

STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:

Application for Certification
for the Chula Vista Energy Upgrade Project

Docket No. 07-AFC-4

DOCKET	
07-AFC-4	
DATE	SEP 16 2008
RECD.	SEP 16 2008

Energy Commission Staff's Pre-Hearing Conference Statement

On August 22, 2008, the Committee assigned to this proceeding issued a Notice of Prehearing Conference and Evidentiary Hearing (Notice). In that document, the Committee requested that parties file Prehearing Conference Statements no later than 5:00 by September 16, 2008. Energy Commission staff hereby files the following in response to the information requested in the Notice.

On September 12, 2008, the Hearing Officer sent an e-mail to all parties involved in this proceeding. The e-mail cited the Commission's obligation under section 25523(d)(1) of the Warren Alquist Act, which requires that, upon a determination of non-compliance with an ordinance, the Commission shall consult and meet with the governmental agency concerned to attempt to correct or eliminate the noncompliance. (Pub. Resources Code § 25523(d)(1).) The e-mail expressed the Committee's intent to take the occasion of the Prehearing Conference scheduled for September 18 for that purpose. In effect, the Committee and the Hearing Officer have made a finding of non-compliance, which is premature. Any finding regarding conformance of the project with applicable laws should be in the Presiding Member's Proposed Decision. The Commission's regulations require the Proposed Decision to be "based exclusively upon the hearing record, including the evidentiary record, of the proceedings on the

application.” (Cal. Code Regs., tit. 20, § 1751.) Evidentiary hearings have yet to be held, and the Committee has no hearing record upon which to base such a finding.

Nor is this the appropriate stage for the Committee to consider whether an override is appropriate to further public convenience and necessity pursuant to Section 25525 as suggested in the e-mail. At this point in the proceedings, prior to the hearing, there is no evidence upon which the Committee could make such a finding. Staff is prepared to offer testimony at the October 2, 2008 hearing to show that the project does conform with all applicable land use laws, making an override under Section 25525 unnecessary.

Staff has completed its analysis in all subject areas and is ready to proceed to evidentiary hearings set for October 2. Staff has concluded that, with the conditions of certification and related impact mitigation proposed in the Final Staff Assessment (FSA), no significant adverse impact to the environment or public health will result from the construction or operation of the Chula Vista Energy Upgrade Project, and that the proposed project will comply with all applicable laws, ordinances, regulations and standards. Staff has received the applicant’s testimony, but has not received any testimony from the intervenors, and thus cannot conclusively determine every area subject to dispute. However, based on previous discussions with the applicant and intervenors, staff believes that there is disagreement in the following areas: Air Quality, Biological Resources, Hazardous Materials, Land Use, Public Health, and Alternatives.

For Air Quality, staff requests 30 minutes to present the direct testimony of staff’s expert witness, Will Walters, P.E. His written testimony and a statement of his qualifications are contained in the FSA (Exh. 200). In support of this testimony, staff will offer into evidence the Final Determination of Compliance submitted by the San Diego Air Pollution Control District (Exh. 202) and the Chula Vista Elementary School District Independent Air Quality Analysis (Exh 203).

In For Biological Resources, staff requests 30 minutes to present the direct testimony of staff's expert witness, Susan Sanders, Ph.D. Her written testimony and a statement of his qualifications are contained in the FSA (Exh. 200).

In For Hazardous Materials, staff requests 30 minutes to present the direct testimony of staff's expert witness, Dr. Alvin Greenberg. His written testimony and a statement of his qualifications are contained in the FSA (Exh. 200).

For Land Use, staff requests one hour to present the direct testimony of staff's expert witness, Ms. Negar Vahidi. Her written testimony and a statement of her qualifications are contained in the FSA (Exh. 200). In support of this testimony, staff will offer into evidence the City of Chula Vista's letter dated August 7, 2008 to C. Meyer regarding CVEUP. (Exh. 204)

For Public Health, staff requests 30 minutes to present the direct testimony of staff's expert witness, Obed Odoemelam, Ph.D. His written testimony and a statement of his qualifications are contained in the FSA (Exh. 200).

For Alternatives, staff requests 30 minutes to present the direct testimony of staff's expert witness, Mr. Christopher Meyer. His written testimony and a statement of his qualifications are contained in the FSA (Exh. 200).

Because staff has not yet reviewed all testimony that may be filed, staff respectfully reserves the right to augment the proposed exhibit list and the time requested for direct or cross-examination depending on the testimony filed by the applicant and any other parties, their Prehearing Conference Statements, and comments made at the Prehearing Conference. Should any matter need briefing after evidentiary hearings, assuming the transcript is expedited, staff proposes that Opening Briefs be filed by November 7, 2008, with reply comments due on November 21, 2008.

Exhibit List

Exh. 200	FSA
Exh. 201	Preliminary Determination of Compliance submitted by the San Diego Air Pollution Control District
Exh. 202	Final Determination of Compliance submitted by the San Diego Air Pollution Control District
Exh. 203	The Chula Vista Elementary School District's Independent Air Quality Analysis
Exh. 204	Letter from the City of Chula Vista's to C. Meyer regarding CVEUP compliance with LORS

For those matters not subject to dispute by the applicant or any intervenors, staff proposes to enter testimony into the record by declaration. The testimony and the respective authors are identified below and declarations have been included in the FSA:

Executive Summary, Introduction, and Project Description – Christopher Meyer

Cultural Resources – Jill K. Gardner, Ph.D. and Amanda Blosser

Noise and Vibration – Steve Baker, P.E.

Socioeconomics – Jacob Hawkins

Soil and Water Resources – Richard L. Anderson

Traffic and Transportation – Jason Ricks

Transmission Line Safety and Nuisance – Obed Odoemelam, Ph.D.

Visual Resources – Martha Ann Goodavish, AICP

Waste Management – Ellen Townsend-Hough

Geology/Paleontology – Dal Hunter, Ph.D., C.E.G.


Power Plant Efficiency, Power Plant Reliability, and Facility Design – Erin Bright

Transmission System Engineering – Laiping Ng and Mark Hesters

General Conditions – Donna Stone

DATED: September 16, 2008

Respectfully submitted,



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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE
STATE OF CALIFORNIA

Application for Certification
For the **CHULA VISTA ENERGY
UPGRADE PROJECT**

Docket No. 07-AFC-4

PROOF OF SERVICE
(Revised: 7/14/08)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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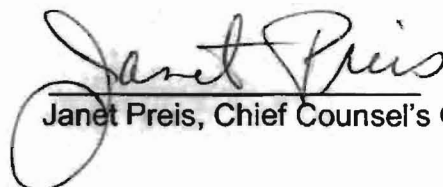
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DECLARATION OF SERVICE

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above on September 16, 2008..

I declare under penalty of perjury that the foregoing is true and correct.



Janet Preis, Chief Counsel's Office