

**DOCKETED**

<b>Docket Number:</b>	99-AFC-04C
<b>Project Title:</b>	Duke Energy North American's Moss Landing Power Plant Modernization Project (Compliance)
<b>TN #:</b>	242306
<b>Document Title:</b>	Order Approving Settlement
<b>Description:</b>	Order No: 22-0309-2
<b>Filer:</b>	Liza Lopez
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	3/14/2022 3:12:50 PM
<b>Docketed Date:</b>	3/14/2022

STATE OF CALIFORNIA  
STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

*IN THE MATTER OF:*

**MOSS LANDING POWER PLANT  
MOSS LANDING POWER  
COMPANY, LLC**

**DOCKET: 99-AFC-04C**

**ORDER APPROVING SETTLEMENT**

**I. STAFF RECOMMENDATION**

Moss Landing Power Company, LLC (MLPC) owns and operates the Moss Landing Power Plant (MLPP or “facility”) licensed by the California Energy Commission (CEC) and located in Monterey County, California. On October 25, 2000, the CEC issued the Moss Landing Power Plant Final Commission Decision (Commission Decision), certifying the power project (Docket No. 99-AFC-04C). The Commission Decision governs the construction, operation, and decommissioning of the MLPP.

CEC staff investigated an alleged failure to report a Citation and Notification of Penalty that the California Division of Occupational Safety and Health (Cal/OSHA), issued to the facility (OSHA Citation) on February 1, 2019. The investigation included an August 7, 2019 visit to the MLPP, calls and discussions with MLPP personnel and a review of all relevant documents. On November 18, 2020, CEC staff sent MLPP a Notice of Violation alleging noncompliance with the compliance reporting provisions of the Final Decision, which appear at pages 34 and 35 of the Commission Decision. Staff’s review also later determined that the facility had not reported an April 6, 2020 audit conducted by the California Public Utilities Commission, also as required by the facility’s Compliance Reporting conditions. The facility had reported other citations to the CEC, however.

The Commission Decision contains a Compliance Monitoring Plan, including General Conditions and Closure Plan and includes the following compliance reporting language (Compliance Reporting Provisions):

- Compliance Reporting, subsection Annual Compliance Report, states “Each Annual Compliance Report shall identify the reporting period and shall contain the following: 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,
- 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).

MLPC has worked with CEC Staff since the August 7, 2019 site visit and cooperated with the investigation. MLPC's cooperation and other efforts have saved the CEC time and resources in further investigation and adjudication of the alleged violations.

Given MLPC's continuing and diligent cooperation, CEC Staff and MLPC believe that rather than engaging in formal adjudication, it would be more productive to enter a settlement to resolve this matter.

In developing this settlement, CEC Staff considered the cooperation of MLPC, the specific facts developed by CEC Staff and MLPC during the course of the investigation, the actions and omissions by the prior owners before MLPC's acquisition of the facility, and applied the relevant factors in the Public Resources Code Section 25534.1(e) to determine that settlement, rather than formal adjudication, is a more appropriate use of the CEC's and MLPC's collective resources.

CEC Staff worked with MLPC to develop additional conditions of certification, to ensure MLPP operates in compliance with all applicable Final Commission Decisions, their respective Compliance Monitoring Plans, and applicable fire codes. The agreed upon Conditions of Certification, are intended to be amendments to the Final Decisions for the MLPP Facility.

The legal requirements at issue, as well as staff's allegations, and MLPC's admissions and denials, are included in the Settlement Agreement, which provides for a payment of \$75,000 by MLPC to the CEC. In addition, changes to the conditions of certification are included in the Settlement Agreement.

Staff recommends that the CEC approve the Settlement Agreement and changes to the conditions of certification and direct the Executive Director to execute the Settlement Agreement on behalf of the CEC.

## **II. ENERGY COMMISSION FINDINGS**

- 1) Public Resources Code section 25532 requires the CEC to establish a monitoring system to assure that any facility certified by the CEC is constructed and is operating in compliance with air and water quality, public health and safety, and other applicable regulations, guidelines, and conditions adopted or established by the CEC or specified in the written decision.
- 2) Public Resources Code section 25534 empowers the CEC to amend or revoke a license or impose administrative civil penalties.
- 3) Public Resources Code section 25534.1 sets forth factors to consider when determining the amount of an administrative civil penalty.

- 4) In reaching resolution, Staff has considered the factors identified in Public Resources Code section 25534.1, specifically the nature, circumstance, extent, and gravity of the alleged violations, the cost to the state in pursuing the enforcement action, efforts by MLPC to resolve issues, and its overall cooperation.
- 5) The agreed settlement is appropriate and reflects a fair resolution of the issues.
- 6) The settlement also includes amended reporting and notification Conditions of Certification. Upon execution of the settlement agreement, these amended conditions of certification will become part of the facilities' licenses.
- 7) Approval of the settlement, including amending of the licenses with new conditions of certification, is exempt from the California Environmental Quality Act as set forth in the California Code of Regulations Title 14, sections 15060(c)(2), 15060(c)(3), 15061(b)(2), 15061(b)(3), 15321, and 15378(a) & (b)(5).

### **III. CONCLUSION AND ORDER**

The CEC hereby approves the Settlement Agreement and changes to the conditions of certification and directs the Executive Director or their designee to execute the Settlement Agreement on behalf of the CEC, file a Notice of Exemption with the Office of Planning and Research, and take any other steps necessary to execute the Settlement Agreement.

**IT IS SO ORDERED.**

### **CERTIFICATION**

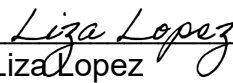
The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the CEC held on March 9, 2022.

AYE: Hochschild, Gunda, McAllister, Monahan, Vaccaro

NAY: NONE

ABSENT: NONE

ABSTAIN: NONE

  
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Liza Lopez  
Secretariat