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May 7, 2008

Mr. Christopher Meyer
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|-----------------|-------------------|
| DOCKET | |
| 07-AFC-4 | |
| DATE | <u>MAY 7 2008</u> |
| RECD. | <u>MAY 8 2008</u> |

**Re: MMC Energy, Inc.'s Preliminary Comments on the Preliminary Staff Assessment
Chula Vista Energy Upgrade Project (07-AFC-4)**

Dear Christopher:

Attached are MMC Energy, Inc.'s (MMC's) initial comments on the California Energy Commission Staff's Preliminary Staff Assessment (PSA) for the Chula Vista Energy Upgrade Project (07-AFC-4). These initial comments are focused on the Conditions of Certification and other matters for discussion at the May 12 PSA workshop. MMC is providing them so that CEC Staff can review them in advance of the workshop so that the parties at the workshop can more easily engage in productive discussions.

MMC will provide more detailed written comments on the PSA at a later date. We look forward to working with you to resolve any remaining permitting issues at the workshop.

Sincerely,

Douglas M. Davy, Ph.D.
AFC Project Manager

Attachment

cc: H. Scarborough, MMC
J. Luckhardt, Downy Brand

MMC Energy Chula Vista Energy Upgrade Project

MMC's Comments on the Preliminary Staff Assessment

General Comment

Pages 1-2, 3-1, 3-3, 6-2, construction and operation schedule - The PSA indicates in several places that the project would begin construction in fall of 2008, for commercial operation by the fall of 2009. This may be a misinterpretation of the AFC, which states that construction would begin in third 3rd quarter of 2008, would take 8 months, and that commercial operation would begin in the 3rd quarter of 2009. Thus, even if the project were to begin construction late in the 3rd quarter (September 30) and would take 8 months, the project could be on line by July 2009. Therefore, it is more accurate to say that the project would be on-line by the summer, instead of the fall, of 2009.

Air Quality

Page 4.1-63, Condition AQSC-9 - This condition is redundant of California Air Resources Board (CARB) requirements. Under AB 32, CARB is required have all entities report 2008 emissions in 2009, so this condition is unnecessary. Furthermore, the CEC/CPUC have recommended the point of regulation to be the "deliverer", which is the power plant, for in-state generation. Therefore, all of this information and more will be provided to CARB.

Biological Resources

Condition BIO-4 - The project owner suggests the following addition to Condition BIO-4, allowing the Worker Environmental Awareness Training to be presented in the form of a video presentation. This is consistent with CEC practice in other cases and accommodates the requirement to train all construction and operation personnel.

BIO-4 The project owner shall develop and implement a CPM-approved Worker Environmental Awareness Program in which each of its employees, as well as employees of contractors and subcontractors who work on the project site or related facilities during construction and operation are informed about the sensitive biological resources associated with the project area. The Worker Environmental Awareness Program must:

1. Be developed by the Designated Biologist and consist of an on-site or training center presentation **or video presentation** in which supporting written material is made available to all participants;

Cultural Resources

Page 4.3-20, Condition CUL-4, Item #6 - This item refers to a written agreement from a curation facility that they will accept artifacts from project-related archaeological investigations. Please note that it may be difficult to arrange for blanket acceptance of artifacts from a fully qualified curation facility in advance of identifying the nature of the collection and site investigated. Acceptance is more likely once an archaeological site has been defined and its significance documented. It may be best to pursue a curation agreement as part of a data recovery plan for a site found to be significant.

6. A statement that the project owner will pay all curation fees **and a plan for obtaining curation services in the event of a significant find** ~~a copy of an agreement with, or other written commitment from, a curation facility to accept artifacts from this project.~~

Any agreements concerning curation will be retained and available for audit for the life of the project.

Page 4.3-24 Condition CUL-4, Verification item #2 states:

Daily, the CRS shall provide a statement that “no cultural resources over 50 years of age were discovered” to the CPM as an e-mail, or in some other form acceptable to the CPM. If the CRS concludes that daily reporting is no longer necessary, a letter or e-mail providing a detailed justification for the decision to reduce or end daily reporting shall be provided to the CPM for review and approval at least 24 hours prior to reducing or ending daily reporting. At least 24 hours prior to implementing a proposed change in monitoring level, documentation justifying the change shall be submitted to the CPM for review and approval.

Given that the Cultural Resources Monitoring and Mitigation Plan is reviewed and approved by CPM in advance of construction and outlines the procedures to follow in case there are finds of cultural resources older than 50 years (including the notification of the CPM in case of a find), daily notification that there is no find does not seem necessary. MMC requests that staff delete this portion of the condition.

Page 4.3-25, Condition CUL-7- There is a minor typographical error.

CUL-7 If commercial borrow or disposal sites are not used, as soon as a borrow site and a disposal site for removed plant-site or laydown area soils are selected, and prior to the start of ground disturbance, the CRS shall undertake or supervise the surface survey of the disposal and ~~barrow~~ **borrow** site for archaeological deposits.

Hazardous Materials

Page 4.4-22, Condition HAZ-2 - MMC suggests the following changes to Condition HAZ-2. The existing Chula Vista Power Plant currently has both a Business Plan and a Risk Management Plan that has been submitted and approved by the San Diego County Department of Environmental Health, Hazardous Materials Division (HMD). Since the CVEUP will be using the same ammonia tank with the existing secondary containment a new RMP is not warranted. In addition, the Business Plan will only need to be updated with information regarding new chemicals brought onsite, and a new plan is not warranted.

HAZ-2 The project owner shall ~~concurrently~~ provide **an updated** Business Plan ~~and a Risk Management Plan (RMP) prepared pursuant to the California Accidental Release Program (CalARP)~~ to the San Diego County Department of Environmental Health, Hazardous Materials Division (HMD) and the CPM for review. After receiving comments from the San Diego County DEH HMD and the CPM, the project owner shall reflect all recommendations in the final documents. Copies of the final Business Plan ~~and RMP~~ shall then be provided to the San Diego County DEH HMD for information and to the CPM for approval. **The project owner shall provide a copy of the current Risk Management Plan (RMP) prepared pursuant to the California Accidental Release Program (CalARP) to the CPM.**

Verification: At least thirty (30) days prior to receiving any **new** hazardous material on the site for commissioning or operations, the project owner shall provide a copy of a final Business Plan to the CPM for approval. At least thirty (30) days prior to delivery of aqueous ammonia to the site, the project owner shall provide the final RMP to the ~~Certified Unified Program Agency for information and to the CPM for approval.~~

Page 4.4-24, Condition HAZ-8 - This standard condition requires either a security guard 24 hours per day and 7 days per week or plant operation personnel to be present at all times

(plus perimeter security). The condition may be more appropriate for large base-load plants that have full-time operation. The CVEUP will have an operator present at most during business hours five days per week. As a peaking power plant that will run only a small percentage of the time, the CVEUP may not warrant this level of security. In addition, in a busy urban area such as this one, the requirement for perimeter breach security and/or motion detectors is likely to lead to many false alarms caused by neighboring activities, animals, etc.

Traffic and Transportation

Page 4.10-20, Condition of Certification TRANS-2, Operation Staff Parking Plan – This condition may be unnecessary for the CVEUP, which would have a maximum of 2 operational staff present at a given time (operator and maintenance technician).

Transmission System Engineering

Page 4.11-11, Condition of Certification TSLN-1 refers to design standards for a new transmission line. The project will not construct a new or modify the existing transmission line. It will only involve connecting the existing line to new substation equipment.

Page 4.11-12, Condition of Certification TSLN-4 states *“The project owner shall ensure that the rights-of-way of the proposed transmission line are kept free of combustible material.”*

Comment: The transmission line right-of-way between the CVEUP power plant site and Otay Substation is owned and maintained by San Diego Gas and Electric Company (SDG&E), not MMC. SDG&E has procedures in place for routine maintenance and this operation and maintenance are regulated by the California Public Utilities Commission.

Page 4.11-12, Condition of Certification TSLN-5 states *“The project owner shall ensure that all permanent metallic objects within the right-of-way of the project-related lines are grounded according to industry standards regardless of ownership.”*

Comment: The existing transmission line right-of-way between the CVEUP power plant site and Otay Substation will be reused by the CVEUP and is owned and maintained by San Diego Gas and Electric Company. It is SDG&E’s responsibility to coordinate grounding with the utility easement landowners.

Visual Resources

Page 4.12-28, Condition of Certification VIS-1, final paragraph – MMC suggests the following changes to this condition. MMC plans to order the equipment from the vendor in ANSI-61 gray base color and to apply surface treatments on site.

The project owner shall not specify to the vendors the **final finish** treatment of any buildings or structures treated during manufacture, or perform the final treatment on any buildings or structures treated in the field, until the project owner receives notification of approval of the treatment plan by the CPM. Subsequent modifications to the treatment plan are prohibited without CPM approval.

Verification: At least 90 days prior to specifying to the vendor the **final** colors and finishes of the first structures or buildings **for which final finish will be applied** ~~that are surface treated~~ during manufacture, the project owner shall submit the proposed treatment plan to the CPM for review and approval and simultaneously to the City of Chula Vista for review and comment.

If the CPM determines that the plan requires revision, the project owner shall provide to the CPM a plan with the specified revision(s) for review and approval by the CPM before any **final finish** treatment is applied. Any modifications to the treatment plan must be submitted to the CPM for review and approval and simultaneously to the City of Chula Vista for review and comment.

Page 4.12-29, Condition of Certification VIS-2 – The project owner suggests revising the wording in this condition that refers to the visibility of lamps and reflectors from beyond the project site. It may not be feasible, particularly in a location such as this, to install light fixtures such that they are never visible from beyond the project site. It is feasible, however, to prevent excessive light and glare from intruding beyond the site into public viewing areas.

VIS-2 Consistent with safety and security considerations, the project owner shall design and install all permanent exterior lighting so that: a) **excessive light and glare from** lamps and reflectors **is minimized from public viewing areas** ~~are not visible from~~ beyond the project site, including any off-site construction laydown areas and security buffer areas; b) lighting does not cause excessive reflected glare; c) direct lighting does not illuminate the nighttime sky; d) illumination of the project and its immediate vicinity is minimized; e) lighting on the exhaust stacks shall be the minimum needed to satisfy safety and security concerns; and f) the plan complies with local policies and ordinances of the City of Chula Vista.

Page 4.12-30, Condition of Certification VIS-3 – This condition requires landscaping along the project's northern facility boundary, and MMC requests deleting this aspect of the Condition. Landscaping in this location is infeasible and unnecessary. The project is appropriately screened from any sensitive uses or viewers by intervening uses, including an automobile salvage yard. Staff has indicated that VIS-3 will mitigate potential adverse visual effects as determined from KOP-3 and KOP-4, but views from these KOPs would be screened by landscaping on the eastern and southern boundaries of the CVEUP, not the northern boundary.

VIS-3 The project owner shall develop a landscape plan that: a) reduces the visibility of the power plant structures; b) avoids species on the California Invasive Plant Council list of invasive species <www.cal-ipc.org>; and c) complies with the local policies and ordinances of the City of Chula Vista. Trees and other vegetation consisting of informal groupings of fast- to moderate-growing evergreens, shall be strategically placed along the southern, **and** eastern, ~~and northern~~ facility boundaries, as appropriate, and be of sufficient density and height to screen the power plant structures to the greatest feasible extent within the shortest feasible time. The landscaping plan shall exclude non-native species that could invade habitats of the Otay River Preserve.

Waste Management

Page 4.13-14, Condition WASTE-3 - The project owner suggests the following changes to Condition WASTE-3. The existing Chula Vista Power Plant has a United States Environmental Protection Agency (EPA) hazardous waste generator identification number; therefore, a new EPA identification number is not warranted.

WASTE-3 The project owner shall ~~obtain~~ **provide a copy of the current** a hazardous waste generator identification number from the United States Environmental Protection Agency **to the CPM** prior to generating any hazardous waste during construction and operations.

Verification: The project owner shall keep a copy of the identification number on file at the project site and provide the number to the CPM in the next Monthly Compliance Report.

Worker Health and Safety

Page 4.14-12, third full paragraph – *“The one exception mentioned above [to compliance with LORS] pertains to fire department access to the site. Both the California Fire Code (24 CCR Part 9, chapter 5, section 503.1.2) and the Uniform Fire Code (sections 901 and 902) require that access to the site be reviewed and approved by the fire department. All power plants licensed by the Energy Commission have more than one access point to the power plant site. This is sound fire safety procedure and allows for fire department vehicles and personal to access the site should the main gate be blocked.”*

Comment: The CFC and UFC require that site access for fire-fighting be reviewed by the local fire department. These regulations do not actually require dual access to a power plant site in all cases. The City of Chula Vista fire department has already indicated approval of the existing design, in the City’s approval of the existing site plan. Staff’s opinion that previous CEC-licensed projects have always had more than one entrance would not qualify as a LORS. These findings are therefore not sufficient grounds for a finding of inconsistency with LORS or a Condition of Certification requiring that MMC add an additional entrance to an existing site that already has Fire Department approval.

Page 4.14-16, Condition Worker Safety-6 – See comments, above. This condition is not necessary and presumes the outcome of any additional discussions with the Chula Vista Fire Department regarding fire department access to the site.

Engineering Assessment

Page 5.1-6, Condition GEN-1 states that a new version of the California Building Standards Code will apply to the project when issued. The project owner recommends deleting this requirement, as it is unreasonable to require design to conform to the 2007 CBSC standard and then to require design changes to conform to a later standard not in effect when the design work was done.

~~In the event that the initial engineering designs are submitted to the CBO when the successor to the 2007 CBSC is in effect, the 2007 CBSC provisions shall be replaced with the applicable successor provisions.~~

Geology and Paleontology

Page 5.2-20, Condition PAL-4, first paragraph – The project owner intends to conduct all worker training through the use of a video module and brochure, consistent with the applicable Biological and Cultural Resources conditions. The paleontological resources training in the video will be presented by the Paleontological Resources Specialist. The video training format ensures consistent training of all employees and allows for the use of video software techniques to enhance the presentation. As a result, the project owner requests that reference to “initial in-person training” be deleted and proposes modifying the condition as follows:

PAL-4 Prior to ground disturbance and for the duration of construction activities involving ground disturbance, the project owner and the PRS shall prepare and conduct weekly CPM-approved training for the following workers: project managers, construction supervisors, foremen, and general workers involved with or who operate ground-disturbing equipment

or tools. Workers shall not excavate in sensitive units prior to receiving CPM-approved worker training. Worker training shall consist of ~~an initial in-person PRS training during the project kick-off for those mentioned above. Following initial training,~~ a CPM-approved video or in-person training may be used for new employees. The training program may be combined with other training programs prepared for cultural and biological resources, hazardous materials, or other areas of interest or concern. No ground disturbance shall occur prior to CPM approval of the Worker Environmental Awareness Program (WEAP), unless specifically approved by the CPM.

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: 1/3/08)

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, Maria Sergoyan, declare that on May 8, 2008, I deposited copies of the attached MMC Energy, Inc.'s Preliminary Comments on the Preliminary Staff Assessment Chula Vista Energy Upgrade Project (07-AFC-4) Preliminary Staff Assessment in the United States mail at Sacramento, CA 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 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.

Original Signed in Dockets

Maria Sergoyan