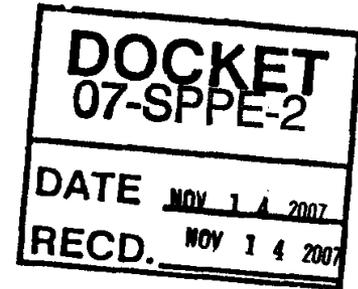


November 14, 2007



VIA E-MAIL

Mr. James Boyd, Vice Chair
Mr. Arthur Rosenfeld, Commissioner
California Energy Commission
1516 Ninth Street, MS-12
Sacramento, CA 95814

Re: Orange Grove Energy, L.P.'s Response to Envirepel Energy Inc.'s September 23, 2007
Comment Letter

Dear Commissioners:

This letter provides Orange Grove Energy, L.P.'s ("Orange Grove Energy") response to Envirepel Energy Inc.'s ("Envirepel") September 23, 2007 submission of comments to the California Energy Commission (CEC). Envirepel's cover letter declares its opposition to the Orange Grove Energy Project ("Orange Grove Project") and contains or purports to contain the following attachments:

1. Letter of Opposition to be submitted to the California Public Utilities Commission,
2. Letter of Opposition to the Orange Grove Project under Title 20, Appendix B,
3. Data Adequacy Worksheet comments for Six Month expedited process,
4. GE LM 6000 estimated performance data sheet,
5. Fallbrook Renewable Energy Facility Executive Summary,
6. Emissions calculations for developments within the six mile study area, and
7. Environmental Impact Reports from some of the surrounding projects.

Orange Grove Energy would like to point out that Envirepel is a direct competitor in the area of energy production in San Diego County. Envirepel proposed its own Fallbrook Renewable Energy Facility to be located near the Orange Grove Project but was not awarded the Power Purchase Agreement by San Diego Gas & Electric (SDG&E). Envirepel is attempting to use the regulatory process to achieve what it was unable to do in the marketplace. Therefore, Envirepel has a clear commercial objective to ensure that the Orange Grove Project is not built.

The September 23, 2007 cover letter to the CEC states that California, when given the choice between a renewable energy project and a conventional energy project on the same circuit, "has an obligation to allow the renewable energy project priority over the gas fired project" We

assume that this question of priority refers to the transmission interconnection queue whereby the California Independent Systems Operator (Cal-ISO) does not make any judgments on selecting one project over another. Unlike what Envirepel suggests, priority is simply a matter of timing based on when an application for interconnection is received.

1. *Letter of Opposition Submitted to the California Public Utilities Commission (PUC)*

In its letter to the PUC, Envirepel claims that J-Power (the applicant for the Orange Grove Project) was fraudulently awarded the Power Purchase Agreement by SDG&E. Envirepel itself has retracted this claim in its October 3, 2007 letter to PUC Commissioner Grueneich.

2. *Letter of Opposition to the Orange Grove Project Under Title 20, Appendix B (September 23, 2007)*

This letter attempts to point out to the CEC the perceived inadequacies of the Orange Grove Project's Small Power Plant Exemption (SPPE) Application.

In Item 1, Envirepel claims that the Orange Grove Project will not be used as a peaker by SDG&E. This claim is false for several reasons. First, the Orange Grove Project has limited hours of operation set in accordance with the permit that is being requested (See Sections 2.4 and 6.2.4.4 of the Orange Grove SPPE Application). The maximum total annual operating hours expected to be licensed and permitted is 3,200 hours per turbine. This clearly indicates that the Orange Grove Project is not intended to be a baseload facility. Second, dispatch is based on heat-rates and peakers have higher heat-rates than combined cycle facilities and are designed to start up quickly and operate for short periods of time, this means that peakers are less efficient than combined cycle plants. The Orange Grove Project is being built as a response to a need from SDG&E for a peaker facility in that region. If a non-peaking power plant was desired, SDG&E would have requested bids from combined cycle facilities with higher operating hours in its RFO. Furthermore, even though the Orange Grove Project will be permitted to operate each turbine up to 3,200 hours per year, it will likely not meet that limit. Historically, peaking power plants in the San Diego region have only operated 5 to 10 percent of the available hours. This roughly equates to 450 to 900 hours per year. Nonetheless, it is typical to permit operation above these historic levels to allow flexibility in operation if needed to support demand or the electric grid in the San Diego County area.

In Item 2, Envirepel states that the Orange Grove Project has significant environmental impacts. Envirepel states that within a six mile radius of environmental study for this project are two Indian casino expansions, 10,000 proposed residences, a solid waste landfill, one million square feet of industrial space, a state college expansion, a rock quarry and a renewable energy power project.

In addition, Item 2 claims that there are significant air quality issues associated with the Project site and no offset credits are available in the San Diego Air Basin. Orange Grove Energy has

however submitted its permit applications to the San Diego Air Pollution Control District (SDAPCD) and will comply with its requirements. Further, Orange Grove Energy has proposed additional emission mitigation measures for NOx, VOC and PM in the October 8, 2007 data responses to assure that any impacts from Project operations will be fully mitigated and less than significant.

Item 2 of the letter also claims that the Rainbow Municipal Water District ("District") does not have jurisdiction over the Orange Grove Project site. This statement is incorrect. The Project is within the District's boundaries, this has been confirmed with the District itself. The District has provided a Project Facility Availability Form signed by the District Engineer on July 11, 2007 confirming that the Project site is within the District. The form is included as Exhibit 63-1 in the Responses to Data Requests submitted to the CEC on October 8, 2007. In addition, Envirepel's comment that gas service will be provided by the District is erroneous. SDG&E will provide gas service to the site, as stated in Section 2.5.2 of the SPPE Application submitted to the Commission on July 18, 2007. Envirepel's statement that the "Project Developer disclosed that any service to the project must cross over the County Water Authority main water aqueducts # 1 and #2" is also erroneous. As shown in Figure 2.2-2 of the SPPE Application, the water main is proposed to be constructed from an existing main that is located north of the Orange Grove Project site and will not cross the County Water Authority aqueducts. The gas line will cross the aqueducts and these interferences will be managed with engineering measures so that there will be no significant impact to the aqueducts.

The "Siting Regulations" cited in Items 3-13 by Envirepel and found in Title 20, California Code of Regulations (CCR) § 2022(b) et seq. simply do not apply to the Orange Grove Project. First and foremost, these siting regulations apply to a program that no longer exists (Cal. Pub. Resources Code section 25550, "Expedited Siting of Electric Generation"). The expedited siting program and section 25550 have been repealed. Second, even if these siting regulations did pertain to a currently existing statute, they do not apply to SPPE applications. Therefore, all of Envirepel's comments based on the 20 CCR § 2022(b) siting regulations are erroneous.

Despite Envirepel's invalid citation to the expedited siting program, the following discussion addresses Envirepel's false contentions.

First, in Items 3-5, Envirepel states that the Orange Grove Project does not meet the ambient air standards criteria when considered in combination with other adjacent project and traffic air discharges. However, the ambient air quality standards compliance evaluation submitted to the CEC does include background concentrations that are based on the worst case measurement for the last three calendar years (2004, 2005 and 2006). Since the background concentrations do include contributions from mobile sources and other adjacent stationary sources of emissions, the basis for this Envirepel claim is unfounded. Furthermore, Orange Grove Energy has also completed the cumulative impacts analysis which evaluates the Orange Grove Project's impacts in combination with reasonably foreseeable future projects.

The reasonably foreseeable threshold is important. Although there is much proposed activity in the area, only a few of those activities would be considered "reasonably foreseeable" projects and Orange Grove Energy has evaluated all of those that are reasonably foreseeable. Lastly on this item, Envirepel has falsely exaggerated the emission estimates and associated emission offsets requirement for the Orange Grove Project by not applying the emission reduction expected to be achieved by the Project's fully-disclosed best available control technology.

Second, in Items 3-13, Envirepel posits that the 12-month AFC application is the correct process. This is not correct because this is an SPPE application and the 6-month expedited siting regulations which Envirepel claims the Orange Grove Project has violated do not apply.

Third, in Items 6, 9 and 10, Envirepel makes mistaken claims regarding the effects of an ammonia spill on the traffic of nearby State Route 76 (SR-76). Based on counts taken for the Orange Grove Project in March of 2007, traffic is overstated by approximately 25 percent. Daily traffic is approximately 9,000 trips east of Rice Canyon Road where the Project occurs (SPPE Table 6.11-2). SR-76 road capacity is 15,400 where it passes by the Project (SPPE Table 6.11-1). The basis of the ten-fold increase in traffic referenced in the letter is not readily apparent and may not be reasonably foreseeable.

The health effects associated with the de minimis ammonia slip were assessed in the Orange Grove Project's Health Risk Assessment and were found to be significantly below conservative regulatory limits even for a long term residential source based on 70-years of continuous exposure.

The discussion of possible ammonia tank or natural gas supply line rupturing due to an earthquake is unfounded. There are no active faults in the immediate vicinity so there is no foreseeable potential for fault surface rupture to directly impact the lines. Ground shaking is possible and engineering would need to meet standards of the Uniform Building Code and the California Building Code to assure resistance to ground shaking. Envirepel's claim that the site is located near "several faults" is misleading. The closest active fault (movement within the Holocene Epoch) is the Elsinore Fault located approximately 8 kilometers (5 miles) away from the site, the ammonia facilities and the gas line (SPPE Figure 6.3-6, Table 6.3-2). The next closest active fault is 45 kilometers (28 miles) away.

In addition to the unfounded discussion of possible damage to ammonia facilities from seismic activity, Section 6.15 of the SPPE Application includes an offsite consequence analysis that demonstrates that even in the worst possible (or nearly impossible) case of a complete release of the entire contents of the aqueous ammonia tank, there would not be serious health effects to travelers on SR-76. Figure 6.15-2 in the Orange Grove Project SPPE Application shows that the ERPG-2 ammonia concentration encompasses only approximately ¼ mile of SR-76 for the worst possible case release scenario. This applies to the nearly impossible scenario of 100 percent of the ammonia tank being instantaneously released due to complete tank failure. At 50 mph, a traveler on SR-76 would pass through the ERPG-2 concentration zone in 12.5 seconds. As

described in Section 6.15 of the SPPE Application, the ERPG-2 is the level at which nearly all individuals could be exposed for up to 1 hour without experiencing irreversible or other serious health effects or symptoms that could impair an individual's ability to take protective action. Based on these considerations, it is not likely that even this very unrealistic scenario could cause serious health issues from a release of ammonia.

Additionally, Envirepel's allegation that the applicant has not disclosed the amount of aqueous ammonia onsite is incorrect. The Orange Grove Project's SPPE Application specifies on Table 2.8-1 that 10,000 gallons of 19 percent aqueous ammonia will be stored onsite. An offsite consequence analysis is summarized in Appendix 6.15-A and Section 6.15 of the SPPE Application.

Fourth, in Items 7 and 12, Envirepel again states that the Project site is not adequately served by the District. As stated above, this is simply untrue.

Fifth, in Item 8, Envirepel asserts that the Orange Grove Project site is "surrounded by, and encompasses habitat and critically endangered species." This is also untrue. Biological resources are described in detail in Section 6.6 of the Orange Grove Project SPPE Application. As identified in that document, the Project site is encompassed by a citrus grove and non-native grassland. The water line and gas line will be constructed within developed areas (e.g., road beds and road shoulders, plus additional area to be identified for the gas pipeline by SDG&E.) There will be de minimis disturbance to natural habitat (coastal sage scrub) as described in the SPPE Application. Special-status species are not expected to be impacted. Even if the Orange Grove Project site were surrounded by environmentally sensitive habitat, such habitat does not exist on the site itself. The key point here is that there are no biological issues with regard to the Project site, and Project features do not impact special-status species or habitat.

Sixth, in Item 11, Envirepel references its 2005 Systems Impact Study (SIS) to bolster its claim that the Orange Grove Project could not be rated at more than 70 MW without the addition of major system upgrades. Once again, there is no basis for Envirepel's statement. As is discussed below, each project applicant is required to conduct its own SIS to determine the project's own specific impacts. Each SIS is unique and specifically tailored to that particular project. The results do not necessarily correspond to different projects at different points in time because much can change in a short period. What's more, there is another facility positioned before the Orange Grove Project in the interconnection queue. If the project at Queue Position #173 goes forward, it will build the Reliability Network Upgrades and fill one of the positions at the Main Bus, with the Orange Grove Project occupying the other. If the higher-queued project falls out of the queue, Orange Grove Energy would be responsible for the system upgrades and would occupy the first slot and Envirepel or any other project proponent would fill the second. This is to say that, contrary to Envirepel's assertion, the Orange Grove Project is not the only project in the interconnection queue. Whether there is room for the Envirepel project after the Orange Grove Project must be analyzed by SDG&E and the Cal-ISO.

Finally, in Item 13, Envirepel once again declares that J-Power was fraudulently awarded the Power Purchase Agreement by SDG&E. As stated above and in Envirepel's October 3, 2007 letter to the PUC, Envirepel has retracted this statement and it no longer applies.

3. Data Adequacy Worksheet Comments for Six Month Expedited Process

Applications going through the SPPE process are not required to submit a Data Adequacy Worksheet. Therefore, Envirepel's attached Data Adequacy Worksheet does not even apply to the Orange Grove Project. For the same reasons stated above, the siting regulations (20 CCR § 2022 et seq.) appearing on the far left column do not apply to the Orange Grove Project. In addition, Envirepel's handwritten comments in the far right column are the same comments it made in its September 23, 2007 Letter of Opposition. As set forth above, those comments are incorrect and unsubstantiated.

4. Fallbrook Renewable Energy Facility (FREF) Executive Summary

The Executive Summary of this document is notable for several reasons. First, the Air Quality section states that Envirepel's FREF project is not classified as a major source of NO_x, CO and particulate matter and that the FREF project will not be providing emission offset. In contrast, while the Orange Grove Project is similarly not classified as a major source of NO_x, VOC, CO and particulate matter, it will provide air emissions mitigation for the Project.

Second, in the Biological Resources section, Envirepel states that no special-status animal or plant species were found on the FREF project site. This is also true of the Orange Grove Project site where no special-status plants or animals have been detected.

Third, just as with the FREF project, the Orange Grove Project intends to have no impacts or less than significant impacts with regard to the remaining sections of Water Resources, Geologic Resources and Hazards, Agriculture and Soils, Land Use, Socioeconomics, Noise, Visual Resources, Traffic and Transportation, Hazardous Materials Handling, Waste Management, Worker Safety, Public Health, Cultural Resources, and Paleontological Resources.

5. System Impact Study (SIS)

Envirepel has also included the SDG&E SIS for its FREF project (dated May 23, 2005). Envirepel cannot rely on a two year-old SIS done for a completely different project to make inferences regarding the Orange Grove Project. Each project applicant is required to conduct its own SIS to determine the project's own specific impacts. Each SIS is unique and specifically tailored to that particular project. An SIS measures the impacts of a project at a particular point in time. The results do not necessarily correspond to different projects at different points in time because much can change in a short period.

In fact, the FREF SIS notes on page 6 that "because there are numerous possible system conditions that could be studied, the Study results should be considered valid only for the indicated Study assumptions" and "the Study results presented in this report are preliminary, non-binding, and subject to revision as additional information is obtained, additional studies are conducted and more detailed analysis is performed."

For these reasons, Envirepel cannot rely on its own project's 2005 SIS to make assumptions about the Orange Grove Project in 2007.

6. *Environmental Impact Reports from Some of the Surrounding Projects*

This is listed as item #7 in Envirepel's September 23, 2007 cover letter but no such documents are attached.

In conclusion, Envirepel's September 23, 2007 comment submission adds nothing to support its claims that the State of California has an obligation to permit a renewable energy project before a gas fired project or that the Orange Grove Project must go through the 12-month AFC process.

Very truly yours,

DOWNEY BRAND LLP



Jane E. Luckhardt

JEL:np

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cc: Service List

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

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

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

**PROOF OF SERVICE
(Revised 10/16/07)**

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-SPPE-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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DECLARATION OF SERVICE

I, Lois Navarrot, declare that on November 14, 2007, I deposited a copy of the attached Orange Grove's Energy L.P.'s Response to Envirepel Energy Inc.'s September 23, 2007 Comment Letter in the United States mail at Sacramento, California with first-class postage thereon fully prepaid to CALIFORNIA ENERGY COMMISSION, Attn: Docket No. 07-SPPE-2, 1516 Ninth Street, MS-4, Sacramento, California 95814-5512. Each individual on the proof of service list shown above received a transmission via electronic mail 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