



State of California
Energy Resources Conservation
And Development Commission

In the Matter of:)
) Docket No. 07-SPPE-02
The Application for a Small Power)
Plant Exemption for the)
ORANGE GROVE POWER PLANT PROJECT)

**Staff's Brief in Response to the Committee's Additional Questions
Regarding the Transition from a Small Power Plant Exemption into an
Application for Certification**

I. INTRODUCTION

On April 4, 2008, the Orange Grove Project Committee ordered all parties to submit briefs addressing how a "transition" from a Small Power Plant Exemption (SPPE) to an Application for Certification (AFC) "could be efficiently accomplished in compliance with CEQA, the Warren-Alquist Act and Title 20 of the California Code of Regulations." The Committee also directed parties to explain the process to be followed for the data adequacy determination, as well as which proceedings and requirements would no longer be necessary "because they have already been fulfilled in this case."

None of the parties in their opening briefs recommended a "transition" from the current proceeding to an AFC proceeding. Both staff and applicant recommended a suspension. Intervener Envirepel recommended a denial. As discussed below in this brief, neither the Warren-Alquist Act nor the Commission's regulations provide a procedure for converting an SPPE proceeding into one for an AFC. Unless the applicant chooses to withdraw its SPPE

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application and file an AFC or the Energy Commission denies the SPPE application, the staff continues to recommend a suspension of the Orange Grove SPPE.

II. DISCUSSION

A. *There is No Procedure to Transition from an SPPE to an AFC.*

The Committee's use of the term; "transition," assumes a process for meeting the procedural requirements to begin an AFC proceeding even though an applicant has filed an application for an SPPE and has requested a suspension of the proceeding, not a withdrawal of its application. The term, "transition," also implies the applicant does not receive a decision on its SPPE application. Under the Warren-Alquist Act and Title 20 of the California Code of Regulations, if the applicant chooses to seek certification for its proposed facility, the applicant has one course of action--to withdraw the SPPE application and file a new application seeking a license through the AFC process. (Pub. Resources Code, §§ 25519, 25520; Cal. Code Regs., tit. 20, §§ 1704- 1706.).

There is no process in the statute that converts the SPPE process into a subsequent AFC process. Rather, the SPPE process must end either through withdrawal by the applicant or denial of the SPPE by the Commission. If either of those events occurs, the next step for the applicant to obtain a license would be to file an AFC and satisfy the informational requirements for acceptance by the Commission and commencement of the statutory timeline for a final decision. (Pub. Resources Code, §§ 25519, 25520, 25522, and 25540.6.) A subsequently filed AFC would receive a new docket number and a new webpage for accessing project-related documents and filings.

B. *AFC Process has Different Requirements, Initiated by Commission Acceptance of a Complete Application.*

Staff need not describe the entire AFC process in this brief because the main objective is not to provide the details of the AFC process, but to recognize that the Orange Grove applicant will need to satisfy certain requirements to start the AFC process. The Orange Grove applicant will need to file the AFC with the appropriate number of copies and with the required fee as directed by Title 20, California Code of Regulations, sections 1706 and 1708. The public, as well as the Commission, would be well served to have a single application in one filing as opposed to having to assemble sections that may have already been filed in the current proceeding with new filings. Moreover, the applicant's submission will need to meet the informational requirements of Title 20, California Code of Regulations, section 1704 and Appendix B.

The informational requirements for an AFC are far more extensive than what is required for an SPPE application. (Compare Appendix F in the Commission's regulations for an SPPE application with Appendix B for an AFC.) An AFC, for example, must include detailed information in 17 technical areas regarding the environment, potential impacts and mitigation, plus information in three areas of engineering and a comprehensive section on all applicable laws, ordinances, regulations, and standards. An SPPE application, by comparison, must contain only a general discussion of environmental impacts, alternatives, and mitigations measures with no requirement to provide engineering information.

Once the applicant has provided the correct number of AFC copies, the application is reviewed to determine whether it is complete. (Cal. Code Regs., tit. 20, §§ 1704, 1706, 1709, and Appendix B). The Warren-Alquist Act directs the Commission to determine within 45 days

of receiving an AFC whether it is complete and, therefore, accepted for purposes of beginning the statutory timeline for a final decision. (Pub. Resources Code § 25522; Cal. Code Regs., tit. 20, §§ 1702(m) and 1709.) The Commission's determination that a filed AFC is complete is a prerequisite to beginning the AFC process. There is no provision allowing parties or the committee in an SPPE proceeding to make that determination in place of the Commission.

C. *A New AFC Proceeding Could Take Advantage of Work Already Completed*

The requirement that the applicant must file a new application to start the AFC process does not mean that staff and applicant cannot use or build on the work already begun or completed. Options exist for time savings and elimination of work which was already performed during the SPPE process. Efficient government would dictate that staff not re-invent the wheel when reviewing an AFC, should Orange Grove choose to file one. The following are possible areas where staff and the applicant can take advantage of proceedings and the work already completed.

Staff assumes it is possible to have the same staff, Committee, and hearing officer be assigned to the project. Their familiarity with the project would help with the processing of an AFC. The first opportunity to reduce the time needed to review an AFC for the Orange Grove project would depend on whether the AFC is complete. Given the data requests already issued and the list of deficiencies described by staff, the applicant has ample notice of what information is needed for a complete AFC, including a complete description of the project, and for staff to complete its analysis. Staff assumes that areas not required in an SPPE such as engineering, would be fully discussed in the AFC filing. Therefore, the AFC could be found complete and accepted at the first business meeting when the AFC appears as an item on the agenda. A complete AFC would likely minimize the number of data requests staff would send the applicant,

which in turn, could decrease the time staff needs to produce a preliminary or final staff assessment.

The next opportunity to save time would be to eliminate the initial hearing and site visit. Because the Orange Grove Project Committee has already held an initial hearing and completed a site visit, the events need not be repeated, assuming the same committee members, hearing officer, and interested parties and absent any objection from the public. The project, after all, has been under review for almost a year. Staff would still hold workshops, as needed, on staff's data requests and applicant's responses and staff's preliminary and final assessments.

Beyond the reduction in processing time as a result of a complete AFC and the elimination of a site visit, time could be saved by staff using sections of its assessment already completed for the project and focusing on remaining areas.

There has already been considerable exchange of information between staff, the applicant and Envirepel, the primary intervener. For many environmental sections, staff has already drafted written testimony. If the applicant were to submit a complete AFC which addressed staff's concerns in the areas of biology, traffic, cultural resources, air quality, and others, staff may be able to bypass the PSA and go directly to drafting the FSA.

After public comment on the FSA, staff and applicant may then be ready to proceed to hearing. The hearing process offers another opportunity to save time depending on whether all issues have been resolved and the parties can stipulate to proposed conditions of certification and forego the need for briefs.

III. CONCLUSION

The decision to withdraw the SPPE and file an AFC is at the prerogative of the applicant. As pointed out above, there is no transition process between an SPPE and an AFC. The filing of an AFC by the applicant would start the process over as controlled by the Warren-Alquist Act and Title 20 of the California Code of Regulations. The AFC would be given a new docket number and a new section on the Commission's website would be set up to post project related documents. The applicant would be expected to provide the correct number of AFC copies, submit the appropriate fee and go through a review for the Commission to determine if the application is complete. Certain past events, such as the informational hearing and site visit, and work already completed could be used to meet some of the procedural requirements of the licensing process. How much time could be saved depends largely on the applicant filing a complete AFC and the resolution of issues.

If the AFC is complete and addresses the informational gaps pointed out by staff and others parties, then the project would move more quickly through acceptance by the Commission and data requests. If the AFC is not complete and staff must submit multiple data requests, the licensing process would lengthen the time for a final decision.

Dated: April 15, 2008

Respectfully submitted,



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Senior Staff Counsel

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE
STATE OF CALIFORNIA

**ORANGE GROVE
POWER PLANT PROJECT
SMALL POWER PLANT EXEMPTION**

Docket No. 07-SPPE -2
PROOF OF SERVICE
Revised (10/16/07)

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:

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DECLARATION OF SERVICE

I, Janet Preis, declare that on April 15, 2008, I deposited copies of the attached Staff's Brief in Response to the Committee's Tentative Decision to Deny the Small Power Plant Exemption 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 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.


JANET PREIS