ORDER NO. 05-0622-01

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION OF THE DUKE ENERGY MORRO BAY POWER PLANT PROJECT	**DOCKET NO. 00-AFC-12**

DOCKET
00-AFC-12C
DATE JUN 22 2005
RECD. JUN 23 2005

Commission Amended Order Authorizing Demolition of the Morro Bay Tank Farm

On April 15, 2005, Duke Energy Morro Bay, LLC, (Applicant or Duke) filed a *Petition for an Order Authorizing Demolition of the Morro Bay Tank Farm* (Petition). The Petition asks the Commission to grant permission for Applicant to commence demolition of the fuel oil tank farm at the site of the proposed Morro Bay Power Plant (Project). Applicant asks that the Commission docket any order granting permission to begin demolition. This Order grants Duke's Petition.

I. BACKGROUND

On October 23, 2000, Duke Energy filed its Application for Certification seeking approval to modernize the existing Morro Bay Power Plant. Duke proposed its new Project to be conducted in three stages, Phase I of which is the demolition of the existing tank farm at the Project site. That phase, and the other two phases of the Project, received careful and extensive environmental review by the Commission. The review culminated in a Decision on August 2, 2004 approving the Project. The Decision allows Project construction after the Decision is filed with the Commission's Docket Unit, following the Central Coast Regional Water Quality Control Board granting the Project a National Pollution Discharge Elimination (NPDES) permit. The NPDES permit is not related to demolition of the tank farm. Therefore, delays in granting the NPDES permit have held up tank farm demolition for reasons unrelated to the tank farm.

Applicant's Petition seeks immediate permission to begin Phase I, tank farm demolition, on the grounds that the Commission's Decision on the Project anticipated that the demolition would occur before and be separate from construction of the proposed power plant or subsequent demolition of the existing power plant. The Petition further states that tank farm demolition will improve the visual quality of the area, is consistent with all applicable laws, and is in the public interest.

The City of Morro Bay has advocated imposition of Condition of Certification LAND-1 prior to allowing tank farm demolition. That condition requires the Project owner to enter an outfall lease agreement prior to commercial operation. On this issue, the Commission did not find for the City for several reasons. First, Condition LAND-1 deals with the cooling water discharge outfall and not at all with the tank farm. It is therefore irrelevant to this matter. Second, LAND-1 refers to "commercial operation" as a deadline, yet the term is meaningless in reference to a tank farm which will be neither commercial nor operational.

Third, the City has other forums available to pursue its dispute with Duke over the outfall lease. Finally, and perhaps most importantly, the Commission has found that due to the tank farm's visual impacts and the potential of hazardous soil contaminants, removal of the tank farm is in the public interest. To require execution of the outfall lease before allowing tank farm removal would likely delay tank farm removal and thus harm that public interest.

This Commission Order adopts those provisions of the Commission Decision on the Morro Bay Power Plant Project which apply to demolition of the tank farm and the Order is limited to activities required for that demolition. The relevant text and Conditions of Certification from the Commission Decision are attached as **Appendix A**.

This Order adopts by reference the text, Conditions of Certification, Compliance Verifications, and Appendices contained in the Commission Decision which are related to and required for tank farm demolition, as listed in **Appendix A**. It also adopts specific requirements contained in the Commission Decision which ensure that demolition of the tank farm will be carried out in a manner to protect environmental quality, and to assure public health and safety.

FINDINGS

The Commission hereby adopts the following findings in addition to those contained in the accompanying text:

1. In its August 2, 2004 Decision the Commission determined that the Morro Bay Power Plant Project, sponsored by Duke Energy Morro Bay LLC, will provide local economic benefits and electricity reliability to the San Luis Obispo County area.

2. The Commission's August 2, 2004 Morro Bay AFC Decision includes a complete environmental analysis of all phases of the Morro Bay Power Plant Project including Phase 1, which is the demolition of the on-site fuel oil tank farm at the Project.

3. The discussion and the Conditions of Certification referenced and contained in the accompanying **Appendix A** are excerpted from the Commission's August 2, 2004 Decision and apply in whole or in part to tank farm demolition activities. If the relevant Conditions of Certification are implemented by the Project owner, they will ensure that tank farm demolition will be carried out 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.

4. Implementation of the Conditions of Certification referenced and contained in the accompanying **Appendix A** will ensure protection of environmental quality and assure reasonably safe and reliable conduct of demolition activities. 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.

5. The Decision contains a discussion of the public benefits of demolishing the tank farm as required by Public Resources Code section 25523(h). These benefits include the fact that tank farm demolition will improve the visual quality of the area and facilitate remediation of the tank farm location.

6. Removal of the Morro Bay tank farm is in the public interest.

7. Condition of Certification LAND-1, requiring the project owner to enter an outfall lease agreement has no physical relation or legal relevance to demolition of the tank farm.

8. To require imposition of Condition LAND-1 prior to allowing tank farm removal would likely delay such removal, thereby harming the public interest.

9. Demolition of the tank farm does not alter or impair operation of the existing Morro Bay Power Plant.

10. While demolition of the tank farm is a necessary precondition to construction of the proposed replacement power plant, tank farm demolition does not cause or commit or allow Duke Energy to begin construction of the proposed power plant.

11. The proceedings leading to this Decision have been conducted in conformity with the applicable provisions of Commission regulations governing the consideration of an Application for Certification and thereby meet the requirements of Public Resources Code, sections 21000 et seq., and 25500 et seq.

ORDER

Therefore, the Commission **ORDERS** the following:

1. The Petition for an Order Authorizing Demolition of the Morro Bay Tank Farm is hereby granted.

2. The approval of this Order is subject to the timely performance of the Conditions of Certification and Compliance Verifications referenced and enumerated in the accompanying **Appendix A**. The Conditions and Compliance Verifications are integrated with this Decision and are not severable therefrom. While the project owner may delegate the performance of a Condition or Verification, the duty to ensure adequate performance of a Condition or Verification may not be delegated.

3. The Commission's analysis of and findings regarding the effects of the Morro Bay Power Plant Project on the environment, including effects related to tank farm demolition, were determined by the Commission in its Decision on August 2, 2004.

4. This Order is adopted, issued, effective, and final on the date it is filed with the Commission's Docket Unit.

5. The Commission directs the hearing officer to file this Order with the Commission's Docket Unit.

6. Reconsideration of this Decision is governed by Public Resources Code, section 25530.

7. Judicial review of this Decision is governed by Public Resources Code, section 25531.

8. The Commission hereby adopts the Conditions of Certification, Compliance Verifications, and associated dispute resolution procedures as part of this Order to allow implementation of the compliance monitoring program required by Public Resources Code, section 25532. Upon the docketing of this Order pursuant to paragraphs 4 and 5 above, all conditions in this Order applicable to tank farm demolition take effect immediately and apply to all activities required to carry out tank farm demolition. This Order is limited to activities required for tank farm demolition.

9. Immediately after docketing of this Order, the Executive Director of the Commission shall transmit a copy of the Order and appropriate accompanying documents as provided by Public Resources Code, section 25537 and California Code of Regulations, title 20, section 1768.

Dated: June 22, 2005, at Sacramento, California.

JOSEPH DESMOND
Chairman

JACKALYNE PFANNENSTIEL
Vice Chair

ARTHUR H. ROSENFELD
Commissioner

JAMES D. BOYD
Commissioner

Absent
JOHN L. GEESMAN
Commissioner

Attachment: Appendix A *Morro Bay Decision References to Existing Tank Farm*

Proof of Service List (Revised on 6/22/05) filed with Original Document. Mailed from Sacramento on 6/23/05).

APPENDIX A

MORRO BAY DECISION
of August 2, 2004
REFERENCES[1]
TO EXISTING ON-SITE TANK FARM

INTRODUCTION

Page 2:

Duke anticipates that the Project will proceed in three stages: Phase I - demolition of the tank farm, which will take three months;....

The proposed Project will have a number of environmental benefits relative to the existing plant....four 145-foot-tall stacks, which are significantly lower than the three 450-foot-tall existing stacks, along with relocation of the power plant to the site of the existing tank farm north of the old plant, will reduce visual impacts....

PROJECT DESCRIPTION

Page 25:

Construction and Operation

Applicant estimates the cost of the Project to exceed $800 million. The Project will include the demolition of the on-site fuel oil tank farm...demolition of the tank farm, which will take three months;....

Page 26:

Footnote 3.

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.

Page 35:

Findings and Conclusions No. 4:

[1] References are to the 3rd Revised Presiding Member's Proposed Decision of June 2004, Publication Number P800-04-013.

4. The Project will be located at the site of the existing tank farm to meet local, community and Project objectives of reducing the industrial influence on the Embarcadero. The Project's reduced stack height and site location also meet local and Project objectives to reduce existing visual impacts.

COMPLIANCE AND CLOSURE

Page 38:

Applicant agreed with Staff's compliance findings and recommendations as set forth in Staff's errata with the exception of two proposed modifications. Applicant asks the Committee to grant the first of these modifications so that Duke may submit certain plans by Project phase as opposed to submittal by certain dates unrelated to the relevant phase of Project construction. Duke argues that the reason for this modification is that the Conditions of Certification should reflect the various phases of the Project (i.e., tank farm demolition,....

General Conditions of Certification

Page 44:

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.

Page 45:

CONSTRUCTION:

[From section 25105 of the Warren-Alquist Act.] Onsite work to install permanent equipment or structures for any facility. Construction does **not** include the following:

a. The installation of environmental monitoring equipment.
b. A soil or geological investigation.
c. A topographical survey.

d. Any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any particular facility.
e. Any work to provide access to the site for any of the purposes specified in a., b., c., or d.
f. Demolition of the tank farm.

AIR QUALITY

Page 159:

CONDITIONS OF CERTIFICATION

AQ-C1 Prior to ground disturbance at the project site, the project owner shall prepare a Construction Fugitive Dust Mitigation Plan that will specifically identify fugitive dust mitigation measures that will be employed for tank farm demolition and construction activities. ...

AQ-C2 The project owner shall mitigate, to the extent practical, tank farm demolition and construction related emission impacts from off-road, diesel-fired construction equipment. ...

HAZARDOUS MATERIALS MANAGEMENT

Page 194:

Conditions **HAZ-1**, and **HAZ-6** apply also to tank farm demolition.

WORKER SAFETY AND FIRE PROTECTION

Page 202:

Note: Relevant portions of Conditions **Worker Safety – 1** and **3** apply also to tank farm demolition activities.

WASTE MANAGEMENT

Page 219:

WASTE-3 Before demolition, the project owner shall assure that two workplans are prepared. The first workplan shall be for demolition of the onsite tank farm and include a detailed site characterization plan with soil and groundwater sampling and analysis to determine the extent and nature of contamination existing beneath the structures. ...

Page 221:

Note: relevant portions of all the above Conditions on Waste Management apply to tank farm demolition. However, Conditions **WASTE-4** and **5** apply to tank farm demolition only if soil excavation or grading is involved.

TERRESTRIAL BIOLOGY

Page 232:

- 3.0 acres of MSS iceplant habitat at the existing tank farm, which would be impacted by the new power block construction and be compensated at a 0.5:1 mitigation ratio at $60,000 per acre. This totals 1.5 acres and $91,500.

Page 233:

a. 3.0 Acres of Iceplant at Site of Proposed Power Block

The Duke witnesses argued against the requirement for compensatory mitigation to replace destruction of this habitat by Project construction. Applicant's reasons include: the land is not designated critical habitat, no MSS are present at the site, as an existing tank farm the area is highly fragmented and is subject to continual maintenance, and the nearest known MSS population is about .9 mile away. (6/4/02 RT 118-119.)

Page 234:

The unknowns surrounding this sensitive species, the fact that the area is within identified range of the MSS, and that the tank farm iceplant constitutes potential habitat within that range leads us to conclude that sufficient nexus exists between the Project's destruction of the iceplant acreage and the need to provide compensation. ...

Page 253:

Findings and Conclusions

1. In light of the unknowns surrounding the Morro shoulderband snail (MSS), the Project's location within the identified range of the MSS, the potential iceplant habitat within that range located at the existing tank farm, and the Project's proposal to permanently eliminate that potential habitat, sufficient nexus exists between the Project's destruction of the iceplant acreage and the need to provide compensatory habitat for the MSS.

Page 270:

Note: The following Conditions apply also to tank farm demolition activities; **BIO-T-1** through **BIO-T-5**, **BIO-T-7**, **BIO-T-10**, **BIO-T-12, BIO-T-13, and BIO-T-17** (if the access road is used during demolition).

SOIL AND WATER RESOURCES

Page 389:

Soil contamination by petroleum hydrocarbons is evident in the Switchyard. Limited testing within the aboveground fuel oil tank farm identified minor TPH contamination extending down to the soil-groundwater interface. No soil sampling or testing has been conducted beneath the existing oil tanks. Soil contamination is addressed in the **Waste Management** section of this Decision. See the FSA for further discussion regarding soil contamination. (*Id.*)

Page 406-407:

A portion of the Project site is located within the 100-year floodplain along Morro Creek. (Ex. 177, p. 7.) However, Duke conducted a Morro Creek Flood Hazard Evaluation (Ex. 56.) and found that the crest elevation of the existing tank farm berms is in excess of 8 feet above the 100-year water surface elevation. (Ex. 177, p. 8.)

Page 409:

6. Conditions

Applicant expressed concerns regarding the wording of Conditions **SOIL & WATER 1 and 2** as it related to the timing of the required Storm Water Pollution Prevention Plans (SWPPPs). The Duke witnesses found this condition generally acceptable with relatively minor clarifications. (Ex. 177 p. 25; 3/13/02 RT 56.) The purpose of the proposed change is to avoid submission of all SWPPPs at the beginning of tank farm demolition. (*Id.* RT 192.) Staff agreed with phasing the submission of the SWPPP plans, so that the plan submitted prior to tank farm demolition would be limited to potential impacts of that phase of the Project only. (*Id.* 232-234.) We have made the recommended change using Staff's proposal. Condition **SOIL & WATER 3** was not disputed and a minor correction was made. (Ex. 177, p. 26; 3/13/02 RT 58, 193.)

Applicant also recommended changes to Condition **SOIL & WATER 4,** which requires Applicant to meet the substantive requirements of a grading permit required by the City of Morro Bay's Flood Damage Protection Plan Ordinance. After some give and take on the record, Staff agreed to consider the phased timing of the permit information. The change allows Applicant to move forward on tank farm demolition without having to first complete all grading plans for the construction phase of the Project. The original requirement could result in delaying the tank farm demolition. (Ex. 177, p. 26; 3/13/02 RT 58-59, 193-194, 232-234.) Because Duke's recommendation provides for adequate compliance with permit requirements while avoiding unnecessary delay, we adopt Applicant's recommendation.

Page 411:

We have adopted Staff's language as best addressing the groundwater concerns while recognizing the phased nature of the Project. However, in its PMPD comments Duke again sought a change in this condition in order to limit its application only to the case

where the Regional Board has not certified MTBE contamination as fully remediated. Staff opposes Applicant's recommended change because the existing condition in the PMPD addresses not only MTBE issues, but also well drawdown. The matter was fully aired during hearings and we are not persuaded to adopt Applicant's change. However, we have added language following the conditions to clarify the fact that this and other conditions only apply to tank farm demolition in the event that groundwater is pumped for such demolition activities.

Page 412:

Finally, the Duke witnesses proposed that the verification for this condition be amended such that the required aquifer test and analysis be submitted 60 days prior to commencement of the construction phase of the Project rather than site mobilization (meaning tank farm demolition). (Ex. 177, p. 31.) Staff and the City opposed this change. (3/13/02 RT. 198, 250.) We think it is reasonable to require testing only prior to the construction phase of the Project. Therefore, we have modified the condition to reflect this change.

Page 413:

... However, Duke expressed concern that the cost be limited to the amount agreed upon and that the verification for the Condition not link submission and approval of the CLOMR to site mobilization for the Project. Applicant argues that such linkage 1) is not required by law (Ex. 177, p. 32-34.), 2) is a matter between the City and FEMA as to the application and approval of the CLOMR and, 3) the process of submittal, review, and approval is likely to take an extended amount of time and, if linked to site mobilization, could delay the start of tank farm demolition. (Duke Reply Brief on Group III Topics, pp. 32-43.)

Page 415-416:

Conditions of Certification

SOIL & WATER 1: Prior to site mobilization of all project elements including off-site staging, laydown areas, and linear facilities, the project owner shall obtain Energy Commission CPM approval for the Final Storm Water Pollution Prevention Plans (SWPPP) as required under the General Stormwater Construction Activity Permit for the project. The project owner may provide the SWPPP in two phases, the first of which addresses tank demolition, and the second of which addresses all the other components of the project.

Verification: No later than 60 days prior to site mobilization for Tank Farm Demolition, the Project Owner will submit copies of the final Storm Water Pollution Prevention Plan (SWPPP) for Tank Farm Demolition to the Energy Commission Compliance Project Manager (CPM) for review and approval and the City of Morro Bay for comments.

No later than 60 days prior to site mobilization for Power Plant Construction, the Project Owner will submit copies of the final Storm Water Pollution Prevention Plan (SWPPP) for Power Plant Construction to the Energy Commission Compliance Project Manager (CPM) for review and approval and the City of Morro Bay for comments.

SOIL & WATER 2: Prior to beginning any site mobilization of all project elements including off-site staging, laydown areas, and linear facilities, the project owner shall obtain CPM approval of a final erosion and sediment control plan and stormwater management plan that addresses all project elements. The project owner may provide the SWPPP in two phases, the first of which addresses tank demolition, and the second of which addresses all the other components of the project.

Verification: No later than 60 days prior to site mobilization for Tank Farm Demolition, the Project Owner will submit copies of the erosion and sediment control plans and storm water management plan in the form of engineering drawings for the Tank Farm Demolition to the Energy Commission Compliance Project Manager (CPM) for review and approval and the City of Morro Bay for comments. Approval of the final plans by the CPM must be received prior to site mobilization for Tank Farm Demolition.

No later than 60 days prior to site mobilization for Power Plant Construction, the Project Owner will submit copies of the erosion and sediment control plans and storm water management plan in the form of engineering drawings for Power Plant Construction to the Energy Commission Compliance Project Manager (CPM) for review and approval and the City of Morro Bay for comments. Approval of the final plans by the CPM must be received prior to site mobilization for Power Plant Construction.
Page 420:

Note that the following **SOIL & WATER** conditions apply also to tank farm demolition activities: **SOIL & WATER – 1, 2, 4,** and **6**. In addition, if the Project owner will be pumping groundwater for demolition activities, **SOIL & WATER – 7**, **8**, and **10** will apply.

CULTURAL RESOURCES

Page 423:

... Two previously recorded archaeological sites have been identified within the Project vicinity. In addition, Applicant has tested a third deposit in the area of the tank farm and recommended that it meets the eligibility requirements of the California Register of Historic Resources (CRHR). (Ex. 143, p. 2-6.)

Page 426:

3. Impacts

All impacts to cultural resources at the Project Site will be mitigated to below a level of significance. The use of existing infrastructure will minimize impacts to archaeological sites in the vicinity of the Project. This infrastructure includes cooling water intake and discharge pipelines, natural gas pipelines, and an electrical switchyard. However, the existing tank farm area may contain cultural deposits which could be affected by the installation of piles needed to support the new combined-cycle units. (Ex. 134, p. 102.) Nevertheless, the field survey conducted by Duke did not reveal unrecorded or prehistoric surface cultural resources within the Project site or adjacent areas which will be disturbed

during construction. Soils in these areas are generally made up of deposited dredge spoils placed on top of native soils by the U.S. Navy during World War II. (Ex. 134, p. 103.) However, later geotechnical testing revealed several subsurface potential locations of prior human habitation and both testing and data recovery was carried out at one location. (Ex. 143, pp. 2-13 to 2-14.)

Page 449:

Note that all of the above Cultural Resource Conditions are applicable to tank farm demolition.

GEOLOGY AND PALEONTOLOGY

Page 463:

Note that Conditions **PAL-1** through **PAL-6** apply to tank farm demolition activities where such activities involve excavating into undisturbed soil.

LAND USE

Page 466:

The acreage of the existing power generation facility footprint is 9.61 acres and includes the power plant buildings, transformers, stacks, shop, warehouse and office buildings, and parking. However, this figure does not account for the existing tank farm occupying approximately 24 acres. Thus, the total area for the existing MBPP is 33.61 acres. (Ex. 4, p. 1-29.) ...

Page 471:

Footnote 162:

These additional benefits include demolition of the existing tank farm, the reduction in noise, the construction jobs, the $10 million local purchasing program, increased revenues to the City of Morro Bay, increased revenues to the County, and to local schools. (3/12/02 RT 261-262.)

Page 472-473:

CAPE argues the Project is an expansion based solely upon the claim of an increase in the "footprint" of the facility from 9.61 acres to 14 acres. However, the facts in evidence do not support CAPE's position. When the total footprint of the existing industrial facility, including the tank farm, is taken into account, the Project will result in a significantly smaller footprint than the existing facility. Staff agreed that the tank farm should be considered in any such comparison on this issue. (3/12/02 RT 327). Furthermore, the change in the footprint of the Project is not a controlling factor. Other considerations include the facts that the existing facility is being completely demolished and replaced by one with a much smaller overall height and total volume. (Ex. 185 p. 2.) Nor are we

persuaded by CAPE's argument that the Project amounts to an expansion under the "plain meaning" of the word "expansion." (CAPE Opening Brief on Group III Topics, p. 51.)

Footnote 163:

The 9.61-acre figure for the existing project does not include the existing tank farm. (Ex.143 at p. 3-10). The tank farm is an additional approximately 24 acres. (Ex. 4 at p. 1-29). Thus, the footprint of the entire existing project is 33.61 acres. Since the new project includes demolition of both the existing power block and the tank farm, the total footprint will be decreasing from 33.61 acres to 14 acres.

Page 483:

Note that Conditions **Land - 3, 4**, and **5** apply to tank farm demolition activities if lay down and/or staging areas will be used for such activities.

NOISE AND VIBRATION

Page 489:

a. Construction Noise

Construction noise is usually considered a temporary phenomenon under a CEQA analysis. Duke has organized the construction period for the Project into three different phases: demolition of the tank farm (a 3-month effort), construction of the new power plant and demolition of the existing 450-foot tall stacks (21 months), and dismantling of the existing power plant generation units (32 months). Construction and demolition of an industrial facility such as a power plant is typically noisier than permissible under usual noise ordinances. In order to allow the construction of new facilities, construction noise during certain hours is commonly exempt from enforcement by local ordinances.

Page 491:

The Applicant and Staff also analyzed noise impacts of construction truck traffic. Predicted noise levels due to truck traffic are shown by in the FSA. (Ex. 115, p. 3.3-10, NOISE: Table 5.) Analysis by both Staff and Applicant determined that the predicted cumulative truck traffic noise levels would be insignificant. (Ex. 115, p. 3.3-10.) Other sources of construction noise include demolition of the existing tank farm, (Ex. 115, p. 3.3-11.) and of the existing plant and stacks. (*Ibid.*) No explosives will be used during the demolition process. To mitigate the noise of construction and demolition activities, Staff proposed a series of conditions, which are discussed below. These include requirements for mitigation steps including temporary noise barriers, equipment enclosures, and fitting construction equipment with silencers. (Ex. 115, p. 3.3-12.)

Page 503:

NOISE-2 Throughout the construction and operation of the project, the project owner shall document, investigate, evaluate, and attempt to resolve all project related noise complaints.

Protocol: The project owner or authorized agent shall:

- Use the Noise Complaint Resolution Form, or functionally equivalent procedure acceptable to the CPM, to document and respond to each noise complaint;
- Attempt to contact the person(s) making the noise complaint within 24 hours;
- Conduct an investigation to determine the source of noise related to the complaint;
- If the noise is project related, take all feasible measures to reduce the noise at its source; and
- Submit a report documenting the complaint and the actions taken. The report shall include: complaint summary, including final results of noise reduction efforts; and, if obtainable, a signed statement by the complainant stating that the noise problem is resolved to the complainant's satisfaction. The project owner shall provide a copy of the written noise complaint report to the complaining party at the same time the report is submitted to the CPM, provided that the complainant has included a contact number or address with the complaint.

Verification: Within 30 days of receiving a noise complaint, the project owner shall file a copy of the Noise Complaint Resolution Form, or similar instrument approved by the CPM, with the City of Morro Bay Planning Department, with the complainant (if the complainant supplied an address) and with the CPM, documenting the resolution of the complaint. If mitigation is required to resolve a complaint, and the complaint is not resolved within a 30-day period, the project owner shall submit an updated Noise Complaint Resolution Form when the mitigation is finally implemented.

Page 507:

NOISE-9 The project design and implementation shall include noise mitigation measures adequate to ensure that tank farm demolition; power building and stack demolition will not cause resultant noise levels to exceed the ambient background noise level (L_{90}) at residential receivers by more than 5 dBA, except as modified by the CPM in accordance with item B below.

Protocol:

A. Upon request by the CPM, the project owner shall conduct one-hour noise measurements during tank farm demolition; power building, and stack demolition at monitoring sites 1, 2, and 4.

B. If the results from the noise survey indicate that noise due to the tank farm demolition, power building, or stack demolition has caused the background noise level (L_{90}) at the most affected receptor to increase by more than 5 dBA for any given hour during the measurement period, the project owner shall implement reasonable mitigation measures, per concurrence of the CPM, to reduce noise to a level of compliance with this limit to the fullest extent practical, as determined by the CPM.

Page 508:

Note that Condition **Noise – 1, 3, 8,** and **9** apply to tank farm demolition activities.

TRAFFIC AND TRANSPORTATION

Page 549:

Note that Conditions **Trans -1, 2, 3, 5, 6,** and **7** apply also to tank farm demolition activities.

VISUAL

Page 554:

... Vapor plumes from the Project could be seen from greater distances than the power plant structures, particularly on clear days that coincide with favorable meteorological conditions for plume formation (low temperature and high humidity). The proposed Project would be located just north of the existing plant at the site of the tank farm.

While views of the site are available from all directions, immediate foreground views are now typically dominated by the existing power plant with its three 450-foot tall stacks, tank farm and complex linear features of the switchyard. From the north, most foreground views of the site are at least partially screened by existing development and vegetation.

Page 566:

Findings and Conclusions

1. For the purposes of the Commission's visual analysis pursuant to CEQA and the Warren-Alquist Act, the baseline against which Project impacts are evaluated consists of the existing Morro Bay viewscape, including the existing power plant with its three 450-foot stacks, its power plant building measuring 500-feet long, 300-

feet deep, and 148-feet high, as well as an adjacent tank farm. The Project calls for demolition and removal of these facilities.

Page 573:

Note that Condition **VIS-4** also applies to tank farm demolition activities.

PROJECT ALTERNATIVES

Page 579:

.... Other Project objectives which are infeasible under the Staff approach include installation of a roadway around the MBPP property, construction of a bridge across Morro Creek, as well as demolition of the existing facilities including the 450-foot power plant stacks, the existing power building, and the existing oil tank farm. ...

Page 583:

The AFC also presented four configurations within the onsite tank farm area as alternatives to the configuration proposed for the project. (Ex. 4, pp. 5-15 to 5-16 and Figure 5-2.).

- The new units perpendicular to each other (the configuration selected as the Project as defined by this AFC);
- Stacks back to back, plant configuration perpendicular to the coast (shift to northern most section of the tank farm);
- Stacks in a row, perpendicular to the coast; and
- Stacks back to back, plant configuration perpendicular and parallel to the coast to form two sides and the corner of a square.

Page 585:

... David Nelson is a resident of Morro Bay who thinks more analysis should have been carried out on the Morro Bay tank farm as an alternative site. He believes that the risks to the estuary of withdrawing once-through cooling water are not well understood, that the Army Corps of Engineers is already addressing the estuary's siltation problem, and that a private company such as Duke should not benefit from its impacts to the estuary. For these reasons he favors the use of an alternative site such as the tank farm. (*Id.* RT 89-92.)

OVERRIDE

Page 600:

- The Project will be located on the site of the existing tank farm to meet local and Project objectives of reducing the industrial influence on the Morro Bay Embarcadero.

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

June 23, 2005

TO: All Parties

RE: Morro Bay Power Plant Project
Proof of Service List
Docket No. 00-AFC-12

Enclosed please find along with the *Commission Amended Order Authorizing Demolition of the Morro Bay Tank Farm* a revised Proof of Service List for the above mentioned project. The only change to the Proof of Service is in the Morro Bay Siting Committee. The new Proof of Service List can be found on the Commission's Web Site at http://www.energy.ca.gov/sitingcases/morrobay/index.html. Please use this list for all filings and submittals.

Please review this information and let us know if you would like to be removed from the Proof of Service or if there are any changes in your contact information.

Dated in Sacramento, California on June 23, 2005.

MAGGIE READ
Hearing Adviser's Office

Attachments

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	)	**PROOF OF SERVICE LIST**
Morro Bay Power Plant Project	)	***[*Revised 06/21/05]***
(MORRO BAY)	)	

I, Maggie Read, declare that on June 23, 2005, I deposited copies of the attached Commission Amended Order Authorizing Demolition of the Morro Bay Tank Farm in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

DOCKET UNIT

Send the original signed document plus the required 12 copies to the address below:

CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
***Attn: Docket No.: 00-AFC-12**
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* * * *

In addition to the documents sent to the Commission Docket Unit, also send individual copies of any documents to:

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***Revisions to POS List, i.e. updates, additions and/or deletions**
MORRO BAY POWER PROJECT Docket No. 00-AFC-12

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

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