

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

In the Matter of:

The Application for a Small Power Plant
Exemption for the Orange Grove Power
Plant Project

Docket No. 07-SPPE-2

DOCKET
07-SPPE-2

DATE APR 15 2008

RECD. APR 15 2008

**ORANGE GROVE ENERGY, L.P.'S REPLY TO THE COMMITTEE'S
APRIL 4, 2008 REQUEST FOR RESPONSE**

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

In the Matter of:

The Application for a Small Power Plant
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**ORANGE GROVE ENERGY, L.P.'S RESPONSE TO THE COMMITTEE'S
APRIL 4, 2008 REQUEST FOR RESPONSE**

In this response Orange Grove Energy, L.P. ("Orange Grove") provides new information received recently from San Diego Gas & Electric Company (SDG&E) regarding a new request to obtain commercial operation by October 1, 2009, replies to the Committee request received on April 7, 2008, and responds to the comments of the intervenor.

I. New Information Received from San Diego Gas and Electric Company

On Thursday April 10, 2008, representatives from SDG&E requested that Orange Grove make every effort to expedite the permitting of the Orange Grove Project ("Project"). SDG&E informed representatives of Orange Grove that SDG&E understands the generation from the Project when combined with the added generation from the Otay Mesa Energy Center and a small peaking facility in southern Orange County (Margarita Energy Center) is a key factor in the California Independent System Operator's (CAISO) decision on when it will allow the South Bay Power Plant to be shut down. According to the attached letter from the CAISO, SDG&E must have significant additional installed capacity available prior to releasing the reliability must

run contract ("RMR Contract") for the South Bay Power Plant.¹ CAISO must award or release this contract on an annual basis by October 1 for the following year. SDG&E transmission customers could be exposed to significant redundant reliability costs if the CAISO has not released the RMR Contract for the South Bay Power Plant at the end of 2009. Further, this Commission has urged the shutdown of less efficient units which use once through cooling; this request is an opportunity for the Commission to advance this goal. The Otay Mesa Energy center is under construction and it is anticipated that it will be operational prior to October 1, 2009 or sooner. SDG&E also anticipates the Margarita peaker will be operational by October 1, 2009 or sooner. But, in order to release the RMR Contract CAISO has stated that they also need the generation from this Project by October 1, 2009.

As a result, SDG&E has requested that Orange Grove expedite the permitting for the Project, if at all possible. With a six month construction schedule, Orange Grove would need to have all permits in hand to begin construction by April 1, 2009 to make an October 1, 2009 commercial operation date. If there is a way to use the Application for Certification (AFC) process such that permitting could be completed by April 1, 2009, Orange Grove would prefer to use that process. If the only way to complete California Energy Commission ("Commission") review within the time permitted is to use the Small Power Plant Exemption (SPPE) process, the SPPE proceeding would need to conclude by March 1, 2009 to allow time for San Diego County to act on the conditional use permit application.

II. Timelines for Providing Responses to Staff's Information List

To have the Project in operation by October 1, 2009, Orange Grove would like to work

¹ This conclusion assumes the Sunrise Powerlink Transmission Project is delayed and not in service by October 1, 2009.

within the process that would best conserve the time expended by all parties in their review of this Project. One permitting path is to suspend the SPPE process until the information requested by Staff is provided by Orange Grove and proceed along the schedule outlined by Staff at the February 19th Status Conference. Orange Grove provides the following timeline for when the information requested by Staff will be available for filing with the Commission.

ORANGE GROVE INFORMATION RESPONSE DATES	
Staff Identified Information Need	Orange Grove Response Dates for SPPE
Complete biological surveys for California coastal gnatcatcher, Southwestern willow flycatcher, Least Bell's vireo, Arroyo toad, Chaparral nolina, Felt-leaved monardella, Mesa horkelia, Parry's tetraococcus and Robinson's peppergrass	Complete biological survey reports by July 3rd Complete survey reports for the Southwestern willow flycatcher by July 15th
Assess potential impacts to Parry's tetraococcus and propose feasible mitigation	Complete assessment of impacts to tetraococcus by May 16th Propose Mitigation by May 30th
Assess temporary and permanent impacts to the waters of the United States due to gas pipeline construction and propose avoidance and minimization measures for reducing these impacts	Complete wetland delineation by April 30th Complete Section 404 Permit Application including impact assessment and avoidance and minimization measures by April 30th
Assess the temporary and permanent impacts to coastal sage scrub and other habitat types (including vegetation cleared for fire protection in the vicinity of new project features) and propose mitigation for the impacts.	Complete assessment of impacts to coastal sage scrub and other habitat types by May 16th Propose mitigation by May 30th
Complete steps to annex the area of the proposed site into the North County Fire District	Complete final draft fire prevention plan by May 30th Final approval must rely on CEC CEQA document and will follow CEC approval
Provide analysis of the traffic and school bus route impacts from the three water truck trips	Complete analysis by May 16th

ORANGE GROVE INFORMATION RESPONSE DATES	
Staff Identified Information Need	Orange Grove Response Dates for SPPE
per hour during operation	
Discuss cumulative traffic impacts from a) widening of 76, b) construction and operation of new landfill, c) construction and build out of mixed use/residential development, and d) proposed community college campus	Complete cumulative impacts analysis by July 3rd
Provide evidence of water purchase agreement with Rainbow Water District and unrestricted access to water main to fill water trucks	Obtain water purchase information by July 3rd
Provide soil characteristics and analysis of impacts to soil resources and agricultural land uses along gas pipeline route	Complete soil and agricultural land evaluation and impacts analysis by May 16th
Provide additional information and identify cultural resources in proximity to the gas pipeline route	Complete cultural resources report by April 30th
Major use permit from the County	Orange Grove will provide periodic reports regarding the process with the county (the application to the County has been determined to be complete) County review of the Project must follow CEC CEQA review and ultimately, is a discretionary permit

These information submittals would be provided to support the SPPE proceeding. Orange Grove requests a suspension of the proceeding until July 3rd. Orange Grove would file all of the information discussed above on July 3rd but for the survey results for the Southwest willow flycatcher which would be filed on July 15th.

Orange Grove has had consultants in the field and has completed all of the field surveys for cultural resources. Orange Grove has begun the biological surveys needed for the gas

pipeline. In addition, Orange Grove has set a meeting with the United States Fish and Wildlife Service to discuss the best path to complete a Section 7 consultation. Fortunately, the pipeline will not require an individual permit from Army Corps, but instead will use a nationwide permit for pipeline construction across a few drainages that are usually dry but meet the definition of waters of the United States. Orange Grove is meeting with the agencies and actively looking for ways to accelerate the review process through these agencies. Orange Grove is aware of the schedule implications of inaction by these agencies.

III. Transition to an Application for Certification

Orange Grove is focused on selecting the best path forward using to the greatest extent the resources and process dedicated to this Project to date. In order to use some of these previous activities such as the informational hearing and site visit within an AFC proceeding, Orange Grove would like to see the SPPE process transitioned to an AFC as opposed to creating an entirely new proceeding. Orange Grove sees the transition moving along the following steps:

1. Orange Grove would provide a written request for a transition to the AFC process including the additional filing fees and information required for a formal data adequacy determination. The filing would include the information listed in the table above as well as an updated project description, project design drawings, noise and air quality analysis. This written request could be filed prior to the availability of survey results planned to be filed on July 3rd and July 15th to provide Staff an opportunity to review the other outstanding information knowing when the complete survey results will be available.
2. Once the Staff has confirmed they have all the information required for an AFC, the transition to an AFC could be brought before the Commission to formally accept the application as data adequate consistent with Title 20 California Code of Regulations Section 1709.
3. The informational hearing and site visit would not be repeated. Title 20 California Code of Regulations Section 1709.7 specifies the requirements for the informational hearing and site visit and is the same for both the AFC and SPPE processes. Thus, it would seem a waste of Staff and Commission resources to repeat this event.
4. The intervenor would not be required to petition to intervene a second time. Instead his

party status would simply transition to the AFC proceeding.

5. Fortunately, Staff has information about the power block and the site itself. The additional information about the water supply and the gas pipeline route may present additional information needs from Staff, but those needs should be devoted to those areas where there are new project elements. Therefore, any new data requests should be of a smaller scale than for a new project.
6. Orange Grove foresees the need for potentially only one additional workshop prior to issuing the Staff assessment discussed below. If deemed necessary by Staff, one workshop could be held to discuss issues regarding the water supply and the gas pipeline.
7. Other than the Final Staff Assessment, the remainder of the customary process practice of the Staff is not required by the Warren-Alquist Act or the regulations. Thus, once Staff has the information it needs to prepare a Staff assessment, Staff could prepare that document. Obviously preparation of a Staff assessment would need to follow the submission of agreed upon biological mitigation with concurrence on the required mitigation from the resources agencies (USFWS, Army Corps, and California Department of Fish and Game). This Project could go directly to a Final Staff Assessment and skip the Preliminary Staff Assessment. If so, Orange Grove would like to see a conditions of certification workshop prior to the hearings to resolve any issues with conditions that do not need to be presented to the Committee to resolve.
8. The length of hearings would be dictated by the issues in contention between the parties not the type of proceeding itself. The statute only requires that hearings be held no earlier than 90 days after the date of filing of an application, which would not create a constraint on when the hearings could be held in this proceeding. (See Cal. Publ. Res. Code Section 25521.)
9. The remainder of the AFC proceeding could move along similar lines to a traditional AFC such as the following:

AFC Schedule	
Activity	Date
AFC Data Adequate	July
Data Requests/Workshop	August/September
[PSA]	[If necessary, September 15, 2008]
[PSA Workshop]	[If necessary, October 2008]
Final Staff Assessment	October 31, 2008 [with a PSA, November 14, 2008]

AFC Schedule	
Activity	Date
Conditions of Certification Workshop	November 2008
Evidentiary Hearings	Week of December 1, 2008
Proposed Decision	February 13, 2008
PD Hearing	Early March 2008
Final Commission Decision	April 1, 2008

The Project will complete the required steps for an AFC although on an expedited schedule through the initial phases of the AFC proceeding taking advantage of events and information already in the record of this proceeding. By formally requesting the transition to the AFC proceeding with the appropriate additional fees the Staff could complete the data adequacy review normally required and provide the Commission an opportunity to formally accept the application. Thus, the required steps would be completed. Nonetheless, the transition would allow the Commission to take advantage of events like the informational hearing that have already occurred that introduce the Project to the public.

IV. Response to Mr. Arand

Orange Grove does not believe a denial of the SPPE for this Project will provide a benefit to the workload of Staff or provide additional resources to the San Diego area. Mr. Arand has expressed his concerns about the Project, but Orange Grove believes his concerns can be addressed either within the SPPE process or within the AFC process. In regards to Mr. Arand's comments about processing an Environmental Impact Report (EIR) by San Diego County, these comments do not apply because the Commission is the lead agency under the California

Environmental Quality Act (CEQA) and the Warren-Alquist Act for this Project. Nonetheless, CEQA does not require a review period for a draft EIR in excess of 45 days. (Cal. Publ. Res. Code Section 21091(a).) Furthermore, the SPPE process is available for power projects less than 100 megawatts and cannot be trumped by local CEQA regulations.

V. Orange Grove's Request for Relief

Orange Grove is willing to transition to an AFC proceeding or after the requested suspension continue the evaluation of this Project within an SPPE proceeding. Given the time constraints of meeting the October 1, 2009 on line date, Orange Grove would prefer to transition to an AFC. But, if the timing to process an AFC is much greater than the remainder of the SPPE proceeding with an EIR, Orange Grove will continue to request an SPPE. Furthermore, if the Committee is uncomfortable with using an EIR in the SPPE proceeding, Orange Grove requests a transition to an AFC to avoid any potential pitfalls with using the SPPE process for this Project.

DATED: April 15, 2008

DOWNEY BRAND LLP

By: 
Jane Luckhardt

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

**APPLICATION FOR SMALL POWER
PLANT EXEMPTION FOR THE
ORANGE GROVE POWER PLANT**

DOCKET NO. 07-SPPE-2
(SPPE filed 10/10/07)

**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:

CALIFORNIA ENERGY COMMISSION
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DECLARATION OF SERVICE

I, Lois Navarrot, declare that on April 15, 2008, I deposited a copy of the attached Orange Grove's Energy, L.P.'s Reply to the Committee's April 4, 2008 Request for Response 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 the 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.



Lois Navarrot



Yakout Mansour
President & Chief Executive Officer

January 28, 2008

Honorable Cheryl Cox
Mayor
City of Chula Vista
276 Fourth Avenue, MS A-101
Chula Vista, CA 91910

Dear Mayor Cox:

Thank you for your letter of January 7, 2008, regarding the future of the South Bay Power Plant ("SBPP"). The letter asks the California Independent System Operator (ISO) to respond to the following questions:

- 1) What is the function of the SBPP as it relates to reliability and transmission?
- 2) What needs to occur in order to reduce the reliability designation on the SBPP enough to allow the lattice towers and transmission lines to be removed by December 2008?
- 3) What needs to occur in order to eliminate the Reliability Must Run (RMR) designation on SBPP so that it can be decommissioned and removed by February 2011?

I understand that the City of Chula Vista is in negotiations with various parties regarding the future use of the bay front that would require removal of the SBPP. Thus, the timing of the possible retirement of the SBPP is an important factor in these negotiations. As you know, the generating units at the SBPP are currently designated by the CAISO as Reliability Must-Run (RMR) units. This designation cannot be removed until local reliability requirements can be met without the SBPP.

The CAISO is a non profit public benefit corporation chartered under the laws of the State of California for the purpose of operating and maintaining the reliability of the statewide electric transmission grid. The reliability of the transmission grid is dependent on a number of specific power plants located in specific areas. SBPP is, in fact, critical to maintaining the reliability of the San Diego area. In order to remove the RMR designation from SBPP, the California ISO must find that reliability requirements can be met without SBPP units.

In May 2007, San Diego Gas & Electric ("SDG&E") entered into an agreement with the operator of the SBPP to fill SDG&E's Local Capacity Area Resource requirement needs as mandated by the California Public Utility Commission (CPUC). This agreement runs through December 31, 2009 and

Mayor Cox
January 28, 2008
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will secure all of the 704-megawatt capacity from the SBPP to the region. Although this agreement will provide SDG&E more flexibility over the operation of the facility and will ensure that the output from the plant is available to the CAISO to support the local area needs, the CAISO concluded that continued RMR designation was required in order to ensure availability of the resource to meet local reliability needs.

The CAISO is aware of the widespread interest that exists to see SBPP decommissioned and has been in discussions with SDG&E about the requirements necessary to remove the SBPP'S RMR designation. In order to remove the RMR designation, there are a number of modifications to the transmission and/or generation infrastructure that must happen first to ensure that local area reliability is maintained.

Three projects are underway to meet this local area reliability requirement. First, with respect to the need for new resources, construction of the Otay Mesa Energy Center is currently underway. Second, SDG&E has filed an application with the CPUC to construct the Sunrise Powerlink Transmission Project that will enable SDG&E to substantially improve system reliability and provide access to renewable resources. Third, SDG&E has recently executed contracts with two developers for new peaking generation resources in its service territory.

From the CAISO's perspective, at least two out of three of these major modifications must occur before the RMR designation at the SBPP can be removed. In addition to these modifications, the new Silvergate 230 kV substation and its related upgrades (scheduled for December 2008) as well as the new Baja Norte natural gas interconnection (scheduled for January 2008) must both be in service.

Given that the Otay Mesa Energy Center is under construction, the future addition of Sunrise Powerlink would satisfy the requirements for removal of RMR designation at SBPP. If Sunrise is delayed or not constructed, additional new peaking generation will be required within SDG&E's service territory. The amount of new capacity would be based on the CAISO's existing grid reliability standards, which are analyzed each year. Based on the current status of the previously noted projects, the RMR designation at the SBPP could be removed as early as 2010. However, delays in construction of the Sunrise Powerlink, lack of sufficient new peaking capacity, or delays in the in-service dates in implementing the new Baja Norte natural gas interconnection, would clearly delay this date. Once the RMR designation is removed, there should be no CAISO-related impediment to retiring and decommissioning SBPP.

Mayor Cox
January 28, 2008
Page Three

I trust that this sheds some light on the California ISO's role in determining the generation and transmission infrastructure necessary to ensure grid reliability and its analysis of local reliability needs related to the SBPP. If you have additional questions, please call Ali Chowdhury, Director of Regional Transmission South, at (916) 608-1113.

Sincerely,



Yakout Mansour
President & CEO

cc: Ali Chowdhury (CAISO)
Mike Niggli (SDG&E)
Steve Castaneda (City of Chula Vista)
David Garcia (City of Chula Vista)
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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE
STATE OF CALIFORNIA

**ORANGE GROVE POWER
PLANT REPLACEMENT 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, April Esau, declare that on April 15, 2008 I deposited copies of the attached Orange Grove Energy, L.P.'s Reply to the Committee's April 4, 2008 Request for Response 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.

Original Signature in Dockets
April Esau