

CALIFORNIA ENERGY COMMISSION

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



ITEM 4

DATE: October 16, 2018

TO: Interested Parties

FROM: Christine Root, Compliance Office Manager, STEP

**SUBJECT: Moss Landing (99-AFC-4C)
Settlement Agreement – CEQA Analysis**

Background:

The combined-cycle, natural gas-fired, 1,060 megawatt (MW) Moss Landing Power Plant (MLPP) was certified by the Energy Commission in its Decision on October 25, 2000, and began commercial operation on July 11, 2002. The project replaced the existing electric power generation Units 1-5 (a total of 613 MW built in the 1950s and shut down in 1995) with two 530 MW, natural gas-fired, combined-cycle units (Unit 1 and Unit 2). The facility is located at the intersection of Highway 1 and Dolan Road, east of the community of Moss Landing, near the Moss Landing Harbor, Monterey County.

Summary:

1. On August 21, 2017, Energy Commission staff (staff) was notified by the California Air Resources Board (ARB) of a settlement agreement between Dynegy and MBUAPCD.
2. On Tuesday, August 22, 2017, ARB forwarded a copy of the settlement agreement to staff.
3. Staff then contacted the MBUAPCD to get further clarification on the agreement, and staff was provided with details of the investigation. Energy Commission staff investigated Notices of Violation and Notices of Noncompliance issued by the Monterey Bay Unified Air Pollution Control District (MBUAPCD) between October 19, 2013 and September 30, 2016 to the MLPP (Notices of Violation and Notices of Noncompliance). The investigation included calls with MBUAPCD personnel and review of all relevant documents including data provided by the MBUAPCD.
4. Staff reviewed the 2014-2015, 2015-2016, and 2016-2017 Annual Compliance Reports and discovered that MLPP did not report the Notices of Violation or Notices of Noncompliance.
5. Staff's review of the 2016-2017 Annual Compliance Report noted that the report stated "[i]n September 2016, Dynegy Moss Landing, LLC reached a settlement agreement relating to concerns by the Monterey Bay Unified Air

Pollution Control District regarding emission calculations and reporting following a CEMS system upgrade in 2013.”

6. The Compliance Monitoring Plan, including General Conditions and Closure Plan includes the following language:
 - a) Compliance Reporting, subsection Annual Compliance Report, states “Each Annual Compliance Report shall identify the reporting period and shall contain the following:…10. A listing of complaints, notices of violation, official warnings, and citations received during the year; a description of the resolution of any complaints which have been resolved, and the status of any unresolved complaints” (Commission Decision, 2000; page 34); and
 - b) Reporting of Complaints, Notices, and Citations states “[i]n addition to the monthly and annual compliance reporting requirements described above, the project owner shall report and provide copies of all complaint forms, notices of violation, notices of fines, official warnings, and citations, within 10 days of receipt, to the CPM. Complaints shall be logged and numbered. Noise complaints shall be recorded on the form provided in the NOISE conditions of certification. All other complaints shall be recorded on the complaint form which follows” (Commission Decision, 2000; page 35).

Recommendation: Staff and Dynegy/Moss Landing have reached an agreement in principle to resolve alleged violations of the above reporting requirements. Under the proposed agreement, Dynegy Moss Landing, LLC would pay \$50,000 to the Energy Commission. In return, the Energy Commission would agree to close the matter without further action or litigation. Staff recommends that the Energy Commission approve the proposed Order and delegate to its Executive Director Energy Commission the authority to sign the Moss Landing Power Plant Settlement Agreement.

STAFF ANALYSIS

The Energy Commission staff reviewed the proposed Settlement Agreement for potential environmental effects pursuant to California Environmental Quality Act (CEQA) and consistency with applicable laws, ordinances, regulations, and standards (LORS).

Table 1 Summary of Staff Responses for Environmental Impacts of the Moss Landing Power Plant Settlement Agreement

TECHNICAL/ENVIRONMENTAL AREAS REVIEWED	STAFF RESPONSE		
	Technical Area Not Affected	No Significant Environmental Impact	Significant Environmental Impact
Air Quality	X		
Biological Resources	X		
Compliance		X	
Cultural Resources	X		
Facility Design	X		
Geological & Paleontological Resources	X		
Hazardous Materials Management	X		
Land Use	X		
Noise & Vibration	X		
Public Health	X		
Socioeconomics	X		
Soil & Water Resources	X		
Traffic & Transportation	X		
Transmission Line Safety & Nuisance	X		
Transmission System Engineering	X		
Visual Resources	X		
Waste Management	X		
Worker Safety & Fire Protection	X		

STAFF DETERMINATION

Staff has determined that the technical or environmental areas of Air Quality, Biological Resources, Cultural Resources, Facility Design, Geological and Paleontological Resources, Hazardous Materials Management, Land Use, Noise and Vibration, Public Health, Socioeconomics, Soil and Water Resources, Traffic and Transportation, Transmission Line Safety and Nuisance, Transmission System Engineering, Visual Resources, Waste Management, and Worker Safety and Fire Protection, are not affected by the proposed settlement agreement, and no revisions or new conditions of certification are needed to ensure the project remains in compliance with all applicable

LORS for these areas. The proposed settlement agreement will have no significant environmental impact to the area of Compliance.

Based on staff's review and consideration of this Settlement Agreement and associated Energy Commission documents, this project:

- Will remain in compliance with all applicable LORS, subject to the provisions of Public Resources Code section 25525;
- Will have no new project changes and no new, additional, or increased significant environmental impacts; and
- Will not require new mitigation measures.

The project's original CEQA determination will not be altered. Furthermore, staff has not identified any new information which would change these opinions.

STAFF RECOMMENDATION

Staff recommends that the Energy Commission approve the proposed Order and delegate to its Executive Director Energy Commission the authority to sign the Moss Landing Power Plant Settlement Agreement.

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The California Energy Commission (Energy Commission or Commission) and Dynegy Moss Landing, LLC (Dynegy) as owner of the Moss Landing Power Plant (MLPP), enter into this Settlement Agreement (Agreement).

I. INTRODUCTION

1. Pursuant to California Public Resources Code section 25500, the Energy Commission “shall have the exclusive power to certify all sites and related facilities in the state.” A “facility” includes any thermal power plant with generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.” (Pub. Resources Code §§ 25110, 25120.)
2. The Moss Landing Power Plant Commission Decision (Final Decision) was issued on October 25, 2000, certifying the power project. The Final Decision governs the construction, operation, and decommissioning of the MLPP.
3. Pursuant to Public Resources Code section 25532, the Energy Commission has established a monitoring system to assure that any facility certified by the Commission is constructed and operated in compliance with conditions specified in the Commission’s Final Decision.
4. Pursuant to California Code of Regulations, title 20, section 1770, the Energy Commission is to provide adequate monitoring of all conditions and measures set forth in the Final Decision required to mitigate potential impacts and to assure that facilities are constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards (LORS).
5. Pursuant to Public Resources Code section 25534, subdivision (b), the Energy Commission may administratively impose a civil penalty against a facility owner for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision. Any civil penalty shall be imposed in accordance with section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation. A civil penalty may be increased by an amount not to exceed \$1,500 for each day the violation occurs or persists, but the total per day penalties may not exceed fifty thousand dollars (\$50,000).
6. Energy Commission staff investigated Notices of Violation and Notices of Noncompliance issued by the Monterey Bay Unified Air Pollution Control District (MBUAPCD) between October 19, 2013 and September 30, 2016 to the MLPP (Notices of Violation and Notices of Noncompliance). The investigation included calls with MBUAPCD personnel and review of all relevant documents including data provided by the MBUAPCD.

II. SUMMARY OF PERTINENT FINAL DECISION PROVISIONS

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The Compliance Monitoring Plan, including General Conditions and Closure Plan includes the following language:

1. Compliance Reporting, subsection Annual Compliance Report, states “Each Annual Compliance Report shall identify the reporting period and shall contain the following:...10. A listing of complaints, notices of violation, official warnings, and citations received during the year; a description of the resolution of any complaints which have been resolved, and the status of any unresolved complaints (Commission Decision, 2000; page 34); and
2. Reporting of Complaints, Notices, and Citations states “[i]n addition to the monthly and annual compliance reporting requirements described above, the project owner shall report and provide copies of all complaint forms, notices of violation, notices of fines, official warnings, and citations, within 10 days of receipt, to the CPM. Complaints shall be logged and numbered. Noise complaints shall be recorded on the form provided in the NOISE conditions of certification. All other complaints shall be recorded on the complaint form which follows” (Commission Decision, 2000; page 35).

III. INVESTIGATION FINDINGS

1. On August 21, 2017, Energy Commission staff (staff) was notified by the California Air Resources Board (ARB) of a settlement agreement between Dynegy and MBUAPCD.
2. On Tuesday, August 22, 2017, ARB forwarded a copy of the settlement agreement to staff.
3. Staff then contacted the MBUAPCD to get further clarification on the agreement, and staff was provided with details of the investigation and the Notices of Violation and Notices of Noncompliance.
4. Staff reviewed the 2014-2015, 2015-2016, and 2016-2017 Annual Compliance Reports and discovered that MLPP did not report the Notices of Violation or Notices of Noncompliance.
5. Staff’s review of the 2016-2017 Annual Compliance Report noted that the report stated “[i]n September 2016, Dynegy Moss Landing, LLC reached a settlement agreement relating to concerns by the Monterey Bay Unified Air Pollution Control District regarding emission calculations and reporting following a CEMS system upgrade in 2013.”

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IV. TERMS

In order to resolve the above-described alleged violations and terminate and settle this matter and, in consideration of Energy Commission Staff not pursuing an administrative action under Public Resources Code section 25534 or otherwise filing a legal action against Dynegy for the above-described alleged violations, the Energy Commission and Dynegy agree as follows:

1. Dynegy shall execute the Agreement and provide a copy no later than October 18, 2018, to the attention of:

Shawn Pittard
Deputy Director, Siting Transmission and Environmental Protection Division
California Energy Commission, MS-16
1516 9th Street
Sacramento, CA 95814

2. Dynegy shall submit to the California Energy Commission a payment in the amount of fifty thousand dollars (\$50,000) to settle these matters. The payment is due within 14 days after Dynegy receives written notification by the Compliance Project Manager (CPM) of the execution of the Settlement Agreement by the Executive Director. Payment shall be made by electronic transfer to the California Energy Commission. Banking information and instructions necessary to complete the electronic transfer shall be provided by the Energy Commission.
3. If the Energy Commission does not approve the Agreement, it shall become null and void. Dynegy further agrees that if this matter comes before the Energy Commission in an administrative adjudication, members of the Energy Commission and the Executive Director shall not be disqualified from participation because of prior consideration of this Agreement.
4. This Agreement shall apply to and be binding upon Dynegy and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary corporations, and upon the Energy Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
5. This Agreement shall constitute the full and final settlement of the matters identified in Section III herein, subject to Dynegy's payment of the amount specified in section 2 above.
6. This Agreement does not preclude an action by the Energy Commission under Public Resources Code section 25534 or by other legal action with respect to the matters in this Agreement if, after the Agreement is approved by the Energy Commission and executed by its Executive Director, the Energy Commission becomes aware of any material false statements by Dynegy or its agents, or any successors thereto, made during the negotiation

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of, or compliance with, this Agreement or, Dynegy fails to complete all of the requirements set forth in this Agreement.

7. This Agreement does not constitute an admission by Dynegy that it agrees with the staff's allegations outlined herein, and further does not constitute an admission by Dynegy that it violated the Conditions of Certification contained in the Final Decision or any other law, ordinance, regulation or standard applicable to the MLPP. Dynegy will report and provide copies of all Notices of Violation and Notices of Noncompliance issued by the MBUAPCD to MLPP in the future.
8. This Agreement constitutes the entire agreement and understanding between the Energy Commission and Dynegy, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind regarding the matters herein, whether written or oral, between the Energy Commission and Dynegy.
9. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
10. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
11. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
12. Any civil litigation to enforce this Agreement shall be filed in the Superior Court of California, County of Sacramento.
13. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
14. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
15. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.

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16. If any public statement is made by either Party about the Agreement or the underlying facts or process leading up to the settlement, to the extent feasible the Party will provide advance notice of the intended public statement to the other Party.
17. The undersigned represent that they have the authority to execute this Agreement.
18. The Parties agree that fax or pdf signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

California Energy Commission

By: _____
Name: Drew Bohan
Title: Executive Director

Date:

Dynegy Moss Landing, LLC

By: 
Name: Barry Boswell
Title: Senior Vice President and
Chief Fossil Officer 
Date: October 12, 2018

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket.	99-AFC-04C
)		
MOSS LANDING POWER PLANT)		
)		
DYNEGY MOSS LANDING, LLC)	ORDER APPROVING	
)	SETTLEMENT	

STAFF RECOMMENDATION

Energy Commission staff investigated Notices of Violation and Notices of Noncompliance the Monterey Bay Unified Air Pollution Control District issued to the Moss Landing Power Plant between October 19, 2013 and September 30, 2016. After staff's investigation, staff and Dynegy Moss Landing, LLC (Dynegy) entered into settlement negotiations. The legal requirements at issue, as well as staff's allegations, and Dynegy's admissions and denials, are included in the Settlement Agreement, which provides for a payment of \$50,000 by Dynegy to the Energy Commission.

Energy Commission technical staff reviewed the Settlement Agreement for potential environmental effects and consistency with applicable laws, ordinances, regulations, and standards (LORS). Staff determined that the existing findings of fact, conclusions of law, and conditions of certification would ensure that no significant impacts to public health and safety, or the environment would occur from implementing the proposed Settlement Agreement.

Staff recommends that the Energy Commission approve the Settlement Agreement and direct the Executive Director to execute the Settlement Agreement on behalf of the Energy Commission.

ENERGY COMMISSION FINDINGS

Based on staff's CEQA Analysis, the Energy Commission concludes that the terms of the proposed Settlement Agreement will not result in any significant impact to public health

and safety, or the environment.

- The Settlement Agreement will not result in any physical modifications to the MLPP or changes in current conditions of certification.
- The MLPP will remain in compliance with all applicable LORS, as provided by Public Resources Code section 25525.

CONCLUSION AND ORDER

The Energy Commission hereby approves the Settlement Agreement, and directs the Executive Director to execute the Settlement Agreement on behalf of the Energy Commission.

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on November 7, 2018.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat