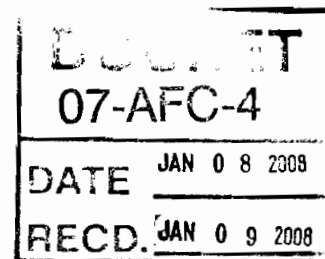


## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

January 8, 2008

Ms. Jane E. Luckhardt  
Downey Brand LLP  
555 Capitol Mall, 10th Floor  
Sacramento, CA 95814

RE: **Cultural Resources, Confidentiality Application,  
Chula Vista Energy Upgrade Project, Docket No. 07-AFC-4**

Dear Ms. Luckhardt:

On December 12, 2007, MMC Energy, LLC (MMC) filed an application for confidentiality on behalf of the Chula Vista Energy Upgrade Project (Chula Vista) (07-AFC-4) with the California Energy Commission. The confidentiality application seeks permanent confidentiality for the cultural resource reports contained in "Data Response 36-1." MMC's confidentiality application states, in part:

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 any competitive advantage. . . . further aggregation of the information is unnecessary. Masking the information contained in Data Response 36-1 would render the information useless.

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential."

The California Public Records Act recognizes the confidentiality principles of federal law. (Gov. Code, sec. 6254(k).) The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations must be kept confidential in order to preserve them. (16 U.S.C. sec. 470hh.) Non-disclosure of the cultural resource information that MMC has submitted is expressly in the public interest. Therefore, MMC's confidentiality application is granted in its entirety, and the information will be kept confidential for an indefinite period.

Any subsequent submittals related to cultural resources can be deemed confidential as specified in this letter without the need for a new application under California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4), if MMC files a certification under penalty of perjury that the new information is substantially similar to that which is granted confidential status by this determination.

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Finally, persons may petition to inspect or copy the records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506. If you have any further questions concerning this matter, please contact Fernando De Leon, Senior Staff Counsel, at (916) 654-4873.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Jones', written in a cursive style.

MELISSA JONES  
Executive Director

cc: Docket Unit  
Energy Commission Project Manager