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January 14, 2008

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

Re: Application for Certification for the Chula Vista Energy Upgrade Project; Docket No. 07-AFC-4

Dear Mr. Meyer:

On behalf of our client, MMC Energy, Inc, ("MMC") we are responding to oral comments made during the Information Hearing and Site Visit in the matter of Application for Certification for the Chula Vista Energy Upgrade Project ("CVEUP") on November 29, 2007. MMC is concerned about misinformation being circulated by and to members of the public. Therefore, MMC is providing this letter in an effort to provide correct factual information. In part A of this letter, we respond to comments from Leo Miras of the Environmental Health Coalition and in part B, we respond to comments from Theresa Acerro of the Southwest Civic Association.

A. Comments from the Environmental Health Coalition:

1. Concern regarding CVEUP's proposed location.

The existing facility as well as the proposed CVEUP is located in an area zoned Limited Industrial ("IL"). The Environmental Health Coalition ("EHC") has expressed a concern about the proposed siting of a 100 megawatt powerplant at the proposed location. The IL zoning's purpose is to "encourage sound limited industrial development by providing and protecting an environment free from nuisances created by some industrial uses and to insure the purity of the total environment of Chula Vista and San Diego County and to protect nearby residential, commercial and industrial uses from any hazards or nuisances." City of Chula Vista Code § 19.44.010. CVEUP would further the IL zoning purpose by upgrading the existing power facilities with cleaner more efficient equipment thereby reducing emissions per energy produced and continuing to provide and protect an environment free from nuisances.

Furthermore, MMC notes the IL zone's permitted or conditionally allowed uses could potentially cause greater environmental impacts than CVEUP. The IL zone provides for: refuse dumps, experimental laboratories, exterminating services, plastics or other synthetic manufacturing,

commercial parking lots and garages, retail distribution centers, trucking yards, passenger stations for bus travel, and hospitals (including emergency rooms, psychiatric care, and ambulance services). City Code §§ 19.44.020(D), (K), (N); 19.44.040 (G), (H), (K), (M); 19.54.020 (G), (H), (L), (U). As revealed by the environmental studies included with the CVEUP's Application, the upgrade project would not adversely impact air quality, would not create noise in excess of that allowed by City code, would not have a significant adverse effect on traffic and roadways congestion, and would not have a significant adverse effect on views. Of note, CVEUP is expected to operate less than 500 hours per year and as a result, the potential impacts identified by the CVEUP's environmental studies (based on 4,000 or more hours of operation) are higher than what is expected. More importantly, CVEUP could potentially create less health risk than a retail distribution center or truck yard that would involve constant truck traffic operating on a daily basis. CVEUP could create less noise than a hospital emergency room or ambulance service which potentially operates 24 hours a day. And CVEUP would not create odors, unlike a refuse dump or certain kids of manufacturing facilities. Therefore, a small powerplant like CVEUP creates fewer impacts than many permitted uses in the IL zone.

2. Concern regarding conformity with City of Chula Vista General Plan Policy E6.4.

General Plan Policy E6.4 does not apply to CVEUP. General Plan Policy E6.4 recommends that the City "[a]void siting new or re-powered energy generation facilities *and other major toxic air emitters* within 1,000 feet of a sensitive receiver, or the placement of a sensitive receiver within 1,000 feet of a major toxic emitter. [emphasis added]" The clause "and other major toxic air emitters" causes Policy E6.4 to apply only to new or re-powered energy generation facilities that are major toxic emitters. Moreover, the phrase, "the placement of a sensitive receiver within 1,000 feet of a major toxic emitter," which excludes reference to new or re-powered energy generation facilities, when read in conjunction with the Policy E6.4's first phrase, provides further evidence that the policy applies only to new or re-powered energy generation facilities that are major toxic emitters.

The General Plan does not define "major toxic emitters" however the Federal Clean Air Act contains provisions for a "major source" of air pollutants. 42 U.S.C. § 7412(a)(1); San Diego Air Pollution Control District ("SDAPCD") Rule 2(b)(26). Because the Clean Air Act and SDAPCD rules would apply to a new or re-powered energy generation facility, the phrase "major toxic emitter" can be interpreted as having the same definition as major source. With this interpretation in mind, Policy E6.4 would not apply to CVEUP, because the project is not a major source for hazardous air pollutants as those terms are defined in the Federal Clean Air Act and SDAPCD rules.

3. Concern regarding the CVEUP's classification as an upgrade and not a new plant.

Though CVEUP would replace the existing turbine, the project would reuse the site's existing infrastructure and as a result, CVEUP is properly classified as an upgrade. First, CVEUP would be located within the existing power plant's site boundary. As such, CVEUP would reuse the

existing interconnection facilities. Existing onsite connections for gas, water, and sewage would also be reused. Moreover, CVEUP would continue to use the fencing and sound attenuation wall, the maintenance building, the stormwater runoff retention basin, and the aqueous ammonia storage tank and tank refilling station. Therefore, CVEUP is properly classified as an upgrade, and not a new plant.

4. Concern regarding the CVEUP's potential emissions and its effect on the local residents' health.

As indicated in the Application's health risk assessment, CVEUP's emissions would be well below the applicable significance thresholds for either cancer or non-cancer risks. Furthermore, as discussed in the Application's air quality section, emissions of criteria pollutants will adhere to National Ambient Air Quality Standards ("NAAQS") and California Ambient Air Quality Standards ("CAAQS"), CVEUP would meet Best Available Control Technology requirements for PM10 and PM 2.5, and the upgrade project would also maintain its minor source status under San Diego Air Pollution Control District Rules 20.1 and 20.2. Additionally, the Application's air quality analysis and health risk assessment assumed CVEUP would operate 4,000 hours a year. As discussed in the Application, a more realistic operating hours figure would be less than 500 hours a year, which is higher than the operating hours of other similarly sized peaker plants located in the greater San Diego County area. In selecting 500 hours, MMC has selected an operating hour number that comfortably exceeds the reported operating hours of 373 of a nearby facility with the same technology, the Larkspur facility in 2004. Therefore, CVEUP's potential emissions of criteria pollutants would most likely be approximately one-sixth of the calculated potential to emit. Thus, not only would actual emissions be much lower, but the corresponding health risk from those emissions would also be much lower.

It should be emphasized that CVEUP would not only be more efficient than the existing facility, but would also be more efficient than other powerplants in California. Because air quality is a regional issue, by potentially replacing the operation of a less efficient powerplant, CVEUP could benefit regional air quality. The California Independent System Operator dispatches gas fired powerplants for two reasons: reliability (the need for additional electric generation in order to maintain the electric grid, sometimes known as congestion management, and prevent power outages) and upon economic dispatch, which means the most efficient power plants are dispatched first. For gas-fired powerplants, efficiency is directly related to heat rate (the rate at which natural gas is converted to electricity). Unless CVEUP is dispatched for reliability reasons, it will have a lower heat rate than other available powerplants. A powerplant with a lower heat rate can produce the same amount of electricity with less fuel than the next powerplant in the dispatch, and this order results in lower overall emissions in the region. Furthermore, the existing powerplant is dispatched currently for reliability reasons. The proposed CVEUP would provide the same reliability service with lower emissions than the existing powerplant. Therefore, the addition of CVEUP should reduce regional emissions per

megawatt hour of energy used by the region under both a reliability and economic dispatch scenario.

Not only would CVEUP present an improvement in efficiency and reduced emissions per electricity produced than the current situation, but it also poses less of a health risk than other uses that can be located at the CVEUP's site. According to the California Air Resources Board ("CARB"), diesel truck PM emissions represent 70 percent of the known cancer risk from air toxics in California. CARB "Air Quality and Land Use Handbook, A Community Health Perspective" (2005) at 12. In fact, one of CARB's highest public health priorities is reducing diesel PM emissions each year. Id. at ES-1. Given the fact that a distribution center, truck yard or bus terminal can be located in the same area as CVEUP, locating a peaker powerplant that is expected to operate less than 500 hours per year, and which studies have shown would not cause any significant health risks, is a more favorable use from a health perspective.

5. Concern that approving CVEUP would lead to future increases in generation and emissions.

MMC has no intention to increase generation capacity beyond what is proposed by CVEUP because such increase cannot occur without significant and expensive changes to the site's configuration, infrastructure, and air permit. If additional generation capacity were added to the CVEUP's site, the interconnection facilities would need to be replaced and upgraded at significant cost to MMC. Increasing generation capacity would also require installation of an additional transformer. However, because of site space limitations, all of the site's facilities would need to be reconfigured to accommodate the additional transformer. A second ammonia tank and its associated pumps would also need to be installed to accommodate more generation. Again, the site's size would require all the facilities to be relocated to fit the additional equipment. Not only would the CVEUP's site facilities need to be changed for increased generation, but the existing substation at Albany and Main would require a major upgrade at significant cost to MMC as well. Even if additional generation capacity were added to the site, that additional capacity would exceed the site's total permitted emissions thereby preventing MMC from operating all the generators at once. As a result, MMC would need to acquire a new air permit or find some way to offset those emissions. Given the significant costs and not to mention downtime associated with increasing generation capacity beyond what is provided for by CVEUP, MMC has no desire or intention to increase generation capacity beyond what is provided for by the upgrade project.

6. Concern that CVEUP does not utilize renewable energy technologies.

Peaking powerplants are needed to support intermittent renewable resources like wind and solar. Powerplants like CVEUP provide critical ramping and firming support for these resources. The power grid requires peakers in critical locations like this to support renewable resources. As indicated in the Application, renewable energy technologies are not suitable for the CVEUP site nor do they meet the project objectives. CVEUP cannot use geothermal or hydroelectric

technology since those resources do not exist in San Diego County. Biomass fuels such as wood waste are not locally available in sufficient quantities to make them a practical alternative fuel to natural gas and moreover, CVEUP site's size prevents the use of such fuels. Last, CVEUP's objective is to provide needed peak electric generation capacity with improved efficiency. Because solar and wind technologies are generally not dispatchable, those technologies are not suitable for a peaker plant like CVEUP.

7. Concern regarding CVEUP's estimated water usage.

CVEUP is a simple-cycle power plant which uses significantly less water than a combined-cycle steam-cycle or steam turbine powerplant. Moreover, unlike a combined-cycle powerplant, which uses water to cool its powerplant, a vast majority of CVEUP's water usage would be attributed to emissions control and power augmentation.

CVEUP's water usage is on par with other peaker plants. CVEUP's water usage derives from the LM6000 turbines that would be installed. Of note, the LM6000 is a common turbine for peaker plants due to the turbine's energy efficiency and low emissions. In fact, Southern California Edison currently utilizes four LM6000s with a fifth to be installed, and Calpine utilizes ten LM6000s. CVEUP's water usage is similar to other similar peaker plants.

8. Concern regarding the number of alternative sites considered and whether alternative sites would have lower health risks.

As discussed in response to comment 4 above, regardless of the CVEUP's location, the project would not cause any significant adverse health impacts (either cancer or non-cancer) due to exposure from toxic emissions.

With regards to the commentator's suggestion to locate CVEUP at the landfill or other eastern area of the City, those locations would likely fail to meet key siting criteria considered for project alternatives. The key siting criteria considered in the alternatives analysis include: being located near the center of electric demand, zoned for industrial use, located near a water source, located near electric transmission facilities, located near an ample gas supply, and feasibility of site control. Given the suggested alternatives' likely failure to meet key siting criteria, CVEUP would not be feasible in those locations without significant upgrades to infrastructure and also without the associated potentially significant environmental impacts related to developing a greenfield site.

B. Comments from the Southwest Chula Vista Civic Association

1. Concern regarding the CVEUP's location and zoning:

See above responses to Environmental Health Coalition's comments 1, 4, and 8 regarding siting, health risks, and alternative locations.

2. Concern regarding noise from CVEUP.

CVEUP will meet all City noise requirements. A noise expert conducted noise monitoring for 25 hours at the project site and in the local neighborhood. In addition, the noise expert prepared a noise generation model of CVEUP. The model revealed that CVEUP would make less noise than allowed by City nighttime noise regulations (45 dBA) at the nearest residential receptor. Of note, nighttime operations, while possible, would be rare. Instead, the most common operating times would be during hot weather, usually in the afternoon, when the City's noise limits are higher (55 dBA) and background noise levels, at times, louder than CVEUP within its own fence line. Furthermore, the emission limits proposed by CVEUP will be enforced by the California Energy Commission.

A noise telephone hot line will be provided for the public to report any undesirable construction or operation noise issues from the project. The hot line's telephone number will be posted at the project site during construction and maintained for one year of project operation to ensure compliance with the California Energy Commission Requirements.

3. Concerns regarding the health risks associated with CVEUP's potential emissions.

See above response to Environmental Health Coalition comment 4 regarding health risks.

The commentator was also concerned that the purchase of emissions offsets would reduce overall emissions without reducing the health impacts associated with those emissions. As indicated in Application Appendix 5.1G, CVEUP is not required to purchase or acquire emission reduction credits to offset proposed project emissions. As such, CVEUP's compliance with NAAQS and CAAQS as well as maintenance of the upgrade project's minor source status is based on CVEUP's potential emissions, and not the purchase of emissions offsets. Nonetheless, CVEUP will provide air quality mitigation for project emissions in accordance with California Energy Commission policy.

4. Concerns regarding environmental justice.

A screening level analysis of environmental justice was conducted pursuant to Presidential Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (EO 12898), dated February 11, 2004. Because the local area meets the criteria for an environmental justice community. Because of this finding, MMC included an additional evaluation in its Application for Certification to the California Energy Commission. The analysis is present in Appendix 5.10A and notes the fact that CVEUP does not create significant adverse impacts and, as such, there are no adverse health or environmental impacts that are likely to fall disproportionately on minority or low-income members of the community.

5. Concern that the necessary findings to amend City zoning to a P-Precise Plan Modifying District cannot be made for CVEUP.

The commentator asserted that the necessary findings for a P-Precise Plan Modifying District ("P-Modifying District") cannot be made for CVEUP. Regardless of the assertion's merits, the P Modifying District is not applicable to CVEUP since the site meets the purpose of the IL zone.

6. Concern regarding the transportation of ammonia and requests a plan to address any spills.

MMC expects ammonia deliveries to the site will be needed approximately twice a year. Transportation of ammonia is highly regulated. All ammonia transportation to this site will comply with section 32100.5 et seq. of the California Vehicle Code that regulates transportation of materials that pose an inhalation hazard. Furthermore, CVEUP or its contractors will comply with applicable California Department of Transportation, California Department of Toxic Substances Control, U.S. Environmental Protection Agency, California Highway Patrol, and California State Fire Marshall regulations related to the transportation of hazardous materials.

The existing Risk Management Plan ("RMP") specifies safe handling and emergency procedures for ammonia. This plan will be updated prior to CVEUP starting operations. The RMP is on file with the San Diego County Department of Environmental Health, the designated Certified Unified Program Agency for the project site. The RMP includes a hazard assessment to evaluate the potential effects of accidental releases, a program for preventing accidental releases, and a program for responding to accidental releases to protect human health and the environment.

CVEUP does not change the ammonia storage facilities currently on site. The aqueous ammonia is stored in a single stationary aboveground storage tank surrounded by a secondary containment structure containing polyballs. The containment structure is capable of holding the tank's full contents and accumulated precipitation. The aboveground storage tank is equipped with continuous tank level monitors, automated leak detection system, temperature and pressure monitors and alarms, and excess flow and emergency block valve. An underground spill containment container is also provided for loading and unloading the ammonia. Storage and use of ammonia complies with Article 80 of the California Fire Code, as well as the California Accidental Release Program.

7. Concern that heat waves will emanate from CVEUP's stack all summer long and negatively impact views.

MMC's consultants prepared a detailed visual resources analysis of CVEUP consistent with the California Energy Commission requirements. This visual impacts assessment concluded that CVEUP would not have a significant impact on visual resources. Three viewpoints representing

the best viewing conditions were considered in the assessment and from two of the viewpoints, only portions of the stack could be seen. The facility can be seen from the third viewpoint, but it appears as a grey vertical element between two industrial warehouse complexes in an industrial park. In fact, though CVEUP, or portions thereof, may be visible within a one-mile radius, because the terrain is mostly flat, most views of the site would be obstructed by large industrial building and trees that line streets. Moreover, because CVEUP is expected to operate less than 500 hours per year, the potential for the stack to emit visible heat waves would be limited in duration.

8. Concern regarding CVEUP's use of potable water for powerplant cooling.

See above response to Environmental Health Coalition comment 7 regarding water use.

CVEUP's potential use of 85 acre-feet of water per year, as noted by the commentator, is based on 4,000 operating hours and is six times greater than the water use calculated from expected actual operating hours. As noted in the Application, CVEUP would probably operate no more than 500 hours per year thereby using less than 13 acre feet of water per year.

Additionally, the commentator questioned why reclaimed water would not be used for CVEUP. As discussed in the Application, reclaimed water is not economically available at or near the CVEUP site. Furthermore, as a simple-cycle plant, CVEUP's water use would be relatively modest as compared to a combined-cycle project such that installing the infrastructure needed to bring reclaimed water to the site could be extremely expensive.

9. Concern that the illegal use of paintball guns or air rifles in the Otay Regional Park directly south of the project site could accidentally damage CVEUP's ammonia tank.

CVEUP's south, southwestern, and southeastern boundaries are fenced by an 18-foot-high metal sound attenuation wall. Therefore, this metal wall must first be pierced by a paintball gun or air rifle before the paintball of other projectile even enters CVEUP's site. After piercing the metal sound wall, the projectile would need to travel more than 150 feet from the southern metal wall to the ammonia tank. The projectile would then need to have sufficient velocity to pierce the ammonia tank's shell, which is made of 0.375 inch-thick steel. Given the fact that the use of paintball guns and air rifles in the park is illegal and because of the obstacles that a projectile would have to overcome to reach the tank it would be nearly impossible for a paintball projectile fired in the park to pierce the ammonia tank.

If by chance the ammonia tank was somehow punctured, because the tank is not pressurized, it would not "explode." The ammonia to be used by CVEUP is aqueous which means that 81% of its weight is water. As such, the tank would typically be kept just above atmospheric pressure. Therefore, if the tank were ruptured, because the ammonia is fully dissolved in water, it would

leak out of the tank into the secondary containment system discussed in response 6 above, rather than form a cloud of ammonia.

Very truly yours,

DOWNEY BRAND LLP

Jane E. Luckhardt

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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE CHULA VISTA ENERGY UPGRADE PROJECT	DOCKET NO. 07-AFC-4 **PROOF OF SERVICE (Revised Janury 3, 2008)**

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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DECLARATION OF SERVICE

I, Lois Navarrot, declare that on January 14, 2008, I deposited copies of the attached **Letter dated January 14, 2008 to Christopher Meyer at CEC Regarding Response to Oral Comments Made During the Information Hearing and Site Visit on November 29, 2007 (Docket No. 07-AFC-4)** in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

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

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

Lois Navarrot

Lois Navarrot