00-AFC-12
CALIF ENERGY COMMISSION
JUL 30 2004
RECEIVED IN DOCKETS

LIVINGSTON & MATTESICH

JOHN MCKINSEY
ATTORNEY AT LAW

July 30, 2004

VIA HAND DELIVERY

LIVINGSTON & MATTESICH
LAW CORPORATION
1201 K STREET, SUITE 1100
SACRAMENTO, CA 95814-3938
FACSIMILE: (916) 448-1709
E-MAIL: JMCKINSEY@LMLAW.NET
TELEPHONE: (916) 442-1111 EXT. 3032

Chairman William J. Keese
California Energy Commission
1516 Ninth Street, MS-32
Sacramento, CA 95814

Commissioner Rosenfeld
California Energy Commission
1516 Ninth Street, MS-35
Sacramento, CA 95814

Commissioner James D. Boyd
California Energy Commission
1516 Ninth Street, MS-34
Sacramento, CA 95814

Commissioner John L. Geesman
California Energy Commission
1516 Ninth Street, MS-31
Sacramento, CA 95814

Commissioner Jackalyne Pfannenstiel
California Energy Commission
1516 Ninth Street, MS-31
Sacramento, CA 95814

Chief Counsel Bill Chamberlain
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: ***REVISED Comments on the Third Presiding Member's Proposed Decision Morro Bay Power Plant Project - 00-AFC-12***

Dear Commissioners and Chief Counsel:

The Proposed Amendments to the Third Revised PMPD for Morro Bay ("The Morro Bay Amendments") are legally unfounded and highly vulnerable to litigation and reversal. The Morro Bay Amendments purport to grant the Coastal Commission more authority in power plant permitting than is required or allowed by law. The Morro Bay Amendments ignore the legal restrictions placed by the Legislature on the Coastal Commission and misapply ordinary rules of statutory interpretation where no such interpretation is invited or allowed. The Morro Bay Amendments also fail to serve the State of California by attempting to unlawfully create a more complicated and chilling permitting process thereby ensuring that this, as well as all future coastal

projects, will take longer to permit and be less likely ever to be built. The Morro Bay Amendments, in fact, defy and defeat the very specific intent of the Legislature to streamline and speed the permitting process for natural gas-fired power plants. The Morro Bay Amendments represent an unlawful attempt to take California farther back in time while current power shortages and all-time high electricity demand highlight the ineffectiveness of past leadership in electricity policy. At the very time when Governor Schwarzenegger is calling upon agencies to address the continuing problems plaguing the electrical supply in California, The Morro Bay Amendments would unlawfully attempt to greatly worsen the power plant siting process.

At issue here is the question of what authority the Coastal Commission has in the repowering of existing or permitting of new power plants in the Coastal Zone. Though the Public Resources Code is quite plain and consistent in this regard, the Coastal Commission has ignored the law and has attempted to usurp the California Energy Commission's ("CEC") authority as well as its expertise in power plant siting. The Morro Bay Amendments endorse this unjustified and incorrect Coastal Commission viewpoint by endorsing a blatantly false argument that the law regarding Coastal Commission involvement is vague and ambiguous. The CEC should not be a party to promulgating this false argument.

El Segundo Power II LLC ("ESP II"), as an interested member of the needed power development community of California, submits these comments to warn the full Commission of the errant direction contained in the Morro Bay Amendments and the dire consequences of adopting them. The Commission should reject The Morro Bay Amendments and approve Morro Bay as proposed in the 3rd Revised PMPD, as published in June 2004. By respecting the law and acting to approve a legitimate decision, the Commission will appropriately take its statutory role in leading California towards the future with needed certainty in power plant siting.

Clear Law Regarding the Coastal Commission in Power Plant Siting Proceedings.

The Legislature has recognized two roles for participation by the Coastal Commission in a power plant siting case conducted by the Energy Commission. First, the Coastal Commission is allowed, under subsection 30413(d) of the Public Resources Code to participate in Notice of Intent ("NOI") Proceedings by submitting a particular report

to the Committee reviewing an NOI.[1] Second, the Coastal Commission is permitted under subsection 31043(e) of the Public Resources Code to participate as a party in Application for Certification (AFC) Proceedings.[2] Nothing in either of these subsections is ambiguous nor does any other section of the Public Resources Code conflict with these requirements. Section 30413 allows two roles for the Coastal Commission, each specific to a particular proceeding in which the CEC might engage itself.

The NOI Proceeding does not contain a full permitting process.[3] Instead it focuses on site selection and the best way to meet a particular electricity need.[4] The Coastal Commission's more authoritative role is limited by PRC 30413(d) to such NOI proceedings.[5] Thus the Coastal Commission has never and is not permitted to control the detailed permitting decisions involved in an AFC proceeding. To arbitrarily grant such a role would grossly distort the siting process, the Public Resource Code, and the legal foundation of the CEC. It would also add such a complicated level of dual permitting authority that the resultant permitting process would likely be vastly worse than California's current confusion of multiple permits and authority.[6] Thus, The

---

[1] PRC 30413(d) provides: "...[P]rior to completion of the preliminary report required by Section 25510, [the Coastal Commission shall] forward a written report on the suitability of the proposed site and related facilities specified in that notice ...

[2] PRC 30413(e) provides "The [Coastal]commission may, at its discretion, participate fully in other proceedings conducted by the State Energy Resources Conservation and Development Commission pursuant to its power plant siting authority. In the event the commission participates in any public hearings held by the State Energy Resources Conservation and Development Commission, it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses]."

[3] PRC 25502 requires that NOI's present only site information and the big picture of the project such as type of fuel to be used and type of operation. The process culminates in a decision that fundamentally indicates which sites are feasible for a power plant of the nature proposed (PRC 25516.6).

[4] The NOI contains minimal information beyond the proposed site and alternative sites (PRC 25502). Issues are deferred to later proceedings (PRC 25510).

[5] PRC 30413(d) is the only law allowing the Coastal Commission authority to do anything other than participate as a party. PRC 30413(e) allows the Coastal Commission to present evidence and cross examine witnesses in other proceedings, a statute clearly demarking a line between NOI proceedings and all other proceedings.

[6] Compare the Morro Bay Amendments to the existing dual permitting processes required for air emissions. Currently, the responsible AQMD or APCD limits its review only to air emissions and yet,

Morro Bay Amendments not only unlawfully expose Morro Bay and other projects to legal and financial uncertainty, they also exacerbate, weaken, and worsen a permitting process that has already spent three and a half years on the Morro Bay Project without reaching a decision.

The Morro Bay Amendments primarily rely upon section 25523(b) as evidence that 30413(d)'s plain language should be discarded and that creative interpretation of legislative history should determine what role the Coastal Commission has in power plant siting. This is a misleading statement, reaching distortion, which flies in the face of a fundamental legal principal, the plain meaning rule. This clear and unambiguous law requires no legislative history interpretation.[7] Below, the legislative history argument contained within The Morro Bay Amendments is fully examined and exposed for its misdirection. Nevertheless, while power plant permitting has been tweaked and modified by the legislature over the years, the fundamental roles of the Coastal Commission in power plant siting have never wavered. The most fundamental changes to power plant siting, those that abandoned the Rate Based Regulatory model for that of a Market-Based Model, made absolutely no changes whatsoever to Section 30413, the section that very specifically controls and limits the Coastal Commission's role in power plant siting.[8] Senate Bill 110 (1999) specifically exempted natural gas-fired power plants from the NOI process yet made no changes whatsoever to section 30413. This action, more than any other act by the legislature, makes clear that there is no hidden meaning in section 30413. The

---

even that duplicative process has delayed and prevented projects. The Morro Bay Amendments purport to give the Coastal Commission virtually unfettered control over all aspects of power plant design. This is not the law in California.

[7] The **Plain Meaning Rule** holds that statutes are given their plain meaning and that legislative history and other sources of intent beyond the statute are only turned to where the words of the statute are vague or ambiguous. *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871 [39 Cal.Rptr.2d 824, 891 P.2d 804] (Words of the statute provide the most reliable indication of legislative intent); *Donabedian v. Mercury Insurance Co.* (2004) 116 Cal.App.4th 968 [11 Cal.Rptr.3d 45] (In determining intent, the court first examines the words of the statue itself giving the words employed by the Legislature their usual and ordinary meaning); *People v. Galvan* (1998) 68 Cal.App.4th 1135, 1140 [80 Cal.Rptr.2d 853] (If the words are clear and unambiguous, the Legislature is presumed to have meant what it said and no statutory construction is needed; the "plain meaning rule" is not followed only if to do so would frustrate the purpose of the statute or lead to an absurd result);

[8] AB 1890 (1996) and SB 110 (1999) made the fundamental changes to California's Electricity Regulation model.

Legislature left intact the dual limited roles of the Coastal Commission, knowing full well that many future siting processes might not contain an NOI proceeding.[9]

There is no ambiguity in the Public Resources Code regarding the role of the Coastal Commission in AFC proceedings. The Coastal Commission can present evidence and question witnesses. It cannot submit a report that compels the CEC to adopt its findings. That role is limited to NOI proceedings, should they occur. By limiting the Coastal Commission's ability to control the permitting of power plants to only the site selection decisions of the NOI process, the Public Resources Code prevents the Coastal Commission from controlling the engineering and project-specific design and mitigation decisions that only the CEC may allow and is legally equipped to make. The Morro Bay Amendments not only defy the Public Resources Code facially, they also unlawfully undermine and destroy that fundamental structure of the permitting process that the Public Resource Code provides. They unlawfully invite the Coastal Commission to assert control over every aspect of the design, permitting and mitigation of every power plant in the Coastal Zone. If adopted, The Morro Bay Amendments would result in a shift of the jurisdiction - the role and responsibility from the CEC to the Coastal Commission; this shift would require legislative action. The law notwithstanding, such a shift would fundamentally alter the nature and structure of power plant permitting in California and would require legislative action.

The Morro Bay Amendments Mischaracterize the Public Resources Code and the History of its Changes Over Time

The Morro Bay Amendments cite one obscure piece of legislative history of one bill and use it to create the impression that the existing law has some inherent conflict that requires balancing intent. Furthermore, The Morro Bay Amendments grossly misrepresent the plain meaning rule and misapply the role of statutory interpretation. The Morro Bay Amendments also present a shallow, misdirecting history of power plant siting in California.

---

[9] SB-110(1999) expanded the NOI exemption in PRC 25540.6(a) to include all natural gas fired power plants.(Stats. 1999, C. 581, §11).

The truth is that the power plant siting process and the Coastal Commission's role in that process are not, nor have they ever been, ambiguous. Instead, from the day the Coastal Act was established the Coastal Commission has had a very specific limited role with authority in NOI proceedings and a broad role as a participating party in AFC proceedings. As the siting process was adjusted over the years, those roles have not been changed and indeed have repeatedly been left unchanged. The statutes and the Legislature's intent with regard to limiting the Coastal Commission's authority in power plant siting are and always have been manifestly obvious. Consistently, the Coastal Commission has been and is limited in its authoritative capacity to site selection issues and regional type-of-use zoning in the Coastal Zone. The Morro Bay Amendments ignore the law and instead use selective citations along with unsupported assertions to claim that the CEC must change the law and cede control of all power plant siting in the Coastal Zone to the Coastal Commission.

The power plant siting process enforced by the California Energy Commission was created by the Warren-Alquist Act in 1974.[10] At that time the Coastal Commission in its current form did not yet exist. In 1976, when the Coastal Act was passed, the Warren-Alquist Act portions of the Public Resources Code were modified to recognize specific, but very limited roles for the new Coastal Commission in Coastal Zone power plant siting.[11] Section 30413 was created at that time. Subsection (d) and (e) of 30413, the subsections that delineate the Coastal Commission's role in power plant siting processes were created by this law and have been modified only slightly since.[12] Beside miscellaneous adjustments to the siting process, significant changes were made in the 1980s to encourage renewable and efficient means of producing electricity[13] and again at the end of the century to shift the regulatory model to a market based system[14]. Despite how The Morro Bay Amendments cast these changes, there has never been ambiguity regarding the role of the Coastal Commission in power plant siting.

---

[10] Division 15 of the Public Resources Code was added by the Warren-Alquist State Energy Resources Conservation and Development Act. Statutes 1974, Chapter 276.

[11] The Coastal Act of 1976 added Division 20 of the Public Resources Code and made changes to related laws, including Division 15 (the Warren-Alquist Act). Statutes 1976, Chapter 1330.

[12] PRC 30413(d) was modified slightly in1978 to require that the report be submitted earlier in the NOI process (Stats. 1978, c. 1013, §23)

[13] These changes occurred in the 1980's following the oil crises of the 1970's.

[14] The primary vehicle for this was Assembly Bill 1890 in 1997.

In 1978, an exemption from the NOI process was added to the Public Resource Code, PRC 25540.6 to exempt cogeneration projects and modifications to existing facilities from the NOI process.[15] At that same time, in a different bill, the Legislature made a slight change to 30413(d), slightly changing the timing of the 30413(d) report.[16] This is the first of several instances where the Legislature expressly removed projects from the NOI process without changing the scope or application of 30413(d) reports to anything other than an NOI process.[17]

The most profound changes to the siting process occurred recently when the old model of need-based siting was abandoned in favor of market forces. Senate Bill 110 in 1999 expressly exempted all natural gas-fired power plants from the having to undergo an NOI process.[18] The most obvious intent of the "deregulation" efforts of the Legislature were to encourage power plant development by abandoning the stodgy need-based siting process in favor of simple market forces. SB-110 removed all natural gas-fired power plants from the NOI process. Despite this manifest and primary effect of SB-110, absolutely no changes were made to PRC 30413. This silence, and the repeated refusals by the Legislature every time it has exempted project types from the NOI process to modify 30413 speaks for itself: the Legislature does not intend for the Coastal Commission to file 30413(d) reports in natural gas-fired power plant AFC proceedings.

The Morro Bay Amendments abuse the Plain Meaning Rule by attempting to interpret meaning to a statute that is clear and precise. The Plain Meaning Rule requires that

---

[15] Stats.1978, c. 1010, p. 3103, §4.

[16] Stats. 1978, c.1013, §23. The report was moved from being due prior to the adjudicatory hearings required under PRC 25513 to an earlier point in the NOI process, prior to the preliminary report required under PRC 25510.

[17] This point is critical. and emphasizes the blatent error in trying to construe that the Legislature ever intended for the Coastal Commission to have any role in the Morro Bay project other than that of a party that can present evidence and examine witnesses.

[18] SB-110(1999) expanded the NOI exemption in PRC 25540.6(a) to include all natural gas fired power plants.(Stats. 1999, C. 581, §11)

the there first be ambiguity before statutory interpretation can begin.[19] While the Morro Bay Amendments fail to cite any specific language in 30413 that is vague and ambiguous, the law is clear that the language of the statute is the touchstone of the plain meaning rule and ambiguity.[20] While The Morro Bay Amendments are not even clear on exactly what ambiguity even exists, they apparently rely upon a vague multiple statute versus legislative history argument. Such an argument fails before the very consistent and clear language of PRC 30413 and the consistent refusal by the Legislature to modify 30413 every time it reduced the types of projects that had to undergo an NOI process.

At best, The Morro Bay Amendments argue that because the legislature changed the siting process in ways that reduced the role of the Coastal Commission, they should have also changed the Coastal Commission's role to compensate for the Coastal Commission's loss.[21] This argument is circular, self- proving, and legally worthless

---

[19] Ambiguity is generally a condition precedent to statutory interpretation. *Ocean Park Associates v. Santa Monica Rent Control Bd.* (Cal.App. 2d Dist., 2004) 8 Cal.Rptr.3d 421.

[20] A statute's language is ambiguous when it is susceptible to more than one reasonable interpretation. *People v. Smith* (Cal.App.4th Dist., 2002) 115 Cal.Rptr.2d 483; *Snukal v. Flightways Mfg., Inc.* (Cal.,2000) 3 P.3d 286. If statutory language that appears unambiguous on its face is shown to have a latent ambiguity when considered in context, a court may turn to customary rules of statutory construction or legislative history for guidance. *Noel v. River Hills Wilsons, Inc.* (Cal.App. 4 Dist. 2003) 7 Cal.Rptr.3d 216. The axioms of statutory construction require a court first to look at the words used by the Legislature; if the language is unambiguous, the court's task is finished, if the language is ambiguous, the court then examines the context of the statute, striving to harmonize the provision internally and with related statutes, and the court may also consult extrinsic indicia of intent as contained in the legislative history of the statute. *English v. Ikon Business Solutions, Inc.* (2001) 114 Cal.Rptr.2d 93. If, however, there is no ambiguity in the language of a statute, the court presumes the Legislature meant what it said, and the plain meaning of the statute governs. *City of Long Beach v. Cal. Citizens for Neighborhood Empowerment* (Cal.App.2.Dist.,2003) 3 Cal.Rptr.3d 473. Additionally, where a statute is clear, courts will not interpret away clear language in favor of an ambiguity that does not exist. *Flynt v. California Gambling Control Com'n*, (Cal.App.1.Dist.,2002) 104 Cal.App.4th 1125. In other words, where the statutory language is unambiguous, the court does not consider various extrinsic aids, such as the purpose of the statute, the evils to be remedied, the legislative history, public policy, or the statutory scheme encompassing the statute. *Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003 [111 Cal.Rptr.2d 564, 30 P.3d 57].

[21] In essence, The Morro Bay Amendments argue that changes to the siting process that reduced the frequency of NOIs necessarily reduced the role of the Coastal Commission in the siting process. The Morro Bay Amendments then paradoxically conclude that the lack of action by the Legislature to

as it appears to reflect what someone wishes the legislature had done, rather than what they did. The Morro Bay Amendments also try to show ambiguity by skipping the text of the statute that is allegedly ambiguous, Section 30413, and pointing instead to an internal report made as part of the legislative process to create the Coastal Commission.[22] The Morro Bay Amendments argue that since that report does not mention NOIs, then the Legislature never intended for 30413(d) reports to apply only to NOIs. That argument has no value, not only because it does not involve any of the later bills that specifically removed projects from the NOI process, but also because the Coastal Act itself, very specifically mentions NOI's right in the heart of PRC 30413(d)![23]

Fundamentally, the Morro Bay Amendments attempt to use Legislative History not to show the meaning of an ambiguity, but instead to suggest different interpretations of an express and clear statute that states that 30143(d) reports must analyze NOIs and be submitted prior to a specific time. The Plain Meaning Rule, as well as basic rules logic, however, clearly show that when a statute is clear and unambiguous it must be enforced as it is written. Legislative History has no role when there is no ambiguity.

Not only is Legislative History misused by the Morro Bay Amendments, it is also mischaracterized. The Morro Bay Amendments depend heavily on the concept that the Coastal Commission's role was accidentally reduced by the legislature. Unfortunately the Morro Bay Amendments do not cite any legislative history from any statute that reduced the Coastal Commission's role. If the Morro Bay Amendments were fairer in their characterization of legislative history, they might have found the acknowledgment before the Legislature by the Executive Director of the Coastal Commission, Peter Douglass, in 1978, that a particular change to the siting process would reduce the Coastal Commission's role. In 1978 many changes were made to incorporate streamlined processes for the types of projects that would most likely be mor efficient or less-controversial. At a Legislative hearing on AB-1859, Peter Douglass, then Deputy Director of the Coastal Commission was asked

---

bolster the Coastal Commission role implies an intent that they meant to anyway.

[22] The Morro Bay Amendments cite the "Report to the Assembly Republican Caucus on AB 1277 by Marc Christensen, August 6, 1976."

[23] PRC 30413(d) requires the Coastal Commission to analyze "any notice of intention" and specifically links to a specific step in the NOI process, (then the Adjudicatory hearings required by PRC 25513, now the preliminary report required by 25510.)

pointedly if he understood that the CEC had and would have ultimate decision making authority over and increased scope of projects including modifications of existing facilities. He admitted that he understood that to be the case.[24]

Question (Senator Rains): "I would suspect that given the situation right now, the only agency that would seemingly be the appropriate agency to make the ultimate decision would be the Energy Commission."

Response (Mr. Douglass): "I don't disagree with that"

Most relevant here is not the acknowledgement by Mr. Douglass, though that seems on point given the Coastal Commission's current efforts to usurp CEC power. Rather, what is relevant is the obvious question from a Senator that shows the obvious: The Coastal Commission's more powerful role is limited to NOIs and the current bill was intentionally shifting more responsibility to the Energy Commission by intentionally exempting numerous types of processes from the NOI process.

The Morro Bay Amendments rest upon unsupported, unlawful attempts to rewrite legislative decisions made in 1976, 1978, 1991, 1997, and 1999 and never modified since. Simply put, the Morro Bay Amendments misapply the Plain Meaning Rule, misuse and mischaracterize legislative history, and appear to be an un-disguised attempt to give the Coastal Commission total control over all power plant siting in the Coastal Zone. The legislature never did that and has never indicated that it meant for the Coastal Commission to have anything more than a very specific limited role in power plant siting. The essence of the Warren-Alquist Act, has never been reduced by the legislature. The Legislature intended for the Energy Commission to conduct permitting for power plants in the Coastal Zone. Over time, the Legislature has specifically and intentionally reduced the number of projects that would go through an NOI process. In those types of projects, the Coastal Commission is left to participate like any other party. There is no ambiguity in 30413 nor has there ever been.

---

[24] Transcript of Hearing by Senate Subcommittee on Energy of the Standing Committee on Public Utilities, Transit and Energy, May 22, 1978, page 76.

The Morro Bay Amendments Ignore Other Requirements of 30413(d)
Besides contravening the fundamental requirement that any report issued under section 30413(d) be submitted prior to the deadline in an NOI proceeding, 30413(d) also specifies minimum content requirements. A review of these content requirements shows that they are necessary for the report to actually be useful to the CEC. Thus, the content requirements further limit the Coastal Commission's role in power plant siting. The Morro Bay Amendments ignore these other requirements. Despite the fact that the document purported to be a "30413(d) report by the Coastal Commission fails to meet many components of section 30413(d), the Morro Bay Amendments treat the document as a report anyway. The table below compares the requirements of the Public Resources Code with the requirements specified by The Morro Bay Amendments.

Following the logic of The Morro Bay Amendments, the Coastal Commission would be free to make very casual comments on details beyond its legal authority that the CEC would be compelled to then treat as findings. The Public Resources Code provides a very specific and limited opportunity for the Coastal Commission to compel some aspects of power plant permitting for some types of projects in the Coastal Zone. Very specifically and intentionally, all natural gas-fired projects have been exempted from the NOI process . Even if a project were in an NOI process however, the Coastal Commission would have very specific information requirements that the report must contain and would be limited to mostly site related issues. The Morro Bay Amendments ignore all of these requirements.

Conclusion
The Commission's appropriate action is to approve Morro Bay as proposed in the 3rd Revised PMPD. Simply put, The Morro Bay Amendments do not comport with the law, they attempt to use an administrative process to legislate change to the siting process, and The Morro Bay Amendments would be disastrous to the future electric generation needs of California. Moreover, the Morro Bay Amendments are unnecessary. The 3rd Revised Presiding Member's Proposed Decision is an acceptable document that was properly noticed and given an the required comment opportunity. To that end, the Commission should reject The Morro Bay Amendments

and adopt the 3rd Revised Presiding Member's Proposed Decision without **any** Amendments. In so doing, the Commission not only will respect the structure and design of the power plant permitting process in California, as well as respecting the law governing the process, it will take action to continue the safe and responsible repowering of existing power plants and provide the applicant a legal foundation upon which it can build a power plant.

Very truly yours,

/ORIGINAL SIGNED/

JOHN A. MCKINSEY
Attorney for El Segundo Power II LLC

JAM:kjh

Enc
The NOI Process and the Coastal Commission 30413(d) report
Selected text of various statutes (PRC 25523, 25540.6, and 30413)

cc: Morro Bay Service List
Dan Skopec, Deputy Cabinet Secretary, Governor Schwarzenegger
Joe Desmond, Deputy Secretary of Energy, Resources Agency

STATE OF CALIFORNIA

Before the 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)	) PROOF OF SERVICE LIST
	)
	)
	)

I, declare that on July 30, 2004, I deposited copies of the attached letter Re: Revised Comments on the Third Presiding Member's Proposed Decision, in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
***Attn: Docket No.: 00-AFC-12**
1516 Ninth Street
Sacramento, CA 95814-5512
e-mail:docket@energy.state.ca.us

CEC Staff Counsel
Caryn Holmes
Cholmes@energy.state.ca.us.

APPLICANT

Duke Energy North America, LLC Kevin R. Johnson 505 14th Street, Suite 940 Oakland, CA 94612 Kjohnson@duke-energy.com	Duke Energy North America, LLC Peter Okurowski 505 14th Street, Suite 940 Oakland, CA 94612 Pokurowski@duke-energy.com Peter@ceaconsulting.com

COUNSEL FOR THE APPLICANT

Ellison, Schneider & Harris, LLP Christopher T. Ellison, Esq. 2015 H Street Sacramento, CA 95814 cte@eslawfirm.com	Jane E. Luckhardt Downey, Brand, Seymour & Rohwer 555 Capitol Mall, 10th Floor Sacramento, CA 95814 jluckhardt@downeybrand.com

INTERESTED AGENCIES

San Luis Obispo County APCD David Dixon, Engineering Manager 3433 Roberto Court *San Luis Obispo, CA 93401-7126* ddixon@co.slo.ca.us	California Coastal Commission Tom Luster 45 Fremont Street, Suite 2000 San Francisco, CA 94105 tluster@coastal.ca.gov
City of Morro Bay Bruce Ambo Director of Public Services Public Services Department 955 Shasta Avenue Morro Bay, CA 93442 bambo@morro-bayca.us	Roger Briggs, Executive Officer Regional Water Quality Control Board *Central Coast Region* 81 Higuera Street, Suite 200 San Luis Obispo, CA 93401-5427 rbriggs@rb3.swrcb.ca.gov
Native American Heritage Commission Attn: Rob Wood 915 Capitol Mall, Room 364 Sacramento, CA 95814 rw_nahc@pacbell.net	Morro Bay Estuary Project Attn: Dan Berman 601 Embarcadero, Suite 11 Morro Bay, CA 93442 mberman@mbnep.org
California State Parks Attn: Mike Walgren 1150 Laurel Lane, Suite 190 San Luis Obispo, CA 93401 mwalg@parks.ca.gov	National Marine Fisheries Service Attn: Bryant Chesney 501 West Oceana Bl., Suite 4200 Long Beach, CA 90802 Bryant.Chesney@noaa.gov
Calif. Dept. of Fish & Game Attn: George Isaac 20 Lower Ragsdale Dr., Suite 100 Monterey, CA 93953 gisaac@dfg.ca.gov	Bonita L. Churney, Esq. BRYAN CAVE LLP P.O. Box 764 Morro Bay, CA 93443 blchurney@bryancave.com
Mr. Babak Naficy Law Offices of Babak Naficy 1204 Nipomo Street San Luis Obispo, CA 93401 bnaficy@ix.netcom.com	Deborah A. Sivas, Esq. Director, EarthJustice Environmental Law Clinic at Stanford 553 Salvatierra Walk Stanford, CA 94305-8620 dsivas@stanford.edu
Patti Dunton Cultural Resources Director 14650 Morro Rd. Atascadero, CA 93422 patpshs@aol.com	City of Morro Bay Attn: Robert W. Schultz 738 Higuera Street, Suite H San Luis Obispo, CA 93401 rschultz@morro-bay.ca.us

Special Council for the City of Morro Bay Barry C. Groveman & Steven J. Elie One Wilshire Blvd., Suite 2000 Los Angeles, CA 90017 B.groveman@mpglaw.com s.elie@mpglaw.com	

INTERVENORS

The Coastal Alliance on Plant Expansion (CAPE)C/o Jack McCurdy & David Nelson P.O. Box 526 Morro Bay, CA 93443 jmccurdy@kcbx.net moniqueanddavid@sbcglobal.net	

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

/s/ _____
Cheryl R. McNeal