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

APPLICATION FOR CERTIFICATION FOR THE ORANGE GROVE POWER PLANT PROJECT BY ORANGE GROVE ENERGY, LP	DOCKET NO. 08-AFC-4 (AFC filed 06/20/08)

ORANGE GROVE ENERGY, L.P.'s OPENING BRIEF

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Pursuant to the Evidentiary Hearing Order (dated December 5, 2008), Orange Grove Energy, L.P. ("Orange Grove") hereby files its Opening Brief. Orange Grove has not briefed areas where there is no controversy between the parties in the case. All topic areas are uncontested as between California Energy Commission Staff ("Staff") and Orange Grove. However, Intervenor Archie McPhee has submitted comments regarding the areas of Noise and Soil and Water Resources. This brief addresses Mr. McPhee's comments.

In addition, DFI Funding, Inc. (DFI) submitted a Letter Brief on December 18, 2008 indicating its concerns with the environmental review conducted for the Orange Grove Power Plant Project (the "Project"). Pursuant to the Committee's request in its e-mail from December 23, 2008 regarding response to comments, DFI's comments regarding soil and water resources are addressed in Part B of this brief. Orange Grove will address the remainder of DFI's comments in a separate response to comments.

Orange Grove has worked diligently with Staff to ensure the Project conforms with applicable laws, ordinances and standards and applies appropriate levels of mitigation to avoid significant adverse environmental impacts. The evidence in the record presented by both Orange Grove and Staff supports findings by this Committee and ultimately the California Energy Commission that the Project protects environmental quality and ensures public health and safety consistent with California Public Resources Code § 25523.

PART A: ORANGE GROVE'S RESPONSES TO TESTIMONY BY INTERVENOR ARCHIE McPHEE

Intervenor Archie McPhee submitted comments regarding the Project in his amended Prehearing Conference Statement ("McPhee Statement"), dated November 23, 2008 and received by the Commission on December 1, 2008. Mr. McPhee also provided testimony regarding the Project at the December 19, 2008 evidentiary hearing. This part of this brief responds to the comments and testimony provided by Mr. McPhee.

I. The Project Will Not Significantly Impact Noise Levels or Soil and Water Resources

Staff and Orange Grove are in agreement that the Orange Grove Project (the "Project") will produce no significant unmitigated adverse impacts to the environment and that the Project will conform with applicable laws, ordinances, regulations and standards. (Exhibit 200, Orange Grove Project Amended Staff Assessment ["Assessment"], dated December 2008, at 1-4; Exhibit 1, Orange Grove Project Application for Certification ["AFC"] at 1.1-7.2-7 to 1.1-8-13.) Intervenor Archie McPhee has commented on a few aspects of the Project in the areas of Noise, and Soil and Water Resources. This brief addresses Mr. McPhee's comments and demonstrates that the Project will have no significant unmitigated impacts on either of these areas.

II. The Project's Noise Mitigation Measures Are Adequate

Intervenor Archie McPhee comments that the Project's noise monitoring program is insufficient in that it "proposes to monitor the proposed noise ordinance by responding to complaints." Mr. McPhee believes the program should include 24-hour noise monitoring using dB meters. (McPhee Statement, Comment 1.) Orange Grove responds that the noise complaint process is only part of the noise mitigation for this project. Orange Grove is not relying only on nearby residents for indication of the Project's noise impacts. Condition of Certification NOISE-4 requires Orange Grove to conduct a survey within 60 days of the time when the Project first achieves a sustained output of 85% or greater of rated capacity. (Exhibit 200 at 4.6-17.) If the results of this survey indicate that the Project's noise at any of the affected receptor sites exceeds the established limits during the four quietest consecutive hours of the nighttime, Orange Grove is required to implement mitigation measures to reduce noise to a level in compliance with the

established limits. (Exhibit 200 at 4.6-16.) Additionally, the Project's heavy equipment operation for construction and noisy construction work will be restricted to between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. (Exhibit 200 at 4.6-17.) Furthermore, Condition of Certification BIO-7 includes provisions for construction work to be set back from sensitive wildlife species that may occur in the area, and requires field noise monitoring by a qualified acoustics monitor and noise screening to protect sensitive riparian bird species nesting near the construction areas from noise. (*See* Exhibit 200 at 4.2-34 and 35.) These measures, in addition to the project design measures to limit noise impacts (See AFC at 2.10, 2.11, 6.12-49 and 6.12-50), will ensure that the Project has no significant unmitigated impacts in the area of Noise and Vibration.

III. Tertiary Treated Sewage Water Is Properly Termed "Recycled Water"

Mr. McPhee expresses concern with the use of the term "recycled water" during proceedings for the Project, beginning with a conference meeting on November 11, 2008. (McPhee Statement, comment 2.) Mr. McPhee believes the term "recycled water" cannot be used to describe tertiary treated sewage water, and that non-disinfected recycled water is more properly described as "reclaimed water." (McPhee Statement, comment 2.) Orange Grove responds that, from a regulatory perspective, the term "recycled water" is the most appropriate term to describe the tertiary treated wastewater to be provided to the Orange Grove Power Plant. The California Water Code defines the term "recycled water" as "water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource." (Cal. Water Code § 13050[n].) Water Code section 26 says this definition applies equally to both the terms "recycled water" and "reclaimed water." The State legislature affirmed its finding that recycled (or reclaimed)[1] water is a valuable resource in the Water Recycling Act of 1991, declaring that "the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational and fish and wildlife purposes will contribute to the peace, health, safety and welfare of the people of the

[1] The term "reclaimed water" does appear in some older state laws and regulations. The term "reclaimed water" appears to be antiquated, and its continued use in some state requirements may be a relic of the past when this term was more common. In a non-regulatory sense, some state regulations and state-published guidance documents appear to use the terms "recycled water" and "reclaimed water" interchangeably. However, current state laws and regulations applicable to the Orange Grove project favor the term "recycled water."

State." (Cal. Water Code § 13511). California law specifically addresses the use of recycled water for industrial cooling. (22 C.C.R. § 60306 ["Use of Recycled Water for Cooling"].) Other state laws also expressly regulate "recycled water," such as the California Porter-Cologne Water Quality Control Act and the Water Recycling Act of 1991. (*See* Cal. Water Code § 13000 et seq. and § 13575 et seq.)

In his testimony from the December 19, 2008 evidentiary hearing, Mr. McPhee expresses additional concern that the recycled water that will serve the Project will not be disinfected, and therefore, cannot properly be termed "recycled water" and cannot be used by the Project due to health risks. (*See* Orange Grove Project Evidentiary Hearing Transcript ["Transcript"] at 104:6-105:8 and 108:19-25.) Orange Grove responds that, for the reasons described above, the re-used water that will serve the Project is properly termed "recycled water." Furthermore, the Project's use of recycled water will be disinfected and will pose no health risks. For more information regarding the safety of the Project's use of recycled water, please see Section IV of this part of this brief, below.

IV. Fallbrook Public Utility District's Recycled Water Is Disinfected And Safe For Use by the Project

Mr. McPhee expresses concern that the recycled water supplied by FPUD is not disinfected, and therefore may not be used by the Project under State law. (Transcript at 108:19-25.) As a basis for this contention, Mr. McPhee claims that the wastewater treatment process used by Fallbrook Public Utility District (FPUD) does not result in disinfected tertiary recycled water. (*Id.*) Orange Grove would like to clarify that the water supplied by FPUD will indeed be "disinfected tertiary recycled water" as that term is defined in Section 60301.230. (Exhibit 23 at A10.) The contract for the supply of recycled water between Orange Grove and FPUD expressly requires the water to meet this standard. (*Id.*) Covenant No. 4 in the Recycled Water Agreement with FPUD, provided in Appendix 6.5-G.1 of the Application for Certification, will require FPUD to provide water that meets all tertiary treated recycled water standards from California Code of Regulations Title 22, which include disinfection to at least the specifications identified in 22 C.C.R. § 60301.230. These Title 22 regulations were established by the California Department of Health Services specifically to assure that recycled water is safe to public health

for the allowed uses. (*See* Water Code §§ 13520 and 13521). In addition, Condition of Certification SOIL & WATER-8 requires the Project to comply with all recycled water use requirements established in Title 22 and Title 17 of the California Code of Regulations and any applicable local recycled water use ordinances. (Exhibit 200 at 4.9-35.) This condition also requires Orange Grove to submit a Title 22 Engineer's Report prior to delivery of recycled water to the Project. This report must include comments on the report from the California Department of Public Health and the San Diego Regional Water Quality Control Board, and the report must be reviewed and approved by the Compliance Project Manager (CPM). (*Id.*)

Mr. McPhee claims that the presence of ammonia in FPUD's Reclaimed Water Chemistry Profile for 2006-2007 indicates that FPUD's recycled water is not disinfected. (Transcript at 126:16-19.) This claim is erroneous and has no technical basis. The presence of residual ammonia is unrelated to the level of disinfection. FPUD disinfects its recycled water using chlorine. Since FPUD's National Pollutant Discharge Elimination System (NPDES) under which this water is currently discharged to the ocean does not allow any residual chlorine to be present, FPUD uses only enough chlorine to disinfect the water to the strict level required by 22 C.C.R. Section 60301.230 and FPUD's NPDES permit, which is not enough to react with all of the ammonia. The presence of ammonia does not mean the water is not disinfected. As discussed above, the water supplied by FPUD will 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. (Transcript at 130:24-131:13.)

The State has broadly recognized that recycled water is safe. The use of recycled water in accordance with Title 22 recycled water standards "does not cause, constitute, or contribute to, any form of contamination," unless the department or the Regional Water Quality Control Board determines otherwise. (Cal. Water Code Section 13522[b].) Water Code Section 13529(f) declares that "the use of recycled water has been proven safe." Tertiary treated recycled water has been determined by the State to be of such a low environmental and health threat that, even if spilled directly in Waters of the State, such a discharge need not even be reported under State law unless it is 50,000 gallons or more. (Water Code § 13529.2). Fifty-thousand gallons is the

equivalent of approximately eight truckloads using the water truck capacity included in the Project design. (*See* Exhibit 200 at 4.10-6.)

Mr. McPhee argues that State law allows recycled water to be used only for irrigation, floor trap priming, cooling towers, and air conditioning. (Transcript at 106:19-25.) Mr. McPhee bases this statement on Section 13552.8 of the California Water Code. However, that section describes certain water uses for which a public agency may *require* the use of recycled water instead of potable water. (Cal. Water Code § 13552.8.) This section does not prohibit other uses of recycled water. State law allows tertiary treated recycled water to be used in many other ways besides the four uses listed by Mr. McPhee. Disinfected tertiary recycled water may be used for irrigation of food crops, including crops where the recycled water comes into contact with the edible portion of the crop, and many other irrigation uses including parks and playgrounds, school yards, residential landscaping, golf courses and any other irrigation not otherwise prohibited. (22 C.C.R. § 60304.)

Mr. McPhee expresses concern that the Project's recycled water will pose a health risk by coming into contact with the Project's employees. (Transcript at 110:17-111:17.) However, mere contact with the Project's recycled water would be harmless. Title 22 of the California Code of Regulations allows disinfected tertiary recycled water to be used in recreational impoundments, where there are no limitations on body contact water recreational activities. (22 C.C.R. § 60305.) This means the State has determined that disinfected tertiary recycled water is safe to swim in. Disinfected tertiary recycled water may be used in commercial or industrial air conditioning and cooling towers, and in toilets, structural firefighting water supply, decorative fountains, commercial laundries, car washes, and a wide variety of other uses, including uses where there is direct contact with humans and wildlife. (22 C.C.R. § 60306, 60307.) Recycled water may also be delivered to private residences for landscape irrigation and other uses that do not require potable water. (Water Code § 13552.4.)

The State has determined that disinfected tertiary recycled water such as that which will be used by the Project is safe for all of these uses. Furthermore, nothing in these provisions suggests that this list of approved uses for tertiary treated recycled water is exhaustive. Also, the Project's employees will have training concerning the proper uses for recycled water, including

training regarding which water is safe to drink. (Transcript at 85:4.) Therefore, the use of disinfected tertiary recycled water at the Project will not pose a health risk to the Project's employees or to the environment.

V. Labeling and Purple Piping Is Not Required for the Project's Recycled Water

Mr. McPhee is concerned that the California Water Code requires recycled water to be delivered by a separate purple pipeline. (McPhee Statement, comment 2 [citing Cal. Water Code § 13555.2-3].) However, there is no law requiring recycled water to be transported to its destination by pipeline. The California Water Code only requires recycled water to be delivered by a separate pipeline if both potable and recycled water are to be delivered by pipeline, in order to ensure that nonpotable recycled water is not mixed with the potable water supply. Sections 13555.2 and 13555.3 contemplate water delivery systems "constructed" on private property. The requirement regarding "purple pipes" comes from the California Health and Safety Code, which requires that "[a]ll pipes *installed above or below the ground...that are designed to carry recycled water*, shall be colored purple or distinctively wrapped with purple tape." (Cal. Health and Safety Code § 116815 [emphasis added].) This section contemplates the installation of a pipeline system as a precondition to requiring purple pipes for recycled water. In other words, the need to distinguish the potable from non-potable water pipes does not arise unless there are actually pipes to distinguish. The Health and Safety Code does not require recycled water to be transported by purple pipe in all cases. The use of purple pipe serves only as an indicator that the water flowing through the pipe is not meant for drinking. In this case, none of the water brought to the site by the water trucks will be used for drinking. The Project's drinking water will come from water bottles. (Exhibit 200 at 4.9-10.) Therefore, the purpose of transporting recycled water by separate purple pipe, which is to prevent people from drinking it, does not apply.

Mr. McPhee also claims that according to state law, recycled water must be labeled "Contaminated: Do not drink." (McPhee Statement, comment 2.) However, this requirement only applies to "areas where recycled water is used that are accessible to the public." (22 C.C.R. § 60310[g].) If recycled water is accessible to the public, a sign must be posted including the wording: "Recycled water – do not drink." (*Id.*) The Project facilities will not be accessible to the public. (Transcript at 85:3.) Therefore, these signage requirements are not applicable to the

Project. Also, as described above, the Project's potable water will come exclusively from bottles delivered to the site.

VI. Recycled Water May Legally and Safely Be Delivered By Truck

Mr. McPhee argues that truck transportation of recycled water is illegal and poses danger to humans and to the environment. (McPhee Statement, comment 5.) Mr. McPhee argues that part (c) of Section 13555.3 of the California Water Code precludes the transportation of recycled water by truck. (Transcript at 105:24-106:18.) This section provides that local governments may adopt regulations which are more restrictive than the requirements of section 13555.3. However, this section does not address the issue of whether recycled water may be transported by truck. No law prohibits trucking of recycled water. Recycled water may safely and legally be transported by truck.

VII. The Project Has Valid Reasons For Obtaining Its Water From Fallbrook Public Utility District

Mr. McPhee expresses concern that the water supply arrangement between the Project and FPUD is intended to unlawfully profit FPUD. (McPhee Statement, comment 6; Transcript at 116:3-9, 117:12-23.) However, Staff explained that the Project will obtain its water supply from FPUD instead of Rainbow Municipal Water District ("RMWD") because RMWD does not offer recycled water and the nearest RMWD potable water distribution line is several miles from the main project site. FPUD offers both recycled water and feasible access to a potable water filling site. Consequently, water supplies for project operations would be provided by FPUD. (Exhibit 200 at 4.9-10.) Mr. McPhee also argues that FPUD and Orange Grove "have conspired to exchange only recycled water...instead of the [Commission's] approved design combination of reclaimed water plus potable water." (Transcript at 115:23-116:2.) Orange Grove responds that, as described in the Assessment, the project will use a combination of potable and recycled water acquired from FPUD. (Exhibit 200 at 3-2 through 3-3; see also Exhibit 1 at Appendices 6.5-G.1 and G.2 .)

Mr. McPhee asserts that instead of receiving water by truck delivery, the Project should be served by a pipeline connecting to existing RMWD infrastructure. (McPhee Statement, comments 3, 4 and 6.) Mr. McPhee contends that the Project's water needs will be served by truck "simply to save construction and operation costs." (Transcript at 114:7-10.) Orange Grove responds that transportation of water to the site via pipeline was extensively pursued and determined not feasible at this time because of land access issues described in Section 5.3.3 of the AFC. (*See* Exhibit 1, sections 5.3 and 5.8.) Furthermore, the potential source of water supply via pipeline, RMWD, has policies that prohibit the issuance of will-serve letters or any guarantee to any user for delivery of water for an extended period of time. (*See* Exhibit 1, Table 5.3-2 and Section 5.8.) The CEC requires such a guarantee. (20 C.C.R. Appendix A[g][14][C][v].) In addition, as described above, RMWD is unable to provide the Project with recycled water. As the Committee noted during the evidentiary hearing, State water policy strongly discourages the use of potable water for power plant cooling. (Transcript at 124:21-125:10.) FMWD is able to meet both the potable and recycled water needs of the Project. For these reasons, a pipeline is not feasible at this time.

Mr. McPhee argues that section 13555.3 of the Water Code states that RMWD should have the right to deliver potable water to the Project. (McPhee Statement, comment 3.) However, section 13555.3 does not address the issue of which water district should serve a particular property. This section merely provides that water delivery systems constructed on private property which could deliver recycled water for nonpotable uses must be designed to ensure that the water to be used for only potable domestic uses is delivered in a separate pipeline which is not used to deliver the recycled water. (*See* Cal. Water Code § 13555.3.) In addition, as described above, this section is inapplicable to the Project site, because the Project will receive its water by truck and potable water will come exclusively from water bottles delivered to the site.

VIII. The Project Will Take Adequate Precautions to Prevent Water Damage to the Project's Combustion Turbine Generators

Mr. McPhee is also concerned that the injection of recycled water into the Project's turbines has potential to damage the turbines, and suggests that Orange Grove should conduct a

pilot study to establish that recycled water obtained from FPUD can be substituted for potable water without damage to the turbines. (McPhee Statement, comment 3.) The inlet air cooling system for the combustion turbine generators (CTGs) will indeed use recycled water. (Exhibit 200 at 4.9-21.) However, under normal operating circumstances, potable (non-recycled) water will be used for injection into the Project's CTGs. (Exhibit 1 at 2-18.) This water will come from the Project's potable (non-recycled) water supply and storage. (Exhibit 200 at 4.9-22.)

The Project would potentially use recycled water for injection into the CTGs at times when potable water is not available due to drought conditions. (Exhibit 23 at A6.) Mr. McPhee contends that recycled water may not legally be used for this purpose. (Transcript at 109:21-110:2.) However, no state law prohibits the use of recycled water for this purpose. State law expressly allows recycled water to be used for industrial processes, and the disinfected tertiary recycled water that will be used by the Project surpasses water quality specifications required by state law for industrial processes where the water will not come into contact with workers, such as injection into the CTGs. (22 C.C.R. § 60307[a][3]; 22 C.C.R. § 60307[b][8].) Furthermore, the recycled water will undergo further treatment before being injected into the CTGs. Neither potable nor recycled water is suitable for direct, untreated injection into the turbines; direct injection of water from either of these sources would rapidly ruin a turbine. (Exhibit 23 at A6.) Therefore, before injection into the CTGs, both potable and recycled water will be treated by the Project's demineralization system. (Exhibit 1 at 2-18 and 19.) This water will be stored in a separate demineralized water storage tank. (*Id.*) Furthermore, on-line water condition monitors will be installed and the plant operators will conduct frequent tests to ensure that water purity remains within manufacturer specifications. (Exhibit 1 at 2-19.) These procedures will ensure that the water coming into contact with the CTGs will not damage the turbine blades.

IX. Orange Grove Properly Secured Water Agreements for the Life of the Project

Mr. McPhee is concerned with the duration of the potable and recycled water option agreements, asking whether it is lawful for Orange Grove to secure such agreements for water delivered by truck. (McPhee Statement, comment 4.) Mr. McPhee notes a comment from RMWD in which it states its opposition to water trucking as a permanent water supply for the Project. (*Id.*) Orange Grove responds that a demonstrated water source for the life of the Project

is required to meet the Commission's Application for Certification requirements. (20 C.C.R. Appendix A[g][14][C][v].) Furthermore, assurance of a long-term water supply is fundamental to basic Project feasibility for a project with such a large capital commitment. (Exhibit 23 at A9.) RMWD is unable to provide any guarantee of long-term water supply to the Project. (Exhibit 1 at 5-22.) Therefore, the Project properly obtained a long-term water supply from FPUD to satisfy this requirement.

PART B: ORANGE GROVE'S RESPONSES TO COMMENTS FROM DFI FUNDING, INC. IN THE AREA OF SOIL AND WATER RESOURCES

On December 18, 2008, DFI submitted a Letter Brief ("DFI Letter Brief") to the Commission, which contains DFI's comments on several topic areas. As described above, this section of this brief addresses DFI's comments regarding soil and water resources. Orange Grove will address the remainder of DFI's comments in a separate Response to Comments.

I. Staff and Orange Grove Have Adequately Addressed Impacts From Runoff at the Project Site

DFI is concerned that runoff at the Project site may have significant environmental impacts. (DFI Letter Brief at 10-11.) DFI notes that the San Diego Regional Water Quality Control Board ("SDRWQCB") "requested that approval of the Project be conditioned on the preservation of pre-project hydrograph conditions on the completed Project site," but Staff refers only to controlling the Project's post-development runoff to a rate that would not exceed pre-project peak runoff or discharge rates. (DFI Letter Brief at 10.) Applicant responds that as noted by Staff, features consistent with the SDRWQCB comments have been incorporated into the Project's design. (*See* Exhibit 200 at 4.9-28.) These features include, but are not limited to, low impact design as required by the San Diego County Watershed Protection, Storm Water Management and Discharge Control Ordinance maintaining natural drainages by returning stormwater runoff to the same areas where runoff would flow under pre-project conditions, and providing a stormwater detention basis to reduce the project's post-development runoff rate so as not to exceed the pre-project hydrograph peak discharge. (*See* Exhibit 200 at 4.9-18, 4.9-19, 4.9-20, 4.9-21, 4.9-32 and 4.9-34; *see* Exhibit 1 at 2-21, 2-22, 6.5-11, 6.5-12, 6.5-14, 6.5-15; 6.5-18 and 6.5-19). In addition to these specific measures that will minimize changes to site and

downstream hydrograph characteristics, the project additionally incorporates implementation of other Best Management Practices and compliance with requirements of other aspects of the San Diego County Watershed Protection, Storm Water Management and Discharge Control Ordinance and the general National Pollutant Discharge Elimination System ("NPDES") permit for discharge of storm water associated with construction activity. (*Id.*) DFI's concern is therefore addressed, as changes to pre-project hydrograph conditions are limited and other additional measures are included to further assure that any project storm water impacts are less than significant. (*See* Exhibit 200 at 4.9-20.)

DFI contends that Best Management Practices ("BMPs") often fail during difficult projects, and DFI instead suggests limiting construction to the dry season. (DFI Letter Brief at 11.) However, Staff noted that its studies have shown that the Project would potentially decrease erosion at the site by lessening the site slope and controlling sediment discharge thorough storm water management features and BMPs. (Exhibit 200 at 4.9-16.) Furthermore, the Conditions of Certification require Orange Grove to comply with the requirements of the general NPDES permit for discharge of storm water associated with construction activity. (Exhibit 200 at 4.9-31.) Orange Grove must comply with all applicable requirements of the San Diego County Watershed Protection, Storm Water Management and Discharge Control Ordinance. (Exhibit 200 at 4.9-34.) The Conditions of Certification also require Orange Grove to comply with the requirements of the General NPDES Permit for Discharges of Storm Water Associated with Industrial Activity unless the project does not require such a permit. (Exhibit 200 at 4.9-35.) Contrary to DFI's contention that the Conditions of Certification fail to address runoff water quality issues (DFI Letter Brief at 11), these conditions would ensure that runoff from the Project site will not unnecessarily degrade the water resources surrounding the Project site. The AFC also indicates that the Project will maintain or reduce pre-development downstream erosion. (Exhibit 1 at 6.5-17.) The Project has been designed to minimize impervious surfaces. (Exhibit 1 at 6.5-14.) Runoff from the site will be diverted to a detention basin designed to detain runoff even from a 100-year storm. (Exhibit 1 at 6.5-17.) Areas around lubricated equipment and hazardous material storage and use areas will be constructed with contained drainage. Furthermore, the Project is designed with zero discharge of process water. Therefore, Project construction and operations impacts to surface water drainage patterns and surface water quality will be less than significant. (*Id.*)

II. The Project Makes Efficient Use of Water In Accordance With State Law and Policy

DFI contends that the Project as proposed violates State law because it fails to make efficient use of water. (DFI Letter Brief at 11-12.) DFI cites the California Water Code's requirement that "water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented." (Cal. Water Code § 100.) Other state laws, applicable specifically to power plant operations, reflect this policy by limiting the consumption of fresh water for power plant cooling to that minimally essential for the welfare of the citizens of the State. (SWRCB Resolution No. 75-58, Water Quality Control Policy on the Use and Disposal of Inland Waters Used for Powerplant Cooling [1975] at 2.) The Commission's own energy policy and the Warren-Alquist Act recognize SWRCB Resolution 75-58's concern with limiting the use of fresh water for power plant cooling purposes. (*See* California Energy Commission, 2003 Integrated Energy Policy Report at 41; Cal. Pub. Res. Code § 25008.) The Commission has adopted a policy of approving the use of fresh water for power plant cooling purposes only where alternative water supply sources and alternative cooling technologies are shown to be "environmentally undesirable" or "economically unsound." (California Energy Commission, 2003 Integrated Energy Policy Report at 41.)

DFI incorrectly asserts that the Project will use potable water for its cooling needs. (DFI Letter Brief at 12.) Orange Grove responds that, to address statewide concern for the conservation of potable water, the Project will use nonpotable recycled water for its cooling needs - a practice that the California Legislature has strongly encouraged in order to avoid the waste or unreasonable use of water. (Cal. Water Code § 13550[a]; Exhibit 200 at 4.9-10 and 26.) If not used by the Project, this recycled water would otherwise be discharged to the Pacific Ocean via a pipeline. (Exhibit 1 at 6.5-7.) With regard to the potable water used by other aspects of the Project, the Project would not impact the water supply to other users. FPUD has indicated that it has the excess capacity within existing infrastructure to supply the Project. (Exhibit 1 at 6.5-13.) Therefore, the Project's use of potable and recycled water is efficient and complies with state law and policy.

DFI comments that the Project is inefficient because it proposes to import bottled potable water by truck rather than by pipeline. (DFI Letter Brief at 12.) As described above in Section VII of Part A of this brief, a water pipeline was extensively pursued for this project, but is not feasible at this time.

III. Staff and Orange Grove Have Adequately Addressed the Impact of a 100 Year Flood on the Natural Gas Pipeline

DFI suggests that sections of the natural gas pipeline that will service the Project are within a 100 year floodplain, and that the Assessment fails to discuss the potential for damage to the pipeline during a 100-year flood. (DFI Letter Brief at 11.) Orange Grove responds that the AFC addresses this very issue, stating that where the gas pipeline occurs within the 100-year flood zone, it will be below the ground surface. (Exhibit 1 at 6.5-14.) Therefore, the pipeline will not be affected by flooding. (Exhibit 1 at 6.3-8 and 9.) Furthermore, isolation valves exposed on the ground surface will be designed such that they would not be adversely impacted in the event that they are inundated by flooding. (*Id.*) The gas pipeline is located at the edge of the flood plain, far from the active river channel, where flood plain sediments are most stable against reclamation by flood flows. (*See* AFC at 6.3-10.) At the only location where the pipeline will be close to the active river channel there is an engineered riprap embankment stabilizing the channel bank and, therefore, no impact on the pipeline from flooding is expected (*Id.*)

IV. Other Comment

DFI notes a discrepancy in the water usage figures between the Soil and Water Resources and Alternatives sections. (DFI Letter Brief at 11.) The 87.3 acre-feet per year (AFY) figure in the Alternatives section (Exhibit 200 at 6-9) is an error. The correct figures are provided in the Soil and Water Resources section of the Assessment, which are as follows. For recycled water use, the Project would require an expected 12.1 AFY and a maximum of 38.7 AFY. (Exhibit 200 at 4.9-22.) For potable water use, the Project would require an expected 21.1 AFY and a maximum of 62 AFY. (*Id.*)

CONCLUSION

As demonstrated above the evidence presented by Orange Grove and Staff clearly refutes the comments and testimony presented by Intervenor McPhee, and the comments presented by DFI. The evidence in this proceeding shows the Project complies with applicable laws, ordinances, regulations and standards, protects public health and safety, and ensures environmental quality. Therefore, this Committee and the Commission should approve Orange Grove's request for certification of this Project.

DATED: January 9, 2009

DOWNEY BRAND LLP

By: _____

Jane E. Luckhardt
Nicholas H. Rabinowitsh

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

APPLICATION FOR CERTIFICATION ORANGE GROVE POWER PLANT	DOCKET NO. 08-AFC-4 **PROOF OF SERVICE (Revised 10/27/08)**

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
Attn: Docket No. 08-AFC-4
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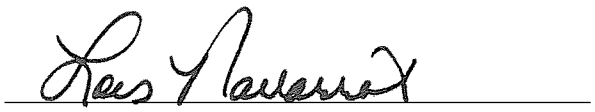
DECLARATION OF SERVICE

I, Lois Navarrot, declare that on January 9, 2009, I deposited a copy of the attached **ORANGE GROVE ENERGY, L.P.'s OPENING BRIEF** 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