

PMPD - COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for) Docket No.
the Chula Vista Energy Upgrade) 07-AFC-4
Project)
_____)

CHULA VISTA CITY HALL
COUNCIL CHAMBERS
276 4TH AVENUE
CHULA VISTA, CALIFORNIA 91940

MONDAY, APRIL 13, 2009

4:12 p.m.

Reported by:
Troy A. Ray
Contract No. 170-07-001

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Susan Brown, Advisor

STAFF AND CONSULTANTS PRESENT

Christopher Meyer, Project Manager

Kevin Bell, Staff Counsel

PUBLIC ADVISER

Elena Miller

APPLICANT

Jane E. Luckhardt, Attorney
Downey Brand Attorneys, LLP

Amy G. Nefouse
DLA Piper US, LLP
Harry Scarborough
MMC Energy

INTERVENORS

Scott Tulloch, Assistant City Manager
Michael Meacham, Director
City of Chula Vista

Kevin P. Bundy, Attorney
Shute, Mihaly and Weinberger, LLP
Environmental Health Coalition

ALSO PRESENT

Pamela Bensoussan, Councilmember

ALSO PRESENT

Elizabeth Martinez
on behalf of Assemblymember Mary Salas

Rudy Ramirez, Councilmember

Cindy Gompper Graves
South County Economic Development Council

Katie Westfall

Diana Vera

Patricia Aguilar

Steven Pavka

Earl Jentz

Ruth Heifetz

Rudy Gonzalez

Jim Peugh

David Danciu
Crossroads Two
Southwest Chula Vista Civic Association

Theresa Acerro
Southwest Chula Vista Civic Association

Frank Acosta

Jean Costa
Local Chapter Global Warming Committee
Sierra Club

Hector Ramirez

Laura Hunter
Environmental Health Coalition

Jose Medina
Environmental Health Coalition

Guillermo Lopez

ALSO PRESENT

Bob Bauer

Ed Valerio

Jim Biddle

Jose Preciado, President
South Bay Forum

Lisa Cohen, CEO
Chula Vista Chamber of Commerce

Ben Haddad
reading for City Councilmember Patty Davis

Robert Boyd

Stephen Padilla

Jennifer Montano

Javier Saunders
Mexican-American Business and Professional
Association

Carlos F. Lopez
Hugo Ivan Salazar
Communities Taking Action

Mark Yepis

Aurora Murillo Clark

Juan Cesena

Octavio Jara

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1 P R O C E E D I N G S

2 4:12 p.m.

3 PRESIDING MEMBER BOYD: Pardon the delay
4 but we've been waiting for some people who need to
5 be here who aren't, who weren't. And I think
6 we'll get started.

7 So, again, good afternoon. Welcome to
8 this afternoon's Committee meeting. I am Jim
9 Boyd, the Presiding Member of the Chula Vista
10 Energy Upgrade Project Siting Committee, and the
11 last surviving Commissioner on this Committee.
12 So, it's me.

13 (Laughter.)

14 (Applause.)

15 PRESIDING MEMBER BOYD: Thank you.
16 You're probably applauding my birthday yesterday.
17 In any event, today's meeting has, I hope you all
18 noticed from the hearing notice, -- and by the
19 way, we'll do introductions in just a moment. I'm
20 going to turn this over to the Hearing Officer
21 after a couple of introductory remarks.

22 As the hearing notice indicated, this is
23 a, quote, "Committee Meeting", and the purpose --
24 or Committee Conference, really, we call it. And
25 its purpose is to consider oral and written

1 comments about the so-called PMPD. It's for all
2 parties, governmental agencies, members of the
3 public to have their opportunity to provide us
4 input on the Committee-recommended decision.

5 The folks have filed their written
6 comments with us, which we are taking under
7 consideration. And we will then take into
8 consideration what we hear today before moving the
9 final recommendation to the full Commission.

10 So, again, I welcome you. Thank you for
11 your interest in this subject. And I think I will
12 turn the meeting immediately over to our Hearing
13 Officer Raoul Renaud, who will conduct the hearing
14 and call for the introductions of the various
15 parties, and take care of that process for us.

16 So, Renaud, thank you.

17 HEARING OFFICER RENAUD: Thank you,
18 Commissioner Boyd. I'm Raoul Renaud, the Hearing
19 Advisor assigned by the Committee to oversee the
20 hearings in this matter. Thank you all for
21 coming.

22 First of all, Commissioner Boyd said
23 that he's the last surviving member of the
24 Committee. And just by way of explanation, if I
25 may, the Commission consists of five members.

1 When an applicant files an application to
2 construct and operate a power plant, as they did
3 in this case, the Commission appoints a Committee
4 of two Commissioners. In this case those
5 Commissioners were Commissioner Jackalyne
6 Pfannenstiel and Commissioner James Boyd.

7 Commissioner Pfannenstiel's term expired
8 after the evidentiary hearings in this matter were
9 concluded, which is well along in the case. And
10 at that point it doesn't make sense to bring in a
11 new Commissioner who would have to fully get up to
12 speed. So the case continues under the Committee
13 of one. And that, I hope, explains and makes that
14 clear.

15 Before I go further, though, let's do
16 some introductions so you'll understand who's up
17 here. Commissioner Boyd to my immediate right.
18 His Advisor, Susan Brown, to his right.

19 Chris, would you care to introduce
20 yourself and who you have here from the staff.

21 MR. MEYER: Christopher Meyer; I'm the
22 Energy Commission Staff Project Manager for the
23 Chula Vista Energy Upgrade project.

24 And to my right is Kevin Bell, Staff's
25 Counsel. And we also have land use staff

1 available onsite, as well.

2 HEARING OFFICER RENAUD: Thank you very
3 much. Now, let's see, from the city, please
4 introduce yourself.

5 MR. TULLOCH: I'm Scott Tulloch; I'm the
6 City of Chula Vista's Assistant City Manager. And
7 joining me here on the dais is Michael Meacham,
8 the Director of Conservation and Environmental
9 Services.

10 In the audience is Gary Halbert, who's
11 the Deputy City Manager and also the Director of
12 Development Services.

13 HEARING OFFICER RENAUD: Thank you. And
14 to my left, starting with Mr. Bundy, please.

15 MR. BUNDY: My name is Kevin Bundy; I'm
16 an attorney with Shute, Mihali and Weinberger, and
17 here representing the Environmental Health
18 Coalition.

19 HEARING OFFICER RENAUD: Thank you. And
20 Ms. Luckhardt.

21 MS. LUCKHARDT: Hi. My name's Jane
22 Luckhardt. I'm representing the applicant. From
23 Downey, Brand. To my left is Harry Scarborough,
24 who is Vice President of MMC Energy. To his left
25 is Monica Schwebs from Bingham McCutchen. Behind

1 me I have Julie Jones from Bingham McCutchen. And
2 Amy Nefouse from DLA Piper.

3 And in the audience we have Michael
4 Hamilton, who is President and CEO of MMC Energy.

5 HEARING OFFICER RENAUD: Thank you very
6 much. To those of you up here who have
7 microphones, let me remind you that they really
8 don't pick up unless you've practically got it in
9 your mouth, so get up good and close.

10 And one of the reasons that's important,
11 first so the audience can hear, but also because
12 this meeting, like all public hearings conducted
13 by the Energy Commission, is being recorded and
14 will be transcribed and available for public view.
15 So we all need to make sure that we can be heard
16 and that a clear record can be made.

17 For that reason it's also important that
18 we maintain order and calm and quiet in the
19 hearing room. Again, so that we can be heard. I
20 know this is an important and somewhat emotional
21 issue for some of you. You may be inclined to
22 want to express your feelings orally during
23 someone else's time. I would please ask that you
24 not do that.

25 Once the parties have finished their

1 presentations we will open this up for public
2 comment and you'll all have time to speak. So
3 that would be very much appreciated.

4 Another housekeeping matter. Those of
5 you who wish to speak should fill out a blue
6 comment card. You can get those from our able
7 Public Adviser, Elena Miller, who is standing in
8 the back there. And she will see that those get
9 sent up here. And then when it's time, we'll call
10 your name so you can speak.

11 We'll probably want to limit the
12 speaking time to about three minutes so that we
13 can keep this from going too late into the night.

14 Okay. I'd like to explain just a little
15 bit about this process and where we are and what
16 we're doing here tonight.

17 The Energy Commission, under the Warren
18 Alquist Act, has jurisdiction to license power
19 plants over 50 megawatts in the state of
20 California.

21 In conducting that licensing process the
22 Commission has a process that's essentially
23 similar and considered comparable to the
24 California Environmental Quality Act, otherwise
25 known as CEQA.

1 And that process begins with the filing
2 of an application for certification, which
3 occurred in this case in August of 2007.

4 Upon the application, AFC we call that,
5 being found data adequate, a period of intense
6 study of that application begins. Volumes of
7 information are exchanged back and forth. Public
8 hearings and workshops are held. And specialists
9 on the Energy Commission Staff review the
10 application with respect to their areas of
11 specialization. And contribute to a volume called
12 the preliminary staff assessment, or PSA. We love
13 alphabet soup at the Energy Commission. We're
14 always using these acronyms. So that's the PSA.

15 The preliminary staff analysis is
16 basically that, preliminary. The staff takes
17 comment on that, leading eventually to the
18 publication of the final staff analysis, or FSA.

19 We then go into evidentiary hearings. I
20 imagine some of you were here at that hearing
21 which I believe was last -- was it October? It
22 lasted many many hours. We took sworn testimony
23 from parties and witnesses, accepted documentary
24 evidence into the record.

25 And then took all of that material and

1 created the document we're here to talk about
2 tonight, which is the Presiding Member's Proposed
3 Decision, also known as the PMPD.

4 Now, the regulations for the Commission
5 allow for a hearing such as this, which we
6 sometimes refer to as a Committee conference, to
7 allow for discussion of the PMPD. And there isn't
8 really any set format for it. In fact, it's
9 considered an optional hearing, but we always hold
10 it.

11 In this case the parties have each
12 submitted -- let me interrupt myself there and
13 explain what I mean by parties, by the way. The
14 applicant is a party to this matter. The Energy
15 Commission Staff is considered a party to the
16 matter. And then any other organization or person
17 who has intervened in the case is a party.

18 So in this case, we have the applicant,
19 the staff, and we have the Environmental Health
20 Coalition, which has intervened.

21 Those parties have all submitted -- I'm
22 sorry, forgot the City, the City of Chula Vista
23 has also intervened. So we have four parties.

24 The parties have all submitted written
25 comments on the PMPD and had an opportunity to

1 respond to one another's comments, as well, in
2 writing.

3 Today we are going to start by allowing
4 the parties time to address the Committee with
5 respect to their comments on the PMPD. We're
6 asking the parties not to just give us a rehash of
7 what's in the written comments, because we have
8 those and we've read them. And they're available
9 for anyone to read in the public record.

10 But any points they wish to emphasize or
11 clarify or embellish, we certainly would like to
12 hear about that.

13 Once that is complete we will then open
14 it up for public comment. And those of you who
15 have submitted blue cards will be invited to come
16 down here in front to the microphone and address
17 the parties.

18 (Pause.)

19 HEARING OFFICER RENAUD: A good tip has
20 been given to me here. Our blue cards have a line
21 on them. It says optional, and it allows you to
22 check a space marked favor, oppose or neutral.
23 What we mean by that, just to clear up any
24 confusion, do you favor the proposed project, are
25 you opposed to the proposed project, or do you not

1 have an opinion, are you neutral. And this is
2 optional. You don't even have to fill this out.

3 But some people might have thought they
4 were marking whether they opposed the PMPD or
5 favored the PMPD. Well, you can clarify that when
6 it's time for public comment.

7 AUDIENCE SPEAKER: Can we get the ones
8 we turned in, because we gave you some wrong
9 information. We thought it about the PMPD. So
10 ours all say favor.

11 (Pause.)

12 HEARING OFFICER RENAUD: Elena, I'm
13 going to -- I'll give these back to Elena Miller
14 and let her sort it out, all right. Thank you.

15 Okay. Just by way of some brief
16 background on where we stand now. The main
17 controversy, area of disagreement in this matter
18 has been over land use. And that's pretty much
19 been the case from the beginning.

20 The issues in the case, there are many
21 issues in these matters, including usually air
22 quality, public health and many many others. But
23 in this particular case there has been a good deal
24 of debate over whether or not the proposed project
25 is in compliance with the City of Chula Vista's

1 zoning and general plan.

2 So you'll be hearing, I think, a good
3 deal of words about that particular issue from the
4 parties, and I imagine from public comment, as
5 well.

6 Are there any questions from parties
7 before we begin? Okay. Then I'm going to ask for
8 comment from first the applicant.

9 MS. LUCKHARDT: And Harry Scarborough
10 will be providing our comments.

11 HEARING OFFICER RENAUD: Thank you. Mr.
12 Scarborough, please.

13 MR. SCARBOROUGH: Thank you. Good
14 afternoon, Commissioner Boyd and Hearing Officer
15 Renaud. My name is Harry Scarborough and I'm the
16 Senior Vice President of MMC Energy.

17 I have been involved with this project
18 since shortly after its inception and before the
19 initial filing of an application for conditional
20 use permit for the City of Chula Vista.

21 Throughout my involvement I have met
22 with and worked with the City of Chula Vista and
23 many community groups to hear and address their
24 concerns. These efforts culminated in the
25 agreement with the city to address all the

1 mitigation measures outlined by the city, but not
2 included as conditions of certification in the
3 proposed decision.

4 I think it is important to note that
5 this is the first time a Committee has recommended
6 denial of a project when the staff found the
7 project complies with applicable law and would not
8 result in a significant environmental impact.

9 So we were taken by surprise when the
10 proposed decision recommended denial. As you
11 know, we disagree with some of the conclusions of
12 the proposed decision and recommendation. But we
13 also agree with much of the decision. I'd like to
14 go over some of the key points on both what we
15 agree and what we don't.

16 The project will not create an adverse
17 health effect. One concern we have heard at every
18 meeting, workshop and public hearing is a concern
19 about the potential impacts to air quality, public
20 health from the project.

21 The analysis and evaluation conducted by
22 the Committee, your staff, a consultant for the
23 school district, and the San Diego Air Pollution
24 Control District have all concluded this project
25 will not cause any significant adverse health

1 effects or air quality impacts.

2 Furthermore, and as you have recognized
3 in the proposed decision, the project will be a
4 substantial improvement in efficiency and result
5 in substantial reduction in the emissions for each
6 megawatt hour produced to serve Chula Vista's
7 load.

8 The project is consistent with LORS. As
9 you know, one of the most contentious issues in
10 this process has been the project's consistency
11 with the city zoning ordinance and general plan.

12 Commission Staff found the project
13 consistent, but the proposed decision disagreed.

14 MMC firmly believes that the evidence in
15 the record, and most importantly the city's
16 comments on the proposed decision, demonstrate
17 without question that the project must be found
18 consistent with LORS.

19 First, as to consistency with the zoning
20 ordinance. There is no dispute that the existing
21 peaker was approved by the city in 2000 under the
22 same zoning code provisions that are in place
23 today.

24 The city is the agency that is charged
25 with interpretation of its own zoning ordinance,

1 and the city has unambiguously determined that a
2 peaker power plant can be sited at this particular
3 location in the limited industrial zone with a
4 conditional use permit.

5 The city has also unambiguously stated
6 that the process for approving the peaker in 2000
7 is the same process it would use today were it the
8 permitting agency on the project, which it is not.
9 Thus, the project is consistent with the city's
10 zoning code.

11 While the zoning ordinance is unchanged
12 since the approval of the original plant, as
13 everyone knows, the general plan was updated in
14 2005. A part of that process added a provision
15 that has become the focus of argument that the
16 project is inconsistent with the general plan,
17 specifically policy E-6.4.

18 However, the city has explained that it
19 interprets this provision in the general plan in
20 the context of the objective which it is a part,
21 and the policies, as a group, are concerned with
22 improving local air quality by minimizing exposure
23 to emissions.

24 The city has also explained that the
25 city reads the policy as applying only to new or

1 repowered energy generation facilities that are
2 also major toxic emitters. This reading of the
3 policy is reasonable, given the second half of the
4 policy which calls to avoid placement of a
5 sensitive receiver within 1000 feet of a major
6 toxic emitter, without any mention of energy
7 generation facilities. It is reasonable, given
8 that the peaker was already in place.

9 This reading also is reasonable when one
10 reads the environmental impact report analysis of
11 this policy, which noted that the facilities in
12 the city that emitted large amounts of toxic air
13 contaminants, as we pointed out, the MMC plant is
14 not on that list.

15 Because the project would not have any
16 significant air quality impacts and would improve
17 the situation with respect to greenhouse gas
18 emissions compared to the existing plant, the
19 project is also not a major toxic emitter and thus
20 policy E-6.4 does not apply.

21 The bottomline here is that the city has
22 told the Commission how it interprets these
23 provisions. The city is in the best position to
24 interpret its own general plan and zoning code.

25 As far as we know, there has been one

1 official action taken by the full city council
2 with respect to this project. And that was to
3 authorize the sending of the August 7, 2008 letter
4 to the Commission, which stated that given the
5 studies done, and the additional mitigation agreed
6 upon by MMC, quote, "The city concludes that any
7 potential inconsistencies with the city's general
8 plan will have been addressed." End quote.

9 Under the city's interpretations there
10 can be no other conclusion except that the project
11 is consistent with LORS.

12 Alternatives. Another issue I'd like to
13 talk about briefly is the analysis of
14 alternatives. The proposed decision concludes
15 that further analysis of alternatives is required.
16 But MMC believes that further analysis is not
17 required and would not be productive.

18 The issue of what is required by law in
19 alternatives analysis had already been extensively
20 discussed in the written papers, so I will
21 highlight only two key points we have made.

22 First, with respect to the analysis of
23 alternative sites, it is important for the
24 Commission to remember that this is an upgrade
25 project. So the only sites that it makes sense to

1 analyze are those close to the existing power
2 plant.

3 MMC did analysis of two potential nearby
4 sites, and the Commission Staff looked at three
5 more. I am confident that all the nearby sites
6 have been analyzed, so doing a further analysis of
7 alternative sites would serve no purpose.

8 Second, with respect to the analysis of
9 alternative generation technologies, it would not
10 make sense to do further analysis of rooftop solar
11 generation as an alternative to the upgrade
12 project.

13 As the Commission has, itself, found in
14 its reports the fast-start peaking power that the
15 upgrade project would provide is a necessary
16 complement to, not an alternative to solar
17 generation. The fast-start capability of the
18 engines that MMC proposed to install are necessary
19 to maintain the reliability of electric grid by
20 balancing power flows as the state adds more
21 intermittent renewable resources such as solar and
22 wind, that are subject to weather and other
23 conditions that are not in the control of the
24 operator.

25 Moreover, it would not be feasible for

1 MMC to be able to gain access to the hundreds of
2 acres of rooftops necessary to produce as much
3 power as the upgrade project will provide.

4 The upgrade project results in a
5 reduction in greenhouse gas impacts. The upgrade
6 project provides a direct reduction in greenhouse
7 gas emissions by replacing an older, less
8 efficient generator consistent with the
9 recommendations included in the Commission's
10 Integrated Energy Policy Report.

11 As the Siting Committee has recognized,
12 an evaluation of greenhouse gas impacts from power
13 plants needs to be performed on a system basis,
14 recognizing that the system must be balanced
15 between generation and load at all times. When
16 one facility operates, another one must reduce
17 generation or turn off all together.

18 As a peaker, this project will only run
19 when needed to support the electric system, and
20 will only run when it is the next most efficient
21 generator, thereby replacing a less-efficient
22 generator.

23 And when this project is dispatched for
24 reliability purposes it will be run ahead of the
25 South Bay Power Plant due to its higher

1 efficiency, directly reducing both criteria
2 pollutants and greenhouse gas emissions.

3 Finally, the evaluation included in the
4 proposed decision, recognizing the integrated
5 system dispatch order and benefits of replacing
6 the existing facility, meets the draft guidelines
7 issued by the Office of Planning and Research and
8 the guidance provided by the Siting Committee.

9 In conclusion, the final point I would
10 like to make is that the Commission should not
11 lose sight of the many benefits the upgrade
12 project would bring to the people of Chula Vista.

13 MMC has taken care to make sure that it
14 acts as a good citizen by working with the city to
15 come up with a separate agreement that commits MMC
16 to take certain actions and fund certain projects
17 that the city believes are worthwhile.

18 MMC appreciates the proposed decision,
19 acknowledges this commitment is laudable. MMC
20 further urges the Commission to recognize that
21 there will be significant benefit to permitting
22 the construction of this project to take place
23 promptly, given the difficult financial
24 circumstances the country and the City of Chula
25 Vista currently face.

1 Permitting the upgrade project to move
2 forward would mean an \$80 million investment that
3 would bring hundreds of construction jobs and
4 substantial tax revenues to the people of Chula
5 Vista.

6 The tax revenues expected from the
7 upgrade project are quite substantial. On the
8 basis of the tax revenues to be paid, the City of
9 Chula Vista Redevelopment Agency recently agreed
10 to dedicate the \$13.2 million in tax increment
11 generated by the project for four specific
12 projects recommended by the immediate neighborhood
13 in southwest Chula Vista. Which would include
14 corridor enhancement, drainage improvement,
15 community park development and pedestrian and ADA
16 improvements.

17 It would undoubtedly be a great
18 disappointment to the City of Chula Vista
19 Redevelopment Agency if the upgrade project does
20 not move forward.

21 We urge this Committee to review the
22 analysis and basis for its proposed recommendation
23 denying this project. We request that the
24 Committee re-evaluate its initial position and
25 recommend approval of the upgrade project.

1 Thank you.

2 HEARING OFFICER RENAUD: Thank you very
3 much.

4 PRESIDING MEMBER BOYD: Mr. Scarborough,
5 does MMS (sic) have a contract or understanding
6 for the sale of electricity from this plant?

7 MR. SCARBOROUGH: No, they do not at
8 this time, Commissioner.

9 PRESIDING MEMBER BOYD: Thank you; no
10 other questions.

11 HEARING OFFICER RENAUD: If I may, one
12 point of clarification for me. You indicated, I
13 believe, unless I misheard you, that the city
14 council had approved the August 7 mitigation
15 agreement? Did I hear that correctly? And if so,
16 is that in form of a resolution, or how was that
17 done?

18 MR. SCARBOROUGH: That was done through
19 a side agreement, Mr. Renaud. And the side
20 agreement was signed by myself and parties of the
21 city, and notarized, as well.

22 HEARING OFFICER RENAUD: But my question
23 is did it go before the full city council?

24 MR. SCARBOROUGH: The August 7th, which
25 identified the eight measures, did go before the

1 city council, yes, sir.

2 HEARING OFFICER RENAUD: Do you know if
3 they did a resolution on that, or anything? I
4 just haven't seen that.

5 MR. SCARBOROUGH: It was a closed
6 session meeting.

7 HEARING OFFICER RENAUD: I see. All
8 right, thank you.

9 MR. SCARBOROUGH: One point of
10 clarification, Commissioner Boyd, if I may add, is
11 that the MMC project is currently under a resource
12 adequacy agreement, so we do provide Cal-ISO with
13 a resource adequacy throughout the 2009. And it's
14 anticipated that the project would also be
15 extended a resource adequacy agreement to meet the
16 requirements of the LTTP for down in this southern
17 California area for 2010, as well.

18 PRESIDING MEMBER BOYD: That's the
19 current project?

20 MR. SCARBOROUGH: Yes, sir.

21 HEARING OFFICER RENAUD: Okay, thank
22 you.

23 Let's turn to the Energy Commission
24 Staff. Kevin Bell, counsel.

25 MR. BELL: Thank you. Kevin Bell, Staff

1 Counsel for the California Energy Commission. I
2 represent staff.

3 First, I want to thank the Committee for
4 the opportunity to address you today. The staff
5 has already filed extensive comments in response
6 to comments based on the PMPD, and I'm not going
7 to take this opportunity to re-hash those
8 comments. I just want to touch on a couple
9 points.

10 First off, I do note that it's staff's
11 continuing position, even in light of the PMPD and
12 the comments filed by all the parties, that based
13 on the evidence that CVEUP complies with all the
14 applicable LORS. And staff would note that it
15 causes no significant environmental impacts,
16 provided that the imposition of the recommended
17 conditions of certification are eventually
18 adopted.

19 The staff notes that primarily E-6.4
20 seems to be the main sticking point here as to the
21 interpretation of that section of the general
22 plan. Staff notes, and is in agreement with the
23 applicant, that E-6.4 applies to not all energy
24 generating facilities, but those that are also
25 major toxic emitters.

1 Staff's analysis shows that that's the
2 only reasonable interpretation of that section.
3 And we respectfully disagree with the findings
4 otherwise within the PMPD, itself.

5 Staff also has to draw a distinction
6 between quasi-legislative function of the city in
7 interpreting its own statutes and the quasi-
8 adjudicative function of the CEC licensing
9 process.

10 Due deference should be afforded the
11 city in interpreting its own statutes. The city
12 has come forward with the interpretation that
13 agrees with staff's analysis that E-6.4 does not
14 apply to all energy generating facilities, but
15 only those that are major toxic emitters.

16 The other point that I need to bring up
17 is with the alternatives analysis. Staff does
18 need to note that there has been no significant
19 environmental impacts identified within the PMPD,
20 or through these hearings, that would call for an
21 expanded alternatives analysis.

22 Staff's position continues to be that
23 the alternatives analysis that was presented here
24 complies with CEQA, and no further analysis is
25 necessary.

1 Staff does urge the Committee to rethink
2 its position with respect to the PMPD.

3 HEARING OFFICER RENAUD: Thank you very
4 much. Questions?

5 PRESIDING MEMBER BOYD: Question.

6 HEARING OFFICER RENAUD: Yes.

7 PRESIDING MEMBER BOYD: Mr. Bell, you
8 referenced due deference. Would you tell me what
9 the requirements are with regard to due deference?

10 MR. BELL: Yes. Section 1744(e) in the
11 Commission's regulations state that comments and
12 recommendations by an interested agency on matters
13 within that agency's jurisdiction shall be given
14 due deference by the Commission Staff.

15 PRESIDING MEMBER BOYD: Okay. I heard
16 you correctly, the Commission Staff. Would you
17 agree that there's a difference between the
18 Commissioners and the Commission Siting Committee
19 and the staff in this -- in all situations like
20 this?

21 MR. BELL: There is. They're separate
22 parties, that's correct.

23 PRESIDING MEMBER BOYD: Thank you.

24 Mr. Bell, you didn't reference the land
25 use issue, and the reference to 2000 approval of

1 an existing plant is precedent. Do you have a
2 position on that?

3 MR. BELL: No, I didn't reference those
4 in these comments. I believe that just in this
5 opening statement I wanted to touch on just a
6 couple of larger issues.

7 I do believe that that was addressed in
8 the comments on the PMPD that staff filed, and
9 possibly in the response to comments, as well.

10 PRESIDING MEMBER BOYD: And would you
11 agree that the circumstances in 2000 with regard
12 to the siting of power plants in California was
13 that number one, there was an emergency
14 declaration by the then-governor?

15 Number two, there was a special siting
16 provision in statute that authorized a 21-day
17 siting process?

18 And number three, that CEQA was, in
19 effect, waived for those types of siting
20 processes?

21 MR. BELL: Yes, I would, Commissioner.
22 I also note that the -- you're referring to the
23 CEQA-exempt process?

24 PRESIDING MEMBER BOYD: Correct.

25 MR. BELL: Yes, that's correct.

1 PRESIDING MEMBER BOYD: Thank you.

2 HEARING OFFICER RENAUD: Okay, any
3 further questions? All right.

4 Let's take a statement from the City of
5 Chula Vista now, please.

6 MR. TULLOCH: I'd like to briefly
7 summarize the city staff comments on the PMPD that
8 were provided on March 16th.

9 With respect to an alternatives
10 analysis, city staff has indicated that an
11 alternatives analysis is an important part of this
12 CEC process.

13 However, city staff has not conducted
14 their own alternatives analysis and are not taking
15 a position on the adequacy of the alternatives
16 analysis done by MMC and the CEC Staff, other than
17 to note that CEC Staff have stated that the
18 analysis met CEC process requirements.

19 With respect to the general plan
20 consistency, the section we've been talking about
21 is on the screen now. The section of the
22 environmental element and objective E-6, under
23 which the policy occurs, are directed at
24 minimizing the production and emission of air
25 pollutants and toxic air contaminants, and

1 limiting people's exposure to these.

2 As such, the context for the wording
3 indicates the consideration of an energy
4 generation facilities emissions and whether the
5 facility is considered a major toxic emitter is
6 the correct interpretation of the policy.

7 With respect to zoning the city's zoning
8 code does allow for power generation facilities to
9 be placed in the limited industrial zone through
10 the conditional use permit process as an
11 unclassified public quasi-public use.

12 That completes our comments.

13 Commissioner, questions?

14 PRESIDING MEMBER BOYD: Did the city
15 issue a conditional use permit in this instance?

16 MR. TULLOCH: We did not. Early on in
17 the process it was determined that this plant
18 should be processed under the CEC process, so we
19 did not conduct our own permit process.

20 PRESIDING MEMBER BOYD: So you, in
21 effect, referred that issue to the Commission
22 Committee?

23 MR. TULLOCH: It's my understanding that
24 the CEC took that jurisdiction. I'm not sure I
25 would classify that as us referring to them, but

1 that's the end result.

2 PRESIDING MEMBER BOYD: Interesting.

3 Thank you.

4 HEARING OFFICER RENAUD: May I ask a
5 question, please, Mr. Tulloch.

6 Do you have any knowledge of why energy
7 generating facilities are mentioned in 6.4? As
8 opposed to some other example of an emitter.

9 MR. TULLOCH: I wasn't part of that
10 process at the time, so I don't personally have
11 any knowledge of that.

12 HEARING OFFICER RENAUD: Okay, thank
13 you.

14 Okay. Environmental Health Coalition,
15 Mr. Bundy.

16 MR. BUNDY: Thank you. And, thank you,
17 Commissioner Boyd and Mr. Renaud, for calling us
18 together to hear comments on the PMPD today. We
19 appreciate the opportunity to address the
20 Committee on the proposed decision.

21 We agree with the PMPD's central
22 conclusions on land use and alternatives. And we
23 fully support the recommendation of denial. In
24 keeping with what the parties have admirably done,
25 I'm not going to reiterate everything in our

1 briefs and comments, and will just try to
2 highlight a couple of points. Would also happily
3 answer any questions that the Committee may have.

4 I'm not going to go through the land use
5 arguments in detail. I believe this was addressed
6 sufficiently in the briefs and our written
7 comments. We believe that the PMPD got it exactly
8 right with respect to general plan policies,
9 especially E-6.4, but also the other general plan
10 policies discussed in the PMPD.

11 And also got it right with respect to
12 the limited industrial zoning, the unclassified
13 use ordinance, and the precise plan requirement.

14 The PMPD properly focused on the plain
15 text of these provisions, and interpreted them in
16 accordance with that plain text.

17 In that context I wanted to address the
18 comments from city staff on the PMPD, and also the
19 standard for deference that you've asked about.

20 There are really three major issues
21 here. I think it's been touched on already that
22 the city has not made any determination here of
23 the kind to which courts normally defer. There
24 hasn't been any resolution of the city council
25 supported by formal findings, as in some of the

1 cases discussed in some of the comments.

2 The city's interpretation also has been
3 inconsistent throughout this proceeding. The
4 prior letters that are in the record are somewhat
5 contradictory or silent -- contradictory on E-6.4
6 and silent as to zoning -- reflecting kind of a
7 shifting view of what the local law requires.

8 I also want to note that the agreement
9 from August 2008 that has been brought up, the
10 agreement between the city and MMC. If there was
11 action taken in a closed session by the city
12 council on that, that action was not -- apparently
13 was not reported out at the end of closed session.
14 So, the public was never part of that. And,
15 indeed, it's my client's understanding that the
16 public was not informed that action took place.

17 There's also scant evidence in the
18 record regarding the city's actual interpretation
19 of its policies. And I think this is a good point
20 to kind of touch on, that the standard for due
21 deference.

22 The courts give deference to an
23 interpretation by the agency charged with the
24 administration of a regulation. They do not give
25 deference to statements of individual officials.

1 And they do not give deference to interpretations
2 where the actual text of the provision being
3 interpreted compels a different conclusion.

4 So, deference is given, but it only
5 extends so far. And there's very little evidence,
6 if any, in the record -- in the actual record,
7 regarding how the city interprets these policies.

8 And I think we covered that in our comments.

9 Most importantly, the city staff's
10 comment letter contradicts the provisions of the
11 general plan and the zoning ordinance. It
12 purports to interpret the view of unclassified
13 uses as expressed in the city's comments as
14 essentially allowing the city to approve, with a
15 conditional use permit, pretty much anything
16 that's not otherwise mentioned in that particular
17 zone.

18 Contradicts the definition of
19 unclassified use that's in the zoning ordinance.
20 Unclassified uses are enumerated, they're spelled
21 out, they're very specific. It's not an open-
22 ended catch-all category allowing the city
23 tremendous discretion. So, again, the text is
24 what controls here.

25 E-6.4 is exactly the same. The view of

1 E-6.4 expressed in the city's comments would allow
2 the city, on a case-by-case basis, to make
3 judgment calls as to whether policy does or does
4 not apply to an energy generating facility.

5 It's interesting in the city's comments
6 that that would be based on mitigation measures
7 proposed. It would be based on the result of a
8 health risk assessment. And I would draw the
9 Committee's attention back to the exhibits,
10 exhibit 626, in the record. Which I think the
11 PMPD accurately discussed being the drafting
12 history of policy E-6.4.

13 As that policy evolved over time, there
14 used to be exceptions for mitigation measures and
15 health risk assessments in that policy. Those
16 exceptions were removed by the city council. They
17 do not appear in the final version of that policy.

18 So, any interpretation that would
19 restore those exceptions that were specifically
20 removed from the policy, I would submit it's
21 unreasonable.

22 The plain text of the city's general
23 plan and zoning code support the PMPD's
24 conclusions. Not the assertions that have been
25 offered in the city's comment letter.

1 As for alternatives, I'll just be brief.
2 We discussed the way that the applicant's
3 objectives seemed to have shifted somewhat through
4 the course of this proceeding, in the context of
5 our written comments.

6 But I would like to reiterate that the
7 key -- what the AFC states is the key purpose of
8 this project is to supply additional generation in
9 the San Diego area during the period of peak
10 demand of quick start, could be accomplished
11 somewhere else in the City of Chula Vista.

12 To the extent that solar generation also
13 provides power, or cuts over all demand during the
14 peak period, it fits within that fundamental
15 objective, and should also be evaluated.

16 And with respect to -- with the benefits
17 of the project -- I know this was touched on at
18 length in the applicant's comments. The benefits
19 that would flow from this project to the City of
20 Chula Vista could also flow from a project that
21 was actually built in the right location, that was
22 built in a location further from homes and
23 schools; that was built in a location that's
24 already zoned for industrial uses.

25 This is not an all-or-nothing

1 proposition with respect to the tax benefits, the
2 construction job benefits that could come from
3 this project. But alternative sites just were not
4 analyzed because the applicant defined its
5 objectives too narrowly, and it's defined the
6 project too narrowly to allow that analysis.

7 As for greenhouse gases, I'm not going
8 to make a big deal out of that here. I think
9 we've covered it pretty well in the briefs and the
10 comments. Just suffice to say that there's been a
11 lot of talk in the comments of MMC and staff about
12 the need to analyze the greenhouse gas impacts of
13 this project against the entire system of
14 generation in California.

15 And our position has always been, and
16 remains, that that analysis just didn't occur
17 here. There has not been analysis of this project
18 with respect to the system of the entire
19 generation system in California.

20 The FSA, the PMPD did not actually say
21 that this kind of analysis was impossible; it just
22 said it would be difficult. So we believe that
23 CEQA requires more in the analysis of cumulative
24 impacts.

25 And especially in the context of

1 assertions regarding replacement of existing
2 generation. MMC's and staff's comments seemed to
3 operate on the assumption that all new generation,
4 all more efficient generation simply operates on a
5 one-to-one -- megawatt-per-megawatt basis to
6 replace existing generation. They don't take into
7 account the expansion for the number of megawatts
8 that would -- and the amount of generation, the
9 amount of time that these facilities would run.

10 So that's just an example of why this
11 analysis actually needs to be done. It can't just
12 be done based on the assumption that new plants
13 are more efficient than older plants.

14 As the Committee's aware, we don't agree
15 with everything in the PMPD. But, we do want to
16 acknowledge the careful review of the law in the
17 record that is reflected in the proposed decision.

18 We agree with the proposed decision's
19 critical conclusions on land use and alternatives.
20 And we agree with the recommendation of denial.

21 My clients certainly don't oppose all
22 power generation in Chula Vista. They just want
23 the power plants to be built in the right place,
24 consistent with the city's own law.

25 And we would ask that the Committee

1 forward the recommendation of denial to the full
2 Commission. And thank you very much.

3 HEARING OFFICER RENAUD: Thank you. Any
4 questions, Commissioner?

5 PRESIDING MEMBER BOYD: There's almost a
6 question, not necessarily related to this project,
7 just in general, but you referenced greenhouse
8 gases. And I guess I did want to make sure you
9 are aware that the Commission has another
10 procedure underway to address that question for
11 the state of California and the system.

12 MR. BUNDY: I am aware, Commissioner,
13 thank you for that. And my clients actually
14 participated and filed comments in that
15 proceeding.

16 I believe that the result, the guidance
17 that was issued by that committee, does support
18 actually doing the technical analysis that's
19 necessary to measure a particular project's
20 emissions against the overall generation system.
21 We covered that a little bit in our written
22 comments. Thank you.

23 MS. LUCKHARDT: Mr. Renaud.

24 HEARING OFFICER RENAUD: Yes.

25 MS. LUCKHARDT: I'm just wondering,

1 since you asked all of the other parties to
2 address deference, I'm wondering if we could have
3 an opportunity to address it, as well.

4 HEARING OFFICER RENAUD: That's what we
5 were just talking about, and anticipated that.
6 I'm going to give the parties another few minutes
7 apiece if they wish to close on anything.

8 So, please go ahead. Thank you.

9 MS. LUCKHARDT: Okay, so then are we
10 addressing deference, or are we addressing a range
11 of issues?

12 HEARING OFFICER RENAUD: This is just
13 your opportunity to speak to anything further that
14 you wish to use this opportunity to speak to.

15 MS. LUCKHARDT: I'm going to turn the
16 microphone over to Amy Nefouse.

17 MS. NEFOUSE: Thank you. I just wanted
18 to respond briefly on the question on the issue of
19 deference.

20 The comment was made that deference
21 shouldn't apply here because the city hasn't
22 actually taken the project through the process.

23 But because this is a situation where
24 it's the Commission that has jurisdiction over the
25 process and over the permitting of the project,

1 the city was not and has not been in a position to
2 take an action similar to the actions that have
3 been viewed by courts, and have commented on how
4 courts treat with deference the city's
5 interpretation of its own zoning code and general
6 plan provisions.

7 The legal principle, however, remains
8 the same, that the city is the agency that is in
9 the best position to interpret its own plans and
10 policies. And that is true regardless of whether
11 they are the actual permitting agency here or not.

12 The city here has made it very clear how
13 they interpret the provisions of the general plan
14 and the zoning code that are at issue. And we
15 believe that the legal authorities and the case
16 law in California obligate the Commission to give
17 adequate deference to the city's articulation of
18 how they view those provisions.

19 Another point to make here is that the
20 city's interpretation of its own provisions of the
21 zoning code and general plan need only be
22 reasonable. They don't have to be the only
23 interpretation. They don't even have to
24 necessarily be the best interpretation. They just
25 have to be a reasonable interpretation. As long

1 as they're reasonable then they are owed deference
2 by the agency here.

3 Finally, I think our legal briefs talk a
4 bit about the legislative history and this concept
5 that somehow the city's interpretation is putting
6 back in a provision that had been taken out.

7 And we disagree with that reading of the
8 legislative history, and think that one particular
9 person's statements that were made during that
10 process are not determinative. And, again, case
11 law speaks to that.

12 Thank you.

13 HEARING OFFICER RENAUD: Thank you. All
14 right, does any other party wish to add to their
15 comments at this time? Mr. Bundy.

16 MR. BUNDY: Mr. Renaud, yes. I do want
17 to briefly, staying on the issue of deference. As
18 for the assertion that the city did not pass a
19 resolution regarding this project because it
20 didn't have jurisdiction over the project, I
21 believe that it's already come up in some of the
22 comments that in 2001 when the previous owner of
23 the existing plant proposed an expansion the city
24 did adopt a resolution expressing concerns with
25 the expansion. If they had wanted to take a

1 position on this project it seems that they know
2 how to do it and could have done it by resolution,
3 as they have in the past.

4 Again, as was covered in our briefs and
5 our comments, the city's interpretations violate
6 basic principles of statutory construction. They
7 contradict the plain text of the provisions that
8 they're supposedly interpreting. And those are
9 not reasonable interpretations.

10 The case law is also very very clear
11 that where the plain text of an ordinance compels
12 a different conclusion you don't accept an
13 interpretation that runs afoul of that plain text.

14 Finally, the legislative history is not
15 based on just one person's statement. This is
16 based on the text of general plan policy E-6.4,
17 itself; the changes that it went through during
18 the drafting process.

19 Those kinds of changes have been looked
20 to by the courts, even in the cases cited by the
21 applicant, specifically NoOil, relies on that kind
22 of drafting history in interpreting what a
23 reasonable or unreasonable interpretation of a
24 particular provision is.

25 So, again, a lot of that was covered in

1 our briefs, but given that those were discussed, I
2 wanted to bring those up.

3 PRESIDING MEMBER BOYD: Yeah, a comment.
4 Mr. Bundy crossed the bridge that I was flirting
5 with when the previous speaker spoke. And that is
6 actions by cities on interpretation of their own
7 land use provisions.

8 And it's my understanding from many
9 years of doing this job, as well as reading all
10 the materials that have been submitted here by
11 many parties, that there's ample evidence that
12 many many cities do not defer to the Commission
13 the question of interpreting their statutes and
14 their LORS, but make specific findings on the land
15 use aspects of projects that have applied -- or
16 applicants who applied for certain projects to the
17 Commission.

18 And there's a long list of cities who
19 have interpreted their statutes as part of this
20 process, not, in effect, relying upon the
21 Commission to do that for them.

22 So, I think you broached that subject.
23 I don't know if you agree with that statement.

24 MR. BUNDY: Well, you certainly have far
25 greater experience with the Commission's

1 proceedings than I do, but I again would say that
2 if the city had wanted to really take a formal
3 position on this, it could have.

4 Instead there have been comments outside
5 the record, things that really don't constitute
6 the kinds of findings, or even the evidence of a
7 past regular practice of interpreting the zoning
8 code that you would need in order to really defer
9 to it.

10 So, I'm not sure if that gets to your
11 point, though.

12 PRESIDING MEMBER BOYD: That's
13 sufficient, thank you.

14 HEARING OFFICER RENAUD: All right.
15 Thank you. Any other party wish to speak at this
16 point? All right.

17 What's going to happen now is the --
18 well, after a few minutes we'll start our public
19 comment period. But let me tell you what the
20 Committee's going to do.

21 Go back to Sacramento; review the
22 Presiding Member's Proposed Decision; review the
23 parties' comments; take all of those into
24 consideration. And issue one of two documents.

25 One would be something we call an

1 errata, which would contain basically corrections;
2 perhaps enlargements, more detailed discussion,
3 that sort of thing. But nothing that would change
4 the outcome or the findings.

5 The other document that can issue from
6 this type of proceeding is called a revised PMPD.
7 And that happens when the Committee decides to
8 make significant changes that may affect the
9 actual outcome of the case. That will take place
10 within the next few weeks.

11 And we will then either be going to the
12 full Commission for review of the proposed
13 decision, or to further possible hearings
14 concerning a revised PMPD.

15 Okay. Now we have a number of blue
16 cards submitted by those who wish to speak. We
17 also have two elected officials here who wish to
18 speak, and we have a brief statement by Councilman
19 Ramirez who could not be here. And I think we
20 will start the public comment period with those
21 three before we go to the general public.

22 Let me call first -- pardon me if I miss
23 your name, mispronounce your name -- Councilmember
24 Bensoussan. How'd I do? Bensoussan, sorry.
25 Please come forward.

1 COUNCILMEMBER BENSOUSSAN: Good evening.

2 Is this on?

3 HEARING OFFICER RENAUD: Yes.

4 COUNCILMEMBER BENSOUSSAN: Okay. First
5 I would like to join my colleague, Councilman Rudy
6 Ramirez, even though he's not here, in welcoming
7 you to Chula Vista. I also wish to join him in
8 underscoring for you that we shared in our letter
9 to you that we stand in strong support of the
10 findings and the recommendation in the Presiding
11 Member's Proposed Decision.

12 I deeply appreciate and strongly support
13 this decision. As a current councilwoman, former
14 planning commissioner and member of the general
15 plan committee that proposed the land use policies
16 in question, I am here to tell you that you got it
17 right. And I thank you on behalf of all Chula
18 Vista residents for doing so.

19 I urge you to go forward with the PMPD,
20 as is, to the full Commission. I really want to
21 be clear that this is not about whether we like or
22 want power plants. We support necessary
23 generation in the appropriate location. And by
24 we, I'm referring to Councilman Ramirez and
25 myself.

1 Our objections are to the project in
2 this location. It was our intent to include
3 minimum buffers where we knew they were important
4 between people and certain industries. Councilman
5 Ramirez and I both participated in the plan.

6 These policies make sense, as some land
7 uses just do not belong in close proximity to each
8 other. I thank you for upholding these buffers.

9 As soon as this project can be denied, I
10 believe we will finally get busy to find and site
11 a plant elsewhere. I understand that there is a
12 landowner with a large site in Chula Vista that is
13 zoned industrial. And it's over 3000 feet from
14 the nearest home.

15 There is another site currently for sale
16 which is 1700 feet from homes, again in an
17 industrial zoning.

18 I will be encouraging our staff to work
19 with MMC to relocate this project as soon as
20 possible.

21 The interpretation of the key general
22 plan policy is fundamental here, and I believe you
23 got it right. During the general plan update
24 process there was a lot of concern about how the
25 first peaker was sited there in 2001, and the

1 attempt to expand it by RAMCO. We sought and
2 secured language for the plan to insure that such
3 an action didn't happen. A negotiated solution
4 set a clear and specific buffer zone that, at a
5 minimum, would be insured between homes, schools
6 and new and repowered power plants of 1000 feet.

7 While there were many policies debated
8 on the general plan, E-6.4, the policy at issue
9 here, was key. It was specific and was intended
10 to protect communities in the future.

11 I remember the discussions of
12 environmental justice and the importance of those
13 policies then. In fact, we remain proud that our
14 general plan was the first in the state to include
15 an environmental justice element.

16 As Councilmember Ramirez and I stated in
17 our letter to you, we believe the siting of this
18 plant closer than 1000 feet to homes is a
19 violation of our general plan policy, both the
20 plain reading and the intent of the policy.

21 I understand that our parties have
22 provided you -- I'm sorry -- that other parties
23 have provided you with the legislative history of
24 this policy so I won't repeat it here in detail.
25 Other than to say that I personally participated

1 in the negotiations for the general plan language,
2 and concur with EHC's statements in that regard.

3 And lastly, I know that you make many
4 decisions on a regular basis about power plant
5 siting. I understand that you're under a lot of
6 pressure from varied interests, including your own
7 knowledgeable staff.

8 But again, this is about our community
9 and our land use policies. We are real people,
10 living and raising families too close to a power
11 plant right now. If it is expanded and increased
12 it will make the injustice even worse.

13 There are better alternatives, better
14 for the environment, better for efficiency, better
15 for health and better for our community.

16 Once you deny this, I'm confident the
17 discussion on alternatives will finally begin in
18 earnest, and I will be there to help insure that
19 we have the right energy supply in the right
20 places.

21 Thank you very much for your time.

22 (Applause.)

23 HEARING OFFICER RENAUD: Thank you.

24 Okay, on behalf of Assemblymember Mary Salas, we
25 have Elizabeth Martinez.

1 MS. MARTINEZ: Good evening. My name is
2 Elizabeth Martinez. I'm here representing
3 Assemblymember Mary Salas. And first I would like
4 to thank Commissioner Boyd for his preliminary
5 decision.

6 Projects like this are recurring
7 environmental justice problems for our
8 constituents in the 79th Assembly District. The
9 South Bay communities, which Assemblymember Mary
10 Salas represents, have borne the brunt of energy
11 infrastructure development and its associated
12 pollution for decades.

13 I urge you to deny this project
14 application. It violates policies of the Chula
15 Vista general plan; it is too close to homes,
16 schools and recreation centers where people
17 congregate. There are other alternatives that can
18 meet our needs in a cleaner, safer and healthier
19 manner.

20 We need to find better ways to meet our
21 energy needs while protecting our community
22 health.

23 Thank you.

24 (Applause.)

25 HEARING OFFICER RENAUD: Thank you.

1 And as I said, Councilmember Ramirez
2 could not be here tonight. He's out of the
3 country, but has submitted a statement on a DVD,
4 which I think you'll see up on the screen now.

5 (Whereupon, a DVD was played.)

6 (Applause.)

7 HEARING OFFICER RENAUD: Okay, thank
8 you. Now we'll go into the members of the general
9 public who have submitted blue cards. I'll call
10 you up and you can come to this microphone, and
11 I'll start the clock running for three minutes.
12 That will help you to keep track of your time.

13 And let me begin with Cindy Gompper
14 Graves, South County EDC.

15 MS. GRAVES: Good evening. On behalf of
16 South County Economic Development Council, thank
17 you very much for holding this hearing in Chula
18 Vista. Regardless of where we are in the issue,
19 we appreciate the extra effort it took to conduct
20 this hearing down here in Chula Vista. So, thank
21 you for that.

22 On May 6, 2008, the South County
23 Economic Development Council Board of Directors
24 voted unanimously to support the MMC peaker plant
25 in Chula Vista.

1 The need for additional energy sources
2 continues to grow in our region, and the peaker
3 plant is seen as an opportunity to assist with
4 providing our businesses with an adequate supply
5 of energy. This is an essential component for our
6 business operations and a necessity for attracting
7 new businesses into our economically challenged
8 areas, which the west portion of Chula Vista is
9 economically challenged. That is where the peaker
10 plant is.

11 Additionally there is currently a power
12 plant located on our bayfront. The peaker plant,
13 together with other sources, is needed to offset
14 the loss of electricity when the power plant comes
15 off the bayfront. Removal of the power plant will
16 allow for future job creation and economic benefit
17 to Chula Vista.

18 The new system will operate cleaner and
19 more efficiently, something South County EDC views
20 as a benefit to the region.

21 And I'll be honest with you, I'm not
22 sure how this conversation changed. The way I've
23 been led to believe it's either the existing power
24 plant or a new, better, more efficient power
25 plant. And somehow the conversation's changed to

1 nothing or the new one.

2 And I believe that we're either going to
3 have this one continue or get a better one that
4 health experts have said the impact and health
5 effects are not significant.

6 So, because of that, and in summary,
7 SCEDC supports the proposed MMC peaker plant in
8 Chula Vista as a means for sustainable growth in
9 our region, and requests that you do the same.

10 Thank you.

11 HEARING OFFICER RENAUD: Thank you.

12 Okay, let's move to Katie Westfall.

13 MS. WESTFALL: Good evening. Thank you
14 very much for your time. My name is Katie
15 Westfall; I am the program manager for the Otay
16 River Conservation Program with Wildcoast, an
17 environmental nonprofit based in Imperial Beach.

18 We would like to thank you, Commissioner
19 Boyd, for your recommendation to deny a permit for
20 the proposed MMC upgrade. The proposed upgrade
21 violates the City of Chula Vista general plan, a
22 policy that explicitly calls for avoiding placing
23 energy facilities within 1000 feet of a sensitive
24 receptor.

25 We'd also like to include the

1 consideration of a sensitive receptor to be park
2 users, wildlife and habitat.

3 The MMC's power plant is directly
4 adjacent to the Otay Valley Regional Park, a 9000-
5 acre area designed open space, intended for
6 preservation of habitat and wildlife and outdoor
7 recreation for the South Bay communities.

8 This resource is precious, as our
9 communities do not have many options when it comes
10 to the enjoyment of the outdoors, because South
11 Bay beaches and the San Diego Bay remain polluted.

12 The City of Chula Vista, the City of San
13 Diego and the County of San Diego have all
14 invested great amounts of money for the
15 preservation of open space and development of the
16 Otay Valley Regional Park. We commend them for
17 these great efforts to conserve what is one of the
18 last areas of open space in south San Diego
19 County.

20 The MMC power plant only sets back these
21 great strides, to provide a much-needed area to
22 enjoy nature, and to get exercise under the sun
23 and surrounded by plants and wildlife.

24 Again, we thank you, Mr. Boyd, for your
25 recommendation to deny the permit for the upgrade.

1 Thank you.

2 (Applause.)

3 HEARING OFFICER RENAUD: Thank you.

4 Okay, Mark Yepis. Put that one to the
5 side. Diana Vera.

6 MS. VERA: Good evening, California
7 Energy Commission. Once again, my name is Diana
8 Vera and I'm representing the neighborhood. The
9 closest house is 350 feet from the peaker plant.

10 Basically what I want to say, the fate
11 of this community is in your hands. We have been
12 in limbo for nine months. And I believe each
13 child has the right for clean air, whether it is
14 East Lake, Point Loma, Coronado, or basically
15 Otay.

16 So, our community is pleading with you
17 to deny the permit once again. I thank you, and I
18 really hope that everyone here realizes it's not
19 about money, this is about people. This is about
20 the health of our children and our senior
21 citizens.

22 Thank you very much.

23 (Applause.)

24 HEARING OFFICER RENAUD: Thank you.

25 Gabrielle Arce, A-r-c-e, I'm not sure

1 how to say that. Not here? Oh, thank you, okay.

2 Patricia Aguilar.

3 MS. AGUILAR: Good evening. My name is
4 Patricia Aguilar, and I am president of an
5 organization called Crossroads Two. We think of
6 ourselves as sort of a chamber of residents, just
7 like there's a chamber of commerce to represent
8 businesses in a city, we think of ourselves as an
9 organization that tries to speak for the best
10 interests of residents of our city. We have about
11 600 dues-paying members.

12 We agree with Commissioner Boyd's
13 report. Let's, for a minute, get away from the
14 issue of whether or not the plant in this location
15 is consistent with the city's land use
16 regulations. There's a difference of opinion on
17 that.

18 But let me quote what I just heard
19 Assistant City Manager Scott Tulloch say. Quote,
20 "The city has not taken a position on the
21 alternatives analysis."

22 Look, this plant is proposed to be 350
23 feet from a single family neighborhood.
24 Regardless of the zoning regulations and all the
25 technicalities about whether or not it's allowed

1 or not, you know that putting a power plant with
2 70-foot stacks is not appropriate that close to a
3 single family neighborhood.

4 And there are alternatives sites that
5 are much more appropriate, and we believe should
6 be considered. And we think that the staff
7 analysis that was done to look at alternative
8 sites was wholly inadequate.

9 The issue here is not, as you've heard
10 from some of the other speakers, is not whether or
11 not we need more power generation in the area. We
12 do. We do. The only question is should that
13 power generation happen on this site.

14 In fact, there's another site within the
15 boundaries of the City of Chula Vista adjacent to
16 the Otay landfill, the landfill in Chula Vista,
17 that is much much more appropriate for a facility
18 like this.

19 And as Commissioner Boyd said in his
20 report, this other site near the landfill is
21 called staff alternative C. It would not require
22 a conditional use permit under the jurisdiction of
23 the City of Chula Vista. Because electrical
24 generating facilities are clearly permitted use
25 under this zoning regulations.

1 So the issue is there are much better
2 sites. There is no evidence in the record why
3 this plant should not be located at that site
4 except that it would cost the applicant a little
5 bit more money, and that's not okay with us.

6 Thank you.

7 (Applause.)

8 HEARING OFFICER RENAUD: Okay, thank
9 you.

10 We continue to receive cards, and we now
11 have quite an impressive stack of them. Many of
12 you have noted your favor or opposed position.
13 We, of course, welcome you to come forward and
14 speak. And I just want you to know, though, that
15 should you decide not to, we will instead note
16 your name in the record and the position you
17 expressed on the card. Just so you know that we
18 will, in fact, have your position on this in the
19 record, whether or not you speak.

20 All right. Let me call now Steven
21 Pavka. Thank you.

22 MR. PAVKA: Thank you very much.
23 Welcome to one of the nation's most boring town.

24 (Laughter.)

25 MR. PAVKA: And one of your old -- the

1 older and more boring people. I have a few little
2 comments.

3 When the city council meetings were open
4 to the public we had many health officials say how
5 unhealthful these plants are, the one that's
6 there, and the one proposed.

7 There was doctors that spoke on that.
8 There were parents who got up. There were parents
9 who pleaded. One of the ladies got down on her
10 knees and begged the city council to listen.

11 Then we had the utility experts, I guess
12 they were experts. They had all the facts. They
13 insisted there is absolutely nothing wrong with
14 these. And they offered \$210,000 for windows and
15 air conditioning to lessen this nonexistent -- you
16 know, some of us people, we don't understand all
17 that.

18 They also guaranteed to pay the city
19 utility tax, lots of money, millions. That got
20 our council's attention, anyway. And I think why
21 we got our change of heart.

22 My only thing, us old people, it isn't
23 going to hurt us. I've got enough ailments
24 already that a couple more won't hurt. But our
25 kids. Now, this bothers me. I have a conscience.

1 Do you?

2 (Applause.)

3 HEARING OFFICER RENAUD: Okay, thank
4 you.

5 We have an idea here that will help
6 speed things up a little bit. First, I appreciate
7 everyone's keeping their remarks within the three
8 minutes. That really has helped.

9 I'm going to call three names, and in
10 that order you'll be speaking. So you'll know, if
11 you want to come down here and get ready, you'll
12 be able to step right up to the microphone.

13 Next person will be David E. Davis.

14 Dave Davis here? Okay. Thank you, all right.

15 Francisco Jimenez. Okay, all right.

16 Earl Jentz. All right. Following Mr.

17 Jentz will be Luce Palomino. Fine, all right.

18 And following Mr. Jentz would be Martinez Adriana,

19 I believe that's it. Here? No. Okay.

20 Ed Herrera. He's gone. Ruth Heifetz.

21 All right, you be ready, you'll be next.

22 All right, please go ahead, thank you,

23 Mr. Jentz.

24 MR. JENTZ: I have some handouts, sir.

25 Who would you like me to give these to?

1 HEARING OFFICER RENAUD: Yes, if you
2 wish, give them to the Public Adviser, thank you.

3 MR. JENTZ: Thank you for coming to
4 Chula Vista. My name is Earl Jentz. I'm a Chula
5 Vista resident. Tonight I'm speaking on behalf of
6 the South Bay Forum. Our goal is to educate and
7 advocate issues in South Bay.

8 South Bay Forum is not in opposition to
9 a peaker plant, but we are opposed to this
10 location. It's too close to homes which show up
11 on the handout that you just received.

12 We're speaking in favor of Commissioner
13 Boyd's preliminary decision. The CEC Staff and
14 city staff base their challenges on the
15 preliminary decision by equating this application
16 to solar energy, which is like equating an apple
17 to an orange.

18 You've already heard about the general
19 plan issues from Councilman Bensoussan and Rudy
20 Ramirez, and their involvement in the general
21 plan. They thought the language protected the
22 residents.

23 Don't let the staff and the lawyers
24 divert you from commonsense protection of local
25 residents. We continue to believe that the siting

1 of this new project violates the general plan in
2 every respect.

3 We support the development of a peaker
4 or other energy sources in general industrial
5 zones, including near the landfill.

6 Thank you.

7 (Applause.)

8 HEARING OFFICER RENAUD: Ruth Heifetz,
9 and then the next speaker will be Rudy Gonzalez.

10 MS. HEIFETZ: Good evening; I'm happy
11 for the opportunity to speak this evening. My
12 name is Ruth Heifetz; I'm on the faculty of the
13 UCSC School of Medicine, a physician member of the
14 Department of Family and Preventive Medicine, with
15 expertise in environmental health.

16 HEARING OFFICER RENAUD: Would you pull
17 that microphone down right in front of you there.
18 That's better, thank you.

19 MS. HEIFETZ: Is that better? I support
20 Commissioner Boyd's recommendation to deny the
21 proposed Chula Vista Energy Upgrade Project. It
22 fails to honor the letter and the spirit of the
23 Chula Vista general plan and zoning ordinances.

24 I find little comfort, as people keep
25 referring to the fact that this plant is not going

1 to be a major emitter. It is going to be an
2 emitter, and we know it has health impacts.
3 Particularly the small particle size emissions
4 that we're just beginning to appreciate how
5 serious they are in terms of hard and long
6 illnesses and deaths, childrens asthma,
7 reproductive functions, et cetera.

8 The proposed project is particularly
9 impacts vulnerable populations, the young, infants
10 and children, pregnant women and individuals who
11 have chronic illnesses like heart and lung
12 problems.

13 Equally important to the public's health
14 and well being is the importance of operating in
15 accord with the 2005 general plan, which involved
16 considerable community input and participation,
17 democracy in action.

18 My husband was a city planner; my
19 daughter is an environmental planner in a nearby
20 California county. Through their work I have
21 learned the importance of crafting effective land
22 use plans and regulations, and insuring their
23 proper enforcement. Many of these laws have been
24 passed specifically to protect the health and
25 safety of the community.

1 As a physician who works with
2 individuals and communities impacted by
3 environmental hazards, I have seen the tragic
4 consequences of failing to separate industrial
5 processes from communities where people live.

6 In my work I have encountered companies
7 with proposals assuring health and safety. No
8 damage really. However, when the activity went
9 online malfunctions occurred. People were put at
10 risk with exposure never anticipated in the
11 company's proposal.

12 That is why we have zoning, to prevent
13 people and unhealthy activities from sitting side
14 by side.

15 This expansion threatens the health of a
16 community where most of the residents are people
17 of color, many with low incomes and/or living in
18 poverty. I realize that some would dismiss this
19 as not relevant to the considerations here today,
20 as I've read in some of the discussions.

21 However, I would remind you that these
22 same residents are more likely to have jobs with
23 exposure to toxic air pollutants, the cumulative
24 impact, which was not included in the public
25 health analysis of this project, may be quite

1 significant and very relevant. These people
2 experience double jeopardy.

3 I urge the CEC to protect the
4 community's health, deny the expansion of the
5 Chula Vista Energy Upgrade Project. It's about
6 what so many people have said before me,
7 protecting the children, the future of the city
8 and actually our country.

9 Thank you.

10 (Applause.)

11 HEARING OFFICER RENAUD: Rudy Gonzalez.

12 And next will be Jim P-e-u-g-h. Are you here?

13 Okay, good, you'll be next. Please.

14 MR. GONZALEZ: Yes. My name is Rudy
15 Gonzalez, and I've been in Chula Vista since 1967.
16 And I'm the second oldest dullest guy behind this
17 gentleman over here.

18 So, anyway, I want to thank you for
19 coming to Chula Vista, and, Mr. Boyd, for your
20 comments. But I respectfully support the program
21 and support staff.

22 I've lived in Chula Vista, like I say,
23 for over 40 years. And I understand the
24 challenges when it comes to placing utilities.
25 And I've also been in California in 2000 when

1 California was held hostage by other power-
2 producing states. I think that this peaker plant
3 will provide us with the energy that we need.

4 As far as the issue of children, I have
5 two children, both of them have been educated here
6 in San Diego County. And I love my children, and
7 I would never ever support anything that I felt
8 would be a detriment to their health and well
9 being, nor any other child.

10 This peaker plant does not do that. I
11 firmly believe in the technology. I firmly
12 believe that this is the best interest, not just
13 to the state of California and San Diego County,
14 but also Chula Vista.

15 Thank you.

16 HEARING OFFICER RENAUD: Thank you. All
17 right. Sharon -- oh, I'm sorry, you're next, and
18 then Sharon Floyd, you'll be next. Okay. Let me
19 get -- David Danciu. Okay, you'll be next.
20 Please go ahead.

21 MR. PEUGH: I'm Jim Peugh and I normally
22 speak on wildlife and open space issues. But this
23 issue just bothered me so much I couldn't avoid
24 speaking.

25 I ask you to please deny the project in

1 its present form, and sustain the Presiding
2 Member's Proposed Decision.

3 For many decades we made development and
4 infrastructure decisions with little concern for
5 the unintended consequences of those decisions.
6 We were confident that we had enough resources and
7 ingenuity to later come along and clean up any
8 problems that we saw.

9 We now know that we do not have the
10 resources to undo short-sighted decisions. We
11 barely have the public resources to get by under
12 the best of circumstances.

13 The English language may never recover
14 from the abuse it received from MMC attempting to
15 hide the real impacts of this project under
16 legalistic gobbly-gook. The project clearly will
17 have impacts. The project will absolutely violate
18 the clear and simple intent of the Chula Vista
19 general plan.

20 There will be health impacts. There
21 will be declines in property value downwind of
22 the -- of the neighborhoods downwind. And there
23 clearly will be environmental justice impacts.

24 I wish the CEC were here discussing how
25 to get rid of the South Bay Power Plant and move

1 the existing peaker plant farther from
2 neighborhoods and schools.

3 Please deny this project and seek a
4 better alternative without the unintended
5 consequences, and hopefully an alternative that
6 will depend far more on carbon for energy.

7 Thank you.

8 (Applause.)

9 HEARING OFFICER RENAUD: Okay, Mr.
10 Danciu and then Theresa Acerro, you'll be next.

11 MR. DANCIU: Good afternoon. My name is
12 David Danciu and I reside in the southwest section
13 of Chula Vista. I am a member of the board of
14 directors of Crossroads Two, and the Southwest
15 Chula Vista Civic Association.

16 Both of the civic association board of
17 directors have voted unanimously to support the
18 community effort to oppose the energy upgrade
19 project at the current location.

20 It must have been difficult for the
21 Presiding Member, Mr. James Boyd, to issue the
22 decision to deny this project, considering the
23 pressure asserted by the many special interests.

24 We, the citizens of the southwest
25 section, and indeed, all of Chula Vista, thank Mr.

1 Boyd for his courageous and honorable decision to
2 deny the upgrade application.

3 Also, Mr. Scarborough refers to the city
4 over and over. The city, the city, the city. I
5 would like him to know we are the city.

6 (Applause.)

7 MR. DANCIU: Thank you very much.

8 HEARING OFFICER RENAUD: And following
9 Theresa Acerro will be Gerald Scott. Are you
10 here?

11 MS. ACERRO: Yes, he declines to speak.

12 HEARING OFFICER RENAUD: All right. Let
13 me find someone who's going to speak. Lupe
14 Rodriguez?

15 (Audience speaker indiscernible.)

16 HEARING OFFICER RENAUD: All right, go
17 ahead.

18 MS. ACERRO: Actually I'm not going to
19 talk that long this time. I'm the President of
20 Southwest Chula Vista Civic Association. And we
21 are not special interests, as Mr. Scarborough told
22 the newspaper reporter last week.

23 We are community members who live and
24 work within a mile of this proposed project. We
25 are extremely grateful to Commissioner Boyd for

1 reading our general plan and ordinances in a
2 commonsense straightforward manner. And we are
3 extremely unhappy with those who condone
4 interpreting these documents on a case-by-case
5 basis, depending on how much money is involved.

6 MMC is the special interest here. And
7 they heavily contributed to one of our council
8 people when he was running for election. And
9 their consultant helped him to retire his debt.

10 And then she has the nerve to actually
11 threaten Councilmembers Ramirez and Bensoussan
12 that they're going to regret the position they're
13 taking supporting our community that has been
14 consistently ignored and devalued by the City of
15 Chula Vista. I do not believe they have anything
16 to worry about.

17 Please do not let these special
18 interests prevail over what is the right thing.
19 Please don't change anything in the preliminary
20 decision. We deserve a resolution to this matter
21 after almost three years. Do no more comment
22 periods, no more hearings, let this go to the full
23 Commission with the current correct decision,
24 denial of the application in this location.

25 There are other locations south of the

1 landfill that are further away from sensitive
2 receptors and in a general industrial zone where
3 this kind of use would be permitted. The PSA
4 evaluated infeasible alternatives.

5 I was on the general plan update open
6 space committee. I know at that time I was angry
7 about this existing peaker plant, and how it was
8 snuck into our neighborhood. We didn't know what
9 a peaker plant was; we didn't know where it was
10 going to be. And the city was not forthcoming
11 with any kind of information that would help us to
12 understand about it. And then when we saw it we
13 were very unhappy.

14 Now, we did not really care about, and
15 we did not discuss, as I remember, anything about
16 whether it was a major toxic polluter or not.
17 Only whether it was a fossil fuel generating
18 electrical generating plant. And we wanted those
19 kept 1000 feet from sensitive receptors. Period.

20 We commend Commissioner Boyd for finally
21 putting solar on commercial buildings and parking
22 lots to be a valid alternative. This has to be
23 the way people start looking at energy if we're
24 going to ever meet our AB-35 goals.

25 And now SDG&E is putting in smart

1 meters, which supposedly will even out the use of
2 energy as people become more aware of the
3 electricity situation. And probably reduce the
4 need, even, for peakers.

5 We need to start making decisions now
6 that favor the future instead of continuing the
7 same reliance on fossil fuels that got us into the
8 spot we are now with climate change.

9 This needs to be the start of the new
10 way of looking at our energy needs of cities all
11 through the state.

12 Please don't listen to all this nonsense
13 and out-and-out lies that are coming out and
14 spewed by the applicant. They are never going to
15 operate that existing plant again. They lost a
16 million dollars and their contract with Cal-ISO
17 running at 50 hours in 2007 and 54 hours in 2008.

18 Their company lost \$13 million last
19 year. They sold their generators in Escondido and
20 Bakersfield. And they sold the gas compressor in
21 Chula Vista to have money for operating expenses.
22 There's no way this company can afford to build
23 anything, or run even the existing peaker.

24 They want to prove also that sometime in
25 the future maybe, maybe somebody will come out

1 there and buy this thing and they might get some
2 money from it. Anyone buying it will know that
3 they face a lawsuit from the Mossy lawfirm that's
4 agreed to represent the businesses and the
5 residents in a diminution of value lawsuit if this
6 thing ever gets built, which we hope sincerely it
7 never will.

8 I think what they should do is just sell
9 it for scrap, because that's all it's worth. And
10 cut their losses.

11 The CEC needs to start focusing on AB-35
12 goals, and incorporating these considerations in
13 all of its decisions. These single cycle peakers
14 just do not fit with these goals. There are
15 better technologies out there, even for fossil
16 fuel plants, which we need to start phasing out
17 completely.

18 Thank you, again, Commissioner Boyd.
19 Thank you very much for your very intelligent,
20 well thought out, and future thinking decisions.

21 And I have here 443 names on a thank-you
22 letter for you. So I'll give it to the gentleman
23 over here.

24 HEARING OFFICER RENAUD: Thank you very
25 much.

1 MS. ACERRO: Thank you.

2 (Applause.)

3 HEARING OFFICER RENAUD: Call Frank
4 Acosta, are you here? And followed by Jean Costa.
5 Jean, are you here? Yes, okay.

6 MR. ACOSTA: Good afternoon, I speak for
7 our mom who just had surgery so she's not able to
8 come here. She is recovering.

9 I am 39 years old. I have lived in the
10 area almost my whole life on and off. And my
11 biggest concern here is, the biggest issue that
12 there's people living there, 350 feet away.

13 And I'm not going to say who's at fault,
14 who's at blame, that's the past. The simple
15 factor is that most of those people are low
16 income. They don't have the resources to be able
17 to move.

18 If this is such a great plant then why
19 not put it in Coronado and other areas that do
20 have its income for the people to be able to move.

21 These people are older people, 50s, 60s,
22 people that have worked their whole lives, paid
23 taxes, our citizens. And their views and their
24 health issues is being -- I'm not saying that
25 they're wrong or right, but I definitely agree, we

1 need to study it more.

2 I think that we owe them that, people
3 that have paid into our system over years that
4 don't have means of being able to say, well, I'm
5 going to sell the house and move.

6 And we also need to think about our
7 children. I think we owe them some time to
8 actually study it.

9 There is other areas that you can build
10 it. And that is not going to be so politically or
11 socially not comprehensible. This is not about
12 money. I mean everybody here knows we are going
13 through hard times. But when do you give up
14 people's right to health and their way of life.

15 I honestly think that we should sit down
16 and look through other options. Or get more views
17 about it. Because this affects not just San
18 Diego, this affects people that -- there are
19 people that are on fixed incomes, people that
20 don't have the means of being able to cover more
21 health bills, or move out of there.

22 And I think we definitely need to step
23 back and view all the options.

24 Thank you.

25 (Applause.)

1 HEARING OFFICER RENAUD: Okay, so we
2 have Jean Costa and followed by Vivian Sheryl.
3 Are you here? Vivian Sheryl? All right. Hector
4 Romero, are you here? All right, you'll be next.
5 Go ahead.

6 MS. COSTA: Good evening. My name is
7 Jean Costa. I'm co-chair of the Global Warming
8 Committee of the local chapter of the Sierra Club.
9 And I just wanted to be public record that our
10 chapter completely agrees with Mr. Boyd.

11 And we oppose this peaker plant for
12 reasons of the future. We should be thinking not
13 in terms of fossil fuels; we should be thinking of
14 alternatives. And for reasons of environmental
15 injustice, as well.

16 Thank you.

17 (Applause.)

18 HEARING OFFICER RENAUD: Hector Romero,
19 and then Jesus Ramirez, you'll be next.

20 All right, go ahead, please.

21 MR. ROMERO: Yes. My name is Hector
22 Romero. My offices -- I'm a general contractor by
23 trade -- my office is approximately not even a
24 mile from the existing power plant.

25 That plant was built in the early '70s,

1 I understand. And I understand that there's
2 people opposing -- the power peak plant. And the
3 way that this economy is, the way that the
4 workload is right now, and because it's a newer
5 technology, we really should rebuild that power
6 plant there.

7 Once the summer season comes everybody's
8 experiencing those power outages, and we don't
9 know what to do. And this is the solution for
10 those power outages. This is the solution that we
11 have on our hands. We have the new technology;
12 it's been through studies already. The studies
13 indicates that they were not creating any impact
14 in the environment.

15 So, I'm in full support of rebuilding
16 the plant.

17 HEARING OFFICER RENAUD: Thank you.

18 All right, Jesus Ramirez. Followed by
19 Nicole Cadiz. All right. You'll pass, all right.
20 Followed by Diane Taquaria. Not speaking?

21 All right, go ahead, sir.

22 MR. RAMIREZ: Good evening,
23 Commissioner. My name is Jesus Ramirez and I've
24 been a resident of Chula Vista for 60 years.

25 The only thing I going to say, I'm

1 opposed to this plant for that already everybody
2 here that opposes has already said it, you know.
3 I don't have to say any more because everybody
4 already said it. So, for the children and for the
5 future generations, because I believe that it's
6 unhealthy.

7 Thank you very much.

8 (Applause.)

9 HEARING OFFICER RENAUD: All right.

10 Laura Hunter and follow Laura with Jose Medina.

11 MS. HUNTER: Good afternoon. Laura
12 Hunter, the Environmental Health Coalition. Just
13 wanted to let you know that obviously we support,
14 we "heart" the PMPD. We're going to have a thank-
15 you rally at 6:00 so you'll see some people going
16 out, unfortunately. But we're going to try to
17 keep everyone in here.

18 I did just want to thank you again for
19 the findings in the PMPD. Obviously we support
20 them. I also wanted to thank you, Mr. Boyd, for
21 reminding everybody the conditions under which the
22 first plant was put there. There were exceptional
23 conditions and we really appreciate you mentioning
24 those.

25 I also just wanted to let you know that

1 we're continuing to move forward to try to find
2 appropriate solutions for our region. We're
3 really starting to dig in and do our own
4 evaluation of alternative sites. There's one at
5 the landfill, but I just wanted to show you some
6 of the research that we're working on now to try
7 to contact landowners and see what's going on in
8 terms of alternative sites.

9 Here's the landfill and all of these
10 sites in here are -- comply with general plan 6.4.
11 They're within the city. Some of them are, you
12 know, reflecting for lease or for sale.

13 I wanted to show you especially this one
14 because I've talked to the landowner of this
15 parcel right here. It's 11 acres; it's 3364 feet
16 from residentials, you can see there. This is
17 zoned general industrial.

18 We're going to be systematically
19 contacting all of these folks to see, you know,
20 where we can work with them to try to locate a
21 more appropriate project at a more appropriate
22 location.

23 So I just wanted you to know that we're
24 still on the job, we're still working to try to
25 bring this to resolution. And we thank you very

1 much for the PMPD. And we will continue to be
2 active in this area.

3 So, thank you very much.

4 (Applause.)

5 HEARING OFFICER RENAUD: Okay, Jose
6 Medina and Guillermo Lopez, can you be ready for
7 next? Okay.

8 MR. MEDINA: Good evening, everyone. My
9 name's Jose Medina and I'm a member of the
10 Environmental Health Coalition.

11 I want to thank you, Commissioner Boyd,
12 for your decision on requesting denial for putting
13 this plant in the location. There's too many
14 homes; too many kids; too many families that would
15 be affected by this sort of thing.

16 Yes, the economy is in terrible shape,
17 and we do need alternative sources of energy. And
18 we do need jobs. But must this plant be built in
19 this location? We should study alternative sites,
20 study alternative means of getting our energy, of
21 course.

22 And of course, I support Chula Vista's
23 land use policy that requires at least 1000 feet
24 between the power plants and homes and schools.
25 It's just not right. We have industrial sites

1 ready for this thing if this thing is to be built.
2 So let's keep studying on this.

3 And once again, thank you very much, Mr.
4 Boyd, for your decision.

5 (Applause.)

6 HEARING OFFICER RENAUD: Okay, Guillermo
7 Lopez. Could we have Luis -- not yet, that's
8 good.

9 MR. LOPEZ: Thank you, Commissioner and
10 the Commission for coming to Chula Vista in
11 support of our, you know, plan, you know, that we
12 wanted to do.

13 Right now I know that you know that they
14 are building already in Otay, power plant over
15 there by Otay, way back there where it is not
16 going to hurt anybody. And it should be in
17 operation within four and a half months at the
18 most. Okay.

19 The peaker plant, you know, owners, I
20 think they took it, you know, lightly without
21 preplanning or doing any kind of a preparation to
22 see about the emissions and stuff like that
23 because it was so convenient to have the water
24 right there and the gas nearby if they needed to
25 use it, instead of running a line someplace else.

1 Or spending a little bit of money and profiting
2 from the health of the children and the elderly.

3 And so I commend you for your wisdom,
4 you know, in determining this factor to at least
5 so we can come to some consensus. Because if you
6 have an air conditioning unit and you turn it on,
7 and this is more particles, it's more particles
8 are coming into the home. I don't care how much
9 they or duct tape you put around there or
10 whatever, it's going to control.

11 We have poultry and meat processors
12 nearby. I don't know if you know of that, either.
13 And they run these refrigerators. And, of course,
14 they got to circulate the air. When you do that,
15 you know, I work in some of these plants before,
16 they going to contaminate those products.

17 You know, I don't know where you live.
18 It might end up on your plate, you know. Just
19 consider that, you know, also. We not only going
20 to contaminate this area, we're going to have
21 contamination all over the United States because
22 especially this plant, they don't just send all
23 this product in San Diego. They send it back to
24 New York, back to San Francisco, San Jose, Fresno,
25 you know, and all those places.

1 So, anyway, the thing that I'm most
2 upset is that they know there is pollutants. Mr.
3 Scarborough knows there is pollutants in this
4 plant. And yet, just for profit, you say no,
5 there is no such thing as pollutants.

6 But you're selling our kids short. You
7 come from New York. And wherever you come from it
8 doesn't matter. The thing is is that this energy
9 is not going to be used in Chula Vista. It's
10 going to be used over there in north county, for
11 the north county people.

12 So, why don't they put the plant over
13 there? Thank you very much. I appreciate it.

14 (Applause.)

15 HEARING OFFICER RENAUD: Robert Ross,
16 followed by Bob Bauer. Are you here, Robert Ross?
17 Bob Bauer? That you? Okay.

18 MR. BAUER: Commissioner Boyd and
19 members of the panel. You have received from me
20 already a letter that states my position regarding
21 the matter of how I understand the land use
22 regulations in the City of Chula Vista. And my
23 belief that the city staff and your staff, the
24 Energy Commission Staff, have accurately
25 interpreted the land use regulations apply to the

1 City of Chula Vista.

2 I appreciate that one of the members
3 that was here spoke to the issue of wildlife, and
4 the issue of sensitive receptors. This is one of
5 the things that concerns me about the language
6 that Chula Vista has adopted in its master plan.

7 It has identified sensitive receptors.
8 If we'd like to, we can even consider, and maybe
9 should consider, all wildlife as potentially being
10 sensitive receptors.

11 We don't know the impact of anything
12 upon all kinds of life. So, there, that creates a
13 condition where there's an ambiguity in how do you
14 interpret, when do you apply, how much do you
15 apply. It could tie our hands to the point that
16 we couldn't do anything if we took it to its
17 extreme.

18 There's a question about the
19 interpretation regarding the condition of power
20 plants in proximity to within 1000 feet of
21 sensitive receptors. And then the question
22 becomes because the general plan does not have
23 clear language to the point that any child can
24 pick it up and understand it, and then can become
25 confusing.

1 It states, power plants and toxic
2 emitters. And everyone kind of agrees that it's
3 an interpretative absurdity to include in the
4 power plant interpretation, photoelectric
5 development of electricity. That's not what was
6 intended.

7 But what specifically was intended? We
8 have people who say this is what was intended, any
9 power plant. If that were true, then a hospital
10 could not be built in a light or the limited
11 industrial zone because it could not have a backup
12 electrical generation at the point of emergency if
13 power went down.

14 So there's a point at which we
15 understand the code may or may not apply, and when
16 it should apply.

17 However, the language is not clear
18 enough. And you'll hear people, you heard your
19 staff saying one interpretation. I believe, Mr.
20 Boyd, you may have come up to a different
21 interpretation. We have members of the city
22 council who say they were part of the process, who
23 say this is what was intended. You also heard
24 from other people saying, no, this was not what
25 was intended.

1 I believe there's enough ambiguity in
2 here that one has to really trust the consensus of
3 the City of Chula Vista. And I strongly support
4 and encourage you to turn back to the City of
5 Chula Vista and to your staff and ask what is the
6 method of interpreting this language. And I
7 believe you should follow it.

8 Thank you.

9 HEARING OFFICER RENAUD: Thank you.
10 Magdalena Serta, who that is? No need to speak,
11 all right.

12 I think at this time we've been going
13 for two hours. And we'll take a ten-minute break,
14 resume in ten minutes. Thank you.

15 (Brief recess.)

16 HEARING OFFICER RENAUD: All right,
17 thank you for coming back. And let's continue
18 with public comment. I'll call Ed Valerio, to be
19 followed by Eugene, I believe that's Lopez. All
20 right.

21 Hold on, let me get it. Go ahead.

22 MR. VALERIO: Resident, business owner,
23 boater and I'll be brief. With respect to the
24 general plan and the city's decision to site that
25 plant in 2000, the city got it wrong then. With

1 the city's decision most recently in 2008 they got
2 it wrong then.

3 Commissioner Boyd, today you have the
4 ability to make it right.

5 And 34 years ago, I was four, I was a
6 student at that school that sits 1000 feet from
7 it. So I wanted to make sure that the CEC,
8 especially you, Commissioner Boyd, you saw a face
9 of someone who used to be fascinated to run up to
10 that fence and listen to that sound. Because
11 little did I know that sound was a substation of
12 SDG&E. And I heard that power running there.
13 Didn't know that that was the case.

14 I have a five-year-old today, and I have
15 a one-month-old. And I would hate for my children
16 to have to experience that power plant, the
17 expansion of it.

18 And with respect to a good friend of
19 mine, Rudy Gonzalez, who spoke here recently, he
20 says he has two children and he would never
21 endanger them putting them there. But I wish I
22 had a chance to ask him if his children went
23 there. I doubt it.

24 And lastly, with respect to reliability,
25 making sure that we have enough power in our

1 cities. You know, Commissioner Boyd, I'll take
2 the occasional blackout than rather have an
3 expansion of this power plant in this community
4 that's been neglected for many many years. Maybe
5 we'll learn to conserve a little more energy so
6 that we don't have those blackouts.

7 Thank you for your time.

8 (Applause.)

9 HEARING OFFICER RENAUD: All right, I'll
10 try again. Eugene, I believe that's Yepis, Lopez?
11 No? All right. Jim Biddle and -- Eugene? Yes.
12 All right. Jim Biddle and then Bianca Tara, call
13 you next. Okay. She left, all right. Are you
14 here, Eugene Yepis? He's not, all right. Okay.

15 Jim Biddle, please.

16 MR. BIDDLE: Good evening, ladies and
17 gentlemen. I am Jim Biddle and I live here on
18 what's called the west side of Chula Vista. I've
19 been in Chula Vista since 1972 before interstate
20 805 was built.

21 And in 1974 I was president of Chula
22 Vista JCs, a young mens organization. And we
23 organized a carnival on a vacant lot across the
24 street from here in what is now the Chula Vista
25 Library.

1 I have been president of the Chula Vista
2 Chamber of Commerce; I'm a past president of Chula
3 Vista Rotary Club.

4 And I think I wanted to say that I've
5 been a very active participant in our community in
6 many many ways, and I've observed a lot of changes
7 that have taken place. Sometimes controversial
8 changes that have happened in our community.

9 In my view the current peaker plant has
10 been in existence for several years, and with
11 respect to its location and its operation. And
12 then many of the residents who live in the
13 proximity have moved there of their own volition.

14 They now see an opportunity to try to
15 change that status quo, and through the proposed
16 modification and upgrade of this facility, even
17 though it has demonstrated it will be a cleaner
18 and more vital part of our community.

19 If there's an intent to site it
20 elsewhere it probably won't be built anytime in
21 the next ten years. This is a project that could
22 begin its transition yet this year.

23 I strongly urge you to approve the
24 construction of this vital and clean-operating
25 facility that our community needs.

1 Thank you.

2 HEARING OFFICER RENAUD: Thank you.

3 Robert Ross? Not present. Elias Vera? No, all
4 right. Octavio Jara? Jack Stanley? Jack
5 Stanley? No.

6 Jose Preciado? All right.

7 MR. PRECIADO: Good evening and thank
8 you for being here once again to hear from the
9 public and the residents. It is unfortunate that
10 we have so much disagreement among us as to
11 whether or not this is a positive project.

12 I continue to be at odds with some of
13 the members of the council who believe that this
14 peaker plant, this peaker generating -- electric
15 generating facility somehow is the panacea we've
16 all been waiting for.

17 A lot of projects in this community
18 become the, you know, the last hope for our
19 survival. But that's simply not the case.

20 We want to thank Commissioner Boyd for
21 your authority in making sure that your staff is
22 aware that there are responsibilities to the
23 citizenry of this public, of this state. And part
24 of that responsibility is to protect us.

25 Now, in my interactions with MMC I have

1 found individuals who are protecting their
2 business interest. For the most part I have found
3 that they present themselves well. But that isn't
4 to say that that makes their project a good
5 project.

6 We support the peaker's location
7 somewhere else in Chula Vista, a more suitable
8 place. We are in complete dissatisfaction with
9 our city staff, who, by the way, released the
10 letter without council approval, or without
11 allowing us to give input into that process.

12 Which reminds me about the remarks I
13 made the last time you were here. Our general
14 plan, updating our general plan is a process that
15 we're all aware of, and that we've all been a part
16 of in this community.

17 And if its developers, or the city
18 council want to change the general plan, they
19 should announce that they're changing the general
20 plan. And we should be allowed to participate in
21 that process.

22 But changing the general plan during the
23 time when the CEC is considering a project is not
24 the appropriate time. It is not the democratic
25 process that we've authorized the city council to

1 proceed in the charter.

2 And as such, we continue to believe that
3 this proposal is inappropriate in its current
4 location. If you -- I've now decided to taking,
5 giving residents, particular those who have never
6 been in that community, some of them who make
7 statements like people moving in there after the
8 plant, you'll note that many of the residents who
9 live there have lived there for decades. They
10 just didn't show up.

11 But they're sometimes ignored. They're
12 not members of the chamber, they're not members,
13 they don't go to cocktail parties. They're just
14 regular working people who, with the few trees
15 that grow high enough, are, you know, don't get to
16 see the peaker plant, but the air and the stuff
17 around it is there.

18 Thank you very much for your decision.
19 Please tell your staff to re-think their processes
20 associated with LORS, because our LORS is not for
21 sale, and it's not going to change.

22 (Applause.)

23 HEARING OFFICER RENAUD: Thank you.

24 Lisa Cohen.

25 MS. COHEN: Good evening; my name is

1 Lisa Cohen, CEO of the Chula Vista Chamber of
2 Commerce. Also a resident on the west side of
3 Chula Vista.

4 The chamber is an 82-year-old community
5 organization that serves as a voice for over 1000
6 local businesses that provide jobs, generate tax
7 revenue, build infrastructure and provide consumer
8 services to the City of Chula Vista.

9 As you know, the California Independent
10 System Operator has designated the San Diego
11 region as a reliability constrained area, meaning
12 that local peak power generation is needed to
13 support the local demand for electricity.

14 To that end, we are pleased to support
15 the effort of MMC Energy to upgrade its existing
16 peaker plant to increase generating capacity to
17 help meet the region's needs for electricity.

18 This project is a win/win for our
19 community. By utilizing the latest technology the
20 plant will decrease its carbon emissions while
21 generating more power for the region.

22 The upgrade is designed to minimize
23 noise and air pollution and will include
24 construction of a fence and soundwall, combined
25 with specialized landscaping to minimize any

1 potential impacts.

2 More importantly from a health
3 standpoint an expert hired by the Chula Vista
4 Elementary School District concluded that no
5 significant health risk impacts are anticipated as
6 a result of the proposed project.

7 We also have one of our elementary
8 schools at Otay that has no windows. So they rely
9 on power for all of their air conditioning,
10 lighting for our children to attend school at that
11 location.

12 Additionally, the peaker plant will
13 utilize existing facilities and infrastructure
14 already onsite including gas supply, water supply
15 and electrical interconnection, and will enhance
16 the buffer between the plant and the Otay Valley
17 Regional Park to the south of the site.

18 This upgrade will create 160 short-term
19 construction jobs and bring new redevelopment
20 dollars to the City of Chula Vista. New capital
21 investment of roughly \$70 million will result in
22 approximately \$850,000 in property taxes annually.

23 And since the upgrade is in the
24 redevelopment area, the City of Chula Vista would
25 receive approximately \$110,000 to \$330,000 in

1 redevelopment agency and taxes or can be invested
2 in improvements for the community. \$13.2 million
3 in tax increment generated by the peaker plant.

4 The MMC peaker upgrade will be cleaner,
5 more efficient, more reliable and greater economic
6 value for the City of Chula Vista. It is a
7 commonsense approach to enhancing energy
8 reliability for our community.

9 We are pleased to support this important
10 project which will not only be good for business,
11 but good for the community. The Chamber of
12 Commerce thanks you for your attention to our
13 energy reliability needs.

14 Thank you.

15 (Applause.)

16 HEARING OFFICER RENAUD: Thank you.
17 Okay, thank you. Trouble reading this one. Elia
18 Thera, perhaps. No? Okay. Maria Yepis. Ben
19 Haddad.

20 MR. HADDAD: Commissioner Boyd, Hearing
21 Officer Renaud, I'm Ben Haddad, a consultant with
22 MMC Energy. Former City Councilmember Patty Davis
23 is too ill to be here tonight, but she asked me to
24 read her letter into the record. With your
25 permission I'll proceed.

1 "Dear Commissioners: I'm am writing to
2 express my concern with the California Energy
3 Commission's Presiding Member's Proposed Decision,
4 and request that the Commission reconsider its
5 proposed decision."

6 "As a former councilmember for the City
7 of Chula Vista from 1998 to 2005 I have firsthand
8 knowledge of the city's interpretation of its
9 general plan and zoning. The city staff was right
10 to call out flaws in the PMPD's analysis of local
11 laws and the upgrade project's consistency with
12 the general plan and zoning."

13 "The PMPD made the assumption that the
14 E-6.4 provision of the general plan applies to all
15 energy generating facilities and not just those
16 that are considered major toxic emitters. If this
17 interpretation is adopted that policy would
18 prohibit all energy generating facilities, even
19 rooftop solar, wind and other renewable energy
20 generation, irrespective of whether those
21 facilities are major toxic emitters."

22 "Furthermore, if the proposed findings
23 in the PMPD are adopted, the PMPD would have
24 concluded that the city's zoning ordinance does
25 not allow the city to replace an older, outdated

1 facility with one that is cleaner, quieter and
2 more efficient at the same site."

3 "In addition, the peaker and its
4 proposed upgrade, as defined by the Federal Clean
5 Air Act and the San Diego County Air Pollution
6 Control District, is not considered a major toxic
7 air emitter, and not a major source for hazardous
8 air pollutants. Furthermore, there is nothing in
9 the record showing that the proposed CVEUP would
10 be a major toxic emitter."

11 "According to the CEC Staff, the Air
12 Pollution Control District and the Chula Vista
13 Elementary School District's independent review by
14 ICF Jones and Stokes, all have agreed that the
15 proposed CVEUP will have no significant
16 environmental impact."

17 "The no-project alternative is
18 unacceptable. If the CVEUP is not approved this
19 will leave the city with an older, dirtier and
20 less efficient facility that emits much higher
21 concentrations of air pollutants. The CVEUP would
22 be a more efficient peaking power plant using
23 state-of-the-art technology, and adding 56
24 megawatts of capacity towards removal of the South
25 Bay Power Plant."

1 "I commend the CEC Staff for encouraging
2 the City of Chula Vista and MMC Energy to work
3 together in coming up with a generous program of
4 energy and water conservation benefits for
5 residents within 1000 feet of the peaker, and for
6 the substantial economic benefits for the
7 southwest community for many years to come."

8 "I respectfully request that you
9 consider expediting the approval of this peaker
10 upgrade so that construction can be shovel-ready
11 to help stimulate our economy. This \$80 million
12 project is expected to create 160 high-paying
13 jobs. Sincerely, Patty Davis.

14 HEARING OFFICER RENAUD: Thank you.
15 Okay, Robert Boyd. Are you here? And we'd like
16 to follow with Stephen Padilla, if you're here.
17 All right, Mr. Boyd.

18 MR. BOYD: Thank you, again,
19 Commissioner Boyd, for your --

20 PRESIDING MEMBER BOYD: Let the record
21 show we're not related, right?

22 (Laughter.)

23 MR. BOYD: We're not related, no.
24 For your ability to wisely look through all the
25 evidence and the testimony that's been given, and

1 to make a decision for the state of California,
2 for the community, for the people.

3 The tortured logic that's being applied
4 by people that are interested in siting that power
5 plant there is -- well, it's interesting to watch.
6 It's interesting to listen to.

7 It makes one think that -- it makes one
8 think that money is pushing everything. But I'm
9 sure that the California Energy Commission is
10 working to assure that we have dependable power in
11 South Bay, as well as other places.

12 It just sort of shocks me to hear that
13 the tax money from this proposed power plant would
14 benefit that community. I know that the tax money
15 would come here to city hall, and that it would be
16 used throughout the City of Chula Vista. If we
17 had a local government in that community that
18 could, you know, make a decision on the
19 interpretation of the general plan, I have a
20 feeling that their interpretation would not be so
21 tortured and that it would be a little bit more in
22 favor of the residents that live there. And that
23 looking for things like tax benefit to their
24 community would be very important to them.

25 But as you can see, those people that

1 come here from that community there, they're not
2 taking that point of view.

3 Once again, thank you.

4 HEARING OFFICER RENAUD: Thank you.

5 (Applause.)

6 HEARING OFFICER RENAUD: Stephen
7 Padilla, is that you? Good.

8 MR. PADILLA: Presiding Commissioner
9 Boyd, Mr. Hearing Officer, good evening, ladies
10 and gentlemen. My name is Stephen Padilla. It
11 was my privilege to serve as the mayor of the City
12 of Chula Vista from 2002 until 2006. And prior to
13 that for two terms on the city council from 1992
14 through 2002.

15 I've also served in an appointed
16 statewide office, so I can appreciate the
17 responsibilities that you exercise. And I know
18 that the thank-yous come all too infrequently. So
19 thank you for your service and for your work.

20 I'd like to express my support for the
21 PMPD and testify publicly to you that my reaction
22 in review of the materials that are in your
23 record, in your decision, I think, are thoughtful
24 and appropriate construction of the applicable
25 LORS. Certainly a thoughtful application of the

1 facts that are in your record. And a well-
2 reasoned decision that is more than substantially
3 substantiated by both.

4 I'd like to address myself to a couple
5 of the points that are the basis for the PMPD.
6 First, with respect to policies exploring the
7 update of the Chula Vista general plan that was
8 adopted by us in 2005. And I know a little
9 something about that, because together working
10 with members of the community, and with DHC, I was
11 the member of the council that introduced that
12 legislative language into the general plan, and
13 saw it unanimously adopted.

14 Now I can speak a little bit to your
15 interpretation and findings with regard to our
16 legislative intent. The purpose of that language
17 was explicit and specific to address the fact that
18 the original draft language was far too weak. And
19 that it allowed for a substantial amount of
20 latitude focused on the determination of whether
21 or not there was any substantial health risk, as
22 if that was the only consideration in the land use
23 policy that we applied. And it was not. It was
24 one, but it was not the only one.

25 The presumption was clearly there that a

1 concentration of these types of facilities on
2 inappropriate land use locations would, per se,
3 constitute a negative impact to multiple facets of
4 the general plan guidelines. To include the
5 potential for adverse health impacts in the long
6 run.

7 That language was adopted for that
8 specific reason. It was our intent to
9 specifically preclude these types of renewed,
10 repowered or new facilities and other toxic
11 emitters, using the exact language, to be sited
12 within 1000 feet of sensitive receptors.

13 What I find interesting in the record
14 and some of the arguments that are being made now
15 is this idea, I find offensive frankly, that you
16 can somehow mitigate a standard. Standards aren't
17 mitigated. Impacts are. And the idea that you
18 can take some monetary consideration and have that
19 be some kind of mitigation of a land use standard,
20 a policy in a general plan, the basis of which I'm
21 at a loss to find, is, to me, ludicrous.

22 It either is within 1000 feet of
23 sensitive receptors or is not with respect to the
24 standard. And you cannot mitigate that. It's a
25 separate issue; it's a red herring.

1 I just wanted to put that on the record.
2 I wanted to thank you for the wisdom of your
3 decision and the opportunity to speak.

4 Thank you.

5 (Applause.)

6 HEARING OFFICER RENAUD: Thank you. All
7 right, Celia Diaz? No. Jennifer Montano? No?
8 Yes. Okay.

9 MS. MONTANO: Hi. My name is Jennifer
10 Montano and I'm a resident of the southwest part
11 of Chula Vista. And, you know what, yes, it is
12 close to homes. But never was it said that not
13 passing this project would lead to its total
14 removal.

15 Do we really want to keep an outdated
16 peaker plant when we can have a new cleaner and
17 efficient one? No. We want a new and improved
18 one.

19 Over and over again it has shown not to
20 have any significant adverse health impacts to the
21 community. This conclusion was reached by
22 credible and respectable resources such as the
23 County Air Pollution Control District, the CEC
24 Staff and even an independent review from the
25 Chula Vista Elementary School District.

1 Yet, the EHC continues to mislead the
2 public by claiming that the project will cause
3 asthma, cancer, birth defects and other health
4 problems. Also, comments regarding renewable
5 forms of energy such as solar, wind power as
6 possible alternatives to the Chula Vista Energy
7 Upgrade Project have been brought up, mainly by
8 the opposition, during various public meetings
9 held by the CEC.

10 However, what they failed to recognize
11 is how peaking facilities, such as our proposed
12 project, are necessary to assist renewable
13 resources in integrating their consistent energy
14 generation.

15 I am definitely in favor of exploring
16 renewable energy generation resources as means of
17 decreasing highly polluting air emissions, but not
18 as a sole means of energy generation. We need the
19 project in order to provide cleaner, more
20 efficient and more reliable energy in order to
21 meet our region's energy demands when other energy
22 generation sources are at peak capacity.

23 For this reason I support the Chula
24 Vista Energy Upgrade Project, and respectfully
25 request that the CEC base their decision on facts

1 and not by someone's interpretation or
2 manipulation of the facts.

3 Also, there are two important things
4 that the opposition has failed to mention. First,
5 increasing our reliance on renewable energy, it
6 will raise the cost of the electricity.

7 Secondly, if the project is approved it
8 will generation millions of dollars in tax
9 increments to the City of Chula Vista, which will
10 be invested in our community to improve it. More
11 money needs to be coming into our community, not
12 going out.

13 I urge you to please support the Chula
14 Vista Energy Upgrade Project.

15 HEARING OFFICER RENAUD: Thank you.
16 Javier Saunders.

17 MR. SAUNDERS: Good evening. I'm Javier
18 Saunders. I'm with the Mexican-American Business
19 and Professional Association. We're a group of
20 professionals. Predominately a large amount of
21 our members are from the southern section of San
22 Diego County and Chula Vista.

23 On behalf of the Mexican-American
24 Business and Professional Association we urge your
25 approval of the Chula Vista Energy Upgrade

1 Project, the peaker plant.

2 The Mexican-American Business and
3 Professional Association has followed the progress
4 of this project from the very beginning, and we
5 were very pleased when the preliminary staff
6 assessment concluded that the proposed peaker
7 plant could be licensed without causing
8 significant environmental impacts with the
9 implementation of the staff's proposed mitigations
10 measures. This opinion was also supported by the
11 Air Pollution Control District.

12 For these reasons we were surprised and
13 disappointed with the proposed decision, and
14 respectfully disagree with the findings in the
15 proposed decision that the project does not comply
16 with the land use ordinance and regulations.

17 We are concerned that the proposed
18 decision appears to give more weight to the
19 intervenors' opinion of interpretation of the
20 city's general plan and the city zoning code over
21 the city's own opinion.

22 The city has consistently interpreted
23 its zoning code to allow flexibility in siting
24 uses that are either specifically mentioned nor
25 specifically precluded.

1 Just as the city approved the original
2 power plant as an unclassified quasi-public agency
3 use in a limited industrial zone, the proposed
4 project should similarly be approved in that zone
5 for the very same reasons.

6 We believe the Energy Commission Staff
7 alternative analysis demonstrated that there are
8 no feasible alternatives to the proposed project
9 including the no-project alternative. In
10 addition, a discussion of site alternatives is not
11 required if the Commission finds that the proposed
12 project has a strong relationship to the existing
13 industrial use and site, which this project does.

14 As demonstrated by the project, and by
15 the record, there are no unmitigated, significant,
16 adverse environmental impacts from the proposed
17 project. The proposed alternative of no project
18 is simply not acceptable.

19 The alternative would leave the
20 community with the existing old power plant, which
21 is much less efficient and emits much higher
22 concentration of pollutants.

23 In addition to reduced emissions, the
24 peaker plant will operate at a much higher
25 efficiency.

1 In conclusion, we applaud the efforts of
2 the City of Chula Vista and MMC Energy for working
3 together to identify and present benefits for the
4 residents and businesses surrounding the proposed
5 project.

6 We are encouraged by the support we
7 found from both the local and the regional
8 community. Not only will this project reduce
9 pollutants and benefit the local economy and
10 environment, but will also generate, as many have
11 said, increased tax revenue to the city, which is
12 very much needed.

13 So, with that, the Mexican-American
14 Business and Professionals Association highly
15 urges your support. And I'd like to leave an
16 official letter here for the record.

17 Thank you.

18 HEARING OFFICER RENAUD: Thank you.
19 Linda Gilgan? Linda? No. Michael Gilgan.
20 Carlos Lopez.

21 MR. LOPEZ: Good evening, Commissioner
22 Boyd and Commissioners for being here in our
23 beautiful city.

24 Basically I'm a retired teacher. Many
25 years ago I used to tell my students that the

1 first line of defense for protecting the health
2 and welfare of our citizens begins with our city
3 council, usually.

4 In this case we have two good members of
5 our city council, and they understand the dangers,
6 they understand the problems. And unfortunately,
7 what we have is money corrupting the process.

8 And basically the council, the three-
9 member majority have basically corrupted the
10 system and they have allowed themselves to be
11 actually, you know, influenced by money, basically
12 campaign donations.

13 The chamber of commerce, the Mexican-
14 American Business Association, I call it the
15 puppet association, basically because I spoke with
16 one of the members and I said, hey, what are you
17 doing here, Jose. And Jose told me, he says,
18 well, you know, coming here to speak against this.

19 So I explained to him the situation and
20 he says, you know what, I'm not going to speak
21 about this situation at all. He says, she didn't
22 tell me the truth. And says, I used to live, he
23 says, right here on J Street. And that plan, he
24 says, this is the reason that every time I run I
25 have problems with my lungs.

1 And I'm telling you, you know, the
2 children right here on Main Street are going to
3 suffer the consequences. You know, these people
4 talk about money, they talk, you know, they could
5 have this project. This company out of New York,
6 they can put this project somewhere else where
7 they are not going to be hurting children.

8 I mean if we cannot protect our
9 children, and I'm glad that the Commission has
10 taken a step to basically, you know, call it what
11 it is, this is too close, you know. Everyone that
12 has come here, you know, especially our officials,
13 past officials and two of our members of the city
14 council basically have stated this is in the wrong
15 location.

16 We're not against, you know, the power
17 plant. We are against the location. You don't
18 put children in danger for the sake of making a
19 dollar, you know. I don't care what, you know.
20 That is not acceptable.

21 And I see my granddaughter every night,
22 you know. She's in a safe location, you know,
23 away from the power plant. But those children
24 there attending there to that elementary school,
25 as young as three and four years old, are

1 attending there. It is a shame if we don't
2 protect those childrens because the City of Chula
3 Vista has failed to do so. They have failed to
4 protect the children.

5 Thank you, again, for being here in
6 Chula Vista. Thank you.

7 (Applause.)

8 HEARING OFFICER RENAUD: Carlos Lopez.
9 That was him, okay. Put the cards in the right
10 pile. Okay. Mark Yepis.

11 MR. YEPIS: Good evening to all. I
12 forgot my speech so I'm going to have to ad lib on
13 this.

14 First of all I would hate to be in your
15 shoes. You have to make a decision and no matter
16 what you do someone's going to be pissed off about
17 it.

18 So, the pros and the cons. Everybody's
19 got good points. I'm not against the growing of
20 Chula Vista, I'm not against the power plant. I'm
21 against MCC (sic).

22 Basically, to quote Scarborough, the VP,
23 he said the Commission has misunderstood what the
24 City of Chula Vista wants. So obviously what he's
25 saying is that you guys don't know how to do your

1 job.

2 Second of all, MCC has, for the past few
3 years, had been operating with losses over \$300
4 million. One year \$300 million; the next year's
5 \$400 million. In an official letter to the Wall
6 Street Journal, they have stated that they are in
7 the process of liquidating assets, including the
8 CCC plant, the plant in Chula Vista. So do you
9 really want to do business with someone who isn't
10 that stable? Is that the right choice?

11 And I can't believe that we haven't
12 gotten together and tried to form a better plan.
13 Why is there such an opposition with sides, just
14 clashing against each other? Why can't we all
15 just meet in the middle?

16 Yes, we need the energy. Yes, Chula
17 Vista needs to grow. But, in a respectful, slow
18 manner. Not build houses out there that need
19 energy, oh, by the way, we need some more energy.
20 We need the businesses out there, but we need a
21 plant.

22 Five miles east is the perfect place.
23 It's in between two industrial zones. There's
24 nothing out there. There's a great lake. Be a
25 perfect place.

1 So, I wish I could remember more of my
2 speech, but that's about it. Thanks for your
3 time.

4 HEARING OFFICER RENAUD: Thank you.

5 (Applause.)

6 HEARING OFFICER RENAUD: Irma Sandoval.
7 Irma Sandoval. Gaby Lopez. Aurora Murillo Clark.

8 MS. CLARK: Good evening. My name is
9 Aurora Murillo Clark and I grew up and went to
10 schools there, Montgomery Elementary and I had to
11 walk to Park where I graduated from. Presently
12 ten of my family members still reside in the area.

13 I understand the beliefs and the concept
14 of the business world. I am an entrepreneur. But
15 I also understand that sometimes we make choices
16 that affect different areas and different people.
17 And we don't really see the magnitude of that
18 effect.

19 I want to thank Commissioner Boyd for
20 making such a thorough investigation and really
21 taking it, paying attention to all the details. I
22 have been extremely impressed.

23 I also was thinking about facts that
24 were mentioned earlier. And I couldn't help to
25 laugh and smile at that facts.

1 Historically the fact has been -- the
2 facts have come out that for awhile cocaine was
3 the greatest thing discovered. But then it turned
4 out that it wasn't so.

5 For awhile somewhere in the United
6 States there was a company that was going to bring
7 work and it was going to be no effects on the
8 community. And then we saw the movie from Erin
9 Brockovich.

10 So, we need to look at facts, at
11 history. And we need to listen to the community.
12 The city does need money. We are in a bind.
13 Everybody has to pull together.

14 The question is why is it that this
15 residence area is the one that has to pay for
16 everybody. How come when the new housing, when
17 the impact on the city is being brought because of
18 the east side, we have to put the load on the west
19 side? On the southwest, a neglected area.

20 I remember when it was incorporated into
21 Chula Vista. And that's when I lived there. And
22 it has always been treated like the step-sister,
23 like the step-daughter of Chula Vista.

24 I think it's time that we make a change,
25 that we bring fairness and equality and equity of

1 treatment, and of respect to every resident in
2 Chula Vista, including the Otay area.

3 Thank you very much.

4 (Applause.)

5 HEARING OFFICER RENAUD: Hugo Salazar.

6 MR. SALAZAR: Good afternoon, California
7 Energy Commission, Commissioner Boyd. Pleasure to
8 finally get a chance to see you again, and thank
9 you for your decision.

10 As a former community organizer for
11 Communities Taking Action, and as a member now of
12 Communities Taking Action, I'm very glad to see
13 that finally true intrepid leadership and
14 conviction has been taken by the California Energy
15 Commission. And we ask you and we urge you to
16 maintain that.

17 The type of leadership that you took,
18 not only Commissioner Boyd, but the rest of the
19 CEC, is something here that in Chula Vista we just
20 don't have. There's been a vacuum maybe from
21 Councilmember Castaneda, John McCann, Sheryl Cox
22 any of the other lobbyists or special interests,
23 such as MMC, continue to perpetuate social
24 injustice in our community. But for you,
25 Commissioner Boyd, and the California Energy

1 Commission, our hat is extended and our hand is
2 extended. And we really appreciate you took that
3 type of leadership.

4 As a person who grew up in the
5 southwest, who attended Otay Elementary, who grew
6 up -- who lived literally just a mile away from
7 that neighborhood, I've had a historical
8 perspective and have seen firsthand how social
9 injustice continues to plague my community.

10 In our Pledge of Allegiance, as we all
11 took it when we were little kids in school, it
12 ends with, "equality and justice for all." Well,
13 I ask, where's our justice and where's our
14 equality.

15 And for people like MMC, for
16 organizations, lobbyists, special interests, for
17 them equality is only something that can be
18 bought. But for us, we have to organize. We have
19 to march; we have to protest to adhere to a basic
20 fundamental human right.

21 And as a former community organizer and
22 volunteer member of Communities Taking Action, I
23 thank you for having the intrepid conviction and
24 leadership for standing up for our community.

25 And, again, we all know that it violates

1 the general plan. We all know that it operates,
2 they expect to operate more than double the hours,
3 which emits far more particulate matter.

4 Is particulate matter and a health risk
5 something that I'm willing to risk for some sort
6 of financial gain for a few? No. I will never
7 tolerate that. Not even if one person, one child
8 is at risk. Our community organization, our
9 community will not tolerate that.

10 For those special interests who don't
11 care, I say I allow your own moral convictions to
12 decide what is right and wrong. But for you,
13 Commissioner Boyd, and for the California Energy
14 Commission, I thank you.

15 Thank you very much.

16 (Applause.)

17 HEARING OFFICER RENAUD: Juan Cesena.

18 MR. CESENA: Good evening,
19 Commissioners, good evening, Board Members, thank
20 you very much for being here tonight.

21 My name is Juan Cesena; I'm part of the
22 community, have been part of the community for
23 over 40 years. Went to Southwest High School,
24 graduated out of Southwestern College. I'm also a
25 chamber member of the San Ysidro Chamber of

1 Commerce.

2 And I'm in favor of the project. I'm in
3 favor of the facts, very simply put. There's been
4 a time for studies. The studies have shown that
5 this project is in the favor of the community, is
6 in favor of the surrounding areas, and is in favor
7 of getting rid of some of the areas that are less
8 efficient in our community.

9 Less efficient in our community is what
10 we less need. One of our cars breaks down, we go
11 out and fix it. It takes a little while before we
12 figure out that fixing the car over and over again
13 is not the right idea.

14 The right idea is to get rid of it and
15 get ourselves a more efficient vehicle. Something
16 that works for the community. Something that
17 brings more monetary effects to the community. A
18 great tax base is what the City of Chula Vista
19 needs.

20 As a member of this community I am in
21 favor of the project. And I thank you very much
22 for being here tonight.

23 HEARING OFFICER RENAUD: Thank you.

24 (Applause.)

25 HEARING OFFICER RENAUD: All right.

1 That's all the cards I have. Is there anyone who
2 submitted a card whose name I did not call?

3 All right, please come forward.

4 MR. JARA: Good evening, everybody. And
5 first of all, Commissioner Boyd, I applaud you and
6 also for being down here and making that decision
7 that you rendered back a couple months ago on
8 prohibiting the expansion of this plant.

9 HEARING OFFICER RENAUD: Sir, would you
10 state your name for the record, please.

11 MR. JARA: Okay, Octavio Jara. I'm
12 sorry, --

13 HEARING OFFICER RENAUD: Thank you.

14 MR. JARA: -- I missed the call when I
15 took my little daughter over there; they're taking
16 care of her right across the hallway.

17 But I also wanted to let you all know
18 that this community that we're dealing with in the
19 South Bay, are folks that are not only hard-
20 working individuals, but at the same time they're
21 folks that live there and they're going to stay
22 there. And they're looking for obviously for your
23 help and support on this.

24 I've known to live in that area now
25 because I do have my mother-in-law who lives

1 there. And I do take my both beautiful children
2 to visit her mother-in-law almost every day. And
3 I can see what can happen in the situation.

4 Now, I'm not against the growth; I'm not
5 against the energy efficient that we need to be.
6 But let's take a look at where we're choosing,
7 what we're choosing, the area; 350 feet from
8 folks.

9 And you've heard this over and over
10 again. It's the right thing to do is to, again,
11 render the same decision.

12 Now, a couple other things. A little
13 while ago you had the Mexican-American Business
14 Association. Well, let's first, just in case you
15 don't know, this is ran by an individual who's an
16 MMC consultant. And all board members are her
17 clients. Now, you talk about a conflict of
18 interest, you have it right there.

19 Second, the young lady who spoke in
20 favor of this peaker plant is an employee of hers.
21 More conflict of interest.

22 So, please, do not let this sway by
23 special interests. Let's do the correct decision
24 here. Let's make sure that we don't expand this
25 peaker plant. Let's find a better location. Some

1 location that's not going to impact our children
2 of the future, the future of this city.

3 It's always been treated like a step-
4 child -- sorry for saying it that way, but let's
5 stop treating it this way.

6 Now, I'm not taking this out on you
7 folks because you guys did the right decision, and
8 you're going to continue to make the right
9 decision.

10 But I also, I'd like to say to the city
11 council, the mayor, that first of all, you should
12 not be here today. This should have never gone to
13 the Commission. This should have been nipped in
14 the bud from the city instead of having the
15 Commission make a decision for us.

16 They did it in 2001. Why are they doing
17 it in 2009, trying to change that? Going against
18 the general plan.

19 So, I appreciate your time. Thank you
20 for coming. And let's do the right thing again.

21 (Applause.)

22 HEARING OFFICER RENAUD: Thank you. I
23 believe that will close the public comment period
24 unless there's anyone else who submitted a card
25 and I did not call? Or who wants to submit a

1 card?

2 Okay.

3 PRESIDING MEMBER BOYD: I just want to
4 thank all of you for being here. And all of you
5 for persevering in understanding the process that
6 we go through.

7 I do need to remind you that this
8 process is a quasi-judicial process. And we
9 predicate our recommendations on the record that
10 was built through the process of the evidentiary
11 hearings, the other testimony, the written
12 submittals we have and what-have-you. And so I
13 don't think we're swayed by emotional appeals one
14 way or the other.

15 We have to predicate our decisions on
16 what we think the record shows. And I think
17 that's where we've been going.

18 We will take under advisement everything
19 we've heard tonight before the final PMPD is
20 issued. And I thank you for adding to that body
21 of information.

22 I just want to say that siting
23 committees don't do it all alone. And while I
24 appreciate the testimonial tonight, it's more than
25 me. Commissioner Pfannenstiel and I were the

1 Committee before. We both were of the same mind
2 as we went through the process.

3 Hearing Officer Renaud does all the
4 heavy lifting for us and deserves some
5 understanding, if not appreciation, as well.

6 Second item, I just want --
7 (Applause.)

8 PRESIDING MEMBER BOYD: The other thing
9 I want to mention, just to explain my own agency,
10 and with regard to power plants and siting and
11 what-have-you.

12 Some of you may or may not be aware that
13 just a week ago the full Commission approved a
14 peaker plant outside of Fallbrook in this area. A
15 plant for which I, again, was the Presiding
16 Member. It went through a process, and
17 recommended approval. And the Commission did
18 approve it, I believe, just last week.

19 And, again, it's predicated on the
20 record and the facts. And I would just say, you
21 know, things can be done appropriately and
22 correctly, and can get approved.

23 So we are very concerned about the
24 energy situation in California. The goals of the
25 energy agency in California are efficiency first,

1 renewables second and then clean generating
2 facilities third, if indeed they need to be built.
3 And we have a mixed portfolio of all those
4 approaches throughout the state.

5 I'll render a personal opinion that I
6 don't think your lights are going to go out. But
7 it doesn't mean we don't run close to the edge
8 many times. And I think you all will help work
9 out your problems.

10 So, again, thank you all for being here.

11 (Applause.)

12 HEARING OFFICER RENAUD: Thank you.

13 We'll adjourn the meeting now.

14 (Whereupon, at 7:07 p.m., the Committee
15 Conference was adjourned.)

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CERTIFICATE OF REPORTER

I, TROY A. RAY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of April, 2009.