

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

In the Matter of:  
The Application for Certification  
for the **CHULA VISTA ENERGY  
UPGRADE PROJECT**

Docket No. 07-AFC-4

**REPLY TO  
CHULA VISTA ENERGY UPGRADE PROJECT: DOCUMENT NO. 07-AFC-4  
COMMENTS ON PRESIDING MEMBER'S PROPOSED DECISION  
SCOTT TULLOCH, ASSISTANT CITY MANAGER**

March 16, 2009

**DOCKET**

**07-AFC-4**

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City of Chula Vista  
276 Fourth Avenue  
Chula Vista CA 91910

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SCOTT TULLOCH, ASSISTANT CITY MANAGER**

City staff appreciates this opportunity to clarify the City of Chula Vista's General Plan and Zoning Code, and comment on the Presiding Member's Proposed Decision (PMPD) consistency determination as to laws, ordinances, regulations and standards (LORS). The City participated extensively in the Commission's review process for the proposed Chula Vista Energy Upgrade Project (Project), with the express understanding that the CEC has the final authority and responsibility to determine whether or not ultimately to grant the AFC.

The PMPD makes two key determinations with respect to LORS consistency: (1) that the Project is not consistent with the City's General Plan, specifically with Policies LUT 45.6, E 6.4 and E 23.3, and (2) that the Project is not consistent with the limited industrial (IL) zone. In reviewing the PMPD, the City would like to clarify some related statements and content as to City policies and regulations to ensure that the City's intent and interpretation of these General Plan policies and land use ordinances is understood.

With respect to General Plan consistency, the City noted in early comments that it was concerned that there may be a potential inconsistency with Policy E6.4 by indicating that adequate justification must be provided to demonstrate that there are no other feasible locations to site the Project, so that conformity with the Policy's provisions to "avoid" could be duly assessed. The CEC staff addressed this concern by conducting additional review of the alternatives and assured participants that the CEC staff effort met the CEC process requirements. The Policy's use of the term "or other" when stating "...new or re-powered energy generation facilities or other major toxic air emitters..." was intended to qualify that the energy generation facilities it references are those that would be considered as major toxic emitters, to be defined by applicable air standards and regulations based on a case-by-case basis dependent upon the proposed facility. In this case, the City and stakeholders waited until the end of the Staff Assessment process for the APCD report which ultimately concluded that there were no significant air quality impacts. Additionally, the CEC Staff Assessments went on to generally state that project related health risk from construction and operations would be less than significant for all

individuals in the project area and below those levels that would warrant further analysis or mitigation. Finally, there are other circumstances where “an energy generation facility” would not be defined as a major toxic emitter. For example, without that interpretation solar/photovoltaic electricity generation facilities would be prohibited in any zone other than the general industrial zone, which they are not.

Policy LUT 45.6 applies to maintaining Main Street as primarily a limited industrial corridor. The Main Street corridor encompasses an area that extends far beyond the Project site, and is predominated by light industrial uses but includes by design some commercial uses, and pre-existing residential uses. Policy LUT 45.6 applies to the overall corridor, and compliance is appropriately assessed at the corridor level, and would remain a Limited Industrial Corridor with this Project.

Policy E 23.3 addresses those uses that pose a significant hazard to human health and safety, typically assessed and determined through an appropriate Health Risk Assessment (HRA). The CEC's review of policy consistency and citing evaluations would need to consider HRA conclusions and both CEC Staff and the PMPD found no HRA issues that could not be mitigated. CEC staff exceeded the standard by requiring the Applicant to fund mitigation reductions for all nonattainment pollutants and their precursors at a 1:1 ratio of annual operating emissions. Further, the Applicant and City developed and submitted additional conditions that were designed to address non-criteria pollutants and many of the other potential local impacts identified by the community in the workshop and hearing process. The City and Applicant submitted those conditions in response to the CEC's direction to work out major issues with the expectation that their incorporation in the Decision would provide the community with the confidence that they would be implemented, and assurance that they could be enforced as CEC conditions. The City further committed to investing the Tax Increment that would be generated by the proposed project to addressing the structural deficits in the immediate neighborhood that were specifically referenced by the public in the workshops and hearings.

With respect to Project consistency with the IL zone, the PMPD correctly notes that the City approved the existing peaker plant in the IL zone in 2000 with a special use permit. In so doing, the City interpreted its Zoning Code to allow such use in the IL zone as an "unclassified use" as specified in Chula Vista Municipal code Chapter 19.54. As explained by the City in its Reply Briefing Statement (November 29, 2008), this process is representative of the conditional use permit process the City would use if it were the lead agency on the Project. (Log # 49119 p.3).

On October 2, 2008, toward the end of a lengthy discussion of land use consistency issues and whether "unclassified" uses could include power plants, Hearing Officer Renaud stated:

. . . we'd like to hear from the City about its interpretation of the zoning ordinance. And particularly whether the city would issue a conditional use permit for this project were it within the City's jurisdiction to do so.

The following responses were given:

MR. TULLOCH: Well, we would want to go through that process, ourselves. But this is my understanding; it's pretty consistent with what you've heard. *And that is that the unclassified use category gives the City the flexibility where they haven't either prohibited or specifically allowed a use.* It gives them the flexibility to go through that process to determine on a specific basis for a specific project.

HEARING OFFICER RENAUD: All right.

MR. TULLOCH: So what I've heard so far, *if it's in that vein*, is consistent with that.

(10/2/08 RT at 335:19—336:11)

The PMPD appears to misunderstand this testimony because it is cited as supporting an interpretation that unclassified uses cannot include a use that is permitted in some other zone in the City, (PMPD p. 292). However, my testimony quoted above explained that the City considered its unclassified use category as giving the "city the flexibility where they haven't either prohibited or specifically allowed a use." The City has neither specifically allowed nor prohibited peaker power plants in the IL zone. Therefore, just like in 2000, if the City were lead agency for the Project (which it is not), we would consider the Project as an "unclassified" use that would be permissible if a conditional use permit were granted.

Since the City is not the lead agency on the Project, it has not considered (and would not have any cause to consider) whether to issue either a CUP, or whether a Precise Plan for the Project is necessary. Under the City's Precise Plan (P) modifying district, flexibility in the application of site development standards, such as setbacks and height are allowed, but not necessarily required. An applicant can proceed with development consistent with the adopted base standards of the underlying zone, however, should they desire to employ modified standards, they may do so subject to required findings and adoption of a Precise Plan establishing those modified standards. Given this, there are properties within the City where the P modifying district has been applied, but no particular Precise Plan exists to-date. Therefore as clarification for the Commission, a Precise Plan is not always required.

The City appreciates the CEC staff and Commission's efforts to provide a transparent and inclusive process and acknowledges that their respective findings have lead to different recommendations. The City also acknowledges its regional responsibility to site energy generation facilities within City boundaries and is committed to working with the CEC and power generation developers to that end.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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Application for Certification  
For the **CHULA VISTA ENERGY  
UPGRADE PROJECT**

*Docket No. 07-AFC-4*

**PROOF OF SERVICE**  
(Revised: 2/10/09)

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DECLARATION OF SERVICE

I, Candy Uvero, declare that on March 16, 2009, I served and filed copies of the attached Comments on Presiding Member's dated March 16, 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[[www.energy.ca.gov/sitingcases/chulavista](http://www.energy.ca.gov/sitingcases/chulavista)]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

*(Check all that Apply)*

FOR SERVICE TO ALL OTHER PARTIES:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Chula Vista with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

**AND**

FOR FILING WITH THE ENERGY COMMISSION:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

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

