



MMC Energy, Inc.  
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August 4, 2008

Christopher Meyer  
Project Manager  
California Energy Commission  
1516 9th Street, MS-15  
Sacramento, CA 95814

<b>DOCKET</b> 07-AFC-4	
DATE	AUG 04 2008
RECD.	AUG 06 2008

Re: **Chula Vista Energy Upgrade Project (Docket No. 07-AFC-4): Agreement with the City of Chula Vista on Mitigation and Consistency of the Project with the Chula Vista General Plan**

Dear Mr. Meyer:

This letter describes the specific mitigation MMC Energy, Inc. ("MMC") has agreed to provide to the City of Chula Vista ("City") for the benefit of the citizens of Chula Vista and the residents and businesses located close to the Chula Vista Energy Upgrade Project ("Project"). The specified mitigation would be provided in conjunction with the proposed Project in connection with a California Energy Commission ("Commission") decision to grant a license to MMC for this Project. This letter also describes MMC's understanding of the City's position that the Project is consistent with the City's General Plan.

#### **Agreements as to Specific Mitigation Measures**

As you know, it is critical to the City to obtain focused benefits for the residents and businesses surrounding MMC's proposed Project. Therefore, MMC has agreed to the City's request that MMC provide all of the following mitigation measures:

1. Provide \$210,000 in direct funds to the City, in addition to the funds to be contributed as noted in Paragraph 2 below, for air quality related mitigation for the local area. This contribution from MMC will give the City the ability to use these funds in the affected local community for energy efficiency and related improvements to homes and local businesses. These funds are intended to directly benefit the local residents potentially most directly affected by the reconstructed plant and shall be payable to the City within 30 days of the CEC final decision regarding CVEUP.
2. MMC hereby agrees to fund the estimated cost of mitigating the air emissions from the Project to a 1:1 ratio at the level outlined in the Final Staff Assessment and at the fixed cost of \$210,000 established by the CEC. MMC also agrees that to the extent possible the mitigation should take place in southern Chula Vista. The City may propose specific projects to the Commission to achieve an equivalent level of emissions reductions. If these alternative project(s) are determined by the California Energy Commission Staff ("Staff") to provide legally enforceable and sufficient mitigation that satisfies the requirements of the Warren-Alquist Act and the California Environmental Quality Act, MMC will provide \$210,000 to the City in addition to the \$210,000 described in

Paragraph 1 above. Should the City of Chula Vista be unable to identify a project within two years of the final California Energy Commission decision on the Project that meets the CEC staff criteria for meeting the 1:1 offset requirements, the \$210,000 will be contributed to the Carl Moyer program administered by the San Diego Air Pollution Control District. MMC's obligation for this issue shall be limited to the timely payment of the funds.

3. MMC acknowledges and agrees that pursuant to the Chula Vista Municipal Code, the proposed Project is subject to the City's utility users' tax ("UUT"). MMC further acknowledges and agrees that MMC and its successors or assignees are subject to UUT and hereby agree to remit such tax to the appropriate franchise natural gas, electricity and/or telecommunications service provider in accordance with the City's Municipal Code.

Additionally, MMC agrees that in the event that, for whatever reason, the UUT payable by MMC directly to the City or through the franchise agent, direct access or other service provider, is determined by a court of competent jurisdiction to be invalidly imposed or collected, MMC agrees to comply with any and all appropriate modifications to the City's Municipal Code or franchise agreement to cure such invalidity so as to continue the payment of equivalent value or consideration to the City throughout the term of the CVEUP's operation.

4. MMC hereby agrees to provide the City with funding for the equipment, software and installation costs to establish an additional wireless Evapotranspiration weather station at an actual not to exceed cost of \$30,000. MMC's understanding is that its obligation for mitigating the use of potable water in the Project shall be limited by mutual agreement of the Commission and the City to providing the funding. MMC therefore expects that upon providing the funds that the City will implement the Water Conservation Program in a timely manner and upon request, the City shall provide MMC with copies of any data requested by the Commission to verify project implementation and/or the amount of water conserved. Funding for this measure shall be payable to the City within 30 days of receiving a detailed invoice from the City but no sooner than 30 days following CEC final decision regarding CVEUP
5. Once the new 100-MW Project is operational, MMC hereby agrees to shut down and remove the existing 44.5-MW facility. MMC will not seek permission from the Commission for any expansion of the Project beyond the generation capacity set forth in the AFC.
6. At this time MMC has elected not to proceed with upgrades to the existing transmission system on lines TL649A and TL644. Should MMC, SDG&E or the CAISO desire to upgrade the portion of TL 649A along Albany Avenue between Main Street and Orange Avenue in the future, MMC will consult with the City to determine if the City would like to underground this portion of TL 649A. Should the City desire to underground those lines, MMC will pay for half of the additional cost required to place those transmission lines below ground. This agreement will avoid half the undesirable outcome of MMC's improvements increasing the cost of future efforts by the City to underground these lines.

This agreement shall be included in a condition of certification from the Commission on the Project.

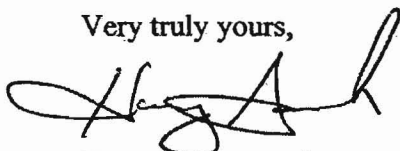
It is MMC's understanding that the City believes these benefits when combined with the requirements included in the Preliminary Staff Assessment will reduce and mitigate air quality and water use impacts, and provide specific, targeted benefits to the nearby residents and businesses.

#### **Compliance of the Project with the City's General Plan**

It is MMC's understanding that the City agrees with the following discussion and conclusions regarding the City's General Plan. The City evaluates a project's consistency with the General Plan by looking at whether the project is in harmony with the policies stated in the General Plan. Because the General Plan reflects a wide range of competing interests, the City weighs and balances the plan's policies when determining whether on balance a project is consistent with the General Plan. A project need not be in complete conformity with each and every policy of the General Plan to be deemed consistent with the General Plan because it is likely that no project would completely satisfy every policy stated in the General Plan. The policies of concern E6.4 and E6.15 address impacts to nearby sensitive receptors. Based upon the preliminary analyses and requirements presented by Staff in the Preliminary Staff Assessment, the analysis and requirements contained in the District's Final Determination of Compliance and the specific benefits and mitigation described above, we believe that the City will find that the Project is in harmony with and therefore, consistent with the City's General Plan.

By copy of this letter to Mr. Scott Tulloch of the City, we request that the City notify you of its concurrence with the proposed additional mitigation and conclusions regarding the City's General Plan contained in this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Harry Scarborough', written over a horizontal line.

Harry Scarborough

cc: Scott Tulloch (via e-mail)

**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 7/14/08)**

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:

**CALIFORNIA ENERGY COMMISSION**

Attn: Docket No. 07-AFC-4  
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[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

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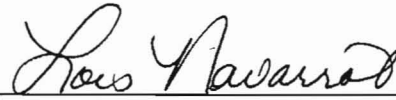
### **DECLARATION OF SERVICE**

I, Lois Navarrot, declare that on August 6, 2008, I deposited copies of the attached **Letter from MMC to Christopher Meyer at CEC Regarding Agreement with the City of Chula Vista on Mitigation and Consistency of the Project with the Chula Vista General Plan** 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.

A handwritten signature in cursive script, reading "Lois Navarrot", written in black ink.

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Lois Navarrot