

APPENDIX A

MORRO BAY DECISION of August 2, 2004 REFERENCES¹ 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.

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

Page 35:

Findings and Conclusions No. 4:

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. ...

AQ-C3 To ensure that combustion emissions from tank farm demolition and construction activities do not result in violations of the State NO₂ or PM₁₀ ambient air quality standards. ...

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. 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 CLOMP 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 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.