

STATE OF CALIFORNIA  
Energy Resources Conservation  
And Development Commission

**DOCKET**

07-AFC-4

DATE June 15 2009

RECD. June 15 2009

In the Matter of:

Docket No. 07-AFC-4

Application for Certification  
for the Chula Vista Energy Upgrade Project

June 15, 2009

**ENERGY COMMISSION STAFF'S REPLY  
TO THE ERRATA  
TO THE PRESIDING MEMBER'S PROPOSED DECISION**

The Errata to the Presiding Member's Proposed Decision was filed on May 5, 2009.

This document does not change the opinions and findings expressed in the original Presiding Member's Proposed Decision, and offers similar reasoning in support of the conclusion that the project as proposed should be rejected. Staff's position is that, based on the hearing record, the Chula Vista Energy Upgrade Project (CVEUP) complies with all applicable Laws Ordinances Regulations and Standards (LORS) and causes no significant environmental impacts with the imposition of staff's recommended conditions of certification. Staff will not restate its position here.

Staff notes that the Errata does not correct the record regarding some of the proposed findings in the Alternatives section. Finding 11 in the Presiding Member's Proposed Decision with respect to project Alternatives should be corrected to reflect the evidence.

Staff is concerned by the silence of the Errata to the PMPD regarding the proposed findings in the alternatives section. As staff demonstrated, a LORS inconsistency, even if true, does not by itself mandate an expanded alternatives analysis. Also, the proposed finding that distributed

Proof of Service (Revised ~~2-10-09~~) filed with original.  
Mailed from Sacramento on 6-15-09 *C. Hong*

urban solar generation could replace quick-start peaking generation is not neither supported by the evidence, nor accurate. The Errata addresses neither of these important issues.

### **I. The Staff's Alternatives Analysis complies with CEQA**

- a. A LORS inconsistency, even if true, does not by itself mandate an expanded alternatives analysis.

The PMPD's proposed findings regarding the Project's perceived conflicts with local land use LORS are incorrectly intertwined with the analysis of alternatives. On Page 26, the PMPD concludes that what it identified as the LORS conflicts "constitute adverse environmental impacts whose importance outweighs the largely economic advantages of reusing the existing infrastructure." However, an inconsistency between a project and land use controls, standing alone, does not mandate a finding of significant environmental effect. "It is merely a factor to be considered in determining whether a particular project may cause significant environmental effect." *Lighthouse Field Research Rescue v. City of Santa Cruz* (2005) 131 Cal. Ap. 4<sup>th</sup> 1170, 1207.

CEQA requires an analysis of "a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would *avoid or substantially lessen any of the significant effects of the project ....*" (Cal. Code Regs., tit. 14, § 15126.6, subd. (a), emphasis added.) The CEQA Guidelines define "effects" as being interchangeable with "impacts." (Cal. Code Regs., tit. 14, § 15358.) In either case, as analyzed under CEQA, "they must be related to a physical change." (*Ibid.*) Aside from the proposed finding that the project is inconsistent with LORS, the PMPD makes no finding that the environmental effects caused by the proposed project at the proposed site are significant. The alternatives analysis submitted by Staff was therefore sufficient.

It must be noted that there are no proposed findings within the PMPD that the proposed mitigation or conditions of certification recommended by staff are insufficient to avoid or minimize any significant adverse environmental impacts. Given sufficient mitigation of the project's potentially significant effects, the range of alternatives identified by staff is reasonable. A broader range would not have substantially added to the discussion of mitigating or avoiding *significant* environmental impacts. Therefore, staff's alternatives analysis complies with CEQA.

b. Rooftop solar photovoltaic generation is not a feasible alternative to a peaking power facility.

Staff requests that Finding 11 on Page 32 be deleted as there is nothing in the evidentiary record that would support a finding that rooftop solar PV is a feasible alternative to a peaking power facility.

Peaking generation projects are recognized by the Energy Commission as necessary to support the shift to intermittent large-scale renewable generation like wind and solar projects (2007 IEPR). Despite this acknowledgement, the proposed findings in the PMPD suggest that PV could replace quick-start peaking generation. On the contrary, quick-start peaking generation facilities such as the proposed CVEUP are still *required* to support intermittent sources of renewable generation that are integrated into the system. The opinions expressed in the PMPD and the Errata do not acknowledge the different, but important, role peaking facilities have in integrating renewable resources into the electricity system.

As set forth in the 2007 IEPR on page 186, natural gas generation “must be used prudently as a complementary strategy to reduce greenhouse gas emissions.” Peaking facilities, such as the proposed project, are necessary to support the shift to large-scale renewable generation. Indeed, many of the gas-fired license applications currently before the Energy Commission are

for projects that will support a transition to a more renewable-based generation system.<sup>1</sup>

Finding 11 on Page 32 should be deleted as there is nothing in the evidentiary record that would support a finding that rooftop solar PV is a feasible alternative to a peaking power facility.

## II. Conclusion

Staff's continuing position is that, based on the hearing record, the CVEUP complies with all applicable LORS and causes no significant environmental impact with the imposition of staff's recommended conditions of certification. The Committee should recommend approval of the proposed project with staff's recommended conditions of certification and the Energy Commission should so approve.

Dated: June 15, 2009

Respectfully submitted,



KEVIN W. BELL  
Senior Staff Counsel  
California Energy Commission  
1516 9<sup>th</sup> Street  
Sacramento, CA 95817  
Ph: (916) 654-3855  
e-mail: [kwbell@energy.state.ca.us](mailto:kwbell@energy.state.ca.us)

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<sup>1</sup> Committee Report: *Committee Guidance on Fulfilling California Environmental Quality Act Responsibilities for Greenhouse Gas Impacts in Power Plant Siting Applications*, (March 2009) CEC-700-009-004.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

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

**Docket No. 07-AFC-4**

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

**APPLICANT**

Harry Scarborough  
Sr. Vice President  
MMC Energy Inc.  
437 J Street, Suite 305  
San Diego, CA 92101  
[hscarborough@mmcenergy.com](mailto:hscarborough@mmcenergy.com)

**APPLICANT'S CONSULTANT**

Douglas M. Davy, Ph.D.  
Senior Project Manager  
CH2M Hill  
2485 Natomas Park Drive,  
Suite 600  
Sacramento, CA 95833  
[ddavy@ch2m.com](mailto:ddavy@ch2m.com)

**APPLICANT'S ENGINEER**

Steven Blue  
Project Manager  
Worley Parsons  
2330 E. Bidwell, Suite 150  
Folsom, CA 95630  
[Steven.blue@worleyparsons.com](mailto:Steven.blue@worleyparsons.com)

**COUNSEL FOR APPLICANT**

Jane Luckhardt, Esq.  
Downey Brand Law Firm  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814  
[jluckhardt@downeybrand.com](mailto:jluckhardt@downeybrand.com)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENORS**

California Unions for Reliable  
Energy (CURE)  
c/o Marc D. Joseph  
Gloria Smith  
Suma Peesapati  
Adams Broadwell Joseph  
& Cardozo  
601 Gateway Boulevard,  
Suite 1000  
South San Francisco, CA 94080  
[mdjoseph@adamsbroadwell.com](mailto:mdjoseph@adamsbroadwell.com)  
[gsmith@adamsbroadwell.com](mailto:gsmith@adamsbroadwell.com)  
[speesapati@adamsbroadwell.com](mailto:speesapati@adamsbroadwell.com)

City of Chula Vista, California  
c/o Michael Meacham  
Director of Conservation &  
Environmental Services  
276 Fourth Avenue  
Chula Vista, CA 91910  
[mmeacham@ci.chula-vista.ca.us](mailto:mmeacham@ci.chula-vista.ca.us)

City of Chula Vista, California  
c/o Michael J. Shirey  
Deputy City Attorney  
Chula Vista City Attorney's Office  
276 Fourth Avenue  
Chula Vista, CA 91910  
[mshirey@ci.chula-vista.ca.us](mailto:mshirey@ci.chula-vista.ca.us)

\*Environmental Health Coalition  
Diane Takvorian & Nicole Capretz  
401 Mile of Cars Way, Suite 310  
National City, CA 91950  
E-MAIL PREFERRED  
[DianeT@environmentalhealth.org](mailto:DianeT@environmentalhealth.org)  
[nicole@environmentalhealth.org](mailto:nicole@environmentalhealth.org)

\*Kevin Bundy  
Shute Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
E-MAIL PREFERRED  
[bundy@smwlaw.com](mailto:bundy@smwlaw.com)

**ENERGY COMMISSION**

James D. Boyd  
Vice Chairman and  
Associate Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

Raoul Renaud  
Hearing Officer  
[rrenaud@energy.state.ca.us](mailto:rrenaud@energy.state.ca.us)

Christopher Meyer  
Project Manager  
[cmeyer@energy.state.ca.us](mailto:cmeyer@energy.state.ca.us)

Kevin Bell  
Staff Counsel  
[kwbell@energy.state.ca.us](mailto:kwbell@energy.state.ca.us)

Public Adviser's Office  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

**DECLARATION OF SERVICE**

I, Chester Hong, declare that on June 15, 2009, I served and filed copies of the attached Energy Commission Staff's Reply To The Errata To The Presiding Member's Proposed Decision. 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:**

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

  x   by personal delivery or by depositing in the United States mail at Sacramento 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."

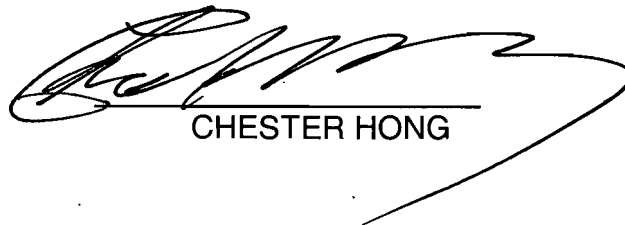
**AND**

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 07-AFC-4  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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

  
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CHESTER HONG