANCE PURSUANT
TO EXECUTIVE LAW § 63(15)**

AOD # 08-132

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WHEREAS:

A. Pursuant to Executive Law § 63(12) and General Business Law § 352, in September 2007 Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made of Dynegy Inc. (the “Company”) regarding the adequacy of the Company’s disclosures to investors, including in its filings with the Securities and Exchange Commission (“SEC”) concerning the expected impact of climate change and the regulation of greenhouse gas (“GHG”) emissions on the Company’s operations, financial condition, and plans to construct new coal-fired electric generating units.

B. On September 14, 2007, the Attorney General issued a subpoena *duces tecum* to the Company seeking information regarding the Company’s disclosure practices. Subsequently, on October 29, 2007 and April 8, 2008, representatives of the Attorney General and the Company met to discuss the Company’s disclosures and other sources of information available to investors, and the Company provided documents responsive to the subpoena.

C. Through its subsidiaries, Dynegy Inc. produces and sells electric energy, capacity and ancillary services in many U.S. markets. The power generation portfolio consists of more

than 18,000 megawatts of baseload, intermediate and peaking power plants fueled by a mix of natural gas, coal and fuel oil. In addition to operating assets, Dynegy Inc. owns a 50 percent interest in a development joint venture with LS Power, and minority interests in two coal-fired plants currently under construction.

D. Dynegy represents that the joint development platform currently includes approximately 6,400 megawatts of potential new site projects, including coal and gas initiatives, and approximately 3,100 megawatts of natural gas-fired repowering, solar and efficiency initiatives at existing operating facilities in the portfolio.

E. The Company has agreed to resolve this investigation voluntarily. After entering into discussions with the Attorney General's office, Dynegy filed its 10-K for the year 2007, in which the Company voluntarily provided more detailed information about climate change risk than in previous SEC filings. Based on the Company's commitment to expand and/or continue to provide a discussion of climate change and possible attendant risks in its Form 10-K filing with the SEC as set forth in paragraph 1, below, the Attorney General agrees to conclude the above-referenced inquiry.

THEREFORE, without admitting or denying that there has been any violation of law or wrongdoing, the Company and the Attorney General have agreed to enter into this Assurance of Discontinuance ("Assurance") for the purpose of resolving this investigation.

NOW, upon the consent of the undersigned counsel for the Attorney General and the Company, it is hereby **STIPULATED** and **AGREED** pursuant to Executive Law § 63(15) as follows:

1. **Disclosures to Investors Concerning Climate Change Risk.** The Company shall disclose (or, to the extent applicable, continue to disclose) in its 10-K filings:

(a) *Analysis of Financial Risks from Regulation.* The material financial risks to the Company associated with the regulation of GHG emissions in relation to climate change. At a minimum, this shall include:

(1) *Present Law.* Identification of GHG legislation or regulations in effect in states and countries in which the Company operates and an analysis of the material financial effect, if any, of the legislation or regulations, including, but not limited to, the costs of compliance with the Regional Greenhouse Gas Initiative.

(2) *Probable Future Law.* Discussion of expected trends in GHG legislation or regulations likely to be adopted that would have a material financial effect on the Company's business and an assessment of the material financial effect, if any, of the legislation or regulations, including a discussion of the factors that may affect the Company's business.

(b) *Analysis of Financial Risks from Litigation.* A description of any litigation related to climate change involving the Company the outcome of which will likely have a material financial effect on the Company and any climate change-related decisions issued by the United States Supreme Court, any United States Court of Appeals, or any court in any jurisdiction in which the Company operates that the Company concludes are likely to have a material financial effect on its business.

(c) *Analysis of Financial Risks from Physical Impacts of Climate Change.* The material financial risks to the Company's operations, if any, from the physical impacts associated with climate change including the impact of an increase in sea level

and changes in weather conditions, such as increases in extreme weather events, changes in precipitation resulting in drought or water shortages, and changes in temperature.

(d) *Strategic Analysis of Climate Change Risk and Emissions Management.*

To the extent the Company's GHG emissions materially affect its financial exposure from climate change risk, the Company shall include:

- (1) *Climate Change Statement.* The Company's current position on climate change.
- (2) *Emissions Management.* The Company's:
 - (i) estimated GHG emissions (in tons) for the reporting year;
 - (ii) expected increases in GHG emissions (in tons) from planned new electric generation projects for which a state or EPA Clean Air Act permit has been sought;
 - (iii) strategies to reduce its climate change risk and to adapt to the physical impacts of climate change, including actions the Company is taking to reduce, offset, or limit GHG emissions (such actions may include, but are not limited to, emission reduction programs, energy efficiency and conservation programs, renewable energy development, diversification of electricity resources, improvements in energy infrastructure, and/or participation in research and development of new technologies to reduce GHG emissions);

(iv) the results of strategies undertaken to date, and the expected effect of such strategies on future GHG emissions, including any GHG emission reduction goals (as a percentage of aggregate emissions) the Company seeks to achieve from such strategies.

(3) *Corporate Governance of Climate Change.* The Company's corporate governance process applicable to climate change issues, including the role of the Board of Directors; and a statement regarding environmental performance factors, including meeting climate change objectives, incorporated into officer compensation, if any.

Except as otherwise required by law, the Company may identify or reference other public documents or reports, including, but not limited to, annual reports, proxy statements and other submittals to state agencies relating to GHG emissions and climate change risks in its Form 10-K filing with the SEC to provide further details on climate change risk.

2. **Entire Settlement.** This Assurance shall constitute the entire agreement of the parties with respect to settlement of the inquiry by the Attorney General referenced herein and is in full satisfaction of any and all potential civil and criminal claims that could have been raised with respect thereto.

3. **Binding Effect.** This Assurance shall be binding on the Company and its officers, directors and successors.

4. **Compliance with Other Disclosure Obligations.** In the event that the Company reasonably believes that the performance of its disclosure obligations under any provision of this

Assurance would conflict with any federal law, regulation, or binding directive that may be enacted or adopted after the date of this Assurance such that compliance with both this Assurance and such provision of federal law, regulation or binding directive would be impossible without violating such law, regulation, or directive, the Company shall notify the Attorney General within 14 days of the effective date of such law, regulation or binding directive, and the parties shall meet or confer at their earliest convenience to discuss same.

5. **Termination of Assurance of Discontinuance.** Subject to paragraph 4 herein, this Assurance and the obligations agreed to herein shall terminate within 4 years of the effective date of the Assurance.

6. **Execution of the Assurance.** The Attorney General and the Company agree that this Assurance may be executed in counterparts, and that the separate execution of the signatures shall not affect their validity. The effective date of this Assurance shall be the date on which the latter signature is executed.

7. **Governing Law.** This Assurance shall be governed by the laws of the State of New York without reference to conflicts-of-law provisions. In the event a provision of this Assurance is held unenforceable in a court of competent jurisdiction or is otherwise contrary to applicable federal, state or other law, the remaining provisions of this Assurance shall continue in full force and effect as though such provision were stricken from the Assurance.

8. **Notices.** Any and all correspondence related to this Assurance must reference AOD # 08-132. Notices required under this Assurance shall be sent, by first class or express mail, to the following party representatives:

For the Attorney General:

Michael J. Myers
Morgan A. Costello

Daniel Sangeap
Assistant Attorney General

Assistant Attorneys General
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, New York 12224

Investor Protection Bureau
New York State Attorney General
120 Broadway
New York, New York 10271


For the Company:

J. Kevin Blodgett
General Counsel
Dynegy Inc.
1000 Louisiana Street, Suite 5800
Houston, Texas 77002

CONSENTED AND AGREED TO:

ANDREW M. CUOMO
Attorney General of the State of New York

By:



DANIEL SANGEAP
Assistant Attorney General
Investor Protection Bureau
120 Broadway
New York, New York 10271

Dated:

10/23/2008

Dynegy Inc.

By:



J. Kevin Blodgett
General Counsel and EVP Administration

Dated:

10/20/08