

**From:** Raoul Renaud  
**To:** Docket Optical System  
**Date:** 4/10/2009 1:09 PM  
**Subject:** Fwd: Fw: Docket No. 07-AFC-4; CVEUP  
**Attachments:** CEC. Letter 4-4-09.doc

<b>DOCKET</b>	
<b>07-AFC-4</b>	
<b>DATE</b>	APR 10 2009
<b>RECD.</b>	APR 10 2009

please docket the email below and the attached letter, 07-AFC-4. Thank you.

Raoul A. Renaud  
Hearing Adviser II  
California Energy Commission  
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From: [rbauerdesigns@att.net](mailto:rbauerdesigns@att.net)  
Sent: Thursday, April 09, 2009 6:57 PM  
To: [jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us) ; [rrenaud@energy.sate.ca.us](mailto:rrenaud@energy.sate.ca.us)  
Subject: Docket No. 07-AFC-4; CVEUP

Dear Sirs,

Attached is a letter that expresses my views on the land use issues that have been previously raised with this peaker upgrade being certified by the California Energy Commission. I believe that those concerns that influenced the preliminary decision have been relieved through substantial clarifications by both the staff of the CEC and the City of Chula Vista.

This proposed upgrade has the potential to provide significant benefits to the community and is an important step towards insuring that there is cleaner source of energy in the region and greater reliability in meeting the energy needs.

Thank you for your consideration. I look forward to your presence in Chula Vista on April 13th.

Bob Bauer

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**April 4, 2009**

### **RE: The Application for Certification of the Chula Vista Energy Upgrade Project; Docket Number 07-AFC-4**

James D. Boyd  
Vice Chair & Presiding Committee Member  
California Energy Commission

Raoul Renaud  
Hearing Officer  
California Energy Commission

Dear Sirs,

I was surprised and disappointed by the Presiding Member's Preliminary Decision (PMPD) dated January 23, 2009 recommendation to deny this upgrade project. It was not until I had an opportunity to review some of the text and more recently the California Energy Commission (CEC) Staff Response & Comments to the PMPD (dated March 16, 2009), the letter sent by the City of Chula Vista Assistant City Manger to the CEC (dated March 16, 2009), and finally the California Energy Commission Reply to Staff Response & Comments to the PMPD (dated March 30, 2009) that I could understand the initial consideration for denial. **It became clear in my mind, and hopefully in yours as well that it was easy to misunderstand the convolutions of land use regulations (LORS) and the Master Plan for this redevelopment area of the City of Chula Vista.**

I believe that it has become clear to all concerned that the initial approval for a Special Use Permit in 2000 for a 44.5 megawatt peaker power plant to be sited and constructed at its present location was well within the jurisdictional authority of the City of Chula Vista and was consistent with their land use regulations (chapter 19.54). The base zone for the specific area is for **Limited Industrial Uses**. I have worked on projects in jurisdictions that have tables and charts that identify every possible use in each general and sub-category of zone and further identify if the use is by specific entitlement or if a discretionary action or development permit must be made (conditional use permit, site development permit, neighborhood use permit, and on and on) with a resolution enacted by

the city council or if the use is prohibited in the zone. Because a specific land use is identified as permitted in one zone, does not preclude the possibility of the same land use being allowed under specific review and conditions in another zone. The City of Chula Vista has chosen to not write a Russian novel that could cover every conceivable condition and all off-spring, but has adopted the tool of review and flexibility under the “unclassified use” determination for uses that are neither permitted by entitlement nor prohibited. A particular land use neither enjoys ministerial entitlement nor is it banned from possibility. The specifics of the requested use, the site, the surrounding area and uses, the importance to meeting the overall general plan, and the ability of the city to impose conditions and regulations upon the project (and require concessions from the developer, the proverbial pounds of flesh) are all part of determining the appropriateness for the issuance of a Special Use Permit or Conditional Use Permit. From the legalistic perspective significant supportive findings must be made that are consistent with the municipal ordinances and land use regulations before such approval is granted.

I believe that the more recent correspondence has clarified that the existing or proposed upgrade peaker power plant is not considered by the City of Chula Vista to be a ‘major toxic emitter.’ From all of the documents it is considered to be an appropriate type of facility within the zoning area, and as city staff and CEC staff have emphasized it is clearly a misunderstanding of the LORS and adopted Master Plan to consider all energy plants are prohibited in the **Limited Industrial Zone**. Such an interpretation of the guidelines of the adopted Master Plan would even preclude roof top photo/voltaic electric generation being within proximity to ‘sensitive receptors’.

The proposal by MMC Energy, Inc. is to demolish the existing 44.5 megawatt peaker plant and to construct on the same site a cleaner, quieter, and more efficient peaker plant that on-line could provide approximately 2.2 times more power at full capacity. This proposal is clearly consistent with the City of Chula Vista LORS and Master Plan. The preservation and expansion of existing industrial uses is identified as preferable by the city in their own regulations and the co-locating of new facilities with existing utility infrastructure is again preferable. **The CVEUP is essentially a recycling project.** It proposes to use the same site and connect into an existing system of transmission or utility infrastructure. An important issue to consider is what nature of a peaker power plant will be on this existing site? The existing plant that has equipment dating to the 1970’s or a more efficient, cleaner and state of the art plant that must meet stricter guidelines for emissions through a host of mitigation measures?

The City of Chula Vista has a number of strong commitments to the sustainability of the community and the protection of the people working and residing in its community. It has exercised ‘smart growth’ in the outlying areas of Eastlake and Otay Ranch. The master plans for these communities have balanced residential, commercial, and recreational needs so that one can live, work, and play in the

same area. The city is committed to development and appropriate redevelopment, which in turn places a present and future emphasis upon electricity being available to support those expanding needs. There is a master plan for the potential bay front development. Now that land is relatively undeveloped and a major area has a vacant industrial complex. Should the bay front development move forward, there will be the need for energy in an area that is currently consuming very little. The city has made a commitment to the development and building industry to help turn around the suffering economy. Future revitalization of the building industry through redevelopment and new development will place an increasing demand for reliable energy. There is open discussion of the desire to have a California State University campus become a reality in the Otay area. The ability to provide energy is definitely an important ingredient to such a reality. The city, as does the CEC, has a commitment to protect its citizens and the environment through the desire to provide clean and reliable power sources and preferably renewable energy. While the focus needs to be upon implementing clean and renewable energy, one can not wait for all of these technological advances to be in place. The recent documents from the CEC staff clearly support an understanding that the proposed CVEUP will be able to provide a cleaner and safer source of energy than is what currently available in the region, and may allow for the South Bay Power Plant to be run at less than full capacity, which would make a significant improvement in the welfare of the air quality in the region and be a step in protecting the environment.

Hopefully all of these more recent documents have shed a clarifying light upon the issues that weighed upon your preliminary decision, and in this process of clarification by the respective staffs of the CEC and the City of Chula Vista, you will be able in good conscience reverse your direction and find in favor of the application for the certification of the CVEUP. **I strongly encourage and endorse a decision for approval.**

Thanks,

**Bob Bauer**

Bob Bauer