

**MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN THE  
CALIFORNIA ENERGY COMMISSION STAFF  
AND**

**BUREAU VERITAS**

**FOR DESIGN REVIEW, PLAN CHECK AND  
CONSTRUCTION INSPECTION OF THE  
MORRO BAY POWER PLANT PROJECT  
00-AFC-12**

**DOCKET**

**00-AFC-12C**

DATE \_\_\_\_\_

RECD. APR 30 2009

**RECITALS:**

A. On October 23, 2000, Duke Energy Morro Bay LLC, filed an Application for Certification with the California Energy Commission (Energy Commission) for approval to construct and operate the Morro Bay Power Plant Project (Project). The 107 acre project site is located in the City of Morro Bay within the County of San Luis Obispo County, California.

B. Duke Energy Morro Bay LLC anticipated that the Project would proceed in three stages: Phase I -demolition of the tank farm, which would take three months; Phase II – construction of the new power block, which would take 21 months; and Phase III - demolition of the existing MBPP, which would begin after the new units commence commercial operation and take no longer than 36 months.

C. On August 2, 2004, the Project was approved by the Energy Commission. The Commission's Order was approved but was not docketed. Per Order No. 04-0802-01, "The Commission directs the hearing officer to file this Decision with the Commission's Docket Unit fifteen days (or the next business day) after the Project is granted a National Pollution Discharge Elimination System (NPDES) permit by the Central Coastal Regional Water Quality Control Board (CCRWQB)". As of April 17, 2009, the Project Owner has not obtained a NPDES permit.

D. On June 22, 2005, Energy Commission Amended Order No. 05-0622-01 approved the demolition of the existing Morro Bay Tank Farm. The Project owner's petition sought immediate permission to begin Phase I, Tank Farm demolition, on the grounds that the Commission's Decision on the Project anticipated that the Tank Farm demolition would occur before and be separate from construction of the proposed power plant or subsequent demolition of the existing power plant. This MOU is for the demolition of the Project Tank Farm Only. If and when the Commission's Decision is docketed, an additional MOU will need to be developed for Phases 2 and Phase 3 of the Project.

E. On or about May 5, 2006, LS Power Group purchased the Project from Duke Energy Morro Bay LLC. Subsequently on April 2, 2007, Dynegy Inc. merged with LS Power Group. As a result of the merger, the Project is now owned by Dynegy Inc.

F. Energy Commission must ensure that the Tank Farm demolition is in conformity with the Energy Commission's Decision (Decision), the California Building Standards Code

(CBSC), the local building codes adopted by the City of Morro Bay, and applicable laws, ordinances, regulations, and standards (LORS) to ensure health and life safety. The Decision contains the Conditions of Certification for the demolition of the Project Tank Farm.

G. The Tank Farm demolition will require that Dynegy Morro Bay, LLC submit engineering plans, calculations, specifications, and other project-related information to the Delegate CBO for the Project, for review and approval, prior to and during demolition of the Project Tank Farm. The intent of this requirement is to provide an independent review of the Project's inspections of the Project's demolition, to ensure compliance with applicable engineering LORS, the local building codes, the CBSC, and the Facility Design, Geology, and Transmission System Engineering Conditions of Certification.

H. The Tank Farm demolition inspections and necessary approvals prior to and during demolition will be provided by Bureau Veritas, a fully qualified third party contractor experienced in providing industrial building official services, acting as the Energy Commission's Delegate CBO to ensure independent review of the project.

**BUREAU VERITAS AND ENERGY COMMISSION STAFF AGREE AS FOLLOWS:**

1. The above recitals are incorporated into this agreement.
2. Bureau Veritas shall act as the Energy Commission's delegate for enforcement of local building codes; the CBSC; the Facility Design, Geology and Transmission System Engineering Conditions of Certification; the Storm Water Pollution Prevention Plan and Erosion Control Plan (as directed by the Compliance Project Manager (CPM)); and other engineering LORS applicable to the Project to ensure health and safety. Bureau Veritas will also be responsible for the design review, plan check, and Tank Farm demolition inspection for those building and non-building structures, Bureau Veritas, acting as the Delegate CBO for the Project, shall carry out these duties with all the rights and immunities afforded the Delegate CBO by the Codes. The ultimate responsibility for facility design, construction, and operational compliance remains with Dynegy Morro Bay, LLC.
3. Although Bureau Veritas will function as the Energy Commission's delegate, the Energy Commission has the final authority and responsibility to ensure that the Project is built in accordance with the applicable engineering LORS and the Decision and related Amendments. The Energy Commission's legal authority to enforce the terms and conditions of its Decision and related Amendments is specified in California Public Resources Code section 25500 *et seq.* The Energy Commission may amend or revoke the certification for any facility and may impose a civil penalty upon the project owner for any significant failure to comply with the terms or conditions of the Decision and related Amendments.
4. To ensure compliance with the Facility Design, Geology, and Transmission System Engineering Conditions of Certification specific to Tank Farm demolition, and the applicable engineering LORS, the Delegate CBO is authorized to take any action allowed by the California Code of Regulations and law to ensure that the Energy Commission's interests are properly addressed and protected. If the

Delegate CBO has issued, or is considering issuing, a stop-work order to ensure compliance, or to ensure that the Energy Commission's interests are protected, or for any other reason, the Delegate CBO shall seek the cooperation and assistance of the CPM appointed by the Energy Commission. The Delegate CBO shall notify the CPM in a timely manner, preferably prior to taking the action, so that the CPM is fully aware of the action taken or under consideration and its implication to the project. For any action taken under emergency conditions, the CPM shall be notified within 24 hours of the action.

5. In the performance of this agreement, Bureau Veritas, its employees and subcontractors shall act in an independent capacity and not as officers or employees of the State of California.
6. The CPM appointed by the Energy Commission shall have the right to approve the qualifications of Bureau Veritas engineering and technical personnel and the scope of work they will perform. Bureau Veritas shall notify the CPM if there is any change in personnel assigned to the Project team. Replacement personnel shall not work on the Project until they are approved by the CPM.
7. Bureau Veritas may retain the services of one or more independent qualified subcontractor(s) to supplement Bureau Veritas employees in the design review, plan check, and demolition inspection of the Project Tank Farm. The subcontractor(s) will answer directly to, and be responsible to, the Delegate CBO. The Delegate CBO shall provide the qualifications and scope of work of the subcontractor(s) to the CPM for approval at least ten days prior to the subcontractor's expected start of work. The Delegate CBO will retain responsibility for the Tank Farm demolition inspections required by sections 106.3.5 and 108 of the CBSC and for monitoring special inspections required by sections 1701, 1702 and 1703 of the CBSC.
8. Bureau Veritas shall notify the CPM if there is any change in subcontractor(s) or subcontractor's personnel. Replacement subcontractor(s) or subcontractor's personnel shall not work on the Project until they are approved by the CPM.
9. Bureau Veritas shall require that its subcontractors have not previously been employed directly by the project owner or its agents at any time during the 12 months prior to the start of this agreement. Bureau Veritas shall also require that during the course of this agreement its subcontractors or its agents will not be directly, or indirectly, employed by the project owner or any entity of which it is a holding, subdivision, or subsidiary.
10. At the request of the CPM, the Delegate CBO, its subcontractor(s), and any special inspectors shall assist the CPM in any audits or inspections of the Project.
11. Bureau Veritas shall enter into a contract for the Project with Dynegy Morro Bay, LLC for the payment of Delegate CBO services provided. The Energy Commission shall ensure that the fees charged to Dynegy Morro Bay, LLC for the review and inspection services provided by the Delegate CBO and any subcontractors are reasonable. These fees shall be based on hourly rates, or as

otherwise agreed to by the CPM. Payments to Bureau Veritas for work satisfactorily completed may be paid directly to Bureau Veritas in advance, in arrears, or from a credit account established with Bureau Veritas by Dynege Morro Bay, LLC. The contract between the project owner and Bureau Veritas shall include a provision that Dynege Morro Bay, LLC may not terminate the contract with, or payments to, Bureau Veritas without prior authorization of the CPM. At least ten days prior to execution of the contract between Dynege Morro Bay, LLC and Bureau Veritas, the proposed contract must be submitted to the CPM for review and approval.

12. The CBO shall take all reasonable measures to accommodate Dynege Morro Bay, LLC's Tank Farm demolition schedule, including, but not limited to, adding staff to its workforce and/or retaining the services of additional independent qualified subcontractors.
13. The Delegate CBO shall review and approve any of Dynege Morro Bay, LLC's proposed special and continuous inspection reporting programs required by sections 1701, 1702, and 1703 of the 2001 CBSC, California Mechanical Code and other related codes, and shall approve the qualifications and experience of the proposed special inspectors. Where appropriate, subject to CPM approval, Bureau Veritas may accept the results of inspections performed by Dynege Morro Bay, LLC's special inspectors.
14. The CPM shall have the right to audit Bureau Veritas and its subcontractors' performance to ensure that they are properly carrying out their duties and responsibilities and that Dynege Morro Bay, LLC is implementing the Decision and related Amendment requirements for the demolition of the Tank Farm at the Project.
15. BUREAU VERITAS, and subcontractor(s) may discuss all aspects of the Project with each other, the CPM, and Dynege Morro Bay, LLC's construction contractors and engineers. The Delegate CBO and CPM shall have access to all associated construction records, demolition and inspection procedures, test equipment, and test results related to the requirements of the Energy Commission Decision and related Amendments. It is the CPM's intention to provide reasonable notice of site visits and audits and to conduct such activities at reasonable times. Circumstances may dictate that site access may be required with little or no notice.
16. The Delegate CBO shall provide weekly reports on the status of the demolition of the Tank Farm of the Project to be posted to the project website (see below). The reports shall include: executive summary of current issues; general activities occurring at the project site; the completion percentage of overall Tank Farm demolition; compliance issues with applicable LORS and applicable Conditions of Certification; issues of concern with or by Dynege Morro Bay, LLC; status of interconnections; scheduled activities for the following week. Many of the information requirements of the weekly status report may be satisfied by weekly updating fields on the project website.

17. The Delegate CBO shall create and maintain a password protected project website for the posting of the weekly reports and other project documents. Documents on the website will be posted in a Word compatible format or as .pdf files. The project website shall include the following information in an easily navigable format: all components of the weekly status report; a minimum of ten dated project photographs of current construction activities; list and status of submitted plans; status of field inspections; new subcontractors or key Delegate CBO personnel; and documents submitted for CPM review and/or approval. The CPM will be notified of new documents posted to the project website by e-mail with an active link to the document.
18. The Delegate CBO shall submit the results of all plan checks and Tank Farm demolition inspections, including recommendations, to Dynegy Morro Bay, LLC and send a copy of all transmittal letters to the CPM. The CPM shall conduct any technical audits and reviews, and present any recommendations, as expeditiously as possible. The Delegate CBO should proceed with reviews and approvals of all components designated in Facility Design Condition of Certification GEN-2 in accordance with any additions and deletions approved by the CPM, unless instructed otherwise by the CPM. Approved plans, specifications, calculations and marked-up as-builts shall be retained by the Delegate CBO for 90 days from the date of completion of demolition of the Project Tank Farm, after which the Delegate CBO shall deliver them to the project owner for long-term retention at the project site or other accessible location [2007 CBSC, section 106.4.2]. Electronic copies of the approved plans, specifications, calculations and marked-up as-builts and other relevant submittals shall be provided to the CPM, in the form of compact discs, within 90 days of completion of construction on the project.
19. The Energy Commission, through the CPM, retains the final authority over all matters relating to interpretation of the Conditions of Certification.
20. The term of this agreement (MOU) is indefinite but shall terminate when all of the mutual obligations have been performed and satisfied. It shall also terminate at such time as Dynegy Morro Bay, LLC fails to pay fees as required or renders Bureau Veritas's performance under this agreement impossible. Notwithstanding the foregoing, Bureau Veritas or the Energy Commission may terminate this agreement upon five (5) days advance written notice complying with the provisions of section 22 below:
21. All correspondence regarding this agreement, including invoices, payments, and notices, shall be directed to the following persons at the following addresses and telephone numbers:

**DELEGATE CBO:** Kevin Wedman  
Bureau Veritas North America, Inc.  
5750 Sunrise Boulevard, Suite 150  
Citrus Heights, California 95610  
Phone: (916) 617-2028 & Fax: (916)-617-2068  
E-Mail: Kevin.wedman@us.bureauveritas.com

**ENERGY COMMISSION:** Angelique Juarez-Garcia  
Compliance Project Manager  
California Energy Commission  
1516 9th Street, MS 2000  
Sacramento, CA 95814  
916-654-4048  
AJGarcia@energy.state.ca.us

Written correspondence shall be sent either by personal delivery (including overnight delivery service), by U.S. Mail, postage prepaid, fax, or e-mail; it shall be considered delivered when actually received.

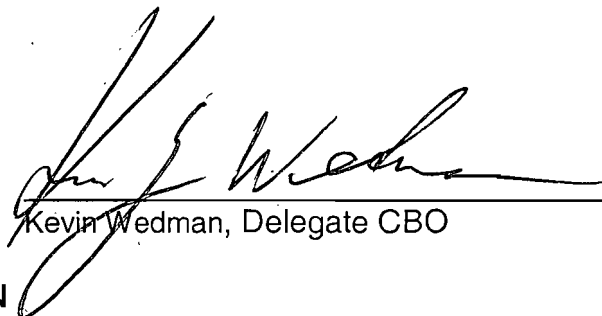
23. This memorandum of understanding shall be effective upon execution by all parties.
24. In the event of a conflict between this MOU and an Energy Commission Decision and related Amendments granting an application for certification, the Decision and related Amendments shall take precedence.
25. This agreement shall be interpreted and applied in accordance with California law. Any litigation concerning it shall be brought in the Sacramento County Superior Court.
26. This agreement sets forth the parties' entire understanding and supersedes all prior agreements and representations, written and oral, and may be modified only by a written document signed by Bureau Veritas and the Energy Commission.

Bureau Veritas has reviewed this MOU and understands its duties and responsibilities.

Signed by:

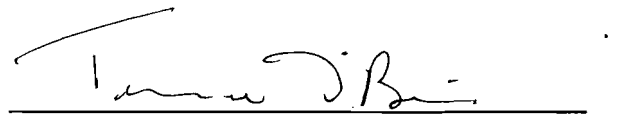
Bureau Veritas

DATED: 4-18-2009  
BY:

  
Kevin Wedman, Delegate CBO

**CALIFORNIA ENERGY COMMISSION**

DATED: 4/17/09  
BY:

  
TERRENCE O'BRIEN, Deputy Director for  
Siting, Transmission & Environmental  
Protection Division