



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

DOCKET
08-AFC-4

DATE APR 06 2009

RECD. APR 07 2009

APPLICATION FOR CERTIFICATION FOR THE
ORANGE GROVE POWER PLANT PROJECT
BY **ORANGE GROVE ENERGY, LLC**

DOCKET No. 08-AFC-4

ERRATA TO THE PRESIDING MEMBER'S PROPOSED DECISION

After reviewing the comments submitted by the parties on March 9, 2009, and discussing them at the March 16, 2009 Committee Conference, we incorporate the following changes to the February 25, 2009 Presiding Member's Proposed Decision (PMPD):

AIR QUALITY

1. Page 157, third paragraph, change entire paragraph to read:

Ms. Day-Wilson closes her comments on Air Quality stating that the Assessment fails to address impacts from Greenhouse Gas Emissions (GHGs). However, there is a complete explanation of the project's GHGs in Appendix A of Staff's Assessment, which also discusses and describes ARB's scoping plan. (Ex. 200, pp. 4.1-91 to 4.1-102; Air Appendix A.)

2. Page 158, Finding Number 4, change to read:

4. SDAPCD is a nonattainment area for both the federal and state ozone standards and the state PM10 and PM2.5 standards.

3. Page 164, Condition of Certification AQ-SC5, Insert number as follows:

1. Equipment with non-Tier 2 engines that have tailpipe retrofit controls that reduce exhaust emissions of No_x and PM to no more than Tier 2 levels.

4. Page 167, Change Condition of Certification ~~AQ-SC12~~ to GHG-1:

Also change three references in the fourth paragraph on Page 147 and one reference in the first paragraph on Page 148 from ~~AQ-SC12~~ to **GHG-1**.

5. **Page 174, Add Condition of Certification AQ-26 as follows:**

AQ-26 The discharge of particulate matter from the exhaust stack of each combustion turbine shall not exceed 0.10 grains per dry standard cubic foot. The District may require periodic testing to verify compliance with this standard.

Verification: The project owner shall provide the source test data to demonstrate compliance with this condition as part of the Quarterly Operation Reports (AQ-SC11), due in the quarter after the source test report is completed.

ALTERNATIVES

6. **Page 32-33, change to read as follows:**

Finally, Ms. **Day-Wilson** correctly points out a discrepancy in the water usage figures between the **Soil and Water Resources** and **Project Alternatives** sections. (Ex. 200, p. 6-9.) ~~The Applicant and Staff are directed to resolve this issue at the PMPD Conference.~~ As explained in Exhibit 204 (supplemental testimony of Suzanne Phinney), the figure of 87.3 acre feet of water trucked per year to the site, as identified in the **Alternatives** section of the Staff Assessment, is incorrect. The maximum amount of water to be trucked for use at the site would be 62 acre-feet per year (AFY) of potable water and 38.7 AFY of recycled water. Expected use requirements would be 21.1 AFY of potable water and 12.1 AFY of recycled water. These amounts are correctly identified in the **Project Description** (Ex. 200 pp. 3-2 to 3-3) and the **Soils and Water Section** of the Staff Assessment (Ex. 200 p. 4.9-7).

BIOLOGICAL RESOURCES

7. **Page 252, last paragraph, change to read:**

Based on survey results, nine endangered, threatened, or special-status species were confirmed present at or near the site. They are: Engelmann oak, Parry's tetracoccus, coastal California gnatcatcher, Cooper's hawk, least Bell's vireo, Southern California rufous-crowned sparrow, southwestern willow flycatchers, San Diego horned lizard, and northern red diamond rattlesnake. An additional two special-status species, San Diego desert woodrat and arroyo toad, could not be ruled out because suitable habitat is available and surveys did not conclusively demonstrate their absence. (Ex. 200, pp. 4.2-13 to 4.2-15.)

8. **Page 257, Under “3. Operational Impacts and Mitigation,” first paragraph, add the following text:**

. . . As discussed in the Noise and Vibration section of this Decision, project noise control design features will reduce plant noise impacts to below the level of significance, in accordance with all applicable state and local laws, ordinances, regulations and standards.

9. **Page 259, third paragraph, delete the following language:**

The County of San Diego incorporates the habitat and sensitive species protection measures through their Habitat Loss Permit (HLP). ~~An approved HLP is required before the San Diego County Department of Public Works can issue a grading permit if coastal sage scrub habitat will be impacted by the grading, pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993).~~ The Orange Grove project is currently under review by the San Diego Public Works Department. The Energy Commission staff’s analysis made the following findings based on the MSCP of the HLP. These findings were not disputed by the Applicant or Intervenors. The findings are as follows:

10. **Pages 263 and 264, Findings, change as follows:**

11. To compensate for these losses, avoid take of listed species, and to achieve consistency with the draft North County Multiple Species Conservation Program, the Applicant must implement the impact avoidance, minimization, and compensation measures of Conditions of Certification **BIO-1** through **BIO-12**.

12. Conditions of Certification **BIO-1** through **BIO-5** include specific measures to protect sensitive species and habitats, and general conditions to ensure implementation of a worker training program, presence of a qualified biologist to monitor construction, and development of a detailed mitigation and monitoring program. [Delete remainder of paragraph]

11. **Insert Finding 13 and renumber all subsequent Findings to the next higher number**

13. Conditions of Certification **BIO-6** through **BIO-14** ensure that all protections and mitigation that would have been found in other county and state permits are included in the Energy Commission’s license.

20. With establishment of appropriate setbacks for the drilling described in Condition of Certification **BIO-9**, and implementation of BMPs described in Condition of Certification **BIO-6**, drilling and other surface-disturbing activities are not likely to result in increased sedimentation or other water quality impacts in these drainages.

25. Implementation of Condition of Certification **BIO-9**, which requires setbacks from Parry's tetracoccus during construction or fuel reduction clearing, and Condition of Certification **BIO-11**, which requires an on-site revegetation plan to replace the Parry's tetracoccus lost during construction or clearing, will reduce this cumulative impact to less than significant levels.

12. Page 274, BIO-10, add the following language:

Verification: At least thirty days prior to start of any project-related ground disturbance activities, the project owner shall provide evidence to the CPM of having secured 18.6 acres of Diegan coastal sage scrub and 6.8 acres of non-native annual grassland has been secured in a mitigation bank approved by the California Department of Fish & Game and the U.S. Fish and Wildlife Service, and that the project owner has implemented all mitigation requirements based on compliance with the Natural Communities Conservation Program Plan and as incorporated into the BRMIMP.

GEOLOGY AND PALEONTOLOGY

13. Page 337, third paragraph, change as follows:

...The shallow subsurface beneath the site is composed of a surficial layer of 12 to 18 inches of fine to ~~course~~ coarse grained sand and silty sand with cobbles, and bounders. This overlies firm to hard sandy lean clay with gravel, cobbles, and boulders. (Ex. 200, pp. 5.2-3 to 5.2-4.)

HAZARDOUS MATERIALS MANAGEMENT

14. Page 218, third paragraph, change the last sentence to read as follows:

. . . We find in accordance with Mr. Walters' expert testimony on this point. ~~credible.~~ (12/19/08 RT 72: 1 to 24.)

LAND USE

15. Page 348, second sentence under "1. The Site", add the following:

The site covers an 8.5 acre area, formerly cultivated as a citrus grove, which is situated on two parcels identified by parcel number (APN) 110-072-26 (41 acres) and APN 110-370-01 (14 acres). Project facilities will be constructed entirely on APN 110-072-26 and ancillary uses such as lay down and parking will occur on APN 110-370-01 adjacent to the existing Pala Substation and a fenced SDG&E

storage area located on that parcel. With the exception of linear facilities and site access, ancillary uses on APN 110-370-01 such as laydown and parking will occur only during construction. The site is zoned General Agricultural (A72) with a minimum lot size of 10/40 acres (split zone). It is not subject to a Williamson Act contract. Also, Orange Grove Energy's lease of the project site from SDG&E is exempt from the requirements of the Subdivision Map Act under California Government Code Section 66428(a)(2) and does not require the filing of a parcel map. (Ex. 200, pp. 4.5-4, 4.5-16; Ex 1, pp. 6.9-1, 6.9-17; Ex. 63.)

16. Page 353, Finding A

The California Land Conservation Act specifically allows the construction and maintenance of electric facilities as a compatible use within an agricultural preserve. In addition, Staff's **Land Use Table 2**, replicated below, identifies adjacent land uses, which are primarily vacant and no longer used for agricultural purposes. The surrounding region is characterized by various operations such as the former sand mine, former dairy farms, existing electric substation, nursery, paved roads, transmission line, gas pipeline, and other existing disturbances. According to the evidence, the site is a suitable location for a power plant based on physical conditions, land use designations, zoning, vicinity of proposed uses (Solid Waste Facility zoning and plans for the Gregory Canyon Landfill), and the steep terrain in the area limiting potential development.

17. Page 354,

Delete the last two highlighted paragraphs.

18. Page 356, second paragraph, change as follows:

. . . The tallest project structures will be the two HRSGs exhaust stacks which are 80 feet in height. No other structures exceed 60 feet in height. (Ex. 200 p. 4.12-4). Since the record indicates that the project would meet the requirements for an MUP, we find that it is exempt from the County's height limitations.

19. Page 359, Condition of Certification LAND-1, correct to read:

Verification: At least sixty (60) days prior to the start of construction, the project owner shall submit to the Compliance Project Manager (CPM) applicable design standards and building codes and evidence of design review ~~and building inspection~~ by the County of San Diego Environmental Health, and Public Works, ~~Planning and Land Use (Building)~~ Departments and Chief Building Official.

20. Page 359, LAND-2, delete last sentence of Verification:

Verification: At least sixty (60) days prior to the start of construction the project owner shall submit the referenced table to the Compliance Project Manager and Chief Building Official. . . . ~~The project cannot commence construction until all standards and criteria are met, unless such matter is minor in nature and authorization is granted by the CPM.~~

PROJECT DESCRIPTION

21. Page 9, third to the last line, change as follows:

[Delete 275,000] The actual size of the demineralized water storage tank will be 100,000 gallons.

22. Page 13, second paragraph, change as follows:

The record shows that the Orange Grove Project was initiated in response to a SDG&E Request for Offer (RFO) for peaking power to serve loads during high electricity peak demand periods. The evidence indicates that the project site is owned by SDG&E and will be available to Orange Grove Energy for the purpose of building and operating the project through a 25-year tolling agreement that allows SDG&E to provide natural gas to the project, and utilize 100 percent of the electrical output. ~~However, the record also indicates that the subject site will be "leased" by Orange Grove Energy L.P. The ramifications of a subdivided leasehold are discussed more fully in the **LAND USE** section of this Decision. (Exs. 1, p.1-1; 200, p. 3-1.)~~

PUBLIC HEALTH

23. Page 199, last paragraph, change to read as follows:

The evidence shows that the Applicant's cancer risk estimate is about the same as s-are higher than Staff's screening assessment using the HARP model (3.7 compared to 4.3 in one million, respectively). The Applicant's acute and chronic noncancer estimates are higher than Staff's estimate when using the HARP model and in fact, the Applicant's estimate of the acute hazard index at the PMI (1.5) is above the threshold of significance (but is not above that threshold at the nearest residence, 0.54). The Staff's estimate of acute hazard index is 0.6 which is below the level of significance. Both the Applicant's and Staff's estimates of the chronic hazard index at the PMI are in agreement (0.041 and 0.049, respectively) and are well below the level of significance. When Staff used a more refined air dispersion model (AERMOD) to estimate cancer risk and chronic

hazard index at the PMI, Staff found a lower cancer risk (0.64 in one million) and a lower chronic hazard index (0.0072).

All cancer risks calculated by the Applicant and the Staff ~~However, even the higher figures~~ are well below the level of significant risk, which is 10 in one million. On the basis of this evidence we find that the project will not cause a significant risk of cancer to the public. And, since Staff's assessment using screening meteorology data found both the chronic and acute hazard indices to be less than significant (< 1.0), we also find that the project will not cause a significant acute or chronic hazard to the public. (Ex. 200, p. 4.7-17.)

24. Page 200, third paragraph, second sentence, change to read as follows:

. . . Staff used the maximum operational hours possible, 3,200 hrs/year, in its estimate of impacts and obtained approximately the same risk and hazard index results as the Applicant (see **Public Health Table 7**). . .

25. Page 201, first paragraph, insert the following sentence at the end of the paragraph:

Moreover, Condition of Certification **TRANS-4** limits the project to a maximum of two water truck deliveries per hour.

26. Page 201, second paragraph, second sentence, change to read as follows:

. . . His concerns, as they related to the topic of public health, ~~related~~ referred to the sanitation . . .

27. Page 202, second paragraph, change to read as follows:

Mr. McPhee also asserts that the presence of ammonia in FPUD's Reclaimed Water Chemistry Profile for 2006-2007 indicates that FPUD's recycled water is not disinfected. (12/19/08 RT 126:16-19.) However, Mr. McPhee's testimony also indicates that FPUD disinfects its recycled water using chlorine (12/19/08 RT 126:17-23; 126-127:2.) As discussed above, the water supplied by FPUD must meet the specifications of disinfected tertiary recycled water as defined in Section 60301.230 of Title 22 of the California Code of Regulations. Furthermore, Staff noted at the evidentiary hearing that FPUD's National Pollutant Discharge Elimination System (NPDES) permit indicates that FPUD indeed produces disinfected tertiary recycled water. (12/19/08 RT 130:24-131:13.) Staff subsequently corrected the record to indicate that the document they were referring to was Order No. 91-39, Waste Discharge Requirements for Fallbrook Sanitary District (see Declaration of Jared Babula, Ex. 209). We are satisfied then that the Orange Grove Project will receive disinfected tertiary ~~treated~~ recycled water from FPUD.

28. Page 204, under PUBLIC COMMENT

Written comment submitted on December 18, 2008, by the law firm Best, Best & Krieger, representing **DFI Funding, Inc.**, notes the inconsistency between Applicant's and Staff's cancer risk and hazard index estimates and suggests that Applicant and Staff "correct and repeat" the risk assessments "before conclusively presuming that public health will not be impacted." However, we note that the comment does not consider the fact that both cancer assessments as well as both chronic noncancer assessments resulted in figures substantially below the level of significance. It is only the Applicant's short term acute noncancer assessment that resulted in an estimate of significance at the PMI. The fact that the Applicant's preliminary assessment differs with Staff's is not unusual. Even though the results differ, Staff's assessment provided a complete double check on the modeling conducted by Orange Grove. We note that Applicant's modeling lacks the transparency and verifiability of Staff's assessments. Further, Staff relies entirely on its own assessment to make its findings and does not use the Applicant's assessment. The record establishes that the AERMOD air dispersion model is more accurate for complex terrain (see, Ex. 200 p. 4.7-17.) As noted above, this model produced the lowest cancer and chronic hazard index figures of all. The AERMOD figures are mere fractions of the already-low risk figures produced by Orange Grove and Staff's ISC/HARP analyses. (Ex. 200, p. 4.7-17.) Therefore, we find the Staff's assessment more persuasive in this regard and we have no evidence that repeating Staff's risk assessments could lead to results exceeding the level of significance., and we must base our findings and conclusions upon the evidence.; not "fears and desires" with no evidentiary basis (Perley v. County of Calaveras, 137 Cal.App. 424, 436).

Also DFI argues that the health impacts from the diesel-fueled water trucks should not be addressed separately from the health impacts of the Project facilities, and instead should be addressed cumulatively. However, the effects from both the Project and the water trucks are so slight that even when considered cumulatively they would still be below the level of significance. The significance of noncancer health effects is established by calculating a hazard index, which is a ratio comparing exposure from facility emissions to the safe exposure level. (Ex. 200 p. 4.7-8.) A ratio of less than 1.0 is less than significant. For the Project's operation emissions (excluding the water trucks), Applicant found a maximum chronic hazard index of 0.0413. (Ex. 200 pp. 4.7-12 and 13.) Staff found a maximum chronic hazard index of 0.049. (Ex. 200 p. 4.7-17.) For the water truck emissions, Applicant found a maximum chronic hazard index of 0.0025 and Staff found a chronic hazard index of 0.0038 using different assumptions of the number of truck trips. (Ex. 200 p. 4.7-19.) The risk of chronic non-cancer health impacts is so low based on the calculations of both Applicant and Staff that even when the emissions from Project operations and from the water trucks are considered together, the impact would be far less than significant.

29. Page 205, Finding 4, change to read as follows:

4. Applicant and Staff both performed a health risk assessments, using well-established scientific protocol, to analyze potential adverse health effects of toxic air contaminants.

SOIL AND WATER RESOURCES SECTION

30. Page 299, fourth paragraph, change to read as follows:

Finally, Ms. **Day-Wilson** correctly points out a discrepancy in the water usage figures between the **Soil and Water Resources** and **Project Alternatives** sections. (Ex. 200 p. 6-9.) ~~The Applicant and Staff are directed to resolve this issue at the PMPD Conference. As explained in Exhibit 204 (supplemental testimony of Suzanne Phinney), the figure of 87.3 acre feet of water trucked per year to the site, as identified in the **Alternatives** section of the Staff Assessment, is incorrect. The maximum amount of water to be trucked for use at the site would be 62 acre-feet per year (AFY) of potable water and 38.7 AFY of reclaimed water. Expected use requirements would be 21.1 AFY of potable water and 12.1 AFY of reclaimed water. These amounts are correctly identified in the **Project Description** (Ex. 200 pp. 3-2 to 3-3) and the **Soils and Water Section** of the Staff Assessment (Ex. 200 p. 4.9-7).~~

31. Page 303-304, Condition SOIL & WATER-2, add the following language:

SOIL & WATER-2: The project owner shall comply with the requirements of the general National Pollutant Discharge Elimination System (NPDES) permit for discharge of storm water associated with construction activity. . . . The project owner shall also develop and implement a construction Storm Water Pollution Prevention Plan (SWPPP) for construction on the main Orange Grove Project (OGP) site, the transmission and gas pipeline routes, and all lay-down areas.

32. Page 308, Revision to Verification of SOIL & WATER-8 as follows:

Verification: ~~Not less than 30 days~~ Prior to beginning any site mobilization activities the start of project construction, the project owner shall submit to the CPM a water supply and distribution system design, an Engineer's Report for the Production, Distribution and Use of Recycled Water (Engineer's Report), and copies of any comments on the documents from CDPH and the San Diego RWQCB for review and approval by the CPM. . . .

33. Page 308, Revise SOIL & WATER-9 Verification: as follows:

Verification: At least 30 days prior to the start of project operation, the project owner shall submit to the CPM documentation identifying which of the five water use elements listed above could use recycled water in lieu of potable water

34. Page 310, SOIL & WATER-12, change language as follows:

. . . The project ~~manager~~ owner shall ensure that the wastewater is transported and disposed of in accordance with the wastewater's characteristics and classification and all applicable LORS (including any CCR Title 22 Hazardous Waste and Title 23 Waste Discharges to Land requirements).

Verification: Prior to initial offsite transport and disposal of facility wastewaters, . . . At least 10 days prior to offsite transport, the project ~~manager~~ owner shall submit to the CPM for review and approval a report documenting the results of the wastewater testing and classification, and identifying the volume of wastewater to be disposed, the methods of transport, and the disposal facility to be used for offsite disposal of the wastewater. . . .

TRAFFIC AND TRANSPORTATION

35. Page 367, last paragraph, change to read as follows:

Based on regional demographics and availability of skilled laborers, the construction workers will probably come from San Diego and Riverside counties. The average number of construction worker round trips will be 56 per day, while the peak workforce is expected to result in ~~105~~ 84 worker round trips per day during a one month period. To determine the amount of vehicle trips to the project site during average and peak construction, the record assumes that workers will commute during the morning and afternoon peak intervals (6 to 8 a.m. and 4 to 6 p.m.) from Monday through Friday. The evidence also assumes that approximately 20 percent of the workers will carpool. (Ex. 1, pp. 6.11-11, 6.11-12, Ex. 200 p. 4.10-5.)

36. Page 368, fourth paragraph, change to read as follows:

The 10-inch diameter underground natural gas pipeline will cross SR-76 at two locations and be installed along the south and north side of SR-76. The pipeline will connect to an SDG&E gas line near Rice Canyon Road west of the project site. The testimony indicates that traffic impacts from the construction of the pipeline will be short term in nature, mitigated by cones and flagmen when necessary, and will not significantly impact traffic flow. ~~However, there is no testimony as to the duration of pipeline construction, the hours of construction, where or when the flagmen will be needed or why there will be no significant impact on traffic flow.~~ The supplemental testimony of Joseph Stenger regarding

Traffic and Transportation (Ex. 66), explains the duration, times and location of the pipeline construction that will need flagmen and concludes that there will be no significant impact on traffic flow. Condition of Certification **TRANS-1** will ensure that the project owner works with Caltrans and San Diego County to mitigate any significant adverse impact on traffic flow along SR-76 during construction of the pipeline. (Ex. 1, pp. 6.11-14 and 15, Ex. 200, p. 4.10-7.)

37. Page 369, second paragraph, change to read as follows:

The two major traffic impacts of the Rosemary's Mountain Quarry project will be the widening of SR-76, expected to take about one year, and the estimated 150 to 180 truck round trips per day during the three year quarry construction process, which—The SR-76 widening and quarry construction began in June, 2008. The SR-76 widening construction should be completed by May, 2009, and quarry construction should be completed in 2011. The Pauma Casino expansion could begin in the spring or summer of 2009, but the project is still under review by San Diego County. Once the casino becomes operational, an estimated 4,365 new average daily vehicle trips will result. The Pala Casino expansion (currently underway) may overlap with the first few months' construction of the Orange Grove Project. Once completed, the Pala Casino expansion could generate 1,032 average daily vehicle trips on SR-76. (Ex. 1 pp. 6.1-4 to 6.1-5; 6.11-24 to 6.11-26; Ex. 200, pp. 4.10-9.)

38. Page 372, second paragraph, last sentence, change to read as follows:

Therefore, the trucks themselves must weigh less than 44,900 24,900 pounds to stay within the legal weight limit.

39. Page 373, first full paragraph, change to read as follows:

The uncontroverted evidence establishes that the project will average ~~56~~ 70 workers per day, resulting in 56 construction worker round trips per day considering the assumption of 20 percent carpooling established in the record. (Ex. 1, p. 2-34, 6.11-1; Ex. 200, p. 4.10-5.) Even if none of them ever carpool, the net daily increase in construction traffic would be a mere ~~44.2~~ 14 round trips per day which is de minimus.

40. Page 373, third full paragraph, change to read as follows:

As to Ms. Day-Wilson's concerns regarding the natural gas pipeline, the evidence states that the pipeline will be bored beneath SR 76 so as not to disrupt traffic flow on the roadway. (Ex. 1, p. 6.11-15.) In response to Ms. Day-Wilson's comment, the supplemental testimony of Joseph Stenger regarding Traffic and Transportation (Ex. 66), explains the duration, times and location of the pipeline construction that will need flagmen and concludes that there will be no significant impact on traffic flow. Finally, there does not appear to be any evidence in the record regarding the ownership of Pala Del Norte Road and Orange Grove Energy's permission, if any, to access it. Therefore, the Applicant and Staff are

~~directed to address the duration of pipeline construction and the hours of construction in their written comments, and, if necessary at the PMPD Conference.~~

Also, in response to Ms. Day-Wilson’s comment regarding authorization to use Pala Del Norte Road, the supplemental testimony of Richard Jones regarding Land Use (Ex. 63), explains that the portion of Pala Del Norte Road that will be used for access to the project site lies exclusively on land owned by SDG&E and this portion of the road is owned by SDG&E. As part of its lease agreement with SDG&E, Orange Grove will hold a license to use the access roads located on adjacent property owned by SDG&E, including Pala Del Norte Road.

41. Page 374, last paragraph, change to read as follows:

~~Pending resolution of the questions regarding the timing of the construction of the natural gas pipeline and the Applicants authorization to use Pala Del Norte Road, The Commission, therefore, concludes may determine that construction and operation of the project, as mitigated herein, will comply with all applicable LORS related to traffic and transportation, and will not result in any significant, direct, indirect, or cumulative adverse impacts to the local or regional traffic and transportation system.~~

42. Page 376, Condition TRANS-4, fourth sentence, change to read as follows:

All water delivery trucks carrying recycled water shall contain signage consistent with 22 C.C.R. 60310[g] which reads: “Recycled water – do not drink;” ~~and~~ All water delivery trucks shall display a notice in large type face on the back of each truck that provides a phone number to call to register complaints about the water delivery trucks.

TRANSMISSION LINE SAFETY AND NUISANCE

43. Page 111, first paragraph:

Inaccurate citation to “Ex. 200, pp. 4.1-1, 4.1-4.” Change to read “Ex. 200, pp. 4.11-1, 4.11-4.”

VISUAL RESOURCES

44. Page 400, at Visual Resources Table 2:

Delete “HRSGs” in this table and replace with “exhaust stacks.”

45. Page 400, add the following text to Table 2 on of the PMPD as follows:

PROJECT COMPONENT	NUMBER OF UNITS	LENGTH AND WIDTH (APPROXIMATELY)	HEIGHT (APPROXIMATELY)
Sound Walls	2 Sets	915 linear feet (total)	24 and 48 feet

46. Page 402, second full paragraph, second sentence, change as follows:

The evidence indicates that this portion of SR-76 is not designated as a State Scenic Highway ~~nor~~ and that it is listed as eligible by the California Department of Transportation but has not received that designation. (12/4819/08 RT 196-198.)

47. Page 404, change as follows:

Visual Change. For eastbound motorists on SR-76, the project structures will be clearly visible from KOP 1. From other segments of SR-76, the project will be partially screened by tree canopy, with the upper portions of the exhaust stacks, ~~heat recovery steam generators (HRSGs) and intake structures~~ sound walls visible above the canopy. In both views, the project introduces contrasting elements of vertical and rectilinear form and line, light and contrastive coloring in relation to the visual foreground of natural grasses, resulting in a moderate level of contrast. (Ex. 200, p. 4.12-8.)

Overall visual dominance of the project will remain subordinate to the hillsides in the background but the vertical form and line of ~~stacks and HRSGs~~ the exhaust stacks and sound walls will silhouette against the hillside, increasing dominance and attracting attention to a moderate degree. However, the project's features will not block high quality or scenic views in the vicinity. Due to the moderate level of contrast, subordinate visual dominance, and low view blockage, overall

visual change will be low to moderate. (Ex. 200, pp. 4.12-8 to 4.12-9, Visual Resources Figure 3B.)

48. Page 411, Finding 2, change as follows:

Project components that could affect visual resources include the ~~two heat recovery steam generators~~ sound walls, the turbine enclosures, the chiller system, the emission control system, and the demineralized water and raw water storage tanks.

49. Page 413, VIS-1, change as follows:

. . . Surface color treatment shall include painting of ~~HRSGs~~ sound walls, exhaust stacks, turbine inlet filters, and other features in an earth tone color and value to match the surrounding hillsides.

WASTE MANAGEMENT SECTION

50. Page 244, Condition WASTE-6, third sentence, change as follows:

. . . Project mobilization and construction shall not precede proceed until the county of San Diego issues an approval document, consistent with the county's normal building permit approval process, and the CPM provides written concurrence.

Delete both Verifications for WASTE-6 listed on page 244, and replace as follows:

~~**Verification:** 60 days prior to the start of any construction activities, the project owner shall submit for review to the county of San Diego shall provide a Debris Management Plan and a Performance Guarantee per the County of San Diego's Construction and Demolition Recycling Program. At least 30 days prior to the start of any construction activities, the project owner shall submit the proposed Debris Management Plan, along with any comments received from the county of San Diego, to the CPM for review and approval. The CPM shall consider all comments by the city prior to approving the Debris Management Plan.~~

~~**Verification:** The project owner shall ensure that project activities are consistent with the approved Debris Management Plan and all applicable county of San Diego waste diversion requirements and provide adequate documentation of the types and volumes of wastes generated, how the wastes were managed, and volumes of wastes diverted. Project mobilization and construction shall not precede until the county of San Diego issues an approval document, consistent with the city's normal building permit approval, and the CPM provides written concurrence. Not later than 60 days after completion of project construction, the project owner shall submit documentation of compliance with the diversion program requirements to the CPM and county of San Diego. The required documentation shall include a Debris Management Plan (as set forth by the city program), along with all necessary receipts and records of measurement from entities receiving project wastes.~~

Verification: Sixty days prior to the start of any construction activities, the project owner shall submit for review to the county of San Diego a Debris Management Plan and a Performance Guarantee per the County of San Diego's Construction and Demolition Recycling Program. At least thirty days prior to the start of any construction activities, the project owner shall submit the proposed Debris Management Plan, along with any comments received from the county of San Diego, to the CPM for review and approval. The CPM shall consider all comments by the county prior to approving the Debris Management Plan.

The project owner shall ensure that project activities are consistent with the approved Debris Management Plan and all applicable county of San Diego waste diversion requirements and provide adequate documentation of the types and volumes of wastes generated, how the wastes were managed, and volumes of wastes diverted. Project mobilization and construction shall not proceed until the county of San Diego issues an approval document, consistent with the city's normal building permit approval, and the CPM provides written concurrence. Not later than sixty days after completion of project construction, the project owner shall submit documentation of compliance with the diversion program requirements to the CPM and county of San Diego. The required documentation shall include a Debris Management Plan (as set forth by the county program), along with all necessary receipts and records of measurement from entities receiving project wastes.

51. Exhibit List, Appendix B – 8, change to read as follows:

The Exhibit List refers to the ~~“Final Staff Assessment, dated November 6, 2008, and docketed on November 6, 2008.”~~ “Amended Staff Assessment, dated December 2008, and docketed December 11, 2008.”

Dated: April 6, 2009 in Sacramento, California.

Original Signed By: _____
JAMES D. BOYD
Vice Chair and Presiding Member
Orange Grove AFC Committee

Original Signed By: _____
ARTHUR H. ROSENFELD
Commissioner and Associate Member
Orange Grove AFC Committee



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION
ORANGE GROVE POWER
PLANT PROJECT**

**DOCKET No. 08-AFC -4
PROOF OF SERVICE
(Revised 2/17/09)**

APPLICANT

Stephen Thome
J-Power USA Development
1900 East Golf Road,
Ste. 1030
Schaumburg, IL 60173
sthome@jpowerusa.com

Mike Dubois
J-Power USA Development
1900 East Golf Road,
Ste. 1030
Schaumburg, IL 60173
mdubois@jpowerusa.com

APPLICANT'S CONSULTANT

Joe Stenger, PG. REA
TRC
2666 Rodman Drive
Los Osos CA 93402
jstenger@trcsolutions.com

COUNSEL FOR APPLICANT

Jane Luckhardt
Downey Brand, LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
jluckhardt@downeybrand.com

Wayne Song
Morgan, Lewis
& Bockius LLP
300 S Grand Avenue,
22nd Floor
Los Angeles, CA 90071
wsong@morganlewis.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

Steve Taylor
San Diego Gas & Electric
8306 Century Park Court
San Diego, CA 92123
srtaylor@semprautilities.com

INTERVENORS

Anthony J. Arand
219 Rancho Bonito
Fallbrook, CA 92028
tony@envirepel.com

Alliance for a Cleaner Tomorrow
(ACT)
c/o Arthur S. Moreau,
Klinedinst, PC
501 West Broadway,
Ste. 600
San Diego, CA 92101
amoreau@klinedinstlaw.com

Archie D. McPhee
40482 Gavilan
Mountain Road
Fallbrook, CA 92028
archied1@earthlink.net

ENERGY COMMISSION

JAMES D. BOYD
Vice Chairman and
Presiding Member
jboyd@energy.state.ca.us

ARTHUR ROSENFELD
Commissioner and Associate
Member
pflint@energy.state.ca.us

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

Felicia Miller
Project Manager
fmiller@energy.state.ca.us

Jared Babula
Staff Counsel
jbabula@energy.state.ca.us

Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on April 6, 2009, I served and filed copies of the attached Errata To The Presiding Members Proposed Decision and dated April 6, 2009. 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/orangegrovepeaker]**. 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 emailed respectively, to the address below (***preferred method***);

OR

_____ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-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.

Original Signed By:
RoseMary Avalos