

COMMITTEE CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) DOCKET NO.  
of Duke Energy for the ) 00-AFC-12  
MORRO BAY Power Plant Project )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET  
HEARING ROOM A  
SACRAMENTO, CALIFORNIA

FRIDAY, MAY 20, 2005

9:00 A.M.

Reported by:  
Peter Petty  
Contract No. 170-04-001

COMMITTEE MEMBERS

James D. Boyd, Commissioner  
Acting Presiding Member

HEARING OFFICER, ADVISORS

Gary D. Fay  
Hearing Officer

Mike Smith, Commissioner Advisor

Mike Tomashefsky, Commissioner Advisor

STAFF PRESENT

Caryn Holmes, Counsel

Connie Bruins

Alvin Greenberg  
Consultant

APPLICANT

Christopher T. Ellison  
Ellison, Schneider & Harris, L.L.P.

INTERVENORS

Robert Schultz  
City of Morro Bay

Dave Nelson  
Jack McCurdy  
CAPE

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P R O C E E D I N G S

9:09 a.m.

HEARING OFFICER FAY: We'll go on the record.

Good morning. This is the Morro Bay AFC Committee Conference to take comments on a petition filed by Duke Energy on April 15th, 2005. The petition seeks an order authorizing demolition of the onsite fuel tank farm at the Morro Bay Power Plant site. By its notice issued April 26th, 2005, the committee invited all parties in this case to comment on Duke's petition and to comment, as well, on a proposed order issued by the committee. On the May 15th deadline, the committee received comments from the Energy Commission staff and from the City of Morro Bay. No other comments were received.

We'll now take introductions from the parties. To my left is Commissioner James Boyd, the Acting Presiding Member of the Morro Bay AFC Committee. And to my right is Mike Smith, Commissioner Boyd's advisor, and to my far right is Scott Tomashefsky, Advisor in general. To the Chairman. Okay. With portfolio, yes.

And for the applicant?

1                   MR. ELLISON: Good morning, Commissioner  
2 Boyd. Christopher Ellison, Ellison, Schneider and  
3 Harris, here on behalf of the applicant.

4                   HEARING OFFICER FAY: Staff.

5                   MS. HOLMES: Good morning. Caryn  
6 Holmes, staff counsel.

7                   HEARING OFFICER FAY: Intervenors. City  
8 of Morro Bay.

9                   MR. SCHULTZ: Yes. Good morning. Rob  
10 Schultz, on behalf of the city of Morro Bay.

11                   HEARING OFFICER FAY: Thank you. Is  
12 anybody here from CAPE?

13                   MR. NELSON: Yes, David Nelson, from  
14 CAPE.

15                   MR. McCURDY: Jack McCurdy, from CAPE.

16                   HEARING OFFICER FAY: All right. David  
17 Nelson and Jack McCurdy are on the line.

18                   Patti Dunton. Is, is she here? Okay.  
19 I hear no indication. Ms. Holmes, have you  
20 communicated with Ms. Dunton?

21                   MS. HOLMES: I have, and I have a  
22 comment to relay later in the proceeding.

23                   HEARING OFFICER FAY: Okay. That's  
24 fine.

25                   Does the Public Advisor have anything to

1 say at this time? No response. Okay.

2 Is there anybody else on the conference  
3 call line that we'd like to identify?

4 MS. HOLMES: I believe there's a staff  
5 consultant, Dr. Alvin Greenberg.

6 HEARING OFFICER FAY: Dr. Greenberg.  
7 Okay.

8 What I'd ask all the people on the line  
9 to do is just be sure that as we go through topic  
10 by topic, before we conclude a topic you speak up  
11 so we're sure to get your comments on that topic,  
12 if you have any. If not, you don't need to  
13 indicate anything.

14 Duke Energy's AFC, which seeks approval  
15 to modernize the existing Morro Bay Power Plant,  
16 proposed its new project to be conducted in three  
17 phases, phase one of which is the demolition of  
18 the existing tank farm at the project site. That  
19 phase, and the other two phases of the project  
20 received extensive environmental review by the  
21 Commission. That review culminated in a  
22 Commission decision reached on August 2nd, 2004.

23 To ensure the tank farm demolition could  
24 be commenced in a timely manner, separate from  
25 other plant modernization activities, the

1 Commission decision has specified, based on advice  
2 from Commission staff, the conditions of  
3 certification that are applicable to tank farm  
4 demolition activities. The Commission's August  
5 2nd, 2004 decision, specified that those  
6 conditions relevant to the tank farm should be  
7 narrowly interpreted to address activities  
8 occurring as part of tank farm demolition, as  
9 opposed to more general modernization project  
10 activities. These same conditions may require  
11 later additional filings to account for other  
12 matters related to the more general modernization  
13 activities at the project.

14 The conditions regarding tank farm  
15 demolition were made available for comment on  
16 several occasions, far in advance of the  
17 Commission's decision of August 2nd. That  
18 decision is not to become effective until after  
19 the Central Coast Regional Water Quality Control  
20 Board grants the project a National Pollution  
21 Discharge Elimination, or NPDES, permit. However,  
22 applicant states in its petition that the NPDES  
23 permit is not related to demolition of the tank  
24 farm; therefore, delays in granting the NPDES  
25 permit have held up tank farm demolition for

1 reasons apparently unrelated to the tank farm.

2           Applicant seeks permission to begin tank  
3 farm demolition immediately on the grounds that  
4 the Commission's decision on the project  
5 anticipated that the demolition would occur before  
6 and be separate from construction of the proposed  
7 power plant, or subsequent demolition of the  
8 existing power plant. The Duke petition further  
9 states the tank farm demolition will improve the  
10 visual quality of the area, is consistent with all  
11 applicable laws, and is in the public interest.

12           The way we'd like to proceed today is  
13 topic by topic, so that we can focus everybody's  
14 attention on the, the issues connected to a given  
15 topic area, and then move on. And I've already  
16 addressed the, the kind of participation we need  
17 from the folks on the phone.

18           Are there any other preliminary comments  
19 before we begin? I see no indication, so why  
20 don't we start.

21           What we have done in the proposed  
22 committee order is lay out in Appendix A all  
23 portions that address the tank farm. And the, the  
24 thinking on that was to be sure that any  
25 discussion separate from the conditions of

1 certification were also included, so that if the  
2 proposed order was, was adopted by the Commission  
3 Appendix A would guide the compliance people and  
4 the applicant in conducting the demolition, and  
5 they'd be fully informed not only as to the  
6 literal wording of the conditions, but what the  
7 thinking of the Commission was in, in putting  
8 those conditions in.

9 So I think we'll just go through in the  
10 order that, that the original Morro Bay decision,  
11 the Third Revised PMPD, lays it out on those  
12 portions that are relevant to tank farm  
13 demolition. And if I skip over something that you  
14 have a concern about, feel free to mention it.  
15 But that's the order that we'd like to go.

16 So, first of all, and right now I'm  
17 looking at a, at a draft of the Morro Bay  
18 comments, because they actually address more  
19 individual conditions than any of the other  
20 comments. Regarding general conditions of  
21 certification, the, the city asked for some  
22 notification on the definition of ground  
23 disturbance and grading. I'm not sure what the  
24 difference was there. And I've asked Ms. Holmes  
25 to, to have the staff comment on these things for

1       our help, and, of course, the applicant is welcome  
2       to do so, as well.

3                ACTING PRESIDING MEMBER BOYD: Mr. Fay.

4                HEARING OFFICER FAY: Yes. Commissioner  
5       Boyd.

6                ACTING PRESIDING MEMBER BOYD: Might I  
7       ask, would it be appropriate to ask for kind of an  
8       opening statement from the applicant as to their  
9       petition and the reason therefor?

10               HEARING OFFICER FAY: That, that'd be  
11       fine. I, I didn't want to preclude that. Mr.  
12       Ellison, you're welcome to do that.

13               MR. ELLISON: Thank you. I will give a  
14       brief opening statement, although I think Mr. Fay  
15       summarized the petition rather well.

16               I think there are a couple of important  
17       points to be kept in mind here, and then I can, I  
18       can summarize quite quickly what Duke's position  
19       is on all of the proposed amendments here,  
20       although I have no problem going through them item  
21       by item.

22               Duke has filed this petition to carry  
23       out its commitment to demolish the onsite tank  
24       farm, not because there's any revenue in it for  
25       the company, there is none, but rather because

1 that's a commitment that it made to the community  
2 and to the contractor that would carry it out, and  
3 because we see no reason that it shouldn't go  
4 forward now. It's not related in any way to, as  
5 Mr. Fay mentioned and as our petition mentions,  
6 it's not related in any way to the NPDES issues  
7 that are otherwise holding up the remainder of the  
8 project. And it's not related in any way to the  
9 use of the outfall or the lease issues, either.  
10 So Duke has filed this petition. It seeks to  
11 carry out the tank farm demo, although it is a  
12 cost, not a revenue producer for the company.

13           Having said that, if there are -- and  
14 let me say one other thing. Duke's petition does  
15 not ask for any change in the conditions of  
16 certification. It simply wants to clarify that  
17 they can proceed with this tank farm demo now,  
18 rather than, rather than later.

19           As Mr. Fay mentioned, we've already  
20 conducted extensive hearings in this matter,  
21 including quite extensive hearings specifically on  
22 the tank farm demo, and specifically on which of  
23 the conditions of certification should apply to  
24 the tank farm demo and which should not. Duke  
25 feels rather strongly that we should not be

1 reopening all of those issues now.

2 And so that takes us to sort of Duke's  
3 bottom line in reviewing the comments of other  
4 parties, and that is that we do not support any  
5 changes in any of the conditions of certification  
6 that the Commission has already proposed to apply  
7 to the tank farm, tank farm demolition.

8 Certainly, any changes that would impose  
9 additional costs on the project or additional  
10 burdens of other kinds on the project threaten the  
11 project. I mean, if this becomes any more  
12 expensive than it already is, Duke simply will  
13 postpone or, or not carry it out.

14 Having said that, there are a number of  
15 comments that the city has filed that, where Duke  
16 believes that we can accommodate their interest  
17 without changing the condition. And in many  
18 cases, we think the existing condition already  
19 addresses the city's concern, and we'd be happy to  
20 talk about that.

21 Finally, with respect to the staff  
22 comments. We agree entirely with, with everything  
23 that's in the staff comments. We think their,  
24 their interpretation is very straightforward and  
25 reasonable. We want to thank the staff for that.

1 The staff also mentions that with respect to one  
2 condition, an air quality condition, AQC3, which  
3 is a, a requirement for, for monitoring that's  
4 rather expensive, staff has agreed, and we agree,  
5 that, that that doesn't make any sense in the  
6 context of the tank farm demo, and staff suggests  
7 that they would entertain a request -- under the  
8 existing condition, my understanding is there's no  
9 need to change the condition -- but that staff  
10 would undertake a request for an interpretation  
11 that that condition does not apply, and we  
12 appreciate that, as well.

13 Thank you.

14 ACTING PRESIDING MEMBER BOYD: Okay.

15 The main thrust of my requesting your comment was  
16 just to, to understand why now, and why not when  
17 you are going to begin the project. You know, why  
18 separate the activities. You've indicated that  
19 you feel it's part of your commitment to the city,  
20 and furthermore, a commitment to a contractor who  
21 would do the work. I'd like to understand that a  
22 little bit.

23 MR. ELLISON: Yeah. I think there,  
24 there are two reasons to go forward now. Well,  
25 let me see, I think there are three.

1                   One is there's no reason not to go  
2 forward now. All, as I mentioned earlier, all the  
3 things that are, that are holding up the rest of  
4 the project do not apply to the tank farm demo.  
5 The second reason to go forward now is we do have  
6 a contractor lined up who's been waiting for some  
7 time to do this, and is frustrated by the fact  
8 that the rest of the project is being held up.  
9 That contractor, Duke is not even getting the  
10 salvage value of the steel from the tank demo,  
11 that goes to the contractor as part of his  
12 compensation. Steel prices are high right now.  
13 He's anxious to do the work sooner, rather than,  
14 rather than later.

15                   And thirdly, this is, this is something  
16 that benefits the community and, and we think the  
17 community is interested in seeing go forward. And  
18 Duke is interested in accommodating them.

19                   ACTING PRESIDING MEMBER BOYD: Thank  
20 you.

21                   HEARING OFFICER FAY: Mr. Ellison, is  
22 there, was there also the possibility that, that  
23 the -- well, the record shows that Duke assumed a  
24 three month demolition process for the tank farm,  
25 that if remediation by PG&E turns out to be far

1 more extensive than is assumed at this time, that  
2 that would add further time to the, to if not the  
3 demolition, at least the time when that site would  
4 be occupied and not available to begin the, the  
5 power plant project?

6 MR. ELLISON: I'm sorry. I  
7 misunderstood. Is there -- the question is --

8 HEARING OFFICER FAY: Yeah, that's my  
9 question. I mean, is, is it possible that an  
10 additional benefit would be allowing for extra  
11 time caused by unexpected remediation?

12 MR. ELLISON: Yes, that is an additional  
13 benefit. My, my understanding is that, that  
14 there's certainly nothing about the PG&E  
15 remediation that stands in the way of proceeding  
16 now with the tank farm demo. And to the extent  
17 that PG&E needs to conduct remediation activities  
18 that are being stopped by the existence of the  
19 tank, tanks, this would remove that impediment and  
20 allow them to move forward.

21 I do want to emphasize that the  
22 remediation is PG&E's responsibility. It is PG&E  
23 that has the reporting obligation to the various  
24 agencies that regulate that activity. And one of  
25 Duke's most serious concerns is that it not be

1 placed in the role of assuming any  
2 responsibilities that are now PG&E's.

3 HEARING OFFICER FAY: But, but the time  
4 estimate of three months for demolition does not  
5 include an estimate of PG&E's remediation, does  
6 it?

7 MR. ELLISON: No, it does not. My  
8 understanding is that, that all or most of the  
9 remediation is, is completed at this point. I  
10 don't know that all the paperwork is done, and  
11 perhaps Rob, you may know more about this than I  
12 do. But in discussions with Duke staff on this  
13 issue, they were not concerned about remediation  
14 activities interfering with the tank farm demo.

15 ACTING PRESIDING MEMBER BOYD: So is  
16 there a high degree of confidence that once the  
17 tanks are down and the tank bottoms removed, there  
18 is not some primordial ooze underneath the thing  
19 that has to be dealt with?

20 MR. ELLISON: Well, I would refer that  
21 question to PG&E. But, but I will say this. This  
22 project, the tank farm demo project, does not  
23 involve any grading. It does not involve any  
24 ground disturbance. It simply involves removing  
25 the tank farm from the surface. And so it can

1           only benefit any remediation that remains to be  
2           done, if there is any that remains to be done.

3                     MR. SMITH:  Mr. Ellison, is there a  
4           sunset on the time that PG&E is responsible for  
5           remediation?

6                     MR. ELLISON:  Not that I know of.

7                     HEARING OFFICER FAY:  Before we, we go  
8           further, I should mention, because the committee  
9           has discussed this, that is the committee very  
10          mindful that what we're dealing with is a, is a  
11          decision by the full Energy Commission, and there  
12          is, in our mind, no reason or authority to change  
13          that decision, and so that would be a very high  
14          burden if anybody wants any modification.  And I  
15          just want to lay that out, because that's just a  
16          fact of life.  We're dealing with an official  
17          decision of a state agency that already exists and  
18          anticipated this very activity.  This is not to,  
19          you know, prejudice people's position.  It's just  
20          to let you know how things lie.

21                    With that said, I would -- now, are  
22          there any opening comments by anybody else?  Ms.  
23          Holmes?

24                    MR. SCHULTZ:  No, we'll wait for the  
25          individual comments as we go through.

1 HEARING OFFICER FAY: Okay. Fine.

2 All right. The general conditions, in  
3 many cases I may be going first to Morro Bay,  
4 because they, they had most of these comments. It  
5 seems to me that the decision addresses ground  
6 disturbance and grading. I don't know why you  
7 included that in there.

8 MR. SCHULTZ: I guess, from the city's  
9 standpoint, the concern was is that you had pulled  
10 out the condition, you know, to show which  
11 condition would require a tank farm demolition,  
12 and when I go through the, the application and the  
13 decision it's not clear whether there was going to  
14 be ground disturbance or grading during the  
15 demolition of the tank farm. So our concern was  
16 just making sure the compliance officer and the  
17 applicant and those, that if there is any grading  
18 or ground disturbance, you know, here's what the  
19 definition of it is, and, and so they have that  
20 ability to look at the decision.

21 And so I was a little confused as to how  
22 the process would be with the compliance officer,  
23 whether they'll have the whole decision and be  
24 able to look at in totality, as opposed to just  
25 looking at the general conditions that you had

1 pulled out, which didn't address ground  
2 disturbance or grading. And that was my only  
3 concern.

4 HEARING OFFICER FAY: Okay. Yeah. This  
5 is a definitional thing that, that is not so much  
6 for the benefit of the compliance unit, because  
7 they, they put this in all the decisions, so they  
8 know what's there, and they know how ground  
9 disturbance is defined. However, there are  
10 specific conditions that only apply if ground  
11 disturbance occurs. And as I recall, those are  
12 specifically addressed. It'll say one, two and  
13 three apply, four and five also apply if ground  
14 disturbance exists.

15 So I think that has been addressed more  
16 specifically, but if -- and, Ms. Bruins, you're  
17 here from the compliance unit. If we assume  
18 anything on the part of your unit that is not  
19 true, please pop up and correct us. But I think  
20 the staff has been dealing with these concepts for  
21 a long time, and comfortable with it.

22 Let's move to hazardous materials.

23 MS. HOLMES: Excuse me.

24 HEARING OFFICER FAY: Yes.

25 MS. HOLMES: Mr. Fay, I have a couple of

1 comments in response to the city's comments.

2 I just wanted to make clear, because I,  
3 I share Mr. Schultz' concern about incorporation  
4 of some of those definitions and some of the  
5 language from that section into the decision that  
6 you're proposing be pulled out separately and  
7 docketed. In addition to the definitional issues,  
8 which I think have been resolved, that section  
9 also has the process that the applicant is  
10 supposed to follow should there be any need for  
11 modifications or amendments to the conditions of  
12 certification.

13 I just want to make clear that that same  
14 process, that isn't separately pulled out into the  
15 order that you propose to docket, would apply to  
16 the conditions that are adopted in that order. Is  
17 that -- because I think it's important to make  
18 clear the process that the applicant needs to use  
19 should there be, for compliance purposes, for the  
20 conditions that are being adopted today.

21 HEARING OFFICER FAY: Yeah. I, I think  
22 we have to assume that this process will be  
23 parallel to the, to the construction process that  
24 we practice. I, I would assume that the applicant  
25 would assume that, and not expect unique

1 treatment. This was, you know, this is a portion  
2 of an AFC project, and so I think the handling  
3 would be parallel, the way compliance would handle  
4 it. I think the Commission would expect it to be  
5 consistent, and I don't think we have to add every  
6 little jot and tittle in there that could possibly  
7 be looked at differently. And this may be one of  
8 the differences that, that the committee would  
9 have with the city, that much of the comments are  
10 not necessary because we expect this will be  
11 handled in a consistent manner with, with all the  
12 Commission's compliance things.

13 MS. HOLMES: Staff supports that. I, I  
14 think it's important to have that on the record,  
15 so thank you for that.

16 The other comment I have about ground  
17 disturbance is the comment that Ms. Dunton, who is  
18 an intervenor in this proceeding, made to me over  
19 the phone and asked me to relay to the committee  
20 at the hearing. And that is that she expressed  
21 doubts that the tank farm demolition could occur  
22 without the use, without ground disturbance or  
23 grading because of the use of, of heavy equipment,  
24 and the fact that there's a reference in the  
25 Commission's decision, the definition of ground

1 disturbance, it refers to light duty vehicles.

2 And it's her belief that heavy duty vehicles will  
3 have to be used, and that therefore there will be  
4 ground disturbance.

5 From staff's perspective, I don't see  
6 the question of whether or not there is a ground  
7 disturbance as a subject for this hearing. As Mr.  
8 Fay has pointed out, the, there are a series of  
9 conditions that are applicable to tank farm  
10 demolition, and some of those are specifically  
11 applicable if there is ground disturbance or  
12 grading. I assume that the question of whether or  
13 not there is ground disturbance or grading will be  
14 something that will be addressed as tank farm  
15 demolition proceeds through the, through the  
16 compliance phase.

17 HEARING OFFICER FAY: And again, we have  
18 to rely on the professionalism of our compliance  
19 unit, and they have done this many, many times on  
20 many projects. So it has the benefit, also, of  
21 being consistent with the way other projects have  
22 been treated.

23 MS. HOLMES: And I did assure Ms. Dunton  
24 that staff would be looking carefully at the  
25 question of whether or not the type of equipment

1 that would be used for tank farm demolition would  
2 constitute ground disturbance.

3 HEARING OFFICER FAY: Okay. Thank you.

4 MR. ELLISON: Mr. Fay, if I could just  
5 add quickly to that, that we, we support the view  
6 that Ms. Holmes has expressed that this is an  
7 issue that, with the staff compliance unit. We  
8 don't need to resolve this here. I will just say,  
9 though, that we understand that staff's  
10 interpretation in the past, and we assume it would  
11 continue to be in the future, is that the use of  
12 -- that the use of heavy duty vehicles does not  
13 per se mean you're disturbing the ground.

14 HEARING OFFICER FAY: Thank you.

15 All right. Now I, I don't mean to  
16 belabor this, going into each topic. I just want  
17 to be sure we don't miss some small elements.

18 Turning to hazardous materials  
19 management. The city wanted language added to Haz  
20 6, that would say instead of just anticipating  
21 hazardous materials coming in, would add, or  
22 removing or taking away from. And this is an  
23 example, I think, of where the committee believes  
24 this is fully contemplated because this condition  
25 was identified as applying to tank farm

1 demolition. And if the other parties think that  
2 there's some confusion about this, I'd like to  
3 hear from them.

4 But, again, the committee's view is if  
5 in doubt, we're not going to change anything,  
6 because we believe the conditions address the tank  
7 farm demolition. And, in fact, if Duke were to  
8 argue well, it only talked about bringing  
9 hazardous materials in, not taking them away,  
10 that's not going to fly.

11 MR. SCHULTZ: Well, thank you. I  
12 appreciate that, coming from the city of Morro  
13 Bay, who doesn't deal with these projects on a  
14 daily basis and is still in the learning process  
15 after four years. Reading literally that  
16 condition and, and dealing with the situation we  
17 didn't want the applicant to be able to say well,  
18 wait a minute, we don't have to comply with it  
19 because --

20 HEARING OFFICER FAY: I, I understand,  
21 and I know that there have been, there's been  
22 perhaps less than full agreement between the, the  
23 city and Duke on some things. But the, as the  
24 language I read at the beginning of the hearing  
25 states, the concept is that the conditions fully

1 apply as relevant to the tank farm. So if they  
2 also say and construction, those words aren't  
3 applicable because the tank farm is demolition.  
4 So if, if Duke were to have a side crew building  
5 the power plant, that would not be appropriate  
6 under this proposed order. The only thing that is  
7 allowed is, is demolition of the tank farm.

8 Now, if they have to build the scaffold  
9 to get up to where they have to start demolishing  
10 something, we would expect the city not to get too  
11 upset that the scaffold was constructed, because  
12 that's part of demolition. But clearly, the focus  
13 of this is just that phase one, removing the tank  
14 farm.

15 The same applies to your comments on  
16 worker safety, where you've removed the references  
17 to construction. It's just not relevant under the  
18 overriding terms of this proposed order. The  
19 order would only apply to tank farm demolition.

20 MR. SCHULTZ: And again, from the city's  
21 concerns, it's just making absolutely certain  
22 there is no confusion between the city as the  
23 review and comment period, and just felt that it  
24 would be better if the actual condition, the way  
25 this body sees it, is actually written instead of

1 just putting in the relevant portion so that it  
2 was clear that these, this is what is going to  
3 comply with it. That if, if, you know, this body  
4 feels that compliance officer is not going to have  
5 any problems later on down the line with what does  
6 apply and what doesn't, from the city's standpoint  
7 we are trying to eliminate as many disputes, even  
8 from within the city staff, as to what does apply  
9 and what doesn't.

10 HEARING OFFICER FAY: Sure. Sure. And  
11 I think if you can maintain a good working  
12 relationship with the compliance unit, that, that  
13 will solve a lot of these things.

14 Then I'd be moving on from worker  
15 safety, if there's no further comments, to waste  
16 management. Now, here there's a fundamental  
17 difference in the city's comment, and that is that  
18 they want Duke to be held responsible for  
19 obligations that, that PG&E has. And I'll just  
20 cite you to the third revised PMPD, which is part  
21 of the Commission's decision.

22 On page 217, the Commission addressed  
23 this and did not follow the city's view. They,  
24 they rejected it. So that's been settled. And  
25 clearly, there's a contract between PG&E and Duke,

1 and we have not, the Commission has, has decided  
2 not to just shift that responsibility from PG&E to  
3 a condition that applies to Duke.

4 MR. SCHULTZ: The city certainly  
5 understands that, and wanted to raise the issue  
6 again, in that we don't feel this body has the  
7 ability to oversee PG&E. PG&E is not the  
8 applicant, so you're asking a third party to  
9 comply with certain conditions, and just wanted to  
10 raise that issue again for the record.

11 HEARING OFFICER FAY: Okay. And again,  
12 Mr. Schultz, if I, if I skip over too quickly  
13 anything you want to emphasize, please, please  
14 stop me.

15 Much of this, again, gets down to where  
16 a condition mentions not only demolition but also  
17 construction. And as I said before, we're not  
18 concerned about the fact that both are mentioned  
19 since only demolition is, is relevant under the  
20 terms of the proposed order.

21 Likewise, the deletion of PG&E, while  
22 consistent with your position, the committee  
23 would, would not be inclined to recommend that and  
24 did not do so in, in its proposed order.

25 Any other comments on the waste

1 conditions of certification, waste management?  
2 Anything further, Mr. Schultz, on waste  
3 management?

4 Okay. Let's move to terrestrial  
5 biology. I see that the city has requested being  
6 added for review and comment on, on selecting the  
7 designated biologist, but also wants to include  
8 several conditions that describe the duties and  
9 the authority of the designated biologist, and  
10 worker awareness, et cetera. Any comments from,  
11 from staff on this recommendation?

12 MS. HOLMES: Thank you. First of all,  
13 with respect to review and comment, the city has  
14 asked for that in a number of areas, not just  
15 terrestrial biology, but also hazardous materials  
16 management and waste. And as, as a general rule,  
17 we're, we're neutral about that unless it were to  
18 involve re-opening the record, which we oppose. I  
19 guess perhaps I should have spoken up earlier.

20 With respect to the review and comment  
21 role for the city on Haz 6, I wanted to note that  
22 typically, it's the certified uniform program  
23 authority that gets review and comment, which in  
24 this case is the San Luis Obispo County Health  
25 Department, Division of Environmental Health. So

1 in that instance, we would, we have a, we have an  
2 active preference to remain consistent with that  
3 practice.

4 Moving back to terrestrial biology,  
5 again, we're neutral about the city of Morro Bay  
6 receiving documents, provided it doesn't  
7 necessitate re-opening the record. The city has  
8 asked that Bio T2 and Bio T4 be included, and it's  
9 my understanding that they are included by the  
10 terms of the condition.

11 So we didn't see much of an issue here  
12 in terrestrial biology with respect to the, to the  
13 city's comments. I think that what they've asked  
14 for with respect to inclusion of conditions is  
15 already accomplished by the Commission's decision.

16 MR. ELLISON: Mr. Fay, if I could just  
17 add a comment.

18 HEARING OFFICER FAY: Yes.

19 MR. ELLISON: During the proceeding, the  
20 city asked for review and comment on a number of  
21 different technical areas. Duke's position at  
22 that time, and its position here, is that in some  
23 cases that's appropriate because the city has a  
24 special expertise or a historic role, and in other  
25 cases it's not. And we went through that in the

1 decision, and, and I think the committee's and the  
2 Commission's adopted decision is quite precise in  
3 when it gives a review and comment role to the  
4 city and when it does not. And so again, this is  
5 a place where we think the, the committee should  
6 not change the earlier decision.

7 Duke's interest here, specifically on  
8 terrestrial biology, we have no problem giving  
9 documents to the city, particularly documents that  
10 are public documents. We are concerned about  
11 paying for the city to review them, and where the  
12 conditions of certification do not already give a  
13 review and comment role to the city we wouldn't  
14 want to see that expanded for that reason.

15 HEARING OFFICER FAY: Okay. Ms. Holmes,  
16 I, I'm just not sure if we're in agreement here.  
17 When I look at the, at Appendix A of the proposed  
18 order, it's, it quotes from the decision, on page  
19 270, the third revised PMPD, Bio T1, 5, 7, 10, 12,  
20 13, 17. And you said you thought Bio T2 and 4  
21 applied.

22 MS. HOLMES: Well, I was, I was reading  
23 from page 270 of my copy of the decision that says  
24 that the following conditions also apply to tank  
25 farm demolition Bio T1 through Bio T5, Bio T7, Bio

1 T10, Bio T12, Bio T13, and Bio T17.

2 HEARING OFFICER FAY: Oh, through. I'm  
3 sorry, my mistake. You're correct, yeah. So --

4 MR. SCHULTZ: My mistake, too.

5 HEARING OFFICER FAY: That's fully  
6 addressed. Okay. And, and again, in response to  
7 Mr. Ellison's comments, I, I just reiterate that  
8 the committee has to respect the deliberations  
9 that went on by this committee and by the  
10 Commission, and not, not try to second guess  
11 those. So I think we're going to, for the most  
12 part, leave, leave things as they are and think in  
13 terms of things like review and comment.

14 Which I think would bring us on to the  
15 next area, unless there's further comment on  
16 terrestrial biology. Further comment? Okay.

17 The, the next is geology and  
18 paleontology. Again, review and comment is  
19 requested. And the, those conditions cited, Paleo  
20 1 through 6, apply if demolition involves  
21 undisturbed soil. So that, that is conditional,  
22 in any case. Any, any further comments on geology  
23 or paleontology?

24 All right. Let's go to land use. That  
25 be more problematic. Again, the review and

1 comment is, is requested, same, same response as  
2 mentioned before. And I'll note that the  
3 conditions that were called out in the decision  
4 only apply if the lay-down area is reviewed. And  
5 I don't know if, if applicant knows that that's  
6 going to be the case, but if it is the case, then  
7 the conditions would apply, and they would not if  
8 it, if those areas were not used.

9 As to Land 1, the city states that it's  
10 adamant on that, and this may be perhaps the  
11 biggest issue regarding the Duke petition. And  
12 the committee's thinking, in terms of the draft  
13 order, was that that is just not relevant to the  
14 tank farm demolition. And this is your  
15 opportunity to, to address that. But we're not  
16 aware that, that there's water discharge involved  
17 that's under the jurisdiction of the regional  
18 board as part of tank farm demolition, and if  
19 there's not, then it appears to be irrelevant.

20 MR. SCHULTZ: I guess I'd go back to the  
21 start, though, and where we were from the very  
22 beginning, in that, you know, when a project is  
23 put in front of the Energy Commission you have to  
24 go through a data adequate, which would require  
25 them to show that they had site control and had

1 all leases in effect for the, for this project.  
2 And I guess on its own, if this was just a  
3 demolition project, it wouldn't be in front of  
4 you, I believe. In fact, in our original MOU the  
5 demolition project was supposed to go through the  
6 city.

7 So I don't believe the Commission  
8 addressed this whole issue of knowing where, what  
9 it would have done. In fact, the condition says  
10 they're supposed to have a lease by November of  
11 2004. They're already in violation of this  
12 condition, although it hasn't been obviously  
13 filed, and is, isn't a permit yet. But once it  
14 will be, they will already be in violation of it.  
15 And so you have an illegal facility. Maybe not  
16 the tank farm, but you do have an illegal facility  
17 right now.

18 Duke is trespassing on city land as, as  
19 we sit here today, so you'll be authorizing a  
20 project that maybe doesn't use the actual outfall,  
21 but it is related to the main facility, and we're  
22 asking that the condition be pulled out and put in  
23 Land 1. I don't think this was an issue at all  
24 that was discussed, this scenario we're in. I  
25 think we all discussed the idea of the demolition

1 being separate, but we certainly didn't discuss  
2 the separation of the demolition without an  
3 outfall lease agreement.

4 HEARING OFFICER FAY: So basically,  
5 because Phase 1 is part of the project, you think  
6 that, that the lease should be applied, the  
7 condition of leasehold should be applied to  
8 everything, whether it -- now, do you dispute --

9 MR. SCHULTZ: Well, not to confuse the  
10 issue. It's actually a lease of three pipelines.  
11 There's a cathodic protection, there's the actual  
12 outfall lease, which is the one being used, but  
13 there's also an outfall for the, when the oil tank  
14 farm was being used that runs through city  
15 tidelands, too. So there's actually three  
16 different leases, so one of them actually is  
17 related to the tank farm, but it's not being used  
18 at this time. It is underground, and we don't  
19 know, I'm assuming that's just in a caretaker  
20 status is what Duke wants to do, and they're not  
21 going to pull out that because then obviously  
22 there would be ground disturbance and grading,  
23 because it's underground.

24 But there's actually three leases that  
25 expired with the city; one for the outfall lease,

1 one for the tank farm oil, and the cathodic  
2 protection. So there was actually three leases in  
3 the 1954 lease. One is related to tank farm  
4 demolition, but my understanding is that has  
5 nothing to do with the actual tank farm, because  
6 that's going to happen all above ground. But  
7 there are three leases that have expired, and  
8 again, I go back to yes, originally the Commission  
9 certainly did understand that demolition would be  
10 removed, and I understand your position that they  
11 discussed this thoroughly and knew what conditions  
12 would apply and not apply. But they certainly did  
13 not know we would be sitting here in 2005 and  
14 there would not be an outfall lease.

15 HEARING OFFICER FAY: Okay. But aside  
16 from, from this, one of the three pipelines that  
17 you say is related to the tank farm, how is the,  
18 the question of the lease, whether it's granted or  
19 not, how does that apply to the tank farm  
20 demolition, physically?

21 MR. SCHULTZ: Physically, it does not.

22 HEARING OFFICER FAY: Okay. Mr.  
23 Ellison, is this pipeline that Mr. Schultz states  
24 is related to the tank farm, is that involved at  
25 all in the tank farm demolition?

1                   MR. ELLISON: I did not ask the Duke  
2                   staff that question specifically, but in, in  
3                   discussing generally the tank farm demo, I am  
4                   confident the answer is no. And I say that  
5                   because they made clear to me that there was no  
6                   ground disturbance, in their opinion, involved in  
7                   this. I don't see how you can remove that pipe  
8                   without disturbing the ground, so that suggests to  
9                   me that, that the pipe is not part of the tank  
10                  farm demolition. They described to me what the  
11                  tank farm demolition project consisted of and did  
12                  not mention removal of the pipe, and they made  
13                  clear to me that there, that there was no entry  
14                  onto city property involved in this.

15                  The bottom line, from our perspective,  
16                  is that it is irrelevant. In fact, even if the  
17                  city were successful in evicting Duke, this tank  
18                  farm demo project could proceed. So I don't see  
19                  any relationship between these things, and, and we  
20                  would very strongly oppose this condition.

21                  ACTING PRESIDING MEMBER BOYD: Well,  
22                  there's been reference to three leases having  
23                  expired, but I think we've all concentrated on one  
24                  lease. Any comment on the, the future of the  
25                  other two expired leases vis-a-vis the one that

1 obviously is the center of attention?

2 MR. ELLISON: Well, with the removal of  
3 the tank farm, the, the lease that is related to  
4 the use of that tank farm I think becomes  
5 irrelevant. I don't know what the city's position  
6 is on that, but I think for the, for our purposes  
7 today and authorizing just the tank farm demo, I  
8 really don't think there's any relationship  
9 between any of the leases and the activity that  
10 we're seeking to have authorized here today.

11 ACTING PRESIDING MEMBER BOYD: Was it  
12 ever Duke's intention to re-negotiate other than  
13 one lease, the one lease that's --

14 MR. ELLISON: In my involvement in the  
15 discussions with, with the city, we have always  
16 discussed the renewal of the outfall lease  
17 singular, and, and we have not reached -- and  
18 there may have been discussions that I was not a  
19 party to where, where they did discuss more  
20 specifically these, these three specific leases.  
21 But I think the issues, as far as I am aware of  
22 them, have no relationship to the tank farm  
23 demolition. Those issues, I've never heard any  
24 expression of concern about the tank farm  
25 demolition in the context of our lease, lease

1 discussions, and I think Mr. Schultz is quite  
2 candid in saying that physically there is no  
3 relationship.

4 HEARING OFFICER FAY: Mr. Schultz, if  
5 the, I mean, our familiarity of the terms of the,  
6 of the agreement to lease make it clear that, that  
7 it is very significant in relationship to the tank  
8 farm demolition project. And if this was a, a  
9 condition, it might well preclude tank farm  
10 demolition.

11 Does the city, would the city prefer the  
12 tanks not be there versus be there, or is it  
13 indifferent about that?

14 MR. SCHULTZ: Absolutely. No,  
15 absolutely not. The city is in support of the  
16 removal of the tank farm. It has been all along.  
17 The MOU and the actual agreement to lease, I don't  
18 -- actually, at this point in time there is no  
19 agreement to lease or lease outfall. We have been  
20 at a stalemate over some, what I consider minor  
21 issues and Duke considers major issue. But not to  
22 get into those negotiations, but the MOU really  
23 contemplated, it says right in there that Duke  
24 will obtain the demolition of the tank farm from  
25 the city. They were going to get the permit from

1 the city, but then Suisun bid into this permit.  
2 But the city is behind it. You know, from a  
3 visual standpoint and the remediation standpoint,  
4 we obviously want it to go forward.

5 Just to step back a little bit. Mr.  
6 Ellison's correct in that during the negotiations  
7 the primary focus has always been on the outfall  
8 lease. I'm not going to tell you the other two  
9 leases carry the same weight. However, there has  
10 been some talks about the oil pipeline, in that  
11 the state lands, we have part of it under our  
12 jurisdiction and the State Lands Commission has  
13 part of it under theirs. They recently entered  
14 into a five-year lease, putting it in caretaker  
15 status, with, with Duke for that area. So there  
16 would be, I mean, sooner or later it has to be  
17 dealt with, what the area -- with the city, either  
18 a lease to put in a caretaker status, or for the  
19 removal of that pipeline. Sooner or later, it's  
20 going to have to be dealt with or get  
21 environmental clearance. You know, there is no  
22 environmental issues there.

23 So it's, it's been in the background  
24 only because it's not being used, and it never had  
25 any outcome as to what would happen to the actual

1 project itself. But there has been some very  
2 minor discussions, and we haven't put any value on  
3 it, as opposed to we all know the outfall has a  
4 tremendous value to Duke.

5 So very little conversations, but there  
6 has been some just as to what would be the future  
7 of that. And, in fact, you know, at one time the  
8 negotiations were that, you know, once it had  
9 environmental clearance then the city could  
10 possibly use it for wastewater or for other  
11 issues.

12 So that's kind of a little bit of a  
13 history. But they were required to get a lease  
14 from State Lands for their portion to put it kind  
15 of in a caretaker status for the next five years,  
16 until Duke decides what they intend to do with  
17 that, that other outfall.

18 HEARING OFFICER FAY: But is it correct  
19 to assume that regardless of how that is handled,  
20 that pipeline related to the tank farm, that that  
21 can be handled completely separate from removing  
22 the tanks?

23 MR. SCHULTZ: Yes. But I think you go  
24 back to the, the main issue of you look at  
25 whether, I think you're supposed to look at

1       whether the applicant has site control over the  
2       whole area and the related facilities, and I  
3       think you could say that that outfall is related  
4       to this facility and what will happen to it in the  
5       future.

6               HEARING OFFICER FAY: All right. I, you  
7       know, I think we're getting back to this question  
8       of, you know, your global approach on that  
9       particular issue, versus an effort to look at  
10      Phase 1 of this project and what is and isn't  
11      relevant to that.

12             Now, does the city believe, as Duke  
13      claimed in its petition, that the visual benefit  
14      and the remediation benefit of removing the tank  
15      farm is in the public interest?

16             MR. SCHULTZ: Absolutely. It does.

17             HEARING OFFICER FAY: All right.  
18      Anything further on land use? Any, any further  
19      comments on the land use question, or this one  
20      about the, the agreement to lease before we move  
21      on?

22             MS. HOLMES: Just one brief comment, and  
23      that's that there is no statutory requirement that  
24      an applicant have site control in order for the  
25      Commission to approve a facility.

1                   HEARING OFFICER FAY: Thanks, Ms.  
2                   Holmes. I, I will note that whether it was lies  
3                   or not, there is precedent for licensing projects  
4                   that do not have site control. And it's  
5                   problematic for the power plant because they tend  
6                   not to be built, but that is, that has not  
7                   precluded licensing in the past.

8                   All right. Moving to Socio-Economics.  
9                   The city wanted Soc 3 added, which I believe is  
10                  the funding for the city. Anything to, to add to  
11                  that, Mr. Schultz?

12                 MR. SCHULTZ: No, Your Honor. And based  
13                 on your previous comments, I think if I tried to  
14                 make a pitch for it I'm not going to get anywhere,  
15                 so I'm just -- going through these conditions and  
16                 going over them with my staff, we know that we're  
17                 going to have to be doing quite a bit of work, and  
18                 would request you to put that in so that there be  
19                 at least some type of compensation. I know Duke  
20                 is against it, and I know that this body is not  
21                 going to change it without the full Commission. I  
22                 know --

23                 HEARING OFFICER FAY: Well, I think it's  
24                 a matter of degree. You know, if we're looking at  
25                 a, at a three-month part of a two-year,

1 contemplated as a two-year huge project, obviously  
2 the city effort and involvement would be much less  
3 on a discrete tank farm demolition. Did staff  
4 have any comments on this?

5 MS. HOLMES: We don't support the  
6 proposal.

7 HEARING OFFICER FAY: And Duke?

8 MR. ELLISON: We do not support the  
9 proposal. I will add, just to put this in some  
10 perspective, that with respect to the offsite tank  
11 farm demolition, which is a separate but almost  
12 identical project of removing the tank farm that  
13 is off the site, today we're discussing the one  
14 that is on the site, Duke has already accomplished  
15 that offsite tank farm demo and did so under the  
16 review of the county, rather than the city. And I  
17 was informed that the, that Duke's out of pocket  
18 cost for the permit reviews associated with the  
19 offsite tank farm demo were, were \$2,500. So  
20 we're talking about a very minimal amount of  
21 review for essentially an identical project.

22 Duke has already provided to the city  
23 something approaching \$2 million in compensation  
24 for all sorts of reviews and activity related to  
25 this project, so while we do understand and are

1 sympathetic with the, with the city's budget  
2 concerns, we don't think that, that there's an  
3 issue here, and we do not support this.

4 MR. SCHULTZ: If I may just respond, for  
5 the record. I, I wouldn't compare the two  
6 projects whatsoever. One's in the, in the middle  
7 of a well populated town of 10,000, and one has no  
8 one around it whatsoever. So the city has many  
9 concerns and will need the review and comment to  
10 protect the citizens of Morro Bay, as opposed to a  
11 tank farm that's out in the middle of nowhere. We  
12 have many concerns about what happened at Moss  
13 Landing and the fire that happened there, so our  
14 big concern is making sure, and we'll be doing as  
15 much review and comment as we can, but understand  
16 the need, the reason why you can't include it in  
17 the decision.

18 HEARING OFFICER FAY: Ms. Holmes, maybe  
19 this would be a good time to, to just address  
20 general compliance issues. In the event of  
21 something unanticipated, where a great cost is  
22 incurred, for instance, is, is there a process  
23 that a party like the city could come in and say  
24 look, the Commission didn't think this was going  
25 to be a, a significant impact. In fact, here,

1 here are the invoices that show that, that to  
2 resolve this unanticipated problem it's been very  
3 expensive. Can they come to the Commission and  
4 seek a revision?

5 MS. HOLMES: Anybody can come to the  
6 Commission and seek a revision. There is a,  
7 there's a complaint process, there is an amendment  
8 process, there is a variety of mechanisms that  
9 people, that, that people can and do use to  
10 address issues that arise post certification.

11 HEARING OFFICER FAY: I think the way  
12 this works is, and we don't see this in the  
13 licensing part of these power plants, but far more  
14 time is spent in compliance than in licensing,  
15 since it takes years to build these projects. And  
16 the compliance team is, is a referee in many ways,  
17 judging whether or not conditions are being  
18 adequately carried out. And just because you may  
19 be frustrated right now doesn't mean that there  
20 isn't some other remedy later on, if a problem  
21 arises.

22 ACTING PRESIDING MEMBER BOYD: I guess I  
23 would just add to that, having sat here almost  
24 three and a half years now, that -- almost in this  
25 very spot part of the time, that, that I, for one,

1 can say that the full Commission has -- and as a  
2 matter of fact I happen to sit on the Siting  
3 Committee which has to pre-review these kinds of  
4 things -- made a lot of modifications to  
5 conditions resulting from experiences gained on  
6 the site of any particular project. Not, you  
7 know, there is not a one size fits all, so I, I  
8 would just concur that it's, it's possible to  
9 change conditions.

10 I will admit most of the time it has to  
11 do with start up of operations and changes,  
12 various environmental approaches. But, but it is  
13 open. And I guess while I'm talking here I might  
14 as well say, to make Mr. Schultz feel a tad  
15 better, that while the committee did agree that,  
16 in, in discussing your petition, that we felt  
17 that, that based on the long history of, of this  
18 organization in dealing with these kinds of  
19 issues, that, that we had already closed the door,  
20 or safely safeguarded the city's position on most  
21 of these issues.

22 I just want to let you know that we  
23 approached today with an open mind, and, and quite  
24 willing to be convinced that we erred somewhere if  
25 we so did. So far, it's going rather quickly.

1 But I still have an open mind to, to the subjects  
2 here, if a case can be made. So, anyway.

3 HEARING OFFICER FAY: Anything further,  
4 then, on, on Socio-Economics issues? Okay.

5 Let's move to Traffic and  
6 Transportation. Your interest in, in Trans 4 is  
7 basically road repair; is that right?

8 MR. SCHULTZ: That's, that's correct.  
9 And, and I think, and again, this is when the  
10 Commission was reviewing this, I, at least my  
11 understanding was we were assuming the bridge  
12 would be there and that they were going to use  
13 Atascadero and Main for the trucks that are  
14 removing the demolition of the material. Now, I  
15 don't know how many trucks that will be and how  
16 many trips, because we don't know that yet. But  
17 if you actually look at the conditions, it talks  
18 about reviewing Main Street and Atascadero Road.  
19 And again, you know, it's just the assumption, the  
20 assumption would be there.

21 If they're using another route,  
22 obviously they're going to pre-inspect that before  
23 and after, but we wanted to make sure it was  
24 clear, because they're going to have to either go  
25 through the back, through the PG&E property and go

1 out that way now, or they're going to have to go  
2 through the middle of town, and we wanted to make  
3 sure that there's pre-inspection of those roads  
4 and post-inspection.

5 If there's only one or two trips,  
6 obviously it's not, like you said, it's three  
7 months, it's not two years. But is it, is it, you  
8 know, four truck trips or is it 100 truck trips.  
9 I, I just don't know.

10 ACTING PRESIDING MEMBER BOYD: I'd like  
11 to hear from the applicant on this, and then I'd  
12 like to hear the staff's reaction.

13 MR. ELLISON: Applicant does not support  
14 this request. As Mr. Schultz acknowledges this is  
15 just a three-month relatively simple project. It's  
16 not a two-year project. And, and also,  
17 importantly, this tank demo does not involve the  
18 very heavy loads that are sometimes involved in  
19 the construction of, of a power plant. We're not  
20 bringing turbines to the site or anything of that  
21 nature. The trucks we're talking about here are  
22 standard trucks that go through the city every day  
23 for the fishing industry, and that sort of thing.

24 ACTING PRESIDING MEMBER BOYD: Do you  
25 have an estimate of how many truck strips are

1 involved in this?

2 MR. ELLISON: I was told that there are  
3 as many as ten trucks a day involved in this,  
4 during the three month period.

5 ACTING PRESIDING MEMBER BOYD: Staff.

6 MS. HOLMES: Thank you. Not having had  
7 the advantage of knowing what the truck traffic  
8 was, our response generally is that since, since  
9 the information is not in the record other than  
10 the reference to the tank farm demolition taking a  
11 relatively short period of time, we thought that  
12 this was the type of issue that is well suited to  
13 resolution in the compliance phase.

14 If it turns out that there, that the  
15 demolition takes longer or there's more use of  
16 heavy trucks, we would encourage the city of Morro  
17 Bay to present that information to the compliance  
18 unit and discuss whether or not some kind of an  
19 amendment is needed. Based on the information we  
20 have in the decision, it, we just didn't feel that  
21 re-opening the record or changing the condition  
22 was justified.

23 ACTING PRESIDING MEMBER BOYD: Do you  
24 think that based on the conditions as they now  
25 read, that the compliance officer can work with

1 the city and the applicant to determine which of  
2 the two, apparently two possible routes is best,  
3 or if both will be used to divide the load, you  
4 know, that kind of decision.

5 MS. HOLMES: I would expect that to  
6 happen. I would expect that if, in the course of  
7 those kinds of discussions it becomes apparent  
8 that there is going to be some type of  
9 extraordinary use of a particularly fragile or --  
10 section of road, or a section of road that's  
11 already in an impaired state and it's going to  
12 potentially contribute to -- that, that the  
13 compliance process of amending the condition to do  
14 the, the -- to meet the requirements of, of that  
15 condition could apply to tank farm demolition, but  
16 only if there's a demonstration after these types  
17 of discussions that it's necessary.

18 ACTING PRESIDING MEMBER BOYD: Well, I  
19 just want to say that the committee, consisting of  
20 Mr. Fay and myself, and Mr. Thomas Fiske, with,  
21 with whatever carte blanche credentials he's  
22 carrying at the moment, we, we have talked about  
23 this. And I will, I, I do feel strongly about not  
24 wanting to, to, if at all possible, engage in  
25 additional surgery on the patient, the patient

1       having free will, recovered by now, that being the  
2       decision.

3               But I am, frankly, somewhat sympathetic  
4       to the city on this point for the reason that the  
5       project, the demolition project has been separated  
6       from the rest of the process. And while  
7       demolition would have preceded construction and a  
8       lot of other conditions would've been met about  
9       bridges and what have you, we are going to have  
10      some activity here that theoretically should not  
11      be super-extraordinary, in terms of, of the size  
12      of the vehicles that traverse our streets in this  
13      day and age.

14             Nonetheless, it's out of sync with, with  
15      the eventual construction of the, of the facility,  
16      and probably will entail different routes. And so  
17      I would just encourage our compliance people to,  
18      consistent with the discussion that just took  
19      place, that, that we pay keen attention to that  
20      fact, because we have no promise that the project  
21      will ever be built. But this activity will take  
22      place, and it will take place separate and apart  
23      from project construction, or no project  
24      construction, as the case may be, and there could  
25      be an impact upon streets or neighborhoods, or

1       what have you, and I think it can be handled,  
2       based on my experience here, within the context of  
3       the authority that the compliance staff has and  
4       in, in working with both the city and the  
5       applicant, but, but recognize there, this is a  
6       little bit different than we first looked at it,  
7       so there could be a situation that needs to be  
8       addressed. But I have great faith in our  
9       compliance organization.

10               MR. ELLISON: Commissioner, if I could  
11       just add one thought, which is, first of all, we  
12       agree that we can work with the compliance staff  
13       on this, and, and we understand the city's point  
14       about the bridge, which is well taken.

15               The one cautionary note I want to throw  
16       out with respect to this discussion, as well as  
17       the discussion that took place with regard to  
18       Socio 3, is that it's important to do, to  
19       understand what its costs are going to be before  
20       it pulls the trigger on, on initiating this  
21       project.

22               As I mentioned earlier, there's no  
23       revenue associated with this. Duke is already  
24       assuming the compliance with the Commission's  
25       conditions for the tank farm demo only will cost

1       it approximately \$100,000. It does need to know,  
2       with some reasonable certainty, what the costs are  
3       going to be ahead of time, rather than, that  
4       getting an unexpected cost added after the project  
5       is accomplished.

6                So with that understanding, we're, we're  
7       happy to work with the city and happy to work with  
8       the compliance staff.

9                ACTING PRESIDING MEMBER BOYD: I  
10       appreciate that, and I don't expect that, that  
11       there has to be any additional costs. But since  
12       we don't know the routes and we don't know the  
13       amount of debris that will be left in the, on the  
14       street surfaces and what have you, presumably you  
15       will go to great pains not to go by a school or,  
16       you know, and they'll pick routes that don't  
17       require extra caution, a crossing guard or what  
18       have you, but nonetheless I wouldn't see this as a  
19       big thing but there may be some minor added costs.  
20       A little clean-up, a little street sweeping, or  
21       what have you.

22               I don't know, and I don't mean to, to  
23       prejudice it, but I also appreciate the dilemma of  
24       our cities in this day and age, that the financing  
25       of government at all levels in the state is, is in

1 a shambles. Therefore, I have some sympathy with,  
2 with the welfare of the, the residents in the  
3 area, as well as any added cost burden that might  
4 be put on the city.

5 MR. SCHULTZ: And if I may just kind of  
6 clarify the situation as I looked at it, if you  
7 look at Trans 7, you know, it talks about the  
8 project shall mitigate, and, and Trans 7 already  
9 does apply to tank farms, so we're not really  
10 talking about new ones. It was more again a  
11 clarification. And Trans 7 says the project shall  
12 mitigate the expected operations at the  
13 intersection of Main and, Main and Atascadero.  
14 It's just not possible for these trucks to go  
15 through that intersection, so it won't apply.

16 But at the same token, what I imagine is  
17 only, again if -- Morro Bay does not have any  
18 street light whatsoever, it's stop signs  
19 throughout, but we do have the same exact one  
20 other intersection that's well impacted, and  
21 that's at Quintana and Harbor. And I would be  
22 very surprised, it's the only way to get out of  
23 town, if these trucks don't use that other  
24 impacted intersection.

25 So it was more of a clarification that

1 the compliance officer would understand, and I  
2 think I have more assurances now, that since Main  
3 and Atascadero doesn't apply, I didn't want them  
4 just to assume okay, we don't have to comply with  
5 that condition, as opposed to looking at that  
6 other major intersection that we're now going to  
7 go through, and look at it. And if there is ten,  
8 ten trucks trips, I would disagree, is ten more  
9 than are going through the town right now. The  
10 fishing industry has been decimated, and we don't  
11 have that. So ten more trucks going through, even  
12 if it's in the day, through that intersection,  
13 could have an impact.

14 So my concern was more just making sure  
15 the same conditions apply, but they're applied to  
16 the route now, because it has definitely changed  
17 from what is put in these conditions.

18 HEARING OFFICER FAY: Sure.

19 ACTING PRESIDING MEMBER BOYD: Our  
20 compliance officer's poised to say something.

21 HEARING OFFICER FAY: Ms. Bruins.

22 MS. BRUINS: I just thought maybe it  
23 would be a good idea -- there you go. I thought  
24 it might be a good idea if, I mean, this is just a  
25 suggestion, that both the city and Duke take a few

1 minutes and go out to, or maybe perhaps after it's  
2 determined which route, routes will be used, and  
3 just take some pictures of the pre-condition of  
4 the, of the roads or intersections, or whatever  
5 applies. And then if, if it is, you know,  
6 determined that down the line that, that there has  
7 been an impact, they'd have something to bring to  
8 the compliance unit.

9 ACTING PRESIDING MEMBER BOYD: We all  
10 know that the, the city already intended to do  
11 that. But that's a good suggestion.

12 HEARING OFFICER FAY: Yeah. And, and,  
13 you know, obviously, the Commission wants this to  
14 be a fully mitigated situation. We don't want the  
15 city to be saddled with a broken down intersection  
16 as a result of tank farm demolition. But  
17 likewise, it should not be an opportunity to, you  
18 know, to squeeze the applicant beyond the impacts  
19 that actually occur.

20 So it's, it's going to be a question of  
21 fact, and, and this happens so often with  
22 construction, that compliance works with the  
23 parties and, and resolves this. And I think they  
24 fairly rarely come to the Commission, unless it  
25 requires literally changing a condition. And as

1 Commissioner Boyd mentioned, that's so often, just  
2 in terms of start-up, because of, of specific air  
3 quality requirements.

4 So I think you needn't worry that  
5 because Duke physically can't use that  
6 intersection, then, you know, all mitigation is,  
7 is out the window. That's, that's not the intent.  
8 The intent is to be sure that, that this, if  
9 approved by the Commission, that it doesn't leave  
10 the city worse off. That obviously, the  
11 Commission's interest in the, in the public  
12 benefit here, would be to improve the visual and  
13 to accomplish the remediation.

14 ACTING PRESIDING MEMBER BOYD: Let me  
15 thrash this horse one last time, for Mr. Ellison's  
16 sake. I don't, frankly, have any reason to have  
17 any problem at all with the applicant here or  
18 their well-meaning, and what have you. And I'm  
19 sure they don't have, as the applicant, any  
20 intention to cause any difficulties or problems  
21 for the city in this regard.

22 But we're dealing with a subcontractor  
23 here, and I've had enough experience in my life  
24 with subcontractors to know that that's something  
25 different. So they just have the responsibility

1 of watching their sub, their contractor real  
2 close, and what have you. And everybody's trying  
3 to squeeze a little profit out of every job they  
4 get, so I'm sure they will carefully watch their  
5 subcontractor on this one.

6 MR. McCURDY: May I ask a question, Mr.  
7 Fay?

8 HEARING OFFICER FAY: Certainly. Please  
9 identify yourself.

10 MR. McCURDY: Jack McCurdy, with CAPE.

11 I'm curious on why the route, or  
12 proposed route or routes are not specified in the  
13 application. Can you help me clarify that?

14 HEARING OFFICER FAY: In the petition?  
15 Mr. Ellison, we'll ask if you can answer that.

16 MR. ELLISON: Well, we didn't specify  
17 the routes in the condition because we didn't  
18 think that was necessary or appropriate. The --  
19 and also, I think, because the, it was envisioned  
20 that we would have a conversation with the  
21 compliance staff and with the city about what  
22 routes they'd prefer, and that conversation  
23 hadn't, hadn't yet occurred, so.

24 HEARING OFFICER FAY: It, it sounds like  
25 there's not a lot of choices to be made, based on

1       what Mr. Schultz said, and so, Mr. McCurdy, I  
2       think this is something that compliance will  
3       address. And I think the city will, you know, be  
4       representing its, its population in terms of the  
5       safety and acceptability of, of using certain  
6       roads.

7               MR. McCURDY: Is it presumed that the  
8       city will have some opportunity for input on those  
9       routes when they're discussed with compliance?

10              HEARING OFFICER FAY: I see Mr. Schultz  
11      nodding affirmatively --

12              MR. McCURDY: Fine.

13              HEARING OFFICER FAY: -- so I think you  
14      can rely on that, and stay in touch with the city.

15              MR. McCURDY: Thank you very much.

16              HEARING OFFICER FAY: Sure. Before we  
17      wrap up, are there any other comments from, from  
18      those on the phone?

19              DR. GREENBERG: No.

20              HEARING OFFICER FAY: No. Okay. Then  
21      Dr. Greenberg, I assume we've, we've stayed within  
22      the bounds of science on, on the waste area?

23              DR. GREENBERG: On, on waste and on haz  
24      mat, yes.

25              HEARING OFFICER FAY: Okay, great.

1 Thank you.

2 Okay. Any final comments from  
3 applicant?

4 MR. SCHULTZ: I want to -- I have one  
5 from --

6 HEARING OFFICER FAY: Okay, fine. Go  
7 ahead.

8 MR. SCHULTZ: -- that staff had in their  
9 comments that I don't know if we addressed, and  
10 that was Noise 2, and whether that applied to the  
11 tank farm.

12 ACTING PRESIDING MEMBER BOYD: Where  
13 were we?

14 HEARING OFFICER FAY: You don't apply  
15 that, I mean oppose that, do you?

16 MR. SCHULTZ: No.

17 HEARING OFFICER FAY: And applicant  
18 hasn't opposed it.

19 MR. SCHULTZ: Okay.

20 HEARING OFFICER FAY: It seemed  
21 eminently reasonable. I assume that it was just  
22 an oversight. If staff had thought about it at  
23 the time they would've included that, because it's  
24 conceivable that the demolition could involve the  
25 kind of noise that might need a, a complaint

1 resolution process.

2 MS. HOLMES: I would just note that,  
3 that Noise 1, which does apply, sets up the  
4 notification for the noise complaint process, but  
5 then Noise 2, that says how it works, was omitted.  
6 So as long as the applicant has, is -- I'm happy  
7 with the verbal confirmation from the applicant  
8 that they're, that they're willing to comply with  
9 Noise 2.

10 MR. ELLISON: That's fine. We have no  
11 problem with that.

12 HEARING OFFICER FAY: And, Mr. Schultz, in  
13 terms of Duke wanting to eliminate that AQC 3, do  
14 you have any, any comment on that? Staff does not  
15 oppose it.

16 MR. SCHULTZ: No comment.

17 HEARING OFFICER FAY: Okay. All right.

18 Do you have anything further, Mr.  
19 Schultz, since --

20 MR. SCHULTZ: Yeah, I think we're there.

21 HEARING OFFICER FAY: Okay. Mr.  
22 Ellison.

23 MR. ELLISON: Nothing further.

24 HEARING OFFICER FAY: Okay. Ms. Holmes.

25 MS. HOLMES: Nothing further.

1                   HEARING OFFICER FAY: Okay. Well, thank  
2                   you very much, everybody, and those of you on the  
3                   phone, as well, for participating. I'll ask just  
4                   one last time if there's any public comment.

5                   MR. NELSON: Yeah, I have -- Dave  
6                   Nelson. Might I make a personal comment about as,  
7                   as a member of the public?

8                   HEARING OFFICER FAY: Certainly.

9                   MR. NELSON: Yeah. I, I just have a  
10                  problem with this, and that it, you know, there's  
11                  this whole job under, under the umbrella of the,  
12                  of the application, that it hasn't been docketed.  
13                  And I kind of have a problem with being able to  
14                  use the process before it actually kicks in. It's  
15                  kind of like moving into a house before you  
16                  actually close escrow. It's done sometimes, but  
17                  oftentimes it'll create problems down the road.

18                  And where there's been so much  
19                  speculation and, and comment in print about Duke's  
20                  ability or willingness even to want to build this  
21                  plant down the road, I just see that as kind of an  
22                  abuse of the system that I see being abused in the  
23                  forms of discharge permits from various power  
24                  plants that'll be able to tie up the system and  
25                  use the system without any real guarantee at the

1 end.

2           And that, that's my concern, citizen of  
3 Morro Bay. I'll be happy to see those things go  
4 on. But looking at the process, I just have a  
5 problem with seeing abuse to the system, to the,  
6 you know, with no promise of this plant ever  
7 really being built. It, it's a far stretch for me  
8 to see this process being handled in this way. So  
9 as a member of the public, that's where my concern  
10 is.

11           Also, the, the traffic, that's going to  
12 be pretty bad, there's other construction that  
13 wasn't foreseen when this project was approved,  
14 and the timing obviously not laid out.

15           So that's my comments. Thank you for  
16 the opportunity.

17           HEARING OFFICER FAY: Okay. Thanks, Mr.  
18 Nelson.

19           And just to address the, the procedural  
20 aspect, just so you know. This may not resolve  
21 your concern, but if this goes forward, the  
22 committee would present its proposed order to the  
23 full Commission, probably for adoption, or  
24 consideration of adoption, on June 22nd at the  
25 regular business meeting on that day. And if the

1 full Commission adopts the committee  
2 recommendation, and I, and I assume it will  
3 continue to be extremely narrow, limited to only  
4 activities related to tank farm demolition, that  
5 adoption and subsequent docketing of that order  
6 would complete and finalize approval for tank farm  
7 demolition separate from the rest of the power  
8 plant project.

9 So you would still have the rest of the  
10 project hanging in limbo, waiting for a water  
11 permit. But the tank farm demolition, if approved  
12 by the Commission, would be authorized completely  
13 as of that time. So it's basically just taking  
14 Phase 1 and granting approval of it without doing  
15 anything one way or the other on the rest of the  
16 project.

17 In any case, we anticipate giving the  
18 parties a chance to comment on any change in the  
19 committee order, any additional language, before  
20 the business meeting. And then the business  
21 meeting of June 22nd we anticipate would be when  
22 this comes up.

23 Anything else from the parties?

24 Anything else from the public?

25 Anything else from the committee?

1                   All right. Thank you all. We are  
2 adjourned.

3                   (Thereupon, the Morro Bay AFC  
4 Committee Conference was adjourned  
5 at 10:25 a.m.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Meeting; that thereafter the recording was transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said Committee meeting, nor in any way interested in the outcome of said Committee meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of May, 2005.