

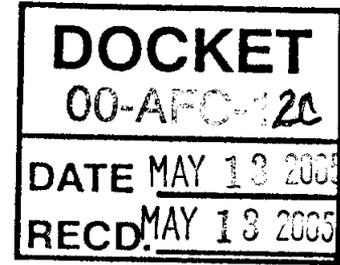
STATE OF CALIFORNIA
STATE ENERGY RESOURCES

CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:

MORRO BAY MODERNIZATION
AND REPLACEMENT PROJECT
(DUKE ENERGY)

Docket No. 00-AFC-12



CITY OF MORRO BAY'S WRITTEN COMMENTS
RE: PRESIDING MEMBER'S PROPOSED
AMENDED ORDER AUTHORIZING DEMOLITION
OF MORRO BAY TANK FARM

Robert W. Schultz, Esq.
City Attorney
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442
(805) 772-6200
(805) 772-6572 (Facsimile)
rschultz@morro-bay.ca.us

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The City of Morro Bay ("City") respectfully submits its written comments pursuant to the Notice of Availability of the Presiding Member's Proposed Amended Order of April 26, 2005, Authorizing Demolition of the Morro Bay Tank Farm. Although the City disagrees with some of the conclusions and statements made in the Proposed Amended Order, it is supportive of the findings and conclusions overall. This brief will set forth certain disagreements with or suggested changes to the Proposed Order relying on the Presiding Member's Commission Decision and the City's prior filings, as well as the entirety of the record. Where appropriate, we have also included suggested wording changes to various Conditions of Certification.

II. GENERAL CONDITIONS OF CERTIFICATION

The City is concerned that the General Conditions of Certification do not include definitions of Ground Disturbance and Grading. Since the City is unable to determine whether these activities will occur during demolition of the tank farm, the City requests the following General Conditions of Certification be added:

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GROUND DISTURBANCE:

Onsite activity that results in the removal of soil or vegetation, boring, trenching or alteration of the site surface. This does not include driving or parking a passenger vehicle, pickup truck or other light vehicle, or walking on the site.

GRADING:

Onsite activity conducted with earth-moving equipment that results in alteration of the topographical features of the site such as leveling, removal of hills or high spots, or moving of soil from one area to another.

III. HAZARDOUS MATERIALS MANAGEMENT

The City is concerned that **HAZ-6** does not adequately reflect tank farm demolition and requests the following language be added:

HAZ-6 The project owner shall direct all vendors delivering or removing any hazardous material to or from the site to use only the route(s) approved by the CPM.

Verification: At least 60 days prior to receipt or removal of any hazardous materials on site, the project owner shall submit copies of the required transportation route limitation to the City for review and comment and to the CPM for review and approval.

IV. WORKER SAFETY AND FIRE PROTECTION

The City is concerned that this section states that “Relevant portions of Conditions **Worker Safety – 1 and 3** apply also to tank farm demolition activities.” In order to ensure that disputes do not arise, the Commission should state which relevant portions will apply to tank farm demolition. The City proposes the following language is relevant:

WORKER SAFETY-1 The project owner shall submit to the CPM a copy of the Project Demolition Safety and Health Program, containing the following:

- A Demolition Illness and Injury Prevention Program;
- A Demolition Personal Protective Equipment Program;
- A Demolition Exposure Monitoring Program;
- A Demolition Emergency Action Plan; and
- A Demolition Fire Protection and Prevention Plan.

The Demolition Illness and Injury Prevention Program, the Personal Protective Equipment Program, and the Exposure Monitoring Program shall be submitted to the CPM for review and approval concerning compliance with applicable Cal/OSHA Safety Orders. The Demolition Safety and Health Program shall be submitted to the Morro Bay Fire Department for review and comment prior to submittal to the CPM for review and approval.

Verification: At least 30 days prior to the start of demolition, the project owner shall submit to the CPM for review and approval a copy of the Project Demolition Safety and Health Program. The project owner shall submit to the Morro Bay Fire Department for review and comment the Demolition Safety and Health Program.

The Project Owner shall incorporate or reconcile all Fire Department comments and recommendations.

WORKER SAFETY-3 The project owner shall negotiate and enter into an agreement with the City of Morro Bay for Fire Protection and Hazardous Materials Services. These services shall include a detailed description of the services to be provided, a list of the plans requested and/or required by the City of Morro Bay Fire Department (MBFD) for demolition of the proposed facility, a schedule for the submittal of those plans, and the cost reimbursement to the City from the project owner for these services. The schedule shall take into account all requirements for submittal to the CMP as per the Worker Safety and Hazardous Materials Conditions of Certification. When implementing this agreement, the CPM will review and approve all plans after receiving comments from the MBFD. The CPM will give the highest consideration to comments received from the MBFD and to the consistency of the agreement with relevant terms described in AFC Appendix 6.10-5 and the Agreement to Lease between the project owner and the City of Morro Bay.

Verification: At least 30 days prior to the start of site preparation activities, the project owner shall submit to the CPM a copy of the final executed Agreement between the City of Morro Bay and the Project Owner.

V. WASTE MANAGEMENT

Once again, the City is concerned that this section states that “relevant portions of all the above Conditions on Waste Management apply to tank farm demolition.” In order to ensure that disputes do not arise, the Commission should state which relevant portions will apply to tank farm demolition. In addition, Conditions of Certification should be modified to confirm that the project owner must conduct the appropriate remediation, not PG&E. PG&E is not a party to these proceedings and the Commission should not, and cannot, rely on it to perform under the private agreement with Duke as part of the licensing. The City proposes the following language is relevant:

WASTE-1 Upon becoming aware of any impending waste management-related enforcement action, the project owner shall notify the CPM of any such action

taken or proposed to be taken against it, or against any waste hauler or disposal facility or treatment operator with which the owner has contracted.

Verification: The project owner shall notify the CPM in writing within 10 days of becoming aware of an impending enforcement action.

WASTE-2 Prior to the start of demolition of the tank farm, the project owner shall prepare and submit to the IWMA, the City of Morro Bay for review and comment and to the CEC CPM, for review and approval, a waste management plan for the demolition of existing onsite fuel oil tanks. Each plan shall contain, at a minimum, the following:

- A description of all expected waste streams, including projections of frequency and hazard classifications; and
- Methods of managing each waste, including treatment methods and companies contracted with for treatment services, waste testing methods to assure correct classification, methods of transportation, disposal requirements and sites, and recycling and waste minimization/reduction plans.
- A stated goal that not less than 80 percent of all demolition wastes will be recycled. Measures that will allow that goal to be achieved should be identified.
- A statement that the project owner will participate in the local recycling program to the extent that the local program is consistent with state law.

Should unusual circumstances arise that make the numerical recycling goals infeasible, the applicant may submit a request to the CPM to amend the goals. Such a request shall include a discussion of the facts that make the goals infeasible, and identification of new goals, along with a demonstration that the new goals are appropriate.

Verification: No less than 60 days prior to the start of demolition, the project owner shall submit the appropriate waste management plans to the IWMA and the City of Morro Bay for review and comment, and to the CPM for review and approval. The project owner shall submit any required revisions within 30 days of notification by the CPM (or mutually agreed-upon date). In the Annual Compliance Reports, the project owner shall document the actual waste management methods used during the year compared to planned management methods and the actual tonnage of material recycled and disposed.

WASTE-3 Before demolition, the project owner shall assure that a workplan is prepared. The 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. The workplan shall be provided to the DTSC, the Administering Agency, for review and approval, and the CEC CPM and the City of Morro Bay

for information. If contaminated soil or groundwater is found to exist, the project owner shall contact the DTSC for further guidance and possible oversight. In no event shall any demolition commence that involves either the movement of contaminated soil or construction on contaminated soil until the CPM has determined that all necessary remediation has been accomplished.

Verification: At least sixty (60) days prior to commencement of tank demolition, the project owner shall provide the appropriate workplan to the DTSC for review and approval. The DTSC will be responsible for distributing the workplan to the Central Coast Regional Water Quality Control Board, the City of Morro Bay and other interested regulatory agencies, and for coordinating comments back to the project owner within 30 days. The Project Owner shall provide a copy of each workplan to the CEC CPM and the City of Morro Bay for information. Within thirty (30) days of completion of the sampling and analysis and prior to the initiation of any demolition activities, the project owner shall provide the results of the sampling and analysis to the California Department of Toxic Substances Control. The DTSC will be responsible for distribution of copies of the sampling and analysis results to CCRWQCB, the City of Morro Bay, and other interested regulatory agencies. The project owner shall provide a copy to the CPM for information.

WASTE-4 The project owner shall have an environmental professional available for consultation if any soil excavation and grading activities occur during demolition of the tank farm. The environmental professional shall meet the qualifications of such as defined by the American Society for Testing and Materials designation E 1527-97 (or updated) Standard Practice for Phase I Environmental Site Assessments, as evidenced by one of the following or similar credentials: (1) Certified Industrial Hygienist with experience in worker exposure monitoring, (2) Qualified Environmental Professional certification, (3) Registered Environmental Assessor II, or (4) Registered Professional Engineer with experience in remedial investigation and feasibility studies.

Verification: At least thirty (30) days prior to the start of demolition, the project owner shall notify the CPM and the City of Morro Bay as to whether there will soil excavation and grading activities associated with demolition and, if so, submit the qualifications and experience of the environmental professional to the CPM for approval and to the City for comments.

WASTE-5 If potentially contaminated soil is unearthed during demolition, the environmental professional shall inspect the site, determine the need for sampling to confirm the nature and extent of contamination, and file a written report with the project owner, the City of Morro Bay, the CPM and DTSC stating the recommended course of action, prior to any further construction activity at that location. If, in the opinion of the environmental professional, significant

remediation may be required, the project owner shall contact the DTSC for guidance and possible oversight.

Verification: The project owner shall submit any reports filed by the environmental professional to the CPM and the City of Morro Bay within five days of their receipt.

WASTE-6 Prior to commencement of tank farm demolition, the project owner shall prepare a schedule describing the remediation of hazardous wastes on the site and provide the schedule to DTSC, the Administering Agency. This schedule should also include the name of the Responsible Party for hazardous waste remediation and should be provided to the CPM for information. The DTSC will be responsible for providing the schedule to the City of Morro Bay, the CCRWQCB, and all other interested regulatory agencies for review and comment.

Verification: At least sixty (60) days prior to commencement of tank farm demolition, the project owner shall provide the schedule to the California Department of Toxic Substances Control for review. The DTSC will be responsible for distributing the schedule to the Central Coast Regional Water Quality Control Board, the City of Morro Bay and other interested regulatory agencies and for coordinating comments back to the project owner within 30 days. The Project Owner shall provide a copy of the schedule to the CPM for information.

VI. TERRESTRIAL BIOLOGY

The City requests that it be given a review and comment period under **BIO-T-1**. The City also requests the inclusion of **BIO-T-2, 3 and 4** in the Conditions of Certification for the tank farm demolition if there is going to be ground disturbance or grading. Under **BIO-T-7 and 10**, the City requests that it be given a copy of the CDFG Consistency Determination and/or Incidental Take Permit and/or Section 7 Biological Opinion.

VII. GEOLOGY AND PALEONTOLOGY

With respect to Condition of Certifications for GEOLOGY AND PALEONTOLOGY, the City respectfully requests that its role of review and comment be added to **PAL-1** through **Pal-6**, so that they will be consistent with the other Conditions throughout the PMPD.

VIII. LAND USE

With respect to Condition of Certifications for LAND USE, the City respectfully requests that its role of review and comment be added to **LAND-3, 4, and 5**, so that the Conditions are consistent with the other Conditions throughout the PMPD.

In addition, the City is adamant that **LAND-1** be added to the Conditions for Demolition. The Outfall Canal used by Duke for discharge purposes is subject to a 50-year agreement between the City of Morro Bay and Duke. The 50-year Agreement, which may not be extended or held over under the granting statutes, expired on November 14, 2004. Since the Lease between the City and Duke has expired, Duke is currently trespassing on the City's State Tide and Submerged Lands. Prior to the commencement of demolition, Duke must be required to secure a long-term lease with the City of Morro Bay for the use of the Outfall Canal. (*See* written testimony of Rick Algert on behalf of the City of Morro Bay, Exhibit 118, admitted on December 17, 2001.) Mr. Algert's testimony (also found at pages 315-318 of the official transcript) is undisputed. Indeed, Mr. Trump, testifying on behalf of Duke, admitted: "We agree that we need to renew the Outfall easement which expires November 14, 2004" (transcript at 270:4-6), and that: "We agree that prior to commencement of construction, we will have to secure a long-term lease for the Outfall easement." (Transcript at 270:18-20.) Moreover, the granting statutes¹ specifically prohibit franchises (leases) in excess of 50 years. (*See, e.g.,* Chapter 1076 of the Statutes of 1947, Section 1(a)). It is undisputed that the County of San Luis Obispo and PG&E (with Morro Bay and Duke as their successors) entered into a 50-year lease agreement on November 15, 1954, which expired on November 14, 2004.

¹ These include: Chapter 1076 of the Statutes of 1947, amended by Chapter 413 of the Statutes of 1955, Chapter 1874 of the Statutes of 1957 and Chapter 70 of the Statutes of 1960.

As the Commission is well aware, projects cannot be "Data Adequate" when site control or LORS conformity is lacking. Thus, Duke must obtain a new Outfall Lease Agreement from Morro Bay prior to the commencement of any phase of the project. Failure to include this condition as part of the demolition phase will surely invite litigation.

IX. SOCIOECONOMICS

City Staff will expend a tremendous amount of time reviewing and commenting on the various aspects of the demolition and construction project. Therefore, the City requests the following condition be added:

SOCIO-3 In order to be able to adequately fulfill the role established for responsible agencies under Title 20 and to adequately review and comment on the numerous plans and documents set forth in the Conditions of Certification, the City of Morro Bay will need to assign staff, hire consultants, and assign other limited City resources to this project. Since the City's resources are extremely limited, the project owner shall negotiate and enter into an agreement with the City of Morro Bay for reasonable costs associated with the project.

Verification: At least 30 days prior to the start of demolition, the project owner shall submit to the CPM a copy of the final executed Agreement between the City of Morro Bay and the project owner.

X. TRAFFIC AND TRANSPORTATION

The Project was analyzed with truck traffic using a newly constructed bridge and Atascadero Road to Main Street. This will not be the case with demolition. Therefore, **TRANS-4** should be added and the project owner should be required to do pre- and post-demolition inspections that would include evaluations of subsurface roads and utility conditions to determine the extent of any project impacts, and repairs necessitated by those project impacts. In addition, **TRANS-7** should be modified to include "any project-related impact," not just the

impacts at Main Street and Atascadero Road, since the demolition trucks will not be able to use that route without a bridge.

XI. CONCLUSION

For the foregoing reasons, the City respectfully requests that certain changes and additions be made to the Presiding Member's Proposed Amended Order Authorizing Demolition of the Morro Bay Tank Farm. The City looks forward to discussing these matters with the Committee on May 20, 2005.

Dated: May 13, 2005

Respectfully submitted,



Robert Schultz
City Attorney for Intervener City of Morro Bay

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA }
 }
COUNTY OF SAN LUIS OBISPO }

I, the undersigned, declare that I am employed in the County of San Luis Obispo, State of California. I am over the age of 18 years and not a party to the within action. My business address is 595 Harbor Street, Morro Bay, CA 93442.

On May 13, 2005, I served in the manner indicated below the foregoing documents, described as:

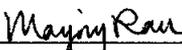
**CITY OF MORRO BAY'S WRITTEN COMMENTS
RE: PRESIDING MEMBER'S PROPOSED
AMENDED ORDER AUTHORIZING DEMOLITION
OF MORRO BAY TANK FARM**

on the interested parties in this action by placing a true copy(ies) thereof in a sealed envelope(s) addressed to all parties on the attached service list.

I caused such envelope(s) to be deposited in the United States Mail at Morro Bay, California, with postage thereon fully prepaid. I am familiar with the City of Morro Bay's practice of collecting and processing correspondence for mailing. It is deposited with the United States postal service each day, and that practice was followed in the ordinary course of business for the service herein attested to. [CCP §1013(a)(3).]

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

Executed on May 13, 2005, at Morro Bay, California.



Marjory Rau

**SERVICE LIST
00-AFC-12**

Duke Energy North America, LLC
Kevin R. Johnson
505 14th Street, Suite 940
Oakland, CA 94612

Duke Energy North America, LLC
Peter Okurowski
505 14th Street, Suite 940
Oakland, CA 94612

Christopher T. Ellison
Ellison, Schneider & Harris LLP
2015 H Street
Sacramento, CA 95814-3109

Jane E. Luckhardt
Downey, Brand, Seymour & Rohwer
555 Capitol Mall, 10th Floor
Sacramento, CA 95814

San Luis Obispo County APCD
David Dixon, Engineering Manager
3433 Roberto Court
San Luis Obispo, CA 93401-7126

California Coastal Commission
Tom Luster
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Roger Briggs, Executive Officer
Regional Water Quality Control Board
Central Coast Region
81 Higuera Street, Suite 200
San Luis Obispo, CA 93401-5427

Native American Heritage Commission
Attention: Rob Wood
915 Capitol Mall, Room 364
Sacramento, CA 95814

Morro Bay Estuary Project
Attention: Dan Berman
601 Embarcadero, Suite 11
Morro Bay, CA 93442

California State Parks
Attention: Mike Walgren
750 Hearst Castle Road
San Simeon, CA 93452-9740

National Marine Fisheries Service
Attention: Bryant Chesney
501 West Oceana Blvd., Suite 4200
Long Beach, CA 90802

California Department of Fish & Game
Attention: George Isaac
20 Lower Ragsdale Drive, Suite 100
Monterey, CA 93940

Bonita Churney, Esq.
Bryan Cave LLP
PO Box 764
Morro Bay, CA 93443

Mr. Babak Naficy
Law Offices of Babak Naficy
1204 Nipomo Street
San Luis Obispo, CA 93401

Deborah A. Sivas, Director
Earthjustice Environmental Law Clinic at Stanford
553 Salvatierra Walk
Stanford, CA 94305-8620

Patti Dunton
Cultural Resources Director
14650 Morro Road
Atascadero, CA 93422

Barry C. Groveman and Steven J. Elie
Musick, Peeler & Garrett
One Wilshire Blvd., Suite 2000
Los Angeles, CA 90017

The Coastal Alliance on Plant Expansion
c/o Jack McCurdy & David Nelson
PO Box 526
Morro Bay, CA 93443

Caryn Holmes
Staff Counsel
California Energy Commission
1516 Ninth Street – MS14
Sacramento, CA 95814

Docket Optical System - Docket No. 00-AFC-12: Written Comments

From: "Marjy Rau" <MRau@morro-bay.ca.us>
To: <docket@energy.state.ca.us>
Date: 5/13/2005 11:45 AM
Subject: Docket No. 00-AFC-12: Written Comments
CC: <ddixon@co.slo.ca.us>, <tluster@coastal.ca.gov>, <gisaac@dfg.ca.gov>, <jluckhardt@downeybrand.com>, <cgraber@energy.state.ca.us>, <cholmes@energy.state.ca.us>, <ctooker@energy.state.ca.us>, <gfay@energy.state.ca.us>, <jboyd@energy.state.ca.us>, <jcaswell@energy.state.ca.us>, <jgeesman@energy.state.ca.us>, <kkennedy@energy.state.ca.us>, <pflint@energy.state.ca.us>, <sharris@energy.state.ca.us>, <wkeese@energy.state.ca.us>, <cte@eslawfirm.com>, <jdh@eslawfirm.com>, <kam@eslawfirm.com>, <bnaficy@ix.netcom.com>, <dberman@mbnep.org>, <mmultari@mbnep.org>, <b.groveman@mpglaw.com>, <s.elie@mpglaw.com>, <bryant.chesney@noaa.gov>, <rw_nahc@pacbell.net>, <mwalg@parks.ca.gov>, <rbriggs@rb3.swrcb.ca.gov>, <moniqueanddavid@sbcglobal.net>, <hplgroot@slonet.org>, <jmccurdy@slonet.org>, <dsivas@stanford.edu>

Attached please find an electronic copy of the City of Morro Bay's Written Comments Re: Presiding Member's Proposed Amended Order Authorizing Demolition of Morro Bay Tank Farm, as well as the related Proof of Service.

Thank you for your attention to this matter. Should you have any questions or concerns, please do not hesitate to contact our office.

Rob Schultz
Morro Bay City Attorney
595 Harbor Street
Morro Bay, CA 93442
805-772-6568
rschultz@morro-bay.ca.us