



August 7, 2008

OFFICE OF THE CITY MANAGER

Christopher Meyer, Project Manager
California Energy Commission
1516 Ninth St
Sacramento, CA 95814

RE: CVEUP Project 07-AFC-04

DOCKET	
07-AFC-4	
DATE	AUG 07 2008
RECD.	AUG 07 2008

Dear Mr. Meyer:

The City of Chula Vista Staff wants to express its appreciation to you and all the California Energy Commission (CEC) staff for their support as the City worked through the Application for Certification process. City Staff is grateful for the CEC's effort to compel all parties to work collaboratively to identify the best alternative for the community and local energy reliability. We also appreciate the open and inclusive approach that the CEC has taken in accommodating the City's requests for information and for providing local opportunities for the community to participate in the process. Community participation will continue to be a critical component of moving forward effectively.

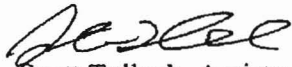
The City Staff has used the opportunity established by the CEC and the input from the community as a basis for working with MMC Inc. (MMC) to craft a portfolio of local mitigation commitments. City Staff believes that adding this portfolio of local commitments to the CEC Staff Assessment conditions will address any potential inconsistencies with the General Plan and makes a good faith effort to address the community's primary concerns. The measures and commitments in the enclosed letter from MMC take into consideration the Certification Process and the San Diego Air Pollution Control District (District) Report statements regarding the impacts, or lack of impacts from the proposed project and the corresponding recommendations. Staff is particularly aware that the District has found that, "the project as proposed will comply with all applicable District rules and regulations if it is constructed and operated in accordance with the information submitted in conjunction with the application(s) for District Authority to Construct, the application for certification submitted to the CEC and the terms and conditions of the FDOC," and "Based on emissions calculations, emissions offsets are not required for this project, Rule 20.2(d)(5)- Emissions Offsets."

Pursuant to these findings by the CEC and San Diego APCD, City Staff joins MMC in recommending that, to the extent possible, the CEC include the measures and commitments contained in the MMC letter as conditions in the Final Staff Assessment, and ultimately the CEC final decision. Subsequent to the Commission adopting the

measures contained in the attached letter and/or the completion of a detailed written agreement between the City and MMC on any of the measures not included in the CEC proposed decision, and timely payment by MMC to implement the measures, the City concludes that any potential inconsistencies with the City's General Plan will have been addressed.

City Staff requests that the CEC notify the City and MMC whether or not staff is able to recommend that the Commission adopt the measures as conditions to the Project's approval, and whether or not they can be added as conditions prior to the next public workshop or hearing. Please feel free to call if you have any questions.

Sincerely,



Scott Tulloch, Assistant City Manager
City of Chula Vista

Enclosure

cc: David R. Garcia, City Manager,
Bart Meisfeld, City Attorney
Harry Scarborough, Vice President Development MMC Inc.



MMC Energy, Inc.

26 Broadway, Suite 907, New York, NY 10004

www.mmcenergy.com

August 4, 2008

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

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.

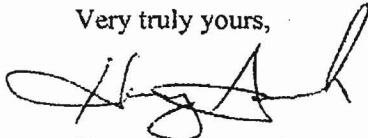
It is MMC's understanding that the City believes these benefits when combined with the requirements included in the Preliminary Staff Assessment will reduce and mitigate air quality and water use impacts, and provide specific, targeted benefits to the nearby residents and businesses.

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,



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-SPPE-1
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512
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DECLARATION OF SERVICE

I, Candy Uvero, declare that on 08/07/08, I deposited copies of the attached Letter to * in the United States mail at Chula Vista, 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.



*Christopher Meyer in regards to CVEUP Project 07-AFC-04