

From: Raoul Renaud
To: Chula Vista POS March 2008
CC: Docket Optical System; Elena Miller; Gary Fay; Stan Valkosky; Susan ...
Date: 9/12/2008 9:33 AM
Subject: Chula Vista 07-AFC-04 Alternatives and Land Use--Committee Request for Further Analysis

To All Parties in the Chula Vista Energy Upgrade Project, 07-AFC-04:

In the course of reviewing the Final Staff Analysis (FSA) in preparation for the upcoming hearings, concerns with the Alternatives and Land Use analyses have arisen which the Committee wants to make you aware of so you can be prepared to discuss them at the Prehearing Conference.

The current zoning designation for the proposed project site is I-L, Limited Industrial. Although electrical generation facilities are not among the listed permitted or conditional uses in this zoning designation, Staff's analysis concludes, consistent with the Application for Certification (AFC), that the proposed project is of the same character as the listed permitted uses and is consistent with the City's plan to maintain the Main Street corridor as an industrial area.

However, it has been pointed out by an intervenor, the Environmental Health Coalition (EHC), that the city zoning ordinance has a zoning designation which explicitly includes electrical generation facilities: I-G, General Industrial. The fact that electrical generation facilities are a listed permissible use for I-G, but are not listed for I-L, suggests to the Committee that the intent of the zoning ordinance was to exclude electrical generation facilities from I-L zoned areas. On this basis, the Committee could be facing a Laws, Ordinances, Regulations and Standards (LORS) inconsistency which, if not resolved by the City, could lead to denial of the application.

The Committee is aware that City has, by letter dated August 7, 2008, apparently agreed that certain mitigation offered by Applicant will be sufficient to address any potential inconsistencies with the General Plan. This appears to be a reference to the General Plan provision that new or re-powered electrical generation facilities not be sited within 1,000 feet of sensitive receptors. However, there is no reference in the letter to the above-described zoning issue.

Furthermore, the Energy Commission has exclusive jurisdiction with regard to siting. While the Commission generally gives great deference to cities in connection with the interpretation of their zoning ordinances, the Committee finds it difficult, on the basis of what has been presented to date, to reconcile the City's acceptance of MMC's mitigation with what appears to be a clear zoning conflict. The city's zoning ordinance only lists electrical generating facilities as a permissible use in I-G zoned areas. Neither the FSA nor the AFC address this point in the course of analyzing whether or not an electrical generating facility is a permissible use in an area zoned I-L, yet both conclude that electrical generating facilities are of the same general character as the uses specified in section 19.44 of the Chula Vista Municipal Code.

The Commission is obligated under section 25523 (d)(1) of the Warren-Alquist Act, upon determining that there appears to be noncompliance with an ordinance, to consult and meet with the governmental agency concerned to attempt to correct or eliminate the noncompliance. The Committee intends to take the occasion of the Prehearing Conference next week for that purpose.

When there is noncompliance with LORS, the Commission can override such noncompliance if it determines that an override will further the public convenience and necessity (section 25525). However, the Commission would have to find that there are not more prudent and feasible means of achieving public convenience and necessity. At this point, there does not appear to be sufficient evidence which could form the basis of such findings by the Committee. For example, the analysis of the need for the Chula Vista Energy Upgrade Project does not address whether the existing plant has sufficient capacity to continue to perform the reliability and voltage support functions it has been performing. Another example of incomplete analysis is Applicant's response to EHC Data Request 33. It states that "the eastern section of Chula Vista is a large area and there may be portions of eastern Chula Vista that would be appropriate sites for a power plant," but there is no analysis of any such site.

The parties are hereby directed to be prepared to discuss these matters at the Prehearing Conference on September 18, 2008, in addition to the matters specified in the Notice. The parties should also consider whether retaining the evidentiary hearing date of October 2, 2008 would be prudent, or if continuing it to a later date would enable the parties to be better prepared to present evidence on these topics sufficient to enable the Committee to support its findings with respect to Land Use and Alternatives.

DOCKET 07-AFC-4	
DATE	SEP 12 2008
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