

## Chula Vista won't take on removal of power plant

David Malcolm weighs-in publicly

By Wendy Fry

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**CHULA VISTA** — The Chula Vista City Council decided Tuesday to no longer negotiate with Houston-based power company Dynegy to take on removal of the South Bay Power Plant - a towering, 178-foot-tall structure on the city's waterfront.

Controversial negotiations facilitated by former Port Commissioner David Malcolm predicate a state agency decision to shut down the 50-year-old plant, according to information brought to light at a public-information session Tuesday.

It was also revealed that Councilwoman Pamela Bensoussan originally involved Malcolm in the discussions.

"Everyone acted with good intentions," Bensoussan said. "It was a very, very, difficult fast-moving situation."

Legal fees have totaled \$221,814 for outside counsel for the city to negotiate terms of the deal. Part of that money - \$138,000 - was used to assist Malcolm in negotiations with Dynegy to prepare a letter of intent for Chula Vista to take on the removal of the plant.

"This whole process stinks," said civic activist Peter Watry. "The council approves \$7,500 in legal fees in public, and then in private spends more than \$200,000 at the same time as it lays people off, convinces city employees to pay more to their pensions and reduces services at libraries and senior centers."

City officials were considering what they called "bifurcated path" for taking on responsibility for the demolition of the plant. More simply, the plan called for removing the eyesore first to encourage investment on the waterfront and worrying about remediation next. Lawyers with the City Attorney's office say they had a verbal agreement for Dynegy to reimburse them for the cost of negotiating the deal, but now Dynegy has declined to pay.

City Manager Jim Sandoval said that no agreement would have ever moved forward without both cap insurance and bonding more than 150 percent of the estimated cost. The advantage would have been Chula Vista getting access to any left-over money from the approximate \$70 million set aside by different agencies for clean-up. That money could have been used for infrastructure upgrades on the bayfront once the power plant was removed.

Council members expressed concerned about behind-the-scene negotiations and Dynegy refusing to provide reimbursement for legal fees.

"It boggles the mind why we couldn't draft a document that spoke specifically to the reimbursement of money from Dynegy," Councilman Rudy Ramirez said.

Raising even more apprehension, was a significant change in the original letter of intent. The amount of money Dynegy would offer Chula Vista for clean-up was significantly reduced, according to city officials, but an exact dollar figure was not provided Tuesday night.

A recent report to the U.S. Securities and Exchange Commission by Dynegy indicates the company is experiencing financial difficulty.

Laura Hunter, from the Environmental Health Coalition, urged city officials to immediately get control of a \$20 million to \$22 million escrow account controlled by Dynegy for removal of the power plant, a sentiment Malcolm echoed. She emphasized the priority of removing the plant correctly as a first concern; and expeditiously as the second goal.

"We're on a roll here. We've pulled together," Hunter said. "I think there's a pretty clear path ahead of us. Let's keep our eye on the prize and keep this moving forward."

In 2002, Malcolm pleaded guilty to felony conflict of interest charges for taking money from a former plant operator while serving as a port commissioner. His involvement in negotiations has been controversial. However, he negotiated the deal for the port to purchase the plant and the land it sits on in 1998 and knows the language of the agreement.

Malcolm, who was elected as a Chula Vista councilman in 1982, said if he had not gotten involved the plant would still be operating today. He added that the port district is not willing to tell the truth about potential costs and demolition of the plant.

"There was never any risk for the city of Chula Vista in this deal," Malcolm said. "It is so unfortunate that this thing spun out of control."

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