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COMPLETED

December 12, 2007

B. B. Blevins
Executive Director
Systems Assessment and Facilities Siting Division
California Energy Commission
1516 9th Street
Sacramento, CA 95814



Re: Application for Confidential Designation of Confidential Cultural Resources Reports
Provided in Response to Data Request 36 (Docket No. 07-AFC-4)

Dear Mr. Blevins:

Pursuant to Title 20 California Code of Regulations § 2505, MMC Energy, LLC ("MMC") hereby submits this application for confidential designation for Data Response 36-1 in the Chula Vista Energy Upgrade Project ("Project") Application for Certification Proceeding.

MMC requests that the attached Data Response 36-1 containing confidential cultural resources reports be kept confidential. The confidential cultural resources reports identify confidential cultural resources information, such as site location and content. MMC further requests that the California Energy Commission ("Commission") keep this information confidential permanently. The requested time frame is consistent with the definition of public records contained in California Government Code Section 6254.10. Section 6254.10 indicates that:

Nothing in this chapter requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency.

Id. Furthermore, California Government Code Section 6254(r) does not require the disclosure of information regarding Native American graves, cemeteries and sacred places. Id. Data Response 36-1 provides just the type of information discussed in the above-cited Government Code sections. Consistent with the intent and philosophy of Cal. Gov. Code Sections 6254.10 and 6254(r), such information should be considered a confidential record permanently.

Cultural resources are assets providing insight into prior cultures and lose a great deal of value if they are improperly disturbed. Publication of location and specific descriptions of these assets at best invites the curious, who may unwittingly disrupt or destroy the assets, and at worst encourages destruction or theft from these sites. Thus, in order to protect the integrity of these sites and to respect the resting places of the deceased, these site descriptions and locations should be kept confidential. MMC's interest in seeking confidentiality for these documents is preservation of the resources rather than of any competitive advantage.

The information in an aggregated form is already included in the cultural section of MMC's Application for Certification. Therefore, further aggregation of the information is unnecessary. Masking the information contained in Data Response 36-1 would render the information provided useless.

The cultural resources information related to the Project and found in Data Response 36-1, is known only to the employees of MMC, the specific consultant hired by MMC for this AFC, MMC's attorneys and local representatives of Native Americans. This information has not been publicly disclosed. MMC has marked this information as "CONFIDENTIAL", is segregating it from other Project files and is restricting access to it through a designated confidential information manager within MMC's consultants.

For the reasons specified above and the specific statutory protection provided for cultural records, the Commission should designate Data Response 36-1 as confidential.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge. I also certify that I am authorized to make the application and certification on behalf of MMC.

Very truly yours,

DOWNEY BRAND LLP



Jane E. Luckhardt

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