

To: The Honorable Chair, Presiding Committee Member Jackalyn Pfannenstiel and the Honorable Vice Chair, Associate Committee Member James Boyd:

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07-AFC-4	
DATE	Nov 12 2008
RECD.	Nov 12 2008

Response to brief by MMC Energy on CVEUP

On page one it is not true that the plant will not be visible. The two 70 foot exhaust vents will be very visible and give our neighborhood a heavy industrial feel for at least a half mile around it. The people who live 1600 feet away to the south can see the existing plant quite well as can the parents at Montgomery Head Start and staff and students at Montgomery High and Montgomery Adult. Everyone is sure that the two towers would be visible and very disconcerting.

LORS Page 2 comments make no sense. There was a different General Plan when the peaker was approved in 2000. The current General Plan was approved in December of 2005. The city has not had the money to do a new Southwest Specific Plan nor to update the zoning, but the new General Plan and its policies apply. There is no change of zoning suggested in the new plan for any properties on the south side of Main Street.

CVEUP is not an upgrade to the existing plant, which would be torn down and removed. CVEUP is a totally new generating plant, which the applicant’s lawyer has called a “large generating facility requiring the upgrade of the substation.”¹ The 2000 peaker did not require an upgrade. These are two totally different plants with different impacts.

It is ridiculous to say that the approval of the little peaker’s SUP in 2000 means the city would approve a CUP for MMC’s peaker. In 2001 the city of Chula Vista fought vigorously against RAMCOII showing that they did not consider the SUP to allow an upgrade. They actually stated that they could not make the findings for the additional plant:

Air Quality Staff’s supplemental FSA amendment stated unequivocally that there would be an increase in pollution from the new peaker in table 25.² Any increase is significant to us, because we already have to tolerate significant amounts of pollution in the air. Also because something is below state and federal standards does not mean that there are no negative health affects. Our neighborhood already bears a disproportionate amount of polluting industries due to the industrial nature of Main Street. We don’t want any more. The rest of the communities in Northwest and Eastern Chula Vista do not have to bear the significant truck traffic nor the concrete plant, nor the substation, nor are the high voltage lines as close to schools and homes.

¹ <http://www.youtube.com/v/TA5vuuBqW3M>

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**AIR QUALITY Table 25
Staff’s CVEUP Incremental Annual Emissions (CEQA Mitigation Basis)**

Emission Source	Pollutant (tons/year)			
	NOx	VOC	SOx	PM10/2.5
CVEUP Expected Maximum Annual Emissions, tons/year	7.35	1.43	0.40	3.60
Chula Vista Power Plant Emissions Baseline, tons/year	1.3	0.07	0.05	0.5
Incremental Emissions Increase, tons/year	6.05	1.36	0.35	3.10

Project Reliability If they apply immediately for a black start generator as they obviously intend to do the Air Quality will no longer meet state and federal standards. This is a huge unresolved issue as well as the fact that the generators will have dual fuel capability, and there will be plenty of room for tanks.

Biological The site will conform to MSCP only if only 25% of the lay down site is impacted.

Noise Noise is a big problem now. The people who live on the ridge to the south complain about being awakened by the existing peaker's noise. Due to the difference in elevation the sound wall is useless. The sound wall is also useless for the businesses to the east, especially those across the driveway from the gate. There will be two gates, doubling the amount of area that will be impacted negatively by noise, since there will be no sound attenuation at all.

Alternatives: The landfill is a very feasible alternative. The small substation there could easily be expanded. There is plenty of landfill gas that could probably be used instead of natural gas at a considerable savings.

No project is also a very feasible alternative since there are many ways to reduce the load, and there is the option of renewable energy.

It is quite doubtful the existing plant will operate at all once this new one is rejected. PG&E abandoned it most likely because it is as uneconomical as it is inefficient. Also the owner has a contractual agreement with the city in the MND to completely overhaul the generators and the pollution control equipment, and PG&E abandoned the thing rather than spend the money to do this.

The proposed project does not follow the load order of the state at all. If the state is serious about AB32 and the load order it must not stick us with this polluting natural gas peaker for 30 years.

Environmental Justice The Commission has violated its own policies by

1. not considering the special circumstances of the area
2. not providing written translation of the reports for the Spanish speaking population
3. not having a public advisor who was a lawyer available from November 2007 until September 2008.
4. There clearly is a disproportionate affect upon this environmental justice community because there are no other peaker plants in CV and the closest peaker plants in Otay Mesa are within 6 miles, but have no one living within 3 miles of them-other than prisoners.
5. This excerpt from the CEC website directs staff to consider "local concerns," which needs to be done and indicates power plants normally are sited much further from sensitive receptors. Ethical companies through out the state go to extreme measures to avoid locating their plants this close to people.³

³ http://www.energy.ca.gov/reports/2001-11-20_700-01-001.PDF

Environmental Performance Report of California's Electric Generation Facilities July 2001

Page 59 Ten out of the 13 power plants were built in industrial areas, often separated from residential areas by distances of approximately one-half to one mile.

Page 60 On balance, the socioeconomic benefits of electric generating facilities substantially outweigh their socioeconomic drawbacks, especially when considered from a regional and statewide perspective. Because of the

General Plan Consistency Baseline cannot be the continued running of the existing plant, because when viewed in the light of the two years it did not operate at all it is unlikely any company would find it profitable to operate the plant. MMC is only doing so because they expect to make a lot of money off of a new plant. Also there is the matter of the Cessation of Operation Ordinance,⁴ established city policy on non-conforming uses,⁵ and the violation of the MND contract to overhaul every two years⁶.

Page 6 It is highly unlikely the existing plant will continue to be used and very likely that its current use is illegal. The existing plant does not generate pollution at a higher rate per hour for three of criteria pollutants as shown by APCD report and staff report. Per mw is the only measure that is cleaner for all pollutants, per hour and per year in is dirtier for 3 of 5 pollutants and after 500 hours overall the proposed plant would pollute more for all criteria pollutants.

On page 7 the quote refers to a different Redevelopment Plan than what is now in force. The existing plan was written in 2005 and will be revised in 2009. Looking at the map⁷ of uses within one mile, it is clear that residential is the most common use. On the San Diego side there is a large park, the Regional Park, schools, residential and a small commercial area. On the Chula Vista side there is a small commercial area, a light industrial strip along Main Street and everything else is residential or schools or churches except for the park and the corridor for the high voltage lines. This is not the industrial or agricultural area that these uses are commonly found in.

Policy E 6.4 MMC refuses to read the policy as it is written. It is clear that the city must “Avoid” placing power generating plants within 1,000 feet of sensitive receptors, and it is clear that the location of this plant would violate this policy. Neither the city nor MMC have made any effort to avoid this location.

Page 12: The statement: “the makeup of the City Council was significantly different in 2005 than it was in 2001” is not correct. Patti Davis, Jerry Rindone and Stephen Padilla were on the council in 2001 and in 2005. Three out of 5 is a majority of

revenues generated by power plants, benefits at the local level can also be substantial. *However, these benefits have to be considered along with local concerns*, such as potential effects on property values and the potential for disproportionate impacts on low-income and minority populations. These local concerns emphasize the need for careful attention to local issues during the power plant siting process. (emphasis added)

⁴ **19.64.070 Cessation of use defined – Time limits.**

A use shall be deemed to have ceased when it has been discontinued either temporarily or permanently, whether with the intent to abandon said use or not.

A. Cessation of Use of Building Designed for Nonconforming Use. A building or structure which was originally designed for a nonconforming use shall not be put to a nonconforming use again when such use has ceased 12 months or more.

⁵ **19.64.010 Declaration of policy.**

Many nonconforming uses within the city are detrimental to the orderly development of the city and adverse to the general welfare of persons and property, in that said nonconforming uses constitute a special benefit or monopoly. In conformance with good zoning practices, it is the policy of the city that nonconforming uses shall be eliminated as soon as it is economically feasible and equitable to do so. (Ord. 1212 § 1, 1969; prior code § 33.1101 (A)). 19-181 Chula Vista Municipal Code 19.64.080

⁶ *generators and pollution control equipment must be updated every two years.* Page 4
www.chulavistaissues.org/26.pdf

⁷ <http://www.chulavistaissues.org/peaker5.pdf>

the council so the council makeup was actually significantly the same. The same people who opposed the expansion of RAMCOII made sure that the new General Plan had language making sure this problem would not occur again.

Page 13: Quoting what was said about the plant conforming with the GP in 2000 is ridiculous, because that text was referring to the 1989 General Plan which was in effect at the time that plant was approved-a very different, much less comprehensive General Plan. It was acknowledged in 2000 that actually even though staff recommended the approval that it was not something that was consistent with the city's new energy goal.⁸ CVEUP is even less consistent, because there is no emergency now in the state.

Page 14: Actually there would be an incremental increase in emissions. This is NOT an upgrade, but a totally new facility.

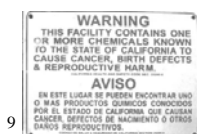
Page 16: This is nonsense. E 23.3 applies as evidenced by the sign that is posted on the gate at MMC's peaker and at Larkspur and will be required at any new peaker.⁹

Page 17: E7.5 It is in contradiction with this, because CVEUP obviously uses fossil fuel and will impede the city's goal of 40% renewable energy by 2017. In fact this would be a great setback. "the Commission's own 2007 Integrated Energy Policy Report identifies natural gas generation as a "complementary strategy to meet greenhouse gas emission reductions." (Ex. 200 at 4.1-56.)" CVEUP if approved would actually produce 7-25% of all the carbon emissions in the city greatly complicating the city's Kyoto pledge.¹⁰ The integrated energy policy was referring specifically to the difference between coal fired and natural gas fired plants.

Page 18: LUT 1.6, 1.5 This is NOT an efficiency upgrade to the existing plant. The existing plant is to be torn down. This is a totally new plant that only would provide jobs for 6 months or less during construction. Since the existing peaker is violating an ordinance and is too inefficient to continue, once it is torn down the site is large enough to provide at least two more industrial condos, which would meet this jobs goal.

Page 19: There is no question when one looks at a picture of Larkspur, which has the same generators as CVEUP would use that this is a heavy industrial use. The city has actually said several times that this use would require a CUP. The unclassified uses that are in **Chapter 19.54** do not include electrical generating plants nor are electrical generating plants mentioned in CVMC 19.58, where specific requirements for unclassified uses are discussed. In fact Electrical Generating Plants are only mentioned in **Chapter 19.46 I – GENERAL INDUSTRIAL ZONE**. This is the only zone where this use is permitted by right. The hazardous waste facilities that MMC makes such a fuss

⁸ PAGE 3 ITEM NO 4 MEETING DATE 9/26/00 Nature of the Project If the goal of the Council is to provide low cost reliable electrical supply to the community a peaker plant designed to produce electricity at relatively high costs to sell at the highest possible rates during peak periods will not produce the solution Council is seeking. The project is also limited in its ability to sell electricity directly to the City or other end users. (It indicates the city staff was acknowledging that this peaker was not helping city to meet its long range goals at all.)



¹⁰ <http://www.youtube.com/v/tIu2-GIqNIU>

about have their own specific code explaining conditions for the L industrial zone- CVMC 19.58.178. In fact most of the unclassified uses in **Chapter 19.54** have specific ordinances describing conditions in 19.58. Electrical Generating facilities do not, because they obviously are not intended to be unclassified uses but General Industrial, since they are specifically placed there in the city's ordinances. The fact that in 2000 the City council foolishly and inappropriately granted a SUP in contradiction to its own energy goals out of fear of blackouts and was misled by the company and stuck with an inferior plant using used parts has absolutely nothing to do with the brand new much larger plant MMC wants to stick upon the city in a very inappropriate location in violation of General Plan policies and the city's Zoning Ordinances.

Page 20: It is likely staff was mistaken when they termed the peaker in 2000 as a public, quasi-public use. It is likely they neglected to check the ordinance that correctly places such a use in the I General Industrial zone. Clearly a peaker power plant is not a "limited manufacturing use." The discretion in the ordinance is meant to allow for interpretation by the Planning Commission at a public hearing where members of the public and legal council would be able to dispute the interpretation in light of the clear wording of **Chapter 19.46**.

Page 21: There is little comparison between the existing plant and the proposed plant. The proposed plant with 70- foot tall exhaust vents is not at all in character with anything in the area now. The existing plant isn't either. What is characteristic of the area now is different than in 2000. Now on both the west and the east are brand new industrial/commercial condos and rental units with businesses that are fully contained within their buildings and manufacture almost nothing. On the south is a Regional Park. The circumstances now are totally different and the existing use likely would not be approved now either.

Page 22: The city has not said that it would grant a CUP to CVEUP if this were going through the city's normal process instead of the CEC process. Mr. Tulloch was very careful in what he said to indicate that the city was deferring the decision to the CEC, not saying they would grant a CUP.

MMC errors in relying upon the city's decision in 2000 since by 2001 the city had clearly changed its mind about the CUP it had issued in 2000. Excerpt from 6/11/01 letter: According to City LORS, a CUP and OPA would be required for this use. The City Council has indicated it would not make the required findings to support a CUP **based on changes in circumstances and knowledge since their previous approval of Unit #1.** (emphasis added)

These findings are (1) That the proposed use at the location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or the community;

(2) that such use will not under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity.

(3) that the proposed use will comply with the regulation and conditions specified in the code for such use;

(4) that the granting of this special use permit will not adversely affect the general plan of the City or the adopted plan of any government agency.

Therefore, LORS compliance cannot be established. (emphasis added) Where LORS compliance does not exist, the CEC must find under PRC 25525 that the facility is "required for the public convenience and necessity and that there are not more prudent and necessary means of achieving such public convenience and necessity." This finding cannot be made here where the project will not be completed in time to meet summer peak demands and other measures with lower adverse impacts may prove successful in the interim. [pp 12-18].¹¹

¹¹ http://www.energy.ca.gov/sitingcases/peakers/chulavista/documents/CHULAVISTA_SUPPLEMENT.PDF

These findings cannot be made in 2008 either because:

1. The environmental justice analysis of staff of the environmental justice concerns of the community have not been adequately dealt with nor have all the stakeholders received the information they need in their native language in order to be adequately involved in the process.
2. The cumulative impacts analysis has not included existing problems in the community to the degree necessary to acknowledge the adverse impacts of the proposed plant.
3. There has been no evidence presented indicating that CVEUP in this specific location is required for public convenience and necessity. Indeed CAISO made it clear that this plant could be anywhere in the San Diego area,¹² and MMC's own engineer acknowledged this in November of 2006.¹³
4. The final decision on the Sunrise Powerlink is very relevant according to CAISO and has not yet happened.
5. There are alternatives to this project as Mr. Powers discussed at length at the evidentiary hearing. There are simple alternatives for load reduction as well as renewable energy, which would help the state in the implementation of AB32. There are many alternative locations further away from people and schools that would avoid adverse impacts to lower income minority communities.

These alternatives need to be explored. This application must be denied and MMC and the city instructed to find a better location elsewhere.

Page 26: MMC mentions other plants that have been put in L industrial zones in other places. This is irrelevant to this case. There is no mention as to the distance of these other peakers from sensitive receptors, which might have some relevance. The Commissioners were given a table showing the location of 15 plants in southern California that had information available on the CEC website in 2007. It is shocking the discrepancy in distance from residents between these other plants and the existing peaker. This appears to be an anomaly. It is in the interest of all California residents that CVEUP be rejected because the location is not suitable. The people of California deserve protection from the siting of things like this in their neighborhoods. The state should have minimal distances guaranteed. The people of California do not need precedents like this.

Page 43 the monetary benefits of CVEUP are highly speculative and mostly contingent upon how much it is used. Since it does not have a contract with SDGE, Sunrise may be approved, and SDGE is planning to implement a large renewable power project in the near term it is likely there will be minimal need for this plant in the future. If it is used it will be used for needs outside of the local area by CAISO. This disproportionately impacts the local environmental justice community without any local public benefit.

¹² http://www.youtube.com/watch?v=bd5bSplf_rk

¹³ http://www.youtube.com/watch?v=2_aarWUROiU

The precedent of allowing a heavy industrial use such as this in this specific location would be devastating for the current redevelopment goals¹⁴ of the area. This is supposed to be developed as more upscale light industrial uses as the recent approvals and the active code enforcement has been indicating. Something like this is very negative for the businesses on the east and for the residents on the west. MMC totally ignores the needs and situation of these new businesses and the close by residents as immaterial. This is unjust and unacceptable. We ask the Commissioners to consider the close by community and reject this application in this location.

The bottom of page 45 has another deliberate lie. The staff report clearly indicates that CVEUP will use more natural gas than the existing plant.¹⁵

Page 46: These claims seem highly speculative and exaggerated considering that CVEUP would add 45mw or less power to the grid on a sporadic basis.

Everything on pages 46-52 could be just as easily accomplished in a more appropriate location further away from homes and schools. In siting these peakers the state must take into consideration appropriate locations. This is NOT an appropriate location. The people of California deserve protection from these inappropriate locations.

Page 54: Again as has been said earlier the baseline should not be the operation of the existing plant. MMC has offered absolutely no explanation for its abandonment for two years by PG&E, nor of the economic feasibility of continued operation, nor of the cost of major overhauls to bring the existing plant up to current standards. It should be assumed the current plant would not operate one second beyond the denial of this project.

Page 55: The fact that it is November and the plant operated only 50 hours so far in 2008 pretty well acknowledges that it is not likely to continue operating, since it obviously is not providing much income and certainly a need of this low level could easily be met by demand reduction and/or solar collectors. If with MMC wanting desperately to operate to show a need the plant has only operated 50 hours there obviously is no need.

They should mitigate for the entire 4400 hours because that is what they have a permit for. None of this discussion includes a black start generator, which they initially were asking for and probably still want. The black start generator would put them over the level of significance. Anything is too much as far as the community is concerned. There are health impacts at any level.

The existing plant did not operate at all in 2004 or 2005. Non-operation should be the baseline.

The way to implement AB32 is to not approve any more fossil fuel fired plants anywhere in the state. Larkspur has applied for an additional generator. This would totally make CVEUP unnecessary. Most likely when Otay mesa comes on line it would also become unnecessary. The analysis of this project needs to include the LOAD order recently passed by the legislature. If it did this project would not be found to be necessary.

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http://www.chulavistaca.gov/City_Services/Development_Services/RedevHousing/Redev/FiveYrPlan/documents/071806FiveYearImplementationPlanADOPTED.pdf

¹⁵ FSA page5.3-3 .."the CVEUP is expected to consume more fuel than the existing plant because of the addition of a second combustion turbine..."

Page 70: EHC provided a map that clearly shows an exceptionally high hospitalization rate for asthma in this area, so it is not accurate to say that Ms Williams did not provide statistics. The precautionary principle would require that this plant's application be denied because it is abnormally close to sensitive receptors and this area already has the highest hospitalization rate for respiratory problems.

Page 86: the chain link fence with wood slats is ugly and will not attenuate noise to the buildings on the east. Elsewhere they say they will build a sound wall all the way around the property, but here they say they will only keep what they already have. This is not adequate. There is a particular problem at the two gates where there is nothing to attenuate sound. The lines running from the existing plant to the substation are ugly and should be under-grounded. They do not fit in with the high-class new businesses. The ugly heavy industrial nature of CVEUP does not fit in either and will deter people from spending millions to buy these condos.

None of the conclusions reached by staff or MMC in regard to visual impacts is agreed to by the community. The appearance of even part of a 70-foot tall stack is an extreme adverse visual impact, because it negatively reflects upon the character of the community and contributes to the existing negative image the community has. It will lower property values and increase anxiety and concern among the near-by residents. This is not something anyone should have in their neighborhood. These uses belong far away from people. The CEC's own report said these things are generally sited one half to one mile away from homes.¹⁶ This anomaly and precedent should not be allowed.

Page 107: We maintain that the impacts are significant due to the special circumstance of the neighborhood, which have not been adequately taken into account by staff. "The applicable environmental justice guidelines and policies do not provide any specific guidance with regard to identifying whether an impact is significant. Since there are no guidelines for significance we believe that our claim of significance due to specific local conditions must be used by the Commission.

Page 109: The number of people with internet access in the southwest is lower than in other areas so relying upon the internet to relay information meant that many people were not adequately informed. While the library does have internet access its hours have been curtailed. In particular it is closed on Sundays, which means it was difficult for people to have access to materials. Also the materials were not available in Spanish the preferred language of many of the people who wanted to participate in this process. There was no lawyer or actual POA available to the public between November and 2007 and September of 2008. There may have been office staff, but they never responded to my inquiries and no one explained the legal and technical aspects of being an intervenor.

Again those of us living within less than a mile of CVEUP are disproportionately impacted by high voltage transmission lines a little over a half mile from the proposed peaker as well as a large substation 1200 feet from it, hordes of overhead power lines, and a peaker plant a mere 350 feet from a home. When taken together with all the infrastructure problems, lack of parks, unpaved alleys, scorn and neglect of the city government that make up the special circumstance of the area (which were ignored in the staff reports) the low income and ethnically diverse residents in this specific location are disproportionately impacted by CVEUP. Nowhere is there a concurrence of all these

¹⁶ http://www.energy.ca.gov/reports/2001-11-20_700-01-001.PDF

negatives in a one- mile area in Chula Vista except right here. The special circumstances of the area make this a disproportionate impact.

Page 116: If the existing plant is a baseline the fact that it did not operate at all in 2004 and 2005 must be the baseline, which makes CVEUP a totally new, much expanded use that would be a significant impact, since the existing one just sat there and did not operate.

Sincerely,

Theresa Acerro, president, Southwest Chula Vista Civic Association