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<b>Project Title:</b>	Orange Grove Energy Project - Compliance
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<b>Document Title:</b>	Settlement Agreement and Release CEC and Orange Grove Energy
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The California Energy Commission (“Energy Commission” or “Commission”) and Orange Grove Energy, LP (“OGE”) as owner of the Orange Grove Energy Center (“OGEC” or “Facility”), enter into this Settlement Agreement and Release (“Agreement”).

**I. INTRODUCTION**

1. Pursuant to California Public Resources Code section 25500, the Energy Commission “shall have the exclusive power to certify all sites and related facilities in the state.” A “facility” includes any thermal power plant with generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. (Pub. Resources Code §§ 25110, 25120.)
2. The Facility is a 96-megawatt simple-cycle, natural gas-fired peaker power plant located near the community of Pala, San Diego County. The project was certified by the CEC on April 8, 2009 and began commercial operation on April 1, 2010. The Final Commission Decision (08-AFC-04C “Final Decision”) governs the construction and operation of the OGEC.
3. Pursuant to Public Resources Code section 25532, the Energy Commission has established a monitoring system to assure that any facility certified by the Commission is constructed and operated in compliance with applicable laws and conditions specified in the Commission Decision certifying such Facility.
4. Pursuant to California Code of Regulations, title 20, section 1770, the Energy Commission is to provide adequate monitoring of all conditions and measures set forth in the Final Decision required to mitigate potential impacts and to assure that facilities are constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards (“LORS”).
5. Pursuant to California Code of Regulations, title 20, section 1769, after a license becomes effective, “the owner shall petition the commission for any change it proposes to the project design, operation, or performance requirements.”
6. Pursuant to Public Resources Code section 25534, subdivision (b), the Energy Commission may after notice and a hearing administratively impose a civil penalty against a facility owner for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision, and a violation of any regulation or order issued by the Energy Commission. Any civil penalty shall be imposed in accordance with section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation. A civil penalty may be increased by an amount not to exceed \$1,500 for each day the violation occurs or persists, but the total per day penalties may not exceed fifty thousand dollars (\$50,000).
7. On October 23, 2018, CEC staff (staff) conducted a routine site inspection of the

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OGEC. Part of the inspection included requesting all records related to the fire protection system testing at the facility. Staff observed that the OGEC had not performed the required annual fire pump testing. Staff further investigated to assess how long the OGEC had been out of compliance with the fire pump testing requirements and what steps OGEC staff were taking to come back into compliance.

8. On January 12, 2021, Energy Commission staff sent OGEC a Notice of Violation alleging noncompliance with the fire pump testing provisions of the Final Decision.
9. The Parties share the common objective of ensuring that the fire protection systems at the Facility operate in a safe and reliable manner. OGE cooperated with the Commission throughout the Commission's investigation and has submitted all documents requested by Commission staff and Commission staff and OGE participated in numerous meetings.

## II. SUMMARY OF PERTINENT FINAL DECISION PROVISIONS

The Final Decision contains a Compliance Monitoring Plan, including General Conditions and Closure Plan and includes the following requirements.

**GEN-1** incorporates of the California Fire Code and addresses the testing and maintenance of fire protection systems including fire pumps. The California Fire Code incorporates Title 19 of the California Code of Regulations, which in turn incorporates the National Fire Protection Association (NFPA). NFPA 25 section 8.3.3.1 requires the annual testing of the fire pumps. Relevant portions of these provisions appear below:

**GEN-1** provides:

“The project owner shall design, construct, and inspect the project in accordance with the 2007 California Building Standards Code (CBSC), also known as Title 24, California Code of Regulations, which encompasses the California Building Code (CBC), California Administrative Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Energy Code, California Fire Code, California Code for Building Conservation, California Reference Standards Code, and all other applicable engineering laws, ordinances, regulations, and standards (LORS) in effect at the time initial design plans are submitted to the chief building official (CBO) for review and approval.” Final Decision 2009, p. 62.

**2007 California Fire Code, Section 913.5** provides:

“Fire pumps shall be inspected, tested, and maintained in accordance with the requirements of this section and Title 19 California Code of Regulations, Chapter 5.”

**Title 19 California Code of Regulations, Chapter 5** states:

“All automatic fire extinguishing systems, including systems installed as an alternate to other building requirements, shall be inspected, tested, and maintained in accordance with the following frequencies. Local authorities may require more frequent inspection,

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testing and maintenance and additional procedures.”

**Title 19, California Code of Regulations, section 904(a)(1)** provides:

“Water-based fire protection systems shall be inspected, tested and maintained in accordance with the frequencies required by NFPA 25 (2011 edition) including Annexes A, B, C, D, and G as amended by the State of California (Published as NFPA 25, 2013 California Edition), which is hereby incorporated by reference.”

**NFPA 25 (a) Chapter 8 Fire Pumps, Section 8.3.3 Annual Flow Testing** provides at Section 8.3.3.1:

“An annual test shall be conducted by qualified personnel under minimum, rated, and peak flows of the fire pump by controlling the quantity of water discharged through approved test devices.”

**COMPLIANCE-14** incorporates the requirements of Title 20, California Code of Regulations section 1769 into the facility’s conditions of certification. Section 1769 requires the facility owner to file a petition with the CEC for any change in operation, design, or performance of the facility.

**COMPLIANCE-14** provides, in pertinent part:

“The project owner must petition the Energy Commission pursuant to Title 20, California Code of Regulations, section 1769, in order to modify the project (including linear facilities) design, operation or performance requirements, and to transfer ownership or operational control of the facility. It is the responsibility of the project owner to contact the CPM to determine if a proposed project change should be considered a project modification pursuant to section 1769. Implementation of a project modification without first securing Energy Commission, or Energy Commission staff approval, may result in enforcement action that could result in civil penalties in accordance with section 25534 of the Public Resources Code.” Final Decision 2009, p. 50.

### III. INVESTIGATION FINDINGS

1. Energy Commission staff investigated an alleged failure to conduct annual fire pump testing at the OGEC. Staff conducted a site inspection of the OGEC on October 23, 2018. Part of the inspection included reviewing the fire protection system testing records for the Facility. Specifically, staff requested the annual flow test reports for the electric and diesel fire pumps at the OGEC. OGEC personnel were unable to provide them. Staff then conducted an investigation to determine how long OGEC had been out of compliance on the fire pump testing requirements.
2. In addition to the staff’s October 23, 2018 visit to the Facility, the investigation included calls and discussions with OGEC personnel and a review of all relevant documents. Based on this information, Energy Commission staff determined that the

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OGEC failed to complete the required annual flow testing for its electric and diesel fire pumps for the years 2015, 2016, 2017, and 2018.

3. On January 12, 2021 Energy Commission Staff sent a Notice of Violation alleging that the OGEC's failure to complete the annual flow testing of its diesel and electric fire pumps constituted violations of OGEC's conditions of certification. Subsequently, Energy Commission staff has alleged that OGEC's failure to test its fire pumps also constituted an unapproved change in operation at the facility in violation of the compliance provisions of the Final Decision and title 20, section 1769.

#### **IV. RESPONSE TO COMMISSION INVESTIGATION**

1. OGE has worked cooperatively with Energy Commission staff since the October 23, 2018 site visit.
2. Given OGE's continuing and diligent cooperation, the Energy Commission staff and OGE believe that rather than engaging in formal adjudication, it would be more productive to enter into this Agreement to allow the Parties to focus on ensuring that the fire protection systems at OGE remain safe and reliable.
3. In developing this Agreement, the Commission considered the cooperation of OGE, the facts developed by the Energy Commission staff and OGE during the course of the investigation and applied the relevant factors in the Public Resources Code Section 25534.1(e) to determine that settlement, rather than formal adjudication, is a more appropriate use of the Commission's and OGE's collective resources.

#### **V. TERMS**

To resolve the above-described alleged violations and terminate and settle these matters and, in consideration of Energy Commission staff not pursuing an administrative action under Public Resources Code section 25534 or otherwise seeking legal redress against OGE for the above-described alleged violations, the Energy Commission and OGE agree as follows:

1. OGE shall execute the Agreement and provide a copy no later than thirty (30) days after the Energy Commission approves the Agreement at a publicly noticed Business Meeting, to the attention of:

Shawn Pittard  
Deputy Director, Siting Transmission and Environmental Protection  
Division California Energy Commission  
715 P Street  
Sacramento, CA 95814

2. OGE shall submit to the California Energy Commission a payment in the amount of \$200,000 (the "Settlement Amount") to settle these matters. The settlement payment

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is due within 30 days after OGE receives written notification by the Commission's Compliance Project Manager ("CPM") of the execution of the Settlement Agreement by the Executive Director. Payment shall be made by electronic transfer to the California Energy Commission. Banking information and instructions necessary to complete the electronic transfer shall be provided by the Energy Commission.

3. If the Energy Commission does not approve the Agreement, it shall become null and void. OGE further agrees that if this matter comes before the Energy Commission in an administrative adjudication, members of the Energy Commission and the Executive Director shall not be disqualified from participation because of prior consideration of this Agreement.
4. This Agreement shall apply to and be binding upon OGE and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary corporations, affiliates, and parent corporations, and upon the Energy Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
5. This Agreement shall constitute the full and final settlement of the matters identified in Articles I and III herein, subject to OGE's payment of the Settlement Amount.
6. In consideration for OGE's entry into this Agreement and for the one-time payment of the Settlement Amount, the Commission hereby releases OGE and its principals, directors, officers, agents, employees, shareholders, subsidiaries, affiliates, parent corporations, and predecessors and successors from any and all claims for violations of the Warren-Alquist Act, the Commission's Regulations, the Final Decisions, LORS, and applicable fire codes, for the matters identified in Articles I and III above (the "Release").
7. OGE does not admit, and this Agreement does not constitute an admission by OGE as to any of the Energy Commission Staff's allegations outlined herein, and further does not constitute an admission by OGE that it violated the Conditions of Certification contained in the Final Decision or any other law, ordinance, regulation or standard applicable to the OGE.
8. OGE will conduct and report the results of its fire pump testing and will file a petition with the CEC for any change in operation, design, or performance of the facility. OGE reserves the right to contest the use of this Agreement in any other matter or proceeding except in a proceeding to enforce the Agreement itself.
9. To the extent required by law, neither Party shall disclose any confidential information provided in support of this Agreement unless (a) written permission to do so has been provided by the Party providing the information, or (b) disclosure is required by law. To be confidential, information must be marked with wording such as "Confidential," "Proprietary," "Trade Secret," or other terms sufficient to provide notice of the confidential nature of such information. In connection with requests for disclosure under law to the extent allowed by law, the disclosing Party will use

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reasonable efforts to (i) notify the other Party prior to any disclosure of confidential information and (ii) reasonably cooperate with the other Party's efforts to prevent or limit such disclosure.

10. This Agreement constitutes the entire agreement and understanding between the Parties and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind regarding the matters herein, whether written or oral, between the Energy Commission and OGE.
11. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
12. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
14. Any civil litigation to enforce this Agreement shall be filed in the Superior Court of California, County of Sacramento.
15. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
16. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
17. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.
18. The undersigned represent that they have the authority to execute this Agreement.
19. This Agreement is effective upon the last date of execution by all of the undersigned.

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20. The Parties agree that pdf signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

California Energy Commission

Orange Grove Energy, LP

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: Drew Bohan

Name: Paul Peterson

Title: Executive Director

Title: Vice President

Date:

Date: 9/20/2022