

**State of California
Energy Resources Conservation and Development Commission**

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| In the Matter of: |) | Docket No. 08-AFC-4 |
| |) | |
| Application for Certification |) | BRIEF IN RESPONSE TO |
| <u>for the Orange Grove Energy Project</u> |) | DFI FUNDING INC.'S COMMENTS |

On December 23, 2008, the hearing officer for the Orange Grove Power Plant Project ("Orange Grove") directed parties to file briefs in response to the December 18, 2008, comment letter from DFI Funding Inc. In particular, the Committee expressed interest in the parties' responses to the points raised by DFI about Green House Gases in Air Quality, the Major Use Permit in Land Use, the "relaxed" noise limits in NOISE-4, and the discrepancy between the data in Applicant's and Staff's acute Hazard Index in Public Health. Parties are to reference the relevant evidence from the record, and briefs are due January 29, 2009, by 3:00pm.

**I
INTRODUCTION**

In Environmental Protections & Information Center v. California Dept. of Forestry & Fire Protection, (2008) 44 Cal.4th 459, 487, the court held, "If it is established that a state agency's failure to consider some public comments has frustrated the purpose of the public comment requirements of the environmental review process, then the error is prejudicial" As demonstrated below, the comments made by DFI have either already been addressed within the Staff Assessment or represent a misunderstanding of the facts. The record is clear that the entire environmental review process has been open and transparent resulting in engaged public participation.

**II
RESPONSES TO COMMENTS FOR EACH TECHNICAL AREA**

Staff respectfully disagrees with DFI's contention that the Staff Assessment failed to adequately inform the public and decision makers regarding the environmental impacts of the Orange Grove project. This simply is not the case as clearly demonstrated in the record. The Orange Grove Docket and evidentiary record demonstrates a robust and detailed environmental review which included five public hearings or workshops held in Fallbrook, (September 24, 2007, July 29, 2008, September 11, 2008, November 20, 2008, and December 19, 2008), all of which produced discussion and debate between the parties, members of the public and local government representatives. In addition, the record shows Commission staff engaged and consulted with a number of various agencies and local representatives on environmental issues. Such agencies include: California Department of Fish and Game, United States Fish and Wildlife Service, CalTrans, County of San Diego, North County Fire Protection District, LAFCO, Bonsall

School District, Regional Water Quality Control Board, California Highway Patrol, Pala Tribe, San Diego Air Quality Management District, and Rainbow Water District. Finally, two local interveners, Archie McPhee and Anthony Arand participated throughout the process bringing up a number of environmental issues. The end result of this extensive process is a comprehensive 700-page environmental analysis which informs the public as to the environmental impacts of the project and the appropriate mitigation to reduce such impacts.

DFI's claims from its letter are quoted below in italics. Each claim is followed by staff's response.

AIR QUALITY

COMMENT: *The Staff Assessment does not include any reference to whether or not the California Air Resources Board conducted an impact analysis for the project pursuant to Cal. Code Regs section 922.5.3(b). Such an analysis is legally required and must be included in the Assessment.*

RESPONSE: The citation to section 922.5.3(b) is incomplete, lacking the Title number. Nevertheless, staff believes DFI may have intended to cite Title 20, California Code of Regulations, section 1722.5(b). Section 1722.5 refers to a report from the Air Resources Board in a Commission proceeding, but it only applies to notices of intention to file an application for certification. It states:

(a) Upon filing of a notice, the local air district (or the Air Resources Board if the local district fails to participate) in which a site is located shall prepare and submit a report prior to the conclusion of the nonadjudicatory hearings held pursuant to Section 1723. Each agency submitting a report shall testify in support of the report at hearings on the notice.

The section does not apply to a proceeding for an application for certification (AFC), such as the current one for Orange Grove. Regardless, the Air Resources Board (ARB) is not required to submit a report if the local air district participates in the proceeding. Section 1744.5 governs air district responsibilities in an AFC proceeding. The assessment that the local district prepares pursuant to Section 1744.5 is typically quite exhaustive and addresses air impacts from the project. The air district's assessment, referred to as the final determination of compliance, for the Orange Grove project has previously been entered into the record. (See applicant's Exhibits 1, 7, 10, 13, 17, 18(b), 60.) There is no regulation requiring a report from the ARB.

COMMENTS: *The Staff Assessment does not state whether the project's fleet complies with Air Resources Board emissions requirements.*

RESPONSE: The project owner would not own the construction offroad vehicles that would be used to construct the facility. The construction contractor and/or equipment rental companies used will be required to meet the offroad fleet regulations; however, these regulations do not come into effect until 2010 for large fleet owners and later for smaller fleet owners. (Staff Assessment, pp. 4.1-30 to 4.1-31) During operation the project owner would have to meet fleet equipment requirements depending on the size of the total diesel fueled fleet owned at all of their locations in California. Staff does not know if any offroad diesel equipment will be permanently

housed at the facility, regardless the regulation is not specific to the facility but to the fleet owner, so this identified LORS is not a site compliance issue. (Staff Assessment 4.1-41) Staff assumes that the project owner would comply with the applicable California offroad fleet regulations for its entire subject fleet.

In addition to emissions from construction equipment and delivery trucks, staff addresses emissions from dust generated during earth moving and general construction activities. Conditions of Certification AQ-SC1 through AQ-SC5 on pages 4.1-53 to 4.1-57, mandate the procedures and equipment required to minimize fugitive dust generation and diesel emissions from construction-related vehicles during the construction of the Orange Grove project. In particular AQ-SC3 requires 14 protocols the applicant must follow in eliminating or reducing dust generation. AQ-SC5 then details how diesel emissions will be controlled. The end results are that all air quality impacts are less than significant and the emissions levels meet all applicable Air Resources Board requirements.

COMMENTS: *Staff failed to evaluate cumulative air quality impacts from the construction and operation of the Orange Grove facility.*

RESPONSE: Pages 4.1-40 through 4.1-47 of the Staff Assessment, as well as the direct testimony of Will Walters during the evidentiary hearing (RT. pp. 64-73), contained extensive analysis and discussion regarding the cumulative impacts from the Orange Grove project. Mr. Walters testified as to the projects considered in the cumulative air impacts analysis and discussed those that were not included and why.

COMMENTS: *Staff failed to fully analyze the project's green house gas emission impacts. The Staff Assessment fails to address how the project fits into the ARB scoping plan and meets the required carbon footprint reduction.*

RESPONSE: Staff dedicated an entire appendix to the analysis of green house gases. (Air Appendix A, Staff Assessment, pp. 4.1-91 to 4.1-102.) DFI should not confuse disagreement with a conclusion with lack of analysis. The Orange Grove project would only be used when called upon to supply power during peak load demands. It would be speculative to conclude that the project would result in a cumulatively significant GHG impact. AB 32 emphasizes that GHG emission reductions must be "big picture" reductions that do not lead to "leakage" of such reductions to other states or countries. If a gas-fired power plant is not built in California, electricity to serve the load will come from another generating source. That could be renewable generation like wind or solar, but it could also be from higher carbon emitting sources such as out-of-state coal imports or old, inefficient peaking units that are still a significant part of the resource mix that serves California.

DFI reaches conclusions not supported by the facts or the ARB plan. The Staff Analysis states very clearly that sectors will have to achieve GHG reductions, and the State will cumulatively achieve the 1990 levels. No one envisions each source or sector having to return to 1990 levels. Staff's analysis acknowledges that the electricity sector may have to contribute more than its proportional share of GHG reductions, or that electricity may increase GHG emissions to electrify other sectors to result in a cumulative state-wide return to 1990 levels. Staff believes that the project fits into ARB's plan in that ARB's plan includes almost every GHG source in the state. (Air Appendix A, Staff Assessment, p. 4.1-100)

BIOLOGICAL RESOURCES

COMMENTS: *The project's impacts on coastal sage scrub due to the proposed gas line have not been adequately mitigated and an alternative pipe line route could avoid this impact however, such an alternative route has not been required or was adequately considered. Construction of the pipeline in the proposed path will result in the permanent destruction of 9.3 acres of coastal sage scrub habitat.*

RESPONSE: DFI makes an unsupported statement that an alternative pipeline route could avoid the sage scrub habitat. In addition, DFI incorrectly states that the gas line will result in the permanent destruction of 9.3 acres of coastal sage scrub habitat.

First, only 7.5 acres will be impacted by the pipe line, not 9.3 acres. (Staff Assessment, Table 4, p. 4.2-17.) Second, the portion of the coastal sage scrub impacted by the gas line represents a temporary impact and not a permanent destruction. As staff's assessment states:

“The impacts to coastal sage scrub habitat along the pipeline alignment will be temporary because disturbed soils within the work area will be seeded with an erosion control mix of native species, and allowed to revegetate naturally. No routine maintenance and removal of woody vegetation will occur along the gas pipeline.” (Staff Assessment p. 4.2-19)

Regardless of the temporary nature of the destruction, Condition of Certification Bio 10 and Bio 13 requires the applicant to offset land impacts by acquiring 18.6 acres of Diegan coastal sage scrub, 6.8 acres of nonnative annual grassland and 4.4 acres of oak woodland for permanent preservation. These mitigation measures will reduce project impacts to coastal sage scrub habitat and other sensitive biological resources to less than significant levels.

More importantly, DFI is incorrect in their assertion that no alternative pipeline alignments were considered. As described in detail on page 4.2-28 of the Staff Assessment, all habitat loss associated with the project has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the California Department of Fish & Game's Natural Community Conservation Plan Process Guidelines. To minimize impacts to coastal sage scrub, the alignment of the gas pipeline was placed within disturbed areas as much as possible, mostly in existing unpaved roads or areas disturbed by agricultural operations. Placing the entire length of the gas pipeline within the SR 76 right-of-way would have avoided all impacts to coastal sage scrub habitat, and this option was thoroughly considered by staff and by the applicant. This option was deemed infeasible because SR 76 is characterized by a narrow roadway and tight turns, severely constrained topography, relatively high traffic flows and absence of an alternate traffic route during construction. Staff's conclusions about the infeasibility of constructing the pipeline within the SR 76 right-of-way are based on staff's personal observations at the site, and on discussions with Caltrans (Markey 2008). Routing the pipeline to the south of SR 76 instead of through the coastal sage scrub habitat would have resulted in even greater impacts to biological resources compared to the selected alignment because of potential impacts to riparian habitat and sensitive species occurring along the San Luis Rey River. (See also Staff Assessment, Alternatives, pp. 6-9, 6-10.)

CULTURAL RESOURCES

COMMENTS: *DFI claims that staff improperly relied on data from four borings clustered along one section of the gas line to develop an assessment. Generally, DFI questions staff's assessment as to the likelihood of the project impacting cultural resources and identifies the following specific areas of concern: Participation by Native American tribes, impacts on the citrus orchard, impacts to Gregory Mountain, cumulative impacts and Condition of Certification CUL-5. Specifically DFI claims the project will be built on top of 8.5 acres of territory formerly occupied by the Luiseno Tribe. DFI goes further to claim there is evidence the project will be built directly over a historical site known to contain artifacts.*

RESPONSE: Staff recommends DFI review the Staff Assessment, pages 4.3-11 through 4.3-25, for a full description of process and sources of information staff used to evaluate the potential impacts of the project on cultural resources. For example in addition to the four borings identified by DFI, staff evaluated the results of four additional borings, studies on a natural creek bank near the gas line, results from literature searches, field studies, and discussion with local Native American groups. (Staff Assessment pp. 4.3-11 to 4.3-25)

There is no evidence to support DFI's suggestion that the project will be built directly over known artifacts. On the basis of archeological records and field work, staff rejects DFI's assertion that staff's assessment grossly underestimates the probability of encountering buried archaeological deposits at the project site. Staff weighed evidence from all sources and reached its independent conclusion that the probability of encountering deposits during project construction would be low in the area of the power plant footprint and along portions of the gas line along the bedrock hills. Staff also designed Condition of Certification CUL-6 to ensure that, as the applicant digs the gas line trench, boring samples are pulled up every 100 meters so that soil can be sampled and evaluated for cultural resource information. This condition is in addition to the standard conditions which set forth a protocol for handling a resource find. (CUL-7)

DFI identifies a number of other issues, all of which are addressed in staff analysis, including engaging local Native American tribes (pp. 4.3-12 to 4.3-13), assessing impacts of citrus orchard loss (pp. 4.3-23 to 4.3-24), and considering Gregory Mountain. (pp. 4.3-25, 4.3-28) Regarding the project impacts to Gregory Mountain, staff concluded the combination of modern industrial and commercial development in the vicinity has already altered the setting of the resource, and the addition of the proposed Orange Grove project would not substantially diminish the integrity of the setting of Gregory Mountain. DFI claims that staff and the applicant cannot rely on impacts from other projects to justify or minimize the project impacts. This statement mischaracterizes the situation and is legally incorrect. As the Staff Assessment notes, the area around Gregory Mountain has some development and, consequently, staff need not consider the impact of the Orange Grove project to a pristine area, but the impact the project would have on Gregory Mountain, as it currently exists. (CEQA Guidelines, Cal. Code Regs., tit. 14, § 15125) In this case, staff concluded that the Orange Grove project would not significantly impact Gregory Mountain which is 2400 feet away. (Staff Assessment, pp 4.3-25, 4.3-28)

Staff concluded that the construction of the facility will impact the setting of Gregory Mountain, adding to the impact from other previous development in the area such as the SDG&E substation and the Pala Casino. But integrity of setting is just one of the seven aspects of integrity considered for a historically significant resource, and the project's impact to the setting

does not increase the degree of impairment to such a degree that the resource would no longer be able to convey its significance. (Staff Assessment, pp. 4.3-25, 4.3-28)

Regarding the cumulative impacts section of the cultural analysis DFI believes that, because staff had not reviewed the cultural resource studies of two nearby projects, staff's analysis is meaningless. Staff assumed that resources were found at the other project sites and that avoidance or mitigation occurred in accordance with CEQA. (pp. 4.3-31 to 4.3-32) Staff determined that construction of the proposed project would not result in any significant impacts to known cultural resources. Additionally, the construction of the Orange Grove project would not contribute to any significant impacts to either the San Diego Aqueduct or Gregory Mountain, as the project would not alter any of the characteristics which convey the significance of these resources

Finally, DFI suggests some changes to CUL-5 which staff believes are not necessary given the complete level of surveying, training, monitoring and reporting required by all the Condition of Certifications.

HAZARDOUS MATERIALS

COMMENTS: *All hazardous waste will be transported to and from the project site via truck, delivered to the project via SR 76. Delivery of these hazardous materials to the project site on a substandard road such as SR 76 puts both the public and the environment at risk. Although the project will use and generate many types of hazardous waste, Conditions of Certification for hazardous materials are largely directed at aqueous ammonia.*

RESPONSE: Transportation of all hazardous materials, including that for aqueous ammonia, the material most likely to cause an off-site impact if a spill were to occur, is discussed in-depth on pages 4.4-12 to 4.4-14 of the Staff Assessment. Staff believes that the greatest risk to human health and the environment is posed by the transport of aqueous ammonia and that all other risks would be substantially less. As stated on pages 4.4-6, 4.4-7, 4.4-12, and 4.4-14, this is due to the physical state of the hazardous material, its mobility, and toxicity. If the risk due to the transport of aqueous ammonia is below the level of significance, the risk due to the transportation of all other less hazardous materials to the site is not significant. Staff has used accident data involving all hazardous materials, not just that involving aqueous ammonia, to support this conclusion.

COMMENTS: *Rather than evaluating the risk associated with deliveries on SR 76, the applicant and staff have relied on data generated from California's highways in general. Consequently, the assessment's analysis and conclusions regarding the likelihood of spills are flawed. Before the project is approved the applicant should be required to assess the likelihood of an accident on SR 76.*

RESPONSE: Staff did review and evaluate the CalTrans SR-76 East Corridor Study (March 2007) which found that there has been an increase in traffic on SR-76 east of I-15 thus leading to an increase in accidents. However, most of the increase in accidents occurs over the part of SR-76 east of the proposed power plant site and involved all vehicles, including automobile drivers coming from the gambling casino east of the project in the late hours of the night when no hazardous materials would be transported to the project. Staff has noted on pages 4.4-3, 4.4-12, 4.4-20, and 4.4-21 of the Staff Assessment that the transportation of hazardous materials is subject to many stringent state and federal driver and vehicle regulations, including training, skill tests, background checks, security measures, and

vehicle safety checks. Nevertheless, staff required an additional safeguard regarding notification to schools of aqueous ammonia transport.

COMMENTS: *When operational, the project will use many types of hazardous materials, including aqueous ammonia as part of the power generation process. Use and storage of these materials creates a risk of spill. To mitigate this possibility additional Conditions of Certification should be added to restrict the use and storage of all types of hazardous material.*

RESPONSE: All hazardous materials during operations are controlled by the engineering and administrative controls listed on pages 4.4-10, 4.4-11, and 4.4-12 of the Staff Assessment. Furthermore, all hazardous materials are restricted by condition HAZ-1 to the precise chemical, amount, and concentration of those found on Appendix B of the Staff Assessment. In addition, a Hazardous Materials Business Plan must be prepared that addresses all hazardous materials, as per condition HAZ-2, and the Safety Management Plan required by condition HAZ-3 must address all liquid hazardous materials, not just aqueous ammonia.

Finally, staff has reviewed the history of power plants licensed by the CEC and found not one incidence or accidental release during the transport of hazardous materials to a CEC-licensed power plant. And while there have been a few accidental releases of hazardous materials at power plant sites, not one has resulted in an airborne or soil or water concentration off-site that would pose a significant risk or hazard to anyone working or living off-site or to the environment. Staff believes that the risk of an accidental release while transporting, storing, or using a hazardous material, while not being “zero”, is well below the level of significance. The methods and practices required for transportation, storage, and use ensure that the risk of impact to humans or the environment is insignificant and staff’s conclusion is supported by the past record.

LAND USE

COMMENTS: *The project’s use of water from FPUD is not consistent with applicable local water district regulations. Rainbow Municipal Water District regulations prohibit the permanent use of water on a parcel other than where the water is purchased. Because the water trucking is proposed on a permanent basis, the plan violates RWMD rules and regulations regarding the sale of water within its service area.*

RESPONSE: This issue has been addressed on numerous occasions. It is true that the project is within the service area of Rainbow Water District, but Rainbow was unable to provide water to the project because a pipeline could not be built and Rainbow’s own rules prevent water from being trucked from a Rainbow pickup point to another location, such as the project site, within the Rainbow district. There is nothing that prevents the applicant from receiving water from another source outside of Rainbow and trucking it into the project area just as the applicant could purchase bottled water and bring it in. (See Applicant’s Exhibit 23)

DFI mischaracterizes the breadth of Rainbow’s regulations. Although Rainbow prohibits the moving of water from location of purchase to location of use within the Rainbow district, FPUD has no such restriction.

Not only can the project truck in water, but because of the water trucking, the applicant can utilize recycled water. The Commission strongly prefers the use of recycled or degraded water for power plant cooling and other uses as appropriate when such water is available. If

Rainbow was supplying the water, all of it would be potable water and therefore the project would be at odds with the State's water policy. (Staff Assessment, Soil & Water Resources, pp. 4.9-21 to 4.9-23, 4.9-26 to 4.9-27. *See also* the comments of Commissioner Boyd, RT. p124: 8-25, p125: 1-17.)

COMMENTS: *A major use permit could not be issued in this case because the San Diego County Board of Supervisors cannot issue a Major Use Permit without making certain findings including that "the location, size, design and operating characteristics of the proposed use will be compatible with adjacent uses, residents, buildings, or structures, with consideration given to ...the availability of public facilities, services and utilities." The Project is beyond the service area of any water district and therefore the County of San Diego and the CEC cannot make the findings necessary for the Major Use Permit. The project is therefore in violation of the San Diego County Zoning Ordinance.*

RESPONSE: It is important to clarify that, given the Commission's exclusive jurisdiction for power plant licensing (Pub. Res. Code § 25500), the county will not be issuing a Major Use Permit. Staff is required to evaluate local laws and regulations to ensure the project, as licensed, will comply with these local laws and regulations. The Staff Assessment addressed the requirements of the local zoning and the findings needed for a Major Use Permit.

California Land Conservation Act (CLCA), Section 51231, empowers the local government to establish and administer agricultural preserves. (Staff Assessment, p. 4.5-10) The proposed project site is zoned A72, General Agricultural, by the county of San Diego. (Staff Assessment, p. 4.5-15) The A72 Use Regulations are intended to create and preserve areas for the raising of crops and animals. Processing of products produced or raised on the premises would be permitted as would certain commercial activities associated with crop and livestock production. Typically, the A72 Use Regulations would be applied to areas distant from large urban centers where the dust, odor, and noise of agricultural operations would not interfere with urban uses, and where urban development would not encroach on agricultural uses. (Staff Assessment, p. 4.5-16).

CLCA, Section 51238 (a)(1), specifically states, "...the erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities are hereby determined to be compatible uses within any agricultural preserve." (Staff Assessment, p. 4.5-10)

Energy Commission staff considered the following two factors in determining that "electrical facility", as cited in Section 51238 (a) (1), includes power plants, making the proposed project compatible with adjacent uses:

1. The County of San Diego, Department of Planning and Land Use, prepared a letter dated December 13, 2007, in response to the Energy Commission's standard request for local government input. The County's letter states that the "the proposed project is compatible with the Agricultural Preserve (Pala #15)."

2. Major Impact Services and Utilities are permitted in the zoning district by Major Use Permit and are consistent with the County's General Plan. (Staff Assessment, p. 4.5-11)

Staff disagrees with the contention that public services or utilities are not available to the project site. As discussed in the Staff Assessment, p. 4.5-22, adequate public facilities, services and utilities have been identified to serve the project or will be assured through Conditions of Certification recommended by staff as described in the following sections of the Staff Assessment: Soil & Water Resources; Socioeconomics; and Worker Safety. The facility will have gas, electricity, water, fire and emergency services. In addition the project will not result in significant land use conflicts, and the site appears suitable based on existing or planned uses in the vicinity (e.g., surrounding solid waste facility zoning and plans for the Gregory Canyon Landfill). (Staff Assessment, p. 4.5-23, p. 4.5-32 to 4.5-33)

NOISE AND VIBRATION

COMMENTS: *The methodology used to perform the analysis of the project's noise impacts is flawed because the noise survey was performed in April and the power plant is expected to mainly operate in the summer months. Staff should have obtained and utilized baseline existing ambient data from summer months for comparison.*

RESPONSE: Staff's professional experience dealing with the noise from operating power plants is that the season of the year the survey was conducted typically makes no measurable difference in the results of an ambient noise survey. Only the weather conditions at the time of the survey can significantly influence the results. According to the AFC Appendix 6.12-A, pp. 5-6, during the survey the winds were mostly calm and there was no precipitation. These conditions are favorable for conducting ambient noise surveys. (Staff Assessment, pp. 4.6-4 to 4.6-7)

COMMENTS: *The noise survey collected baseline data from the nearest residential site between 3:35 p.m. and 5:04 p.m. instead of the nighttime hours when residents are most likely to be home and disturbed by sound and vibrations. The applicant failed to measure the ambient levels at three of the noise receptors and instead estimated these levels based on values from similar locations and conditions.*

RESPONSE: This statement is incorrect. The nearest residential receptor, labeled LT1 in the Staff Assessment, was monitored continuously for more than 25 hours, from 3:35 p.m. on April 18 through 5:04 p.m. on April 19. Staff used the average of the four quietest consecutive hours of the nighttime to evaluate the project's operational impact at this location. (Staff Assessment, pp. 4.6-5 to 4.6-7, Noise Table 2)

Based on the evaluation of the noise environment in the project area, staff believes the ambient noise environments at the project receptors are similar. The applicant estimated the ambient levels to be in the range of 27-30 dBA at House B and House C. The range of the actual measured noise levels at the other receptors is 27-34. Staff has used the lowest level, 27 dBA (Staff Assessment, Noise Table 2 and Noise Table 5). This is a conservative approach and assumes the worst case scenario. Also, the project plus ambient noise level would still be within the threshold in staff's analysis of no more than 5 dBA above the ambient even if the actual late-night ambient levels at these locations prove to be 4-6 decibels below the already conservative estimated levels. For ST2, the ambient level of 34 dBA used in the Amended Staff Assessment, Noise Table 5, is not an estimation. It is the measured level taken after 9 p.m. Staff believes

using this value is conservative, because, even if the late-night levels prove to be up to 6 dBA lower than this, the project would still not exceed the threshold of significance used by staff. (Staff Assessment, Noise Table 5. *See also* Staff Assessment pp. 4.6-10 to 4.6-11, and Conditions of Certification Noise-4.)

COMMENTS: *The Staff Assessment fails to describe the type and frequency of construction noise. The Staff Assessment should predict the single event exposure levels (SENEL) resulting from the construction. The probability of being repeatedly awakened by multiple single-event sounds can be calculated.*

RESPONSE: There is no need for describing the type and frequency of the noise. There is no indication that the Orange Grove Project construction equipment and activities would generate unusually disturbing noises. Furthermore, if tonal noises arise, condition NOISE-2 (noise complaint resolution process) would reduce the impacts. There is no need to calculate the SENEL, as it does not provide much benefit when evaluating power plant construction noise. The SENEL is more applicable to aircraft noise. Construction noise is typically continuous whereas an aircraft overflight produces a single event noise level at a given receptor. Staff typically uses the Leq (hourly average) descriptor to evaluate construction noise, as it accounts for the overall noise, including maximum and single event noise levels. In addition, condition NOISE-6 prohibits construction between 7 p.m. and 7 a.m. (and on weekends and federal holidays). No construction noise will be produced when the project neighbors are trying to sleep. Staff has correctly addressed the construction noise impacts and has proposed appropriate construction-related noise conditions of certification to reduce the impacts. (Staff Assessment, pp. 4.6-7 through 4.6-9 and pp. 4.6-14 through 4.6-18)

COMMENTS: *NOISE-3 fails to provide any details of the noise program, such as ensuring workers are not exposed to levels exceeding 85 dBA and providing hearing protection devices, training and signage.*

RESPONSE: The requirements described above are incorporated in the OSHA and Cal-OSHA standards. NOISE-3 clearly states that the noise control plan shall be in accordance to the OSHA and Cal-OSHA standards. The condition further requires this plan to be reviewed and approved by the Compliance Project Manager.

COMMENTS: *On December 1, 2008, staff agreed to relax the project noise limits in NOISE-4. To protect nearby receptors, staff should not have done that.*

RESPONSE:. The revised noise limits in NOISE-4 are still within 5 dBA above the ambient and would produce less than significant adverse impacts at the project's noise-sensitive receptors. (Staff Assessment pp. 4.6-11 to 4.6-12)

PUBLIC HEALTH

COMMENTS: *The health risk assessments prepared by the applicant and staff identify emissions sources at the proposed project as two combustion turbine generators, one black start engine and one diesel-fueled emergency firewater pump. This inventory should also include the*

diesel-fueled water trucks hauling water to the proposed site. Instead, the assessment separately addresses cancer risks and chronic hazards due to emissions from diesel fueled trucks. The health risk assessment should evaluate impacts from all potentially harmful sources cumulatively.

RESPONSE: It is not scientifically acceptable to combine the risks and hazards associated with the water haul trucks with the results of the health risk assessment for the power plant emissions because the points of maximum impact are different for the two assessments. The water haul trucks will have a point of maximum impact along the transportation route only a few feet from the road due to the ground-level emissions from the tail pipe or stack of a diesel truck. The power plant emissions Point of Maximum Impact is located about one-half mile west southwest from the project, at an elevation approximately 450 feet above the project site. Any other location will have airborne concentrations far less than that at the PMIs. (Staff Assessment pp. 4.7-5 to 4.7-8)

COMMENTS: *The Staff Assessment concludes that the project will not cause a significant risk of cancer to the public despite unexplainable differences between data collected by staff and the applicant. Staff and the applicant should each correct and repeat the inconsistent health risk assessments before conclusively presuming that public health will not be impacted.*

RESPONSE: Staff's mandate is to perform an independent environmental review. (Cal. Code Regs., tit. 20, §§ 1712.5 and 1742.5.) In power plant siting cases, staff typically uses its own assessment to determine the level of risk and hazard. The fact that the Orange Grove applicant's assessment differs with staff's and failed to be transparent and verifiable does not change staff's conclusions. As required, staff conducted an independent assessment to reach its conclusions, all of which was subjected to public review and comment. (Staff Assessment p. 4.7-17)

COMMENTS: *Condition of Certification PUBLIC HEALTH-1 requires development of a cooling water management plan to minimize the potential for Legionella bacteria growth in cooling water but fails to describe the components of such a plan. PUBLIC HEALTH-1 should be expanded to explain the methodology that will be implemented to protect against Legionella bacteria at the project facility.*

RESPONSE: PUBLIC HEALTH-1 requires the preparation and implementation of a Cooling Water Management Plan that will be consistent with either the Cooling Technology Institute, (CTI), guidelines or staff's proposed guidelines. This plan will be reviewed by the Energy Commission's Compliance Project Manager (CPM) and must be approved by the CPM prior to operation of the cooling tower. PUBLIC HEALTH-1 is very specific as to the proper guidelines to follow and those guidelines are publically available. (For a detailed discussion of Legionella and cooling towers, see Staff Assessment, pp. 4.7-19 to 4.7-21.)

SOCIOECONOMIC RESOURCE

COMMENTS: *The Staff Assessment concludes that construction and operation of the project would not displace any people because workers would be hired locally. However, this analysis fails to consider that existing residents may relocate due to significant adverse impacts from the project. The analysis fails to acknowledge that construction and operation of the power plant will degrade surrounding property values, thus impacting the socioeconomic setting.*

RESPONSE: The project site would be constructed on a former citrus orchard in northwestern San Diego County. This area of San Diego County is primarily rural, with some agriculture and small communities. There is no evidence that the project would cause relocation of residents from the immediate area. In addition, the nearest residence is over 2000 feet away from the project site, nearly seven football fields away. (Staff Assessment, p. 4.8-6. *See also* Staff Assessment pp. 4.6-5 to 4.6-6.)

The impacts on the value of nearby property are not an environmental impact under CEQA. Moreover, the staff's assessment concluded the project would not cause any significant environmental impacts with the conditions of certification as staff proposed. Therefore, impacts to property values were not evaluated as part of the Staff Assessment. (*Hecton v People of the State of California*, (1976) 58 Cal.App.3d 653, 656)

SOIL AND WATER

COMMENTS: *Construction of the project will result in significant alterations to existing drainage conditions on the site. Depending on the changes, this can result in flooding, increases in erosion in downstream channels, or increases in sediment in formerly clear waters. The San Diego Regional Water Quality Control Board, RWQCB, previously commented on the project and requested that approval of the project be conditioned on the retention of pre-project hydrograph conditions on the completed project site. This has not been done. Project conditions are aimed at not increasing flood risks downstream but do not address water quality. The water quality aspects of the project's hydromodification impacts need to be mitigated.*

RESPONSE: Features consistent with the RWQCB comments have been incorporated into the design of the Orange Grove Project. (Staff Assessment, p. 4.9-28) For a detailed discussion on construction impacts on drainage, see the section titled, *Soil Erosion Control and Storm Water Management*, Staff Assessment, p. 4.9-16 to 4.9-17, and the section titled *Operational Impacts* at p. 4.9-20 to 4.9-21. In addition, Conditions of Certification Soil & Water 2, 3, 4 and 5 require all project construction wastewaters and storm water runoff to be managed to protect surface and groundwater in accordance with the requirements established by the NPDES General Construction Storm Water Permit and SWPPP, the DESCP, and provisions of the San Diego County watershed protection and grading ordinances. Staff concluded that project management of storm water runoff would result in a less-than-significant impact on soil and water resources and supplies if the project complies with all laws, ordinances, regulations and standards and all the conditions of certification are implemented.

COMMENTS: *At difficult project sites, Best Management Practices ("BMPs") often fail or are initially ineffective...None of the proposed Conditions of Certification adequately mitigate these impacts. One feasible mitigation measure not discussed in the Assessment that would prevent discharges from the Project site is limiting construction to the dry season. Construction is anticipated to take approximately six (6) months. (Assessment 4.9-15.) If construction were limited to the dry season, the lack of precipitation would correspondingly limit the potential for construction related discharges.*

RESPONSE: Project construction impacts associated with grading and storm water management would be mitigated through compliance with Federal, state and local grading and storm water management laws, ordinances, regulations, and standards (LORS) and development of a project specific Drainage, Erosion, and Sedimentation Control Plan (DESCP), in accordance with Conditions of Certification Soil and Water-2, 3, 4, and 5, (Staff Assessment, pp. 4.9-16 to 4.9-19). The storm water LORS all recognize and address the potential for implementation problems with BMPs by incorporating requirements for regular maintenance, inspection and repair of BMPs throughout construction. At a minimum, inspection of BMPs must be conducted before and after storm events and once each 24-hour period during extended storm events. Equipment, materials, and workers must be available for rapid response to failures and emergencies, and all corrective maintenance to BMPs must be done as soon as possible after the conclusion of each storm depending on worker safety. There are also requirements for modifying or upgrading BMPs that aren't effectively controlling runoff, etc. Staff's delegate Chief Building Officials specifically monitor all project plant construction activities to ensure compliance with Soil & Water Resources BMPs and all related LORS.

In addition, the project construction schedule information provided in the Staff Assessment Project Description section (page 3-4) identifies that construction of the project would be initiated sometime in April 2009 and be completed in October 2009. This construction schedule is consistent with the commenter's suggested mitigation, because it generally coincides with the regional "dry" season. (The San Diego Storm Water Ordinance defines "rainy season" as November 11 through April 30.)

COMMENTS: *The California Water Code requires that "water resources of the state be put to beneficial use to the fullest extent of which they are capable." By using potable water as a cooling source for the project the project is denying water for other higher uses in the area, including domestic and agricultural uses. In addition the trucking of water to the project site requires enormous investments in energy, for that reason the project's proposed use of potable water violates state law.*

RESPONSE: DFI's characterization of the water use for this project is incorrect. First, to clarify, the project will not be using potable water for the power plant's evaporative cooling system. The project is expected to use approximately 21 acre-feet a year of potable water for NOx emissions control and power augmentation. The facility is also expected to use around 12 acre-feet a year of recycled water for power plant cooling. (Staff Assessment, pp.4.9-11 to 4.9-12.)

In addition to a project which has incorporated recycled water, the project will also be offsetting its potable water use through conservation programs as required by Condition of Certification Soil & Water 13. Staff also notes that the project's potable water agreement with

FPUD contains a clause that allows FPUD to provide recycled water in lieu of potable water in the event of a drought, water supply shortage, or water emergency. (Staff Assessment, p. 4.9-22)

Staff believes that, with adoption and implementation of Conditions of Certification SOIL & WATER- 8, 9, and 10, the project's water use would have a less than significant impact on water resources and water quality. (Staff Assessment, p. 4.9-23)

There are no legal prohibitions for the trucking of either potable or recycled water and it is unclear how DFI correlates energy used by trucks to be a violation of state law.

COMMENTS: *Because portions of the proposed gas pipeline will be located [in] a 100 year floodplain, there is a possibility that it could be severed or damaged during a 100 year flood. The potential for this adverse impact needs to be discussed in the Assessment, and mitigated before the Project can be approved.*

RESPONSE: As noted on page 4.9-9 of the Soil and Water section of the Staff Assessment, no structures would be placed in the 100-year floodplain that would impede flood flows.

TRAFFIC AND TRANSPORTATION

COMMENTS: *The Staff Assessment anticipates that construction traffic will add between 154 and 310 one way vehicle trips per day for approximately six months. This figure underestimates traffic volume by assuming that approximately 20% of workers will carpool without citing any authority for this assumption. The Assessment also summarily concludes that construction traffic will not degrade the level of service on I-15 or SR-76 below Caltrans and San Diego County's acceptable standards or below the no project level of service. The Assessment claims that the level of service will not be degraded but fails to explain what the level of service will be for I-15 and SR-76 during construction.*

RESPONSE: The assumption that 20 percent of construction workers will carpool is based on prior experience with power plant projects. Regardless of the exact number of carpoolers, the volume of construction traffic most likely will fall between 154 and 310. (Staff Assessment p. 4.10-5) The increase in traffic flow is relatively minor when compared to existing volumes as noted in Traffic and Transportation Table 2, page 4.10-4 of the Staff Assessment. With implementation of TRANS-1, the level of service on project related roads would not deteriorate. (Staff Assessment, pp. 4.10-4 to 4.10-7, 4.10-12)

COMMENTS: *The Staff Assessment fails to account for the unique and dangerous character of the roads connecting the project site. The Assessment briefly notes that the water trucks will be capable of handling curves in the road and maintaining the appropriate speed to blend in with existing traffic. However, the Assessment fails to thoroughly study water truck or hazardous material truck safety in the context of all the particular features of roads to be used for the project.*

RESPONSE: The issues of water truck traffic and the impact on road safety have been fully analyzed. Staff recognized the unique situation of hauling water by truck and therefore commissioned a special traffic study by Fehr & Peers (Traffic & Transportation Technical

Memorandum, attached to the end of the Traffic & Transportation section of the Staff Assessment,)). As noted in the technical memorandum "there are no sub-standard geometric features or conditions that would be incompatible with the types of trucks that will be using these roadways for the Orange Grove project..." (p. 2). Regarding the curves, the report stated, "East Mission and SR 76 both have a number of relatively sharp curves. However, the curves are clearly visible and well marked with advisory signs. Trucks can easily travel through these curves as long as their drivers are using reasonable care."

The applicant will be purchasing new water trucks for the specific purpose of delivering 6,500 gallons of water to the project site. Staff finds no evidence to support a finding that the project owner will use trucks not capable of performing the trip. (Staff Assessment, p. 4.10-6. Testimony of Joe Stenger, Evidentiary Hearing transcripts, p. 146: 14-25, p. 147: 1-3)

COMMENTS: *The Staff Assessment devotes only a single paragraph to the installation of a 10 inch diameter natural gas pipe line across SR-76. Without analysis or evidence, the Assessment concludes that pipe line traffic impacts would be short-term, mitigated by cones and flagmen when necessary and would not significantly impact traffic flow. The Assessment must explain precisely how long the pipe line installation is expected to take, during what hours the construction will occur and how the construction will interfere with or damage the roadway.*

RESPONSE: The installation of a gas pipeline is a routine activity and the mitigation measures (cones, flagmen and subsequent road repair) are standard operating procedure. With the implementation of TRANS-1, staff does not expect any significant adverse impacts to traffic flow on SR-76. (Staff Assessment, p. 4.10-7)

COMMENTS: *The Staff Assessment states that access to the site would be via Pala Del Norte Road, a local private road. The Assessment does not state whether construction and operation vehicles have been authorized to utilize the private road or whether the applicant will seek alternate access.*

RESPONSE: The applicant will need to get permission to use Pala Del Norte Road. A second access road will be built on the eastern portion of the site that would ensure emergency ingress/egress once the project becomes operational. For a more detailed discussion of emergency services concerning adequate ingress/egress for the Orange Grove project, see the WORKER SAFETY AND FIRE PROTECTION section in the Staff Assessment. (Staff Assessment, p. 4.10-9)

VISUAL RESOURCES

COMMENTS: *The project will change existing visual character from natural grasses to manmade exhaust stacks, heat recovery steam generators and intake structures. The Staff Assessment acknowledges that residents with long periods of viewing time will potentially suffer impacts on property values and that the overall visual sensitivity of this viewer group is moderate to high. Nonetheless, the Assessment characterizes the visual impacts to these residents as "moderate" due to "limited viewer numbers, distance from the project site, and screening at the site." The Assessment fails to quantify viewer numbers or distance from the project site, and fails to explain how tree and shrub screening at the site could possibly mitigate*

aesthetic impacts down to a "moderate" level for residents who currently enjoy sweeping landscapes views.

RESPONSE: In the Staff Assessment, staff indicated the intervening rolling hill terrain and vegetation along SR-76 near the project site and the low shrub and existing storage facility screening on the eastern portion of the project site minimally filter views of the site. In this area of SR-76, motorists' attention tends to be drawn to the roadway due to the various curves along this stretch of highway rather than eastward toward the project site, but the prominent and striking upper portions of the power plant structures and noise walls would draw *viewers' attention toward the site momentarily*. Staff's overall visual sensitivity was determined to be moderately low, not moderate to high as indicated by DFI. (Staff Assessment, p. 4.12-8)

DFI indicated that the visual assessment failed to quantify viewer numbers. Under visual sensitivity for Key Observation Point one, (KOP 1), staff indicated that approximately 9439 vehicles per day use SR-76. In addressing KOP2, staff again addressed the vehicles per day and indicated that KOP 2 is a view taken from SR-76, approximately 500 feet east of the Project Site. (Staff Assessment, pp. 4.12-8 to 4.12-10)

COMMENTS: *The Assessment concludes that the project will not impact scenic vistas because the project viewsheds contain no scenic vistas. However, the Assessment later states that east bound motorists on SR-76 at the project location have "views of the rural countryside and hills." The Assessment goes on to note that these rural views will be impacted by the "prominent and striking upper portions of the power plant." The views of rural countryside hills describe in the Assessment are by definition distant and pictorial scenic vistas. These scenic vistas will be impacted by the project.*

RESPONSE: Staff has analyzed visual resource related information pertaining to the proposed Orange Grove Project, and found that the project, with staff-recommended conditions of certification, would not introduce an adverse "Aesthetic" impact under the California Environmental Quality Act and Guidelines. (Staff Assessment p. 4.12-1)

Approximately 9439 vehicles per day use SR-76. About half of these vehicles would be eastbound; therefore the number of viewers will be moderately low. Their duration of view will be moderately low, from 10 to 20 seconds, because the motorist will be focused on maneuvering the various curves in the highway. The overall visual sensitivity for motorists is considered moderately low from KOP 1. This assessment is the result of the moderately low visual quality, moderate viewer concern, and moderate overall viewer concern. (Staff Assessment, p. 4.12-8)

The project would not block high quality or scenic views from key viewpoints in this general area. Vertical features would not intrude into the sky, but remain visually subordinate. Due to the moderate level of contrast, subordinate visual dominance, and low view blockage, overall visual change due to structures would be low to moderate. In the context of the setting's moderate visual sensitivity, and the moderate level of project visual change, the project's visual impact at KOP 1 would be adverse, but less-than-significant. (Staff Assessment, p. 4.12-9)

To minimize visual impacts even further, staff has proposed Condition of Certification VIS-1 which requires that all project features be colored to blend in with the existing landscape to the greatest extent feasible in accordance with a Surface Treatment Plan that would be approved by the Compliance Project Manager (CPM).

WORKER SAFETY AND FIRE PROTECTION

COMMENTS: *The Staff Assessment improperly defers analysis and mitigation for fire safety impacts. Staff proposes that the applicant submit a final Fire Protection Plan that will accomplish general goals ranging from establishment of a fire hazard inventory to fire control requirements and procedures. Because the project-specific Fire Protection Plan is not included in the Assessment, the public will not have an opportunity to review and comment on the fire safety analysis as required by CEQA. The Assessment similarly improperly defers preparation of a worker Injury and Illness Prevention Plan, Personal Protective Equipment Program and Emergency Action Plan. The CEC cannot approve the project without a complete environmental review.*

RESPONSE: Worker Safety and Fire Protection essentially involve compliance with all applicable laws, ordinances, regulations, and standards (LORS) designed to protect workers from fire and other hazards. Consequently, staff's assessment reviews the applicant's list of LORS to make sure it is complete. All the LORS that the applicant must follow are listed by the applicant in the AFC and a list summarizing the particularly relevant ones are listed in the Staff Assessment on page 4.14-2. Elements that must be included in both the worker safety and fire prevention plans are provided both in the AFC and on pages 4.14-6 through 4.14-9 of the Staff Assessment. Staff's assessment, which identifies all applicable LORS, describes the elements required for worker safety and fire protection plans according to governing rules, and recommends conditions of certification to ensure compliance with all applicable LORS, provides sufficient analysis and mitigation under CEQA. This approach is consistent with what the Commission has required for all past worker safety and fire protection plans and conditions of certification to protect project workers.

POWER PLANT EFFICIENCY

COMMENTS: *At full load operation, the project will consume natural gas via pipeline from an existing SDG&E gas main at a rate of 860 million Btu per hour LHV. The Staff Assessment fails to adequately analyze whether this substantial rate of natural gas consumption could potentially impact SDG&E energy supplies or require the development of additional energy supply capacity. The Assessment fails to quantify what percentage of available SDG&E natural gas the project will consume.*

RESPONSE: Given that the project was initiated by SDG&E and is being built on land owned by SDG&E, staff finds it reasonable to assume SDG&E has ample natural gas to supply the facility. Staff found it unnecessary to question SDG&E's assessment of its supplies and capabilities. DFI has failed to point to any evidence that would suggest SDG&E would not be able to provide natural gas to the facility.

In summary, staff has concluded that the project would not require additional sources of energy supply, would not consume energy in a wasteful or inefficient manner, and would not create significant adverse impacts on energy supplies or resources. There is no requirement that staff determine what percentage of available SDG&E natural gas the project will consume. (Staff Assessment, p. 5.3-1)

COMMENTS: *Staff devotes only one paragraph to consideration of alternative generating technologies for the project. The Assessment should thoroughly explore biomass, geothermal, hydroelectric, solar or wind technologies.*

RESPONSE: The Alternatives section of the Staff Assessment addresses in more detail alternative technologies. This project is a peaker, responding to specific local reliability needs in the northern San Diego region. (Staff Assessment 3-1) Since peaking facilities require unique quick start-up and on-demand capabilities, most of the renewable sources with their intermittent availability and/or remote location features, tend not to fit these needs. Rooftop photovoltaic facilities could be local, but they would still have intermittent supply characteristics.

Alternative generating technologies for Orange Grove are considered in the AFC (OGE2008a, AFC § 5.6). Fossil fuels (oil and coal), biomass, geothermal, hydroelectric, solar, and wind technologies are all considered. Biomass and fossil fuels other than natural gas have higher emission levels than natural gas and would have greater difficulty meeting air quality limitations. Most renewables require more physical area and are not always available when peaking power is needed. Given the project objectives to provide peaking power, location, and air pollution control requirements, staff agrees with the applicant that only natural gas-burning technologies are feasible. (Staff Assessment, p. 5.3-4)

COMMENTS: *The Staff Assessment should also include a comprehensive examination of alternative gas turbine cooling mechanisms. The Assessment fails to analyze whether alternative cooling options would be more efficient.*

RESPONSE: The Alternatives section of the Staff Assessment addresses in more detail alternative technologies. It should be noted again, that for cooling, the project will be utilizing recycled water which would otherwise be dumped into the ocean.

Staff did evaluate cooling technologies in the context of efficiency. The applicant proposes to employ a mechanical chiller with a three-cell evaporative cooling tower to cool the chiller condensers. (OGE2008a, AFC §§ 2.3.1, 5.10) Given the relative lack of clear superiority of one system over the other, staff agrees that the applicant's approach would yield no significant adverse energy impacts. In addition, staff believes that the dry cooling option identified by the applicant, (OGE2008a, AFC § 5.10) in which a dry cooling tower would replace the evaporative cooling tower for the chiller condensers, would result in no significant adverse energy impacts and would reduce other project impacts such as water use.

In conclusion, the project configuration (simple cycle peaking facility) and generating equipment chosen appear to represent the most efficient feasible combination to satisfy the project objectives. There are no alternatives that could significantly reduce energy consumption and meet the primary objectives of the project. (Staff Assessment, p. 5.3-6)

TRANSMISSION SYSTEM ENGINEERING

COMMENTS: *The Staff Assessment improperly avoids and defers analysis and mitigation of transmission system impacts. The Assessment relies on studies and any review conducted by responsible agencies to determine the effect of the project on the transmission grid. The proposal fails to actually analyze or mitigate project-specific transmission grid impacts.*

Instead, it relies on third-party studies and mitigation measures that have not yet been contemplated or analyzed for CEQA compliance.

RESPONSE: Energy Commission staff relies on the interconnecting authority for the analysis of impacts on the transmission grid as well as the identification and approval of required new or modified facilities downstream from the proposed interconnection that would be required as mitigation measures. The proposed Orange Grove project would interconnect to the SDG&E transmission network and requires analysis by SDG&E and approval by the California ISO. (Staff Assessment, p. 5.5-2)

The System Impact Study (SIS) and Facilities Study (FS) indicate that there would be adverse impacts on the SDG&E transmission system caused by the addition of the Orange Grove project. The interconnection of the project would cause overloads under contingency conditions, as well as frequency and voltage deviations during transient system conditions due to faults. The mitigation plan identified in the SIS and FS would eliminate the adverse impacts through Special Protection Systems and downstream network upgrades. (Staff Assessment, p. 5.5-1)

Transmission system upgrades will be required beyond the Pala Substation, including reconductoring, changing relay settings, and other work. Transmission system upgrades will be performed by SDG&E and will be finalized in conjunction with the interconnecting agreement. The reconductoring will take place entirely within the existing SDG&E transmission line right-of-way between the Monserate and Pala Substations, a distance of approximately seven miles. Reconductoring work consists of preparing existing transmission line poles to receive new conductors, which will involve replacing 33 of the 117 existing poles, installing nine new poles, and removing two existing poles. (Staff Assessment, p. 4.2-10) When final design is complete, a final assessment of impacts to biological resources would be made and mitigation measures developed as part of the overall transmission system upgrade design work completed by SDG&E. Mitigation for impacts to sensitive biological resources resulting from the reconductoring work would be mitigated in accordance with SDG&E's Natural Communities Conservation Plan (SDG&E 1995). (Staff Assessment 4.2-10)

Transmission system upgrades that will be required for the project and that will be conducted by SDG&E will impact approximately 0.1 acres of coastal sage scrub and approximately 0.1 acres of non-native grassland. These transmission system upgrade impacts will be mitigated according to SDG&E's Natural Communities Conservation Plan (SDG&E 1995). (Staff Assessment p. 4.2-17)

ALTERNATIVES

COMMENTS: *The Alternatives section claims that 87.3 acre feet of water per year will be trucked to the facility for cooling of gas turbines. The assessment does not explain how it arrived at the 87.3 acre-foot figure, or why the figure does not match the numbers in the Soil and Water Resources section.*

RESPONSE: The figure of 87.3 AFY is incorrect. The amount of water to be trucked for use at the site should have reflected the rates identified in the Project Description, (pages 3-2 and 3-3) and the Soils and Water Section (4.9-7).

COMMENTS: *The Staff Assessment fails to adequately analyze renewable energy alternatives, alternative gas turbine cooling technologies or alternative project locations.*

RESPONSE: Staff fully analyzed all three of these areas. One of the primary objectives of the project is to operate as a peaking facility, which does not operate many hours and uses very little water, some of which is recycled water. Typical alternative technologies do not operate this way. Staff Analysis, p. 6-8, discusses solar, wind, geothermal, biomass and tidal energy. Staff Analysis, p. 6-9, discusses alternative cooling technologies, and discussion of alternative project sites can be found on pp. 6-4 to 6-6.

IMPACT OF PROJECT ON PALA PROPERTIES

COMMENTS: *Although its comments in this section are unclear, it appears DFI is inferring that property values will be diminished by the construction of the Orange Grove project.*

RESPONSE: The impacts on the value of nearby property are not considered an environmental impact under CEQA or the Commission's certified regulatory program. Socio-economic impacts are not evaluated unless connected to physical environmental impacts that have the potential to be significant nor is such analysis required. (*Hecton v People of the State of California*, (1976) 58 Cal.App.3d 653, 656) Here, the Staff Assessment concluded that the Orange Grove project, if it complies with staff's recommended conditions of certification, would not result in any significant adverse environmental impacts.

III CONCLUSION

As discussed above, the Staff Assessment has addressed all significant issues associated with the proposed project and, with implementation of the Conditions of Certification and compliance with them, all impacts will be mitigated to levels below significance.

Date: January 29, 2009

Respectfully submitted,



JARED J. BABULA
Senior Staff Counsel
California Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814
Ph: (916) 651-1462
E-mail: jbabula@energy.state.ca.us



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 10/23/08

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
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

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

APPLICANT CONSULTANT

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

COUNSEL FOR APPLICANT

Jane Luckhardt
Downey Brand, LLP
555 Capitol Mall, 10th 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
P.O. Box 639014
Folsom, CA 95763-9014
e-recipient@caiso.com

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

ENERGY COMMISSION

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

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, Suite 600
San Diego, CA 92101
amoreau@klinedinstlaw.com**

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

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

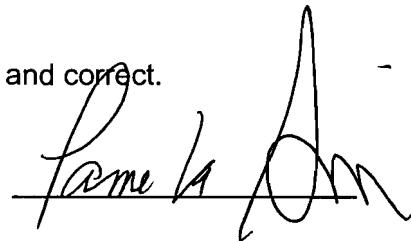
DECLARATION OF SERVICE

I, Pamela Guinn, declare that on 1/29/08, I deposited copies of the attached BRIEF IN RESPONSE TO DFI FUNDING INC'S COMMENTS in the United States mail at Sacramento, CA 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.



Attachments