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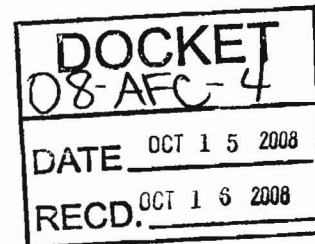
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October 15, 2008



Via FedEx Delivery

California Energy Commission
Attention: Docket No. 08-AFC-4
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512

Re: Application for Certification
Orange Grove Power Plant
Docket: 08-AFC-4

To Whom It May Concern:

Enclosed please find the original of Alliance for a Cleaner Tomorrow's Reply to Orange Grove, L.P.'s Opposition to Petition to Intervene by Alliance for a Cleaner Tomorrow. Please conform the enclosed copy and return in the self-addressed stamped envelope.

Thank you for your assistance in this matter. Please do not hesitate to contact me if you have any questions regarding the enclosed materials.

Very truly yours,

KLINEDINST PC

A handwritten signature in cursive script, appearing to read "D. Huxtable".

Darlene Huxtable, Secretary to
ARTHUR S. MOREAU

Enclosure

unsaved

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

APPLICATION FOR CERTIFICATION
FOR THE **ORANGE GROVE ENERGY AFC**
POWER PLANT PROJECT

Docket No.: 08-AFC-04

ALLIANCE FOR A CLEANER TOMORROW'S REPLY TO ORANGE GROVE, L.P.'S
OPPOSITION TO PETITION TO INTERVENE BY
ALLIANCE FOR A CLEANER TOMORROW

October 15, 2008

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TOMORROW

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

APPLICATION FOR CERTIFICATION
FOR THE **ORANGE GROVE ENERGY AFC**
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Orange Grove Energy, L.P. ("Applicant") an Application for Certification ("AFC") for the Orange Grove Project filed with the California Energy Commission ("Commission") on June 20, 2008. The Commission deemed the AFC date adequate on July 16, 2008. Alliance for a Cleaner Tomorrow ("ACT") filed a Petition to Intervene in the proceeding on September 22, 2008 (the "Petition"). Applicant filed an Opposition to the Petitioner on October 10, 2008. ACT replies.

I. ACT is a Proper Party to Represent the Reasonable and Relevant Concerns of its Members to the Commission.

The basis for intervention is derived from California law requiring that the Commission hold open meetings and afford an opportunity to be heard to any person on any subject before the Commission. California Public Resources Code Section 25214. Any person, or group representing interested persons, may ask to intervene in a power plant siting case. Section 1207(a) California Code of Regulations, Title 20. An association has standing to act on behalf of its members: (1) if the members would otherwise have standing to participate on their own behalf; (2) the organizations interest are in line with the organizations purpose and (3) the interest protected or claims asserted do not require participation of individual members. See *Citizens against Force Annexation v. County of Santa Clara* (1984) 153 Cal. App. 3rd 89.

The Alliance for a Cleaner Tomorrow is a coalition of independent construction company owners and construction industry professionals whose members work in and around power plants in California, headquartered at 1029 K Street, Suite 28, Sacramento, California 95814. As counsel for Applicant has pointed out, one concern of ACT is efficient labor markets. An equally important concern of ACT is protecting the state's land, air and water and assisting developers and public agencies in building the most energy efficient and environmentally sensitive projects.

II. The Environmental Concerns of ACT and its Members are Reasonable and Relevant.

The concerns of San Diego County contractors and tradesman regarding the environmental issues associated with siting for the Orange Grove project are both reasonable and relevant. California Public Resources Code Sections 25500 to 25543 sets forth the procedural aspects of Power Facility and Site Certification, as further developed under Title 20 of the California Code of Regulations. Section 25509.5 specifically provides that non-adjudicatory hearings shall be conducted, "to obtain the views and comments of the public.....on the environmental, public health and safety, economic, social and land use impacts of the facility at the proposed sites." California Public Resources Code Section 25509.5(c). ACT need not set forth with exacting specificity its environmental concerns at the time of its Petition to Intervene. It is sufficient to note that ACT has concerns with the environmental impact of the Orange Grove project and would like to participate in the process in a more formal manner than public comments.

Public comment is not formal evidence. See Title 20 CCR Section 1201(g). Only parties to the process can offer testimony, present evidence and cross examine witnesses. ACT has a right for the opportunity to use appropriate discovery methods, gather evidence and provide testimony in the evidentiary hearing. Whether this active participation is necessary remains to be

seen, based in large part, on the due diligence as set forth in Applicant's responses to the Data Requests of the California Energy Commission staff and other participants.

ACT's members are vitally concerned with the three potential issues initially identified in the Orange Grove project (08-AFC-4) Issues Identification Memorandum authored by Felicia Miller on July 24, 2008 ("Issues Identification Report"): (1) Biological Resources; (2) Socioeconomics issues and (3) Traffic and Transportation impact. Habitat encroachment and impact on special status species continues to be an issue that California cannot ignore. The dialogue between Applicant and staff appears to be headed in the right direction. That does not foreclose ACT's right to request, and that the Applicant or the governmental agencies involved provide, additional information if ACT has a differing opinion from the analysis and findings ultimately published by the Commission Staff and adopted by the Commission.

ACT's San Diego County members have significant concerns with regard to the impact that the site will have on emergency medical services. See Transcript, Informational Hearing July 29, 2008 ("Informational Hearing"), p. 64, l. 17 – p. 65, l. 10. Traffic and transportation issues remain a significant concern. The issue of transportation during the onsite water hauling received particular attention at the Informational Hearing. See Transcript p. 31, l. 23 – p. 32, l. 19, p. 34, l. 16 – p. 37, l. 14, p. 68, l. 21 – p. 74, l. 19. Further, in addition to ordinary traffic, it appears that the impact of traffic to and from Indian gaming facilities and further up Route 76 have been given short shift. The transportation impacts, including in the water hauling, and the associated environmental impact were first touched on in a series of expressed questions and concerns at the Informational Hearing. These same issues were raised again in the Orange Grove Project Data Request 1-73(set #1) authored by the California Energy Commission staff on August 5, 2008. William Waters raised the water trucking emissions issue at page 2-3. These concerns were echoed by Dr. Alvin Greenburg in the public health section at page 18. The fire protection/primary ambulance service was finally raised by Amanda Stennick in the socioeconomic section of pages 19-20. These issues will allegedly be fully addressed by Applicant in their Data Request Responses. (Note that Applicant's Status Report of September

15, 2008 only addresses what Applicant perceives as Staff's excessive concern with regard to an archeological resources survey.) The environmental concerns of ACT as set forth above are both relevant and reasonable.

III. The Role of ACT and Other Public Watchdog Groups Should be Welcomed by the Commission.

In the end, we are all environmentalist. The Commission should welcome the efforts of ACT and their participation in the environmental assessment associated with the Orange Grove siting process. As Ms. Miller set forth in her Issue Identification Report of July 24, 2008, the California Energy Commission staff is putting forth great effort to meet its obligations as part of the siting process.

Ms. Miller noted:

The siting case load is currently very high (i.e., 23 active projects currently under review) and at least three new AFCs are expected to be filed within the next 90 days. Although the Orange Grove Project is currently on schedule, given the high staff workload and uncertain timing for Orange Grove issue resolution, we anticipate difficulty meeting the dates presented below from the Committee's June 26, 2008 Order. At this time, staff does not have specific recommendations for schedule revisions. Staff is currently drafting data requests. The timing for issue resolution and thus the ability to meet the schedule will be more certain after staff has evaluated the applicant's data responses, any disputed issues and assessed its overall workload for fall 2008. We will update the parties if the staff's ability to meet specific dates in the first status report.
Issue Identification Report, p.7

Commission staff is working hard and going to great lengths to ensure that all the environmental concerns associated with the Orange Grove siting process were properly addressed. ACT is fully entitled to participate in that analysis and assessment.

IV. The ACT's Reasonable and Relevant Petition to Intervene Should Be Allowed at this Stage.

This Orange Grove Project (08-AFC-04) is just getting started. It is nearing the point at which Commission Staff will issue its initial assessment. If the data responses submitted by the Applicant aren't adequate, the Commission Staff has the obligation, and ACT should have the

right, to insist that additional relevant, reasonable and appropriate information be provided.

ACT, could and should have the ability to fulfill this role, as necessary. In his opening remarks, the presiding member of the board for the Orange Grove Project, Commissioner Jim Boyd noted, "it is important to emphasize that the law requires that the committee's proposed decision be based solely on the evidence contained in the public record." Transcript p. 11, ll. 2-5. Evidence that is elicited through public testimony, under oath, is given more weight than public comment. Mr. Boyd further noted, "the testimony that you and/or your witnesses provide become part of the record on which decisions can be made. So, you can.....it's a much more substantial, more active way to participate." Transcript p. 16, l. 23 – p. 17, l. 2. These sentiments were echoed by Mr. Celli, the hearing officer when he stated, ".....and any of you can become a party if you want to petition to intervene. And that will give you a place at the table, and you would become one of the parties. You'd be able to cross-examine witnesses and submit evidence and so forth when that time comes." Transcript p. 59, l. 21 to p. 60, l. 1.

ACT is only asking to exercise a right to which it is legitimately entitled at a reasonable point in the proceedings.

V. Conclusion

ACT does not deny that it represents multiple concerns of its members. However, one of those vital concerns is the environmental impact associated with the siting process for participants in California. ACT is a representative of a specific group of California citizens, concerned about the environmental impacts, of the siting for the Orange Grove Power Plant they wish to be heard. ACT's Petition to Intervene should be granted.

Dated: October 15, 2008

Respectfully submitted



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694124

1 **BEFORE THE ENERGY RESOURCE CONSERVATION AND DEVELOPMENT COMMISSION OF THE**
2 **STATE OF CALIFORNIA**

3 APPLICATION FOR CERTIFICATION
4 FOR THE **ORANGE GROVE ENERGY AFC**
5 **POWER PLANT PROJECT**

Docket No.: 08-AFC-04

6
7 **PROOF OF SERVICE**

8 I declare that:

9 I am and was at the time of service of the papers herein, over the age of eighteen (18)
10 years and am not a party to the action. I am employed in the County of San Diego, and my
11 business address is 501 West Broadway, Suite 600, San Diego, California.

12 On October 15, 2008, I caused to be served the following documents:

13 **ALLIANCE FOR A CLEANER TOMORROW'S REPLY TO ORANGE GROVE,**
14 **L.P.'S OPPOSITION TO PETITION TO INTERVENE BY ALLIANCE FOR A CLEANER**
15 **TOMORROW**

- 16 **VIA FACSIMILE TRANSMISSION:** (Code Civ. Proc. §§ 1013(e) and (f)): From fax
17 number (619) 238-8707 to the fax numbers listed below and/or on the attached service
18 list. The facsimile machine I used complied with Rule 2008 and no error was reported by
19 the machine.
- 20 **VIA ELECTRONIC FILING SERVICE:** Complying with Code of Civil Procedure
21 section 1010.6, my electronic business address is dhutable@klinedisntlaw.com and I
22 caused such document(s) to be electronically served through the LexisNexis/Verilaw
23 system for the above-entitled case to those parties on the Service List maintained on the
24 LexisNexis/Verilaw's website for this case. The file transmission was reported as
25 complete and a copy of the Filing/Service Receipt will be maintained with the original
26 document(s) in our office.
- 27 **VIA MAIL:** By placing a copy thereof for delivery in a separate envelope addressed to
28 each addressee, respectively, as follows:
- BY FIRST-CLASS MAIL (Code of Civ. Proc. §§ 1013 and 1013(a))**
 - BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c) and (d))**
 - BY CERTIFIED RETURN RECEIPT MAIL (Code of Civ. Proc. §§ 1013 and 1013(a))**

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California Energy Commission Attn: Docket No. 08-AFC-4 1516 Ninth Street, MS-15 Sacramento, CA 95814-5512 docket@energy.state.ca.us	
Applicant – Stephen Thome J-Power USA Development 1900 East Golf Road, Suite 1030 Schaumburg, IL 60173 sthome@jpowerusa.com	Counsel For Applicant – Jane Luckhardy Downey Brand, LLP 555 Capital Mall, 10 th Floor Sacramento, CA 95814 jluckhardt@downeybrand.com
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Steve Taylor San Diego Gas & Electric 8306 Century Park Court San Diego, CA 92123 staylor@semprautilities.com	Energy Commission – James Boyd Presiding Member jboyd@energy.state.ca.us
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

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

Executed on October 15, 2008, at San Diego, California.



Darlene K. Huxtable

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