

Environmental Health Coalition

COALICION de SALUD AMBIENTAL

401 Mile of Cars Way, Suite 310 • National City, CA 91950 • (619) 474-0220 • FAX: (619) 474-1210
ehc@environmentalhealth.org • www.environmentalhealth.org

February 13, 2008

Mr. Christopher Meyer
Project Manager
California Energy Commission
1516 9th Street
Sacramento, CA 95833

DOCKET	
07-AFC-4	
DATE	FEB 10 2008
RECD.	FEB 13 2008

RE: Chula Vista Energy Upgrade Project; Docket No. 07-AFC-04

Dear Mr. Meyer:

This is a rebuttal to MMC's letter dated January 14, 2008 responding to comments the Environmental Health Coalition made at the California Energy Commission Public Information Hearing on November 29, 2007. We believe MMC is misrepresenting our statements and providing incorrect information.

A. Concern Regarding CVEUP's Proposed Location

1. Zoning

In their letter, MMC argues that the Chula Vista Energy Upgrade Project (CVEUP) is consistent with the spirit of the Limited Industrial designation and is in fact cleaner than most uses permitted under the IL designation. This is a misrepresentation of the spirit and letter of the IL designation. It is true that the area is zoned IL, however, energy generation is expressly defined as General Industrial (IG), a higher level of industry. The intent of the designation was to clearly exclude any type of power plants, with its unique set of problems and conditions associated with energy generation, from the IL designation.

Chula Vista staff, in a recent letter to the CEC, stated its agreement with CEC's description of the IL designation as one providing for "light industrial" uses, while the power plant itself is an example of a "heavy industrial" use. MMC is trying to confuse the issue by mentioning other, potentially more polluting uses that fall under the IL designation. However, pollution emission is not the only criteria placing a type of use into a particular designation. A use is placed under a particular designation depending on how it furthers the designation's overall goal.

Through its letter and the original adoption of the zoning ordinances, the city has made it clear that excluding energy generation plants from IL zoning furthers the IL's goals of encouraging "sound limited industrial development by providing and protecting an

environment free from nuisances created by some industrial uses and to insure the purity of the total environment of Chula Vista and San Diego County and to protect nearby residential, commercial, and industrial uses from any hazards or nuisances.” (CV Ord. 19.44.010, 2007). In this circumstance, energy generation, with its safety issues, hazardous material uses, potential for expansion, nature of the industry, noise, and pollutant emissions creates a nuisance that the IL designation is seeking to prevent.

2. Hours of Operation

In another statement, MMC states, “CVEUP is expected to operate less than 500 hours per year.” This is the first time MMC has given a concrete statement regarding expected operation hours. However, it is extremely unlikely and contrary to the common practices of similarly situated power plants that CVEUP will run at its minimum, especially considering the fact that most power plants run at considerably higher hours in the first year to quickly make up costs.

Moreover, according to a 2006 CEC report there were several peaker plants that ran well over 1,000 hours in a year. Adding to the fact is the San Diego region’s unique energy situation, with its general lack of in-basin generation, a heavy reliance on transmitted energy, and its designation by the Federal Energy Regulatory Commission (FERC) as a federal energy corridor. These factors illustrate that a new peaker plant near the major load centers in San Diego county could run considerably more than 500 hours.

Finally if MMC is serious about its claim of operating only near 500 hours, why has it not made an enforceable agreement with the community to that affect? Specifically this would require an agreement that would be enforceable even if the regional energy conditions warrant hours of operation over 500 hours. Such an enforceable agreement must also commit to the community that no applications will be made to the APCD or any other regulatory agency for permission to run additional hours. Without such safeguards, the community is essentially betting on MMC’s promises without additional consideration and with their life.

B. Concern Regarding Conformity with City of Chula Vista General Plan Policy E6.4

In their letter, MMC asserts that “General Plan Policy E6.4 does not apply to CVEUP. EHC strongly disagrees with that interpretation. The applicable policy, “avoid siting new or re-powered power plants and other major toxic air emitters within 1,000 ft. of a sensitive receiver,” indicates that the clause includes both power plants and other major toxic air emitters.

Moreover, MMC says that because the General Plan does not define “major toxic emitters” then the CEC should use the definition of “major source of air pollutants” as defined in the Federal Clean Air Act. This is incorrect and distorts the meaning of the policy. The General Plan would have used the term “major source of air pollutants” if it

indeed intended to use the Clean Air Act definition. Imposing the Clean Air Act's definition for a phrase not used within the policy would be arbitrary and incorrect.

Furthermore, MMC uses the Clean Air Act term to apply not just to "other toxic emitters" but also to the first part of the policy, "new or re-powered energy generation." This leads to a reading inconsistent with the plain meaning of the term. MMC's argument therefore can be summed as stating that "new or re-powered energy generation" does not necessarily mean "new" or "re-powered" or "energy generation." Thus, using MMC's interpretation creates a meaningless policy and an absurd result.

Finally, the intent of the E6.4 is clear as it relates to CVEUP when taking into account statements made by authors of the policy as well as the context of the policy. Several authors of the original policy, including Environmental Health Coalition's Laura Hunter and Chula Vista City Councilmember Rudy Ramirez, who at the time chaired the Policy Steering Committee, have remarked that the policy was intended to prevent what MMC is attempting to do to southwest Chula Vista with the CVEUP. Furthermore, EHC interpretation of E6.4 is consistent with other strong environmental justice policies throughout the General Plan such as policy E 6.15 "site industries in a way that minimizes the potential impacts of poor air quality on homes, schools, hospitals, and other land uses where people congregate." In fact, it can be argued that if MMC does not violate policy E6.4, it would still violate E 6.15. The spirit and letter of the Chula Vista General Plan's Energy Section outlines a strong commitment to environmental justice that would be ignored if the CVEUP was certified as it is currently proposed.

C. Concern Regarding the CVEUP's Classification as an Upgrade and Not a New Plant

MMC states, "Though CVEUP would replace the existing turbine, the project would reuse the site's existing infrastructure and as a result, CVEUP is properly classified as an upgrade." Moreover, MMC points towards the fact that the CVEUP would use the existing plant's location, interconnection facilities, existing onsite connections for gas, water, and sewage, and the existing fencing and sound attenuation." This, however, is misleading. The major source of concern for the surrounding neighborhood comes from what is new- the new turbines that will give the new plant a 122% greater energy capacity than the original plant. Furthermore, there will be new smokestacks as well.

Thus, even though the project will use existing external infrastructure, the main components of actual energy generation will come from new facilities. The existing power plant will be dismantled, leaving a vacant lot where it had existed. This does not sound like a simple upgrade. This is clearly a new power plant utilizing some old infrastructure and equipment.

Finally, to obtain air permit by the San Diego Air Pollution Control District, the new plant will have to undergo a review as a "new source" as defined by the Federal Clean Air Act. The act defines any stationary source in which there is a physical change "which

increases the amount of any air pollutant emitted by such source” (42 US § 7411 (a)(4)). Thus, this is a new power plant with new turbines and new smokestacks while using supporting infrastructure and some recycled equipment on a different portion of the same lot. The most significant components of energy generation at the CVEUP will be new.

D. Concern Regarding CVEUP’s Potential Emissions and Its Effect on the Local Residents’ Health

MMC states that “emissions of criteria pollutants will adhere to NAAQS and CAAQS.” However, according to our internal assessment this does not appear to be the case. The area is already in violation of NAAQS standards for 24-hour PM2.5 levels, and the CVEUP’s likely emissions will further violate these standards.

MMC points out that, “by potentially replacing the operation of a less efficient power plant, CVEUP could benefit regional air quality.” However, this statement implies that the CVEUP would run at the same amount of hours as the original plant. This, again, seems very unlikely- why spend money on a new power plant, if it will only run around the same amount as the previous plant? Moreover, the above statement is also untrue when taking into account both MMC’s numbers and our own analysis that the CVEUP will produce more PM2.5, PM10, SOx, and VOC emissions per hour than the existing plant. If the CVEUP will run more than the 200 hours the original plant usually ran per year, which is extremely likely, air emissions will likely increase. Further, in responses recently received from MMC it clearly states that mitigations will be required for over tons of air pollution over the current load.

Finally, MMC claims that the new project “could benefit regional air quality.” However, MMC has yet to undertake an adequate air quality analysis based on cumulative impacts. Only after such a complete analysis is done coupled with a shorter range of likely hours of operation will the public know the accuracy of MMC’s “air quality benefit” claim.

E. Concern That Approving CVEUP Would Lead to Future Increases in Generation and Emissions

MMC claims it has, “no intention to increase generation capacity beyond what is proposed by CVEUP because such increase cannot occur without significant and expensive changes to the site’s configuration, infrastructure, and air permit.” The question then is- at what point, will the existing infrastructure be replaced? Is it possible that CVEUP will replace the existing infrastructure with equipment that would allow an expanse in capacity?

MMC goes on to assert that, “the existing substation at Albany and Main would require a major upgrade at significant cost to MMC as well.” and that if additional generation capacity were added to the site, MMC states, it would need to acquire new air permits or find some way to offset the new emissions. These, however, are not barriers to expansion,

only administrative requirements that can be overcome relatively easily. Changes in air permits happen routinely in power plants.

F. Concern That CVEUP Does Not Utilize Renewable Energy Technology

MMC justifies the CVEUP by stating that, “peaking power plants are needed to support intermittent renewable resources like wind and solar.” However, what MMC does not mention is that new and larger natural gas plants continue our reliance on fossil fuels and prevent the development of renewable energy. This continues increasing our greenhouse gas emissions and makes it unlikely that the state will meet its goals prescribed in AB 32.

Also, MMC states that, “because solar and wind technologies are generally not dispatchable, those technologies are not suitable for a peaker plant like CVEUP.” This is misleading since solar and wind power would be dispatchable in a project such as CVEUP since it would be “firmed up” by natural gas, thus meeting CAISO requirements. MMC is perpetuating the myth that renewable energy is not a realistic alternative to fossil fuel energy, disregarding the California Energy Commission’s own loading order policy encouraging energy through energy efficiency measures first, renewable energy development second, and only after the former two are considered not feasible should we look towards fossil-fuel energy.

G. Concern Regarding CVEUP’s Estimated Water Usage

MMC states that its “water usage is on par with other peaker plants” MMC should provide information and comparison tables supporting that assertion. The comparison should be made with peaker plants built in the past five years and are located in areas with similar water concerns as the San Diego region. Furthermore, it is unclear whether MMC has even looked at less water intensive cooling methods, despite EHC’s request for data to that effect.

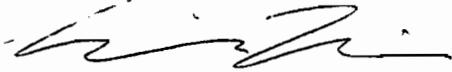
H. Concern Regarding the Number of Alternative Sites Considered and Whether Alternative Sites Would Have Lower Health Risks.

MMC claims, “The project would not cause any significant adverse health impacts (either cancer or non-cancer) due to exposure from toxic emissions. As previously stated, without a complete cumulative impacts analysis MMC is making a bold statement without support, essentially forcing residents to bet their life on MMC’s empty statement.

MMC dismisses EHC’s suggestion of locating the CVEUP, “at the landfill or other eastern areas of the City” because they will fail to meet key siting criteria. MMC should, however, point out that these are internal criteria that MMC has the ability to modify if they so choose.

Moreover, MMC does not mention in their criteria locations that are farther away from residential areas or schools. CVEUP will be a 100 MW power plant, located only 350 ft from a residential neighborhood and 1300 ft. from a school. This would make CVEUP one of the closest power plants to homes and schools in California.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Leo Miras', with a stylized flourish at the end.

Leo Miras
Environmental Health Coalition

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

Docket No. 07-AFC-4

PROOF OF SERVICE

I, Georgette Gomez, declare that on February 13, 2008, I deposited copies of the attached letter in the United States mail at National City, California, with first class postage thereon fully prepaid and addressed to the following:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-SPPE-1
1516 Ninth Street, MS-14
Sacramento, CA 95814-5512

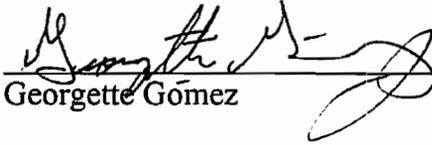
Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified in the following list:

docket@energy.state.ca.us	Energy Commission Docket Unit
hscarborough@mmcenergy.com	Harry Scarborough, MMC Energy Inc
jluckhardt@downeybrand.com	Jane Luckhardt, Applicant's Attorney
ddavy@ch2m.com	Douglas Davy, CH2M HILL
Steven.blue@worleyparsons.com	Steven Blue, Worley Parsons
LTobias@caiso.com	Larry Tobias, Ca. ISO
esaltmarsh@eob.ca.gov	Electricity Oversight Board
mdjoseph@adamsbroadwell.com	Marc Joseph, Adams Broadwell
gsmith@adamsbroadwell.com	Gloria Smith, Adams Broadwell
speesapati@adamsbroadwell.com	Suma Peesapati, Adams Broadwell
cpomeroy@mckennalong.com	Charles Pomeroy, McKenna Long
cdawson@mckennalong.com	Caren Dawson, McKenna Long
jpfannen@energy.state.ca.us	Commissioner Jackalyne Pfannenstiel
jboyd@energy.state.ca.us	Commissioner James Boyd
rrenaud@energy.state.ca.us	Raoul Renaud, Hearing Officer
cmeyer@energy.state.ca.us	Chris Meyer, Project Manager
kwbell@energy.state.ca.us	Kevin W. Bell, Staff Counsel

pao@energy.state.ca.us

Public Adviser's Office

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


Georgette Gomez