

**CALENDAR ITEM
C40**

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S 15

10/22/09
PRC 1390.1
A. Scott

GENERAL LEASE - INDUSTRIAL USE

APPLICANT:

Dynegy Morro Bay, LLC
1290 Embarcadero Road
Morro Bay, California 93442

AREA, LAND TYPE, AND LOCATION:

5.23 acres, more or less, of sovereign lands in the Pacific Ocean, Estero Bay, near Morro Bay, San Luis Obispo County.

AUTHORIZED USE:

Maintenance of one 16-inch pipeline, one 24-inch pipeline, and one concrete anchor, chain, and marker buoy.

LEASE TERM:

Five years, beginning February 3, 2008.

CONSIDERATION:

\$16,970 per year; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount of not less than \$1,000,000

Bond:

\$5,000,000

Other:

Lessee shall submit an application to the Commission for decommissioning or proposed re-use of the existing facilities by October 22, 2010.

No use of the existing facilities is allowed without the prior approval of the Commission.

CALENDAR ITEM NO. **C40** (CONT'D)

OTHER PERTINENT INFORMATION:

1. Applicant owns or has the right to use the uplands adjoining the lease premises.
2. The original 49-year lease (Lease PRC 1390.1) for the offshore marine terminal facilities was issued to Pacific Gas and Electric Company (PG&E) effective May 26, 1954. The marine terminal facilities were constructed to transfer fuel oil from vessels to onshore tanks for use at the upland Morro Bay Power Plant. The offshore marine terminal and a portion of the pipelines extending from the terminal are located on ungranted sovereign lands under the Commission's jurisdiction. The pipelines continue across sovereign lands that have been legislatively granted to the city of Morro Bay, pursuant to Chapter 1076, Statutes of 1947.
3. In the early 1990's, the power plant was converted to natural gas fuel. Some of the facilities appurtenant to the marine terminal were removed, the pipelines were cleaned, and the marine terminal was officially placed in caretaker status, in which it remains today. The marine terminal is subject to annual inspection by staff of the Commission's Marine Facilities Division.
4. In 1998, the Commission authorized the assignment of Lease PRC 1390.1 from PG&E to the Duke Energy Morro Bay LLC, (DEMB) in conjunction with its acquisition of the Morro Bay Power Plant.
5. The original 49-year lease expired on May 25, 2003, and was in holdover status until February 2, 2004, when the Commission authorized a two-year lease to allow DEMB to continue to maintain the remaining marine terminal facilities in caretaker status and to evaluate options and develop a plan for the future use or disposition of the remaining facilities.
6. Pursuant to the terms of the lease, in October 2004, DEMB submitted an application for the decommissioning of the remaining facilities. However, before the CEQA process could be initiated, an application was received to consider assignment of the marine terminal to LS Power Generation LLC.
7. On February 9, 2006, the Commission authorized a conditional assignment of the lease in connection with the transfer of controlling interest in DEMB to LS Power Generation LLC. Through a series of mergers in April 2007, LS Power Generation LLC's name was changed to Dynegy Morro Bay, LLC (Dynegy).

CALENDAR ITEM NO. **C40** (CONT'D)

8. Dynege is now requesting that the Commission authorize a five-year lease to allow time to pursue the viability of reusing the pipelines as part of an alternative energy facility. Dynege also will simultaneously prepare a plan for abandonment or removal of the remaining facilities. If no alternative uses prove viable, Dynege will provide a plan to the Commission for abandonment or removal of the remaining facilities.

9. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

10. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Site Map
- B. Land Description

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

CALENDAR ITEM NO. **C40** (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE ISSUANCE OF A GENERAL LEASE - INDUSTRIAL USE TO DYNEGY MORRO BAY, LLC BEGINNING FEBRUARY 3, 2008, FOR A TERM OF FIVE YEARS, FOR MAINTENANCE OF TWO EXISTING PIPELINES, A CONCRETE ANCHOR, CHAIN AND MARKER BUOY AS SHOWN ON EXHIBIT A (FOR REFERENCE PURPOSES ONLY) AND DESCRIBED IN EXHIBIT B, ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; ANNUAL RENT IN THE AMOUNT OF \$16,970, WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN \$1,000,000; SURETY IN THE AMOUNT OF \$5,000,000.