

**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
(AFC Filed 8/10/07)

DOCKET 07-AFC-4	
DATE	June 9 2009
RECD.	JUNE 9 2009

**MMC ENERGY, INC.'S REQUEST TO POSTPONE COMMISSION CONSIDERATION
OF THE PRESIDING MEMBER'S PROPOSED DECISION, SUSPEND THE
PROCEEDING, AND SCHEDULE FILING OF A STATUS REPORT**

William Kissinger
Monica Schwebs
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Fax: (415) 393-2286
Email: william.kissinger@bingham.com
Attorneys for MMC Energy, Inc.

Jane E. Luckhardt
Wendy Bogdan
DOWNEY BRAND LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
Telephone: (916) 444-1000
Fax: (916) 444-2100
Email: jluckhardt@downeybrand.com
Attorneys for MMC Energy, Inc.

Dated: June 9, 2009

At its business meeting on June 17, 2009, the California Energy Commission (“Commission”) is currently scheduled to consider the Presiding Member’s Proposed Decision (“PMPD”) on the Application for Certification of the Chula Vista Energy Upgrade Project. MMC Energy, Inc. (“MMC Energy”) respectfully requests that the Commission: (1) postpone its consideration of the PMPD; (2) suspend this proceeding; and (3) schedule the filing of a status report by the applicant on or before October 12, 2009.

MMC Energy is the current owner of the existing Chula Vista Power Plant and the applicant for certification of the proposed Chula Vista Energy Upgrade Project (“Upgrade Project”) which would replace the existing Chula Vista Power Plant. MMC Energy is in the process of selling its interest in the Chula Vista Power Plant and the Upgrade Project.

In light of the pending sale, MMC Energy requests that the Commission postpone consideration of the PMPD until the new owner has an opportunity to determine how it wishes to proceed in light of the adverse PMPD. In particular, the new owner will need to decide whether it will ask the Commission to consider an override pursuant to Public Resources Code § 25525 or some other course of conduct. The Commission hearing is now scheduled for June 17, 2009. As of that date, MMC Energy will still be the owner of record, but only for a short additional period while the sale is finalized.

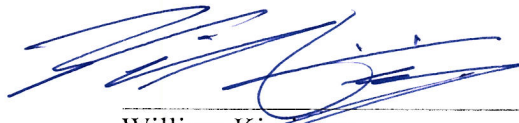
During the transition to new ownership, it would be appropriate for the Commission to suspend this proceeding. The Commission has often suspended proceedings at the applicant’s request for good cause shown. *See, e.g., In re: Application for Certification of Bullard Energy Center,*

Docket No. 06-AFC-8, Order issued August 28, 2007 (order suspended proceedings for one year). MMC Energy submits that the need to complete the transition to new ownership is good cause to suspend the proceeding.

MMC Energy believes that it is only necessary for the Commission to postpone the hearing on the PMPD and suspend the proceeding for a limited period of time. But, in lieu of setting a firm date for a Commission hearing at this time, MMC Energy requests that the Commission order the applicant to file a status report on or before October 12, 2009. In this status report the applicant could inform the Commission regarding how the Buyer would like to proceed. The Commission could then reschedule the hearing on the PMPD, lift the order suspending the proceeding, or take other appropriate actions.

In summary, MMC Energy requests that the Commission: (1) postpone its consideration of the PMPD; (2) suspend this proceeding; and (3) schedule the filing of a status report by the applicant that would be filed on or before October 12, 2009.

Respectfully submitted,



William Kissinger

Monica Schwebs

BINGHAM McCUTCHEN LLP

Three Embarcadero Center

San Francisco, CA 94111-4067

Telephone: (415) 393-2000

Fax: (415) 393-2286

Email: william.kissinger@bingham.com

Attorneys for MMC Energy

**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)**

<u>APPLICANT</u> Harry Scarborough Sr. Vice President MMC Energy Inc. 437 J Street, Suite 305 San Diego, CA 92101 hscarborough@mmcenergy.com	<u>COUNSEL FOR APPLICANT</u> Jane Luckhardt Downey Brand LLP 621 Capitol Mall, 18 th Floor Sacramento, CA 95814 jluckhardt@downeybrand.com	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
<u>APPLICANT'S CONSULTANT</u> Douglas M. Davy, Ph.D. Senior Project Manager CH2M Hill 2485 Natomas Park Drive, Suite 600 Sacramento, CA 95833 ddavy@ch2m.com	<u>INTERESTED PARTIES</u> California ISO e-recipient@caiso.com E-MAIL PREFERRED	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
<u>APPLICANT'S ENGINEER</u> Steven Blue Project Manager Worley Parsons 2330 E. Bidwell, Suite 150 Folsom, CA 95630 Steven.blue@worleyparsons.com	<u>INTERVENORS</u> 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	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 Kevin Bundy Shute Mihaly & Weinberger LLP 396 Hayes Street San Francisco, CA 94102 E-MAIL PREFERRED bundy@smwlaw.com
<u>ENERGY COMMISSION</u>		
James D. Boyd Vice Chairman & Associate Member jboyd@energy.state.ca.us	Christopher Meyer Project Manager cmeyer@energy.state.ca.us	Kevin Bell Staff Counsel kwbell@energy.state.ca.us
Raoul Renaud Hearing Officer rrenaud@energy.state.ca.us		Public Adviser's Office publicadviser@energy.state.ca.us

Declaration of Service

I, Lois Navarrot, declare that on June 9, 2009, I served and filed copies of the attached **MMC Energy, Inc.'s Request to Postpone Commission Consideration of the Presiding Member's Proposed Decision, Suspend the Proceeding, and Schedule Filing of a Status Report**. 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

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

- X 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