

DOCKET

07-AFC-4

DATE APR 14 2009

RECD. APR 20 2009

From: Harry Scarborough
To: jboyd@energy.state.ca.us <jboyd@energy.state.ca.us>
Cc: Michael Hamilton; Nefouse, Amy <Amy.Nefouse@dlapiper.com>; Ben Haddad <benh@calstrat.com>; Josie Calderon <josielc@cox.net>; jb2@cpuc.ca.gov <jb2@cpuc.ca.gov>; mp1@cpuc.ca.gov <mp1@cpuc.ca.gov>; dgx@cpuc.ca.gov <dgx@cpuc.ca.gov>; crc@cpuc.ca.gov <crc@cpuc.ca.gov>; Schwebs, Monica <monica.schwebs@bingham.com>; Jones, Julie <julie.jones@bingham.com>
Sent: Tue Apr 14 21:22:22 2009
Subject: Regarding Question Concerning Power Purchase Agreement for CVEUP

Dear Commissioner Boyd:

MMC Energy would like to thank the California Energy Commission for the hearing conducted yesterday afternoon/evening in response to the Presiding Member's Proposed Decision (07-AFC-04). I am writing to supplement a response to a question you asked of me at the hearing.

As you may recall, the question and answer provided were roughly as follows:

Commissioner Boyd: "Mr. Scarborough, does MMC have a power purchase agreement for the proposed project?"

Mr. Scarborough: "No sir, it does not"

The additional information I would like to provide is that MMC Energy was engaged in the early stages of privileged and confidential talks with a utility company specifically regarding a bilateral purchase agreement for the proposed Chula Vista Energy Upgrade Project when your proposed decision was issued. The talks were effectively halted upon release of your proposed decision recommending denial of the project.

MMC is providing this information since even though both MMC Energy and Energy Commission Staff have indicated in their comments that whether or not MMC Energy has a power purchase agreement is irrelevant to your decision, it appears you still disagree. If it is in fact your position that whether or not MMC Energy has a power purchase agreement is relevant to your decision, MMC Energy requests that you explain in detail the basis for your position in the revised proposed decision. MMC Energy's concern is twofold. First, if a power purchase agreement is now considered a prerequisite, or even a factor to be given weight in a proposed decision, a revision to the current Energy Commission regulations is strongly recommended since they currently provide no indication that the existence of a power purchase agreement is a relevant consideration when determining whether or not to certify a project. Secondly, if this is the path the Energy Commission has selected, it will be setting a dangerous precedent since requiring a power purchase agreement as a condition of certification will force applicants to agree on a price for the sale of electricity before knowing the cost of producing that electricity. This would greatly increase the risks applicants and purchasers of power already face in negotiating power purchase agreements.

I thank you again for your time and patience and look forward to your response.

Harry Scarborough
Senior Vice President
Business Development and Operations
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**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 2/10/09)**

<p><u>APPLICANT</u></p> <p>Harry Scarborough Sr. Vice President MMC Energy Inc. 437 J Street, Suite 305 San Diego, CA 92101 hscarborough@mmcenergy.com</p>	<p><u>COUNSEL FOR APPLICANT</u></p> <p>Jane Luckhardt Downey Brand LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 jluckhardt@downeybrand.com</p>	<p>City of Chula Vista, California c/o Michael Meacham Director of Conservation & Environmental Services 276 Fourth Avenue Chula Vista, CA 91910 mmeacham@ci.chula-vista.ca.us</p>
<p><u>APPLICANT'S CONSULTANT</u></p> <p>Douglas M. Davy, Ph.D. Senior Project Manager CH2M Hill 2485 Natomas Park Drive, Suite 600 Sacramento, CA 95833 ddavy@ch2m.com</p>	<p><u>INTERESTED PARTIES</u></p> <p>California ISO e-recipient@caiso.com</p>	<p>City of Chula Vista, California c/o Michael J. Shirey Deputy City Attorney Chula Vista City Attorney's Office 276 Fourth Avenue Chula Vista, CA 91910 mshirey@ci.chula-vista.ca.us</p>
<p><u>APPLICANT'S ENGINEER</u></p> <p>Steven Blue Project Manager Worley Parsons 2330 E. Bidwell, Suite 150 Folsom, CA 95630 Steven.blue@worleyparsons.com</p>	<p><u>INTERVENORS</u></p> <p>California Unions for Reliable Energy (CURE) c/o Marc D. Joseph Gloria Smith Suma Peesapati Adams Broadwell Joseph & Cardozo 601 Gateway Blvd., Suite 1000 So. San Francisco, CA 94080 mdjoseph@adamsbroadwell.com gsmith@adamsbroadwell.com spesapati@adamsbroadwell.com</p>	<p>Environmental Health Coalition Diane Takvorian & Nicole Capretz 401 Mile of Cars Way, Suite 310 National City, CA 91950 E-MAIL PREFERRED dianet@environmentalhealth.org Nicole@environmentalhealth.org</p> <p>Kevin Bundy Shute Mihaly & Weinberger LLP 396 Hayes Street San Francisco, CA 94102 E-MAIL PREFERRED bundy@smwlaw.com</p>
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Declaration of Service

I, Lois Navarrot, declare that on April 20, 2009, I served and filed copies of the attached **E-Mail from Harry Scarborough at MMC to J. Boyd at CEC Regarding Question Concerning Power Purchase Agreement for CVEUP**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/chulavista. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service List) and to the Commission's Docket Unit, in the following manner:

(check all that apply)

For Service to All Other Parties

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service List above to those addresses **NOT** marked "email preferred."

AND

For Filing with the Energy Commission

sending an original paper copy and one electronic copy, mailed and e-mailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies as follow:

California Energy Commission
Attn: Docket No. 07-AFC-4
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

/s/
Lois Navarrot