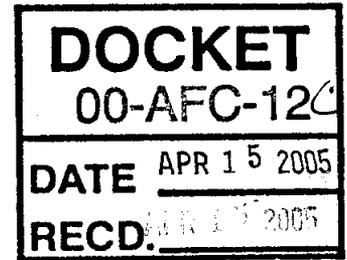


STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission



In the Matter of: )  
 ) Docket No. 00-AFC-12  
Application for Certification of Duke Energy for the )  
Morro Bay Power Plant Project )  
(MORRO BAY) )  
\_\_\_\_\_ )

**PETITION FOR AN ORDER AUTHORIZING DEMOLITION  
OF THE  
MORRO BAY TANK FARM**

Pursuant to Title 20, California Code of Regulations, Section 1716.5, Duke Energy Morro Bay LLC (“Applicant” or “Duke Energy”) hereby petitions the California Energy Commission (“Commission”) for an order authorizing demolition of the on-site fuel oil tank farm at its Morro Bay Power Plant (“MBPP”). Additionally, Duke Energy requests that the Commission direct the hearing officer to file with the Commission’s Docket Office the order authorizing demolition of the tank farm.

The demolition of the on-site fuel oil tank farm was authorized by the Commission in its Final Decision on the Morro Bay Power Plant Project. However, that decision has not been filed with the Commission’s docket office, pending the grant of a National Pollutant Discharge Elimination System (“NPDES”) permit by the Central Coastal Regional Water Quality Control Board. The issuance and docketing at this time of a limited order authorizing the demolition of the tank farm is in the public interest and would be in compliance with all applicable laws, ordinances, regulation and standards.

## I. Procedural Background

On October 23, 2000, Duke Energy filed an Application for Certification seeking approval to modernize the existing MBPP. Duke Energy proposed that the modernization project proceed in three stages: Phase I - demolition of the tank farm, Phase II – construction of the new power block, and Phase III - demolition of the existing MBPP.

In a proceeding that spanned more than 3½ years, the Commission undertook a thorough review and analysis of all aspects of the proposed project. During this process, the Commission conducted a comprehensive examination of the project's potential economic, public health and safety, reliability, engineering, and environmental ramifications.<sup>1</sup> The Commission's process and associated documents are functionally equivalent to the traditional Environmental Impact Report process.<sup>2</sup> During its licensing proceedings, the Commission acted as the lead state agency under the California Environmental Quality Act.<sup>3</sup>

Based on this review, the Commission concluded that the Morro Bay Power Plant Project “will provide local economic benefits and electricity reliability to the San Luis Obispo County area.”<sup>4</sup> The Commission further concluded that “The Conditions of Certification contained in the accompanying text, if implemented by the project owner, ensure that the project will be designed, sited, and operated in conformity with applicable local, regional, state, and federal laws, ordinances, regulations, and standards, including applicable public health and safety standards, and air and water quality standards.”<sup>5</sup> Furthermore, the Commission stated

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<sup>1</sup> 3rd Revised Presiding Member's Proposed Decision (PMPD), 00-AFC-12, pp. 8-9

<sup>2</sup> Pub. Resources Code, § 21080.5.

<sup>3</sup> Pub. Resources Code, §§ 25519 (c), 21000 et seq.

<sup>4</sup> Commission Adoption Order, 00-AFC-12, August 2, 2004, Finding #1.

<sup>5</sup> *Id.* at Finding #2.

“Implementation of the Conditions of Certification contained in the accompanying text will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility. The Conditions of Certification also assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative adverse environmental impacts.”<sup>6</sup>

The Commission Decision expressly addressed the demolition of the fuel oil tank farm. In Footnote 3, the Commission noted that “While tank farm demolition is part of the overall Project as analyzed by the Commission for the purposes of CEQA compliance, it does not constitute “construction” as defined in the general conditions of this Decision. In addition, tank farm demolition is not construction for the purposes of Title 20, California Code of Regulations, section 1720.3. Nor are conditions of certification triggered by tank farm demolition, unless express language of the condition states otherwise.”<sup>7</sup>

Because the demolition of the tank farm does not constitute “construction” for purposes of Title 20, California Code of Regulations, section 1720.3, the Commission held that

“many reporting and planning conditions or requirements that require various actions prior to “start of construction” should not be triggered by the start of tank demolition activity, but rather the start of construction of the combined cycle facilities. Duke Energy recommends that conditions specifying that plans and reports typically submitted “prior to construction” should be restated to say “prior to construction of the combined-cycle facility.” Both Applicant and Staff agreed that it would be preferable to deal with issues topic by topic. (12/17/01 RT356-57.) The Committee finds that the adoption of this proposed change is appropriate. (Ex. 117, p. 58.) Accordingly, changes have been made to Conditions of Certification in the various topic areas to implement this modification. Additional language has also been included in the definitions of the General Conditions of Certification.”<sup>8</sup>

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<sup>6</sup> *Id.* at Finding #3.

<sup>7</sup> Commission Decision, p. 26

<sup>8</sup> *Id.* at 38

The Commission Decision emphasizes that the demolition of the tank farm should be severable from the construction of the replacement power plant so that tank farm demolition is not needlessly delayed:

**“TANK FARM DEMOLITION:**

“Demolition of the tank farm is severable from construction activities on the replacement power plant. Therefore, Conditions of Certification related to the construction and operation of the modernized replacement facility should not necessarily be triggered by demolition of the existing tank farm. Tank farm demolition could be needlessly delayed if the Commission ties the demolition to all of the reporting requirements and Conditions of Certification required of the full modernization project.

“To ensure that tank farm demolition can be commenced in a timely manner, separate from other modernization activities, the Commission has specified, based on advice from Staff, which conditions are applicable to tank farm demolition activities. Specified conditions should be narrowly interpreted to address activities occurring as part of tank farm demolition, as opposed to more general modernization project activities. The same conditions may require later, additional filings to account for other matters related to the more general modernization activities of the Project.”<sup>9</sup>

In addition to approving the demolition of the tank farm, the Commission decision also certifies the construction and operation of the replacement power plant. However, the replacement power plant will result in effluent discharge that must be permitted by the NPDES Program. The Central Coast Regional Water Quality Control Board is authorized to issue the NPDES permit in this case. Because the NPDES permit has not yet been issued, the Commission Adoption Order directs the hearing officer to file this Decision with the Commission's Docket Unit fifteen days (or the next business day) after the Project is granted a NPDES permit by the Central Coastal Regional Water Quality Control Board.

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<sup>9</sup> Commission Decision, p. 44

## **II. An Order Authorizing Demolition at this time is in the Public Interest**

Duke Energy desires to proceed with demolition of the tank farm as soon as practicable. The tank farm is not needed for the operation of the existing MBPP. Therefore, demolition of the tank farm will not alter or impair operation of the existing MBPP. In addition, while the demolition of the tank farm is a necessary precondition to the proposed replacement of the existing MBPP, demolition of the existing tank farm does not in any way cause or commit Duke Energy to undertake the construction of the replacement power plant.

Whether or not the replacement power plant is ultimately constructed, demolition of the tank farm is in the public interest. The demolition will improve the visual quality of the area and facilitate remediation of an area that has been unused for many years.

## **III. An Order Authorizing Demolition at this time is consistent with all Applicable Laws.**

The Commission has taken all of the steps necessary for it to issue and docket an order authorizing demolition of the tank farm. First, the Commission has completed a comprehensive environmental review of the project, including the tank farm demolition. Based on this review, the Commission has concluded that the project, including the demolition of the tank farm, will not have a significant adverse impact on the environment.<sup>10</sup> According to the Adoption Order, “The Commission's analysis of and findings regarding the effects of the Morro Bay Power Plant Project on the environment are final on August 2, 2004.”<sup>11</sup>

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<sup>10</sup> See, for example, PMPD, p. 411: “We, therefore, conclude that with implementation of the Conditions of Certification, construction and operation of the Morro Bay Power Plant Project will create no significant direct, indirect, or cumulative adverse impacts to soil or water resources.” Similar findings were made for each of the other environmental issue areas.

<sup>11</sup> Adoption Order, 00-AFC-12, Ordering Paragraph #3.

Second, the Commission has adopted separate and distinct conditions of certification specifically applicable to the demolition of the tank farm to ensure protection of environmental quality during demolition and to assure safe demolition practices.<sup>12</sup>

Third, the Commission has found that the Conditions of Certification contained in the Final Decision, if implemented by the project owner, ensure that the project, including demolition of the tank farm, will be undertaken in conformity with applicable local, regional, state, and federal laws, ordinances, regulations, and standards, including applicable public health and safety standards, and air and water quality standards.<sup>13</sup>

While the Final Decision will not be docketed until the NPDES permit is issued,<sup>14</sup> the demolition of the tank farm will not involve the discharge of any effluents. Therefore, because the demolition of the tank farm is severable from construction activities on the replacement power plant<sup>15</sup> and because the NPDES permit is not a precondition to the demolition of the tank farms, it would be appropriate for the Commission to issue and docket an order authorizing the demolition of the tank farm, subject to the conditions of certification expressly applicable to this activity.

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<sup>12</sup> See, generally PMPD, 00-AFC-12.

<sup>13</sup> Adoption Order, 00-AFC-12, August 2, 2004, Finding #2

<sup>14</sup> Adoption Order, Ordering Paragraph #5.

<sup>15</sup> PMPD, 00-AFC-12, p. 44.

**IV. Conclusion**

For the reasons set forth above, Duke Energy requests that the Commission issue and docket an order authorizing demolition of the on-site fuel oil tank farm.

Respectfully submitted,

Dated: April 15, 2005

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STATE OF CALIFORNIA

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**PROOF OF SERVICE**

I, Ron O'Connor, declare that on April 15, 2005, I deposited copies of the attached *Petition for an Order Authorizing Demolition of the Morro Bay Tank Farm* in the United States mail in Sacramento, California, with first-class postage thereon fully prepaid and addressed to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Ron O'Connor

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