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April 15th, 2008

Mr. Kenneth Celli
California Energy Commission
1516 Ninth Street, MS-12
Sacramento, CA 95814

DOCKET 07-SPPE-2	
DATE	APR 15 2008
RECD.	APR 15 2008

Re; Orange Grove Energy Project Rebuttal Brief in response to your email dated April 4, 2008

Dear Mr. Celli,

The attached document is my response to your Project Rebuttal request for the Orange Grove Energy Project, Docket No. 07-SPPE-2.

Once again, I would like to thank you, Staff and the Commission for the opportunity to participate in this process, and please contact me with any questions or clarifications that Staff may have regarding my submission.

Sincerely,



Anthony J Arand
CEO

PROOF OF SERVICE (REVISED 10/16/07) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 4/15/08 HJ

Introduction

On March 10th, 2008, the Orange Grove Committee issued a tentative decision recommending the denial of the application for a small power plant exemption submitted by the applicant, Orange Grove Energy LP. As part of the tentative decision, the committee ordered all parties to submit briefs in response to the tentative decision.

On April 4th, 2008, the following was sent to the parties:

The Committee has reviewed the parties' briefs in this matter, which, taken together, identify three options:

1. Deny the SPPE application.
2. Suspend the SPPE application.
3. Transition the SPPE application into an AFC.

The first option (denial) needs no further explanation.

The second option (suspension), which has the support of both Applicant and Staff, does not estimate the length of time needed before the Applicant would reactivate the SPPE application. Staff presented a list of eleven rather substantial tasks that must be completed by the Applicant before Staff would resume work on the project. The Committee would like the Applicant to provide its most realistic estimation of the length of time necessary to complete Staff's enumerated tasks.

The third option (transition to an AFC) would obviate the first two options. The Committee would like the parties to explain how a transition from an SPPE to an AFC could be efficiently accomplished in compliance with CEQA, the Warren-Alquist Act and Title 20 of the California Code of Regulations. The parties should include in their explanation their idea of the process to be followed for the data adequacy determination, as well as itemize the proceedings and requirements that would no longer be necessary because they have already been fulfilled in this case.

Discussion

In my submission to the Committee I made the following statements:

"This Intervener would recommend that the Orange Grove Application for a Small Power Plant Exemption be denied, as the SPPE process is not the appropriate permitting procedure for this Project in San Diego County. This Intervener would recommend that the AFC under Title 20, Appendix B, is the appropriate permitting route for this project.

The San Diego County Dept. of Land Use code describes this Project as a "Major Impact Service and Utilities", which requires a Major Use Permit and a full Environmental Impact Report to be completed if the project is under the jurisdiction of the County of San Diego. In the County of San Diego, a full EIR is typically a 36 month long process, with two separate 6 month duration public comment periods, separated by a 6 month processing and response period. The Applicant has incorrectly portrayed the timelines involved in a full EIR in San Diego County, and has not produced any information or documentation to prove that it is exempt from the traditional EIR process and timelines.

This land use code from the Lead Agency for this Project, the County of San Diego, should help to answer Staff's questions as to the appropriate interpretations of law and precedent that should be applied to the Proposed Project.

In the County of San Diego, the proposed Project can be developed on almost any parcel type, with a Major use permit and EIR, as the County of San Diego recognizes that the proposed use, Gas Turbine Power Plant, indeed does have the potential for significant environmental impacts under the definitions used in the Dept. of Planning and Land use Codes, section 1350. The Applicant has not provided any documentation to the contrary from the County of San Diego, and therefore does not qualify for the SPPE process in the first place.

It is my understanding of the intent of the SPPE process is to provide an expedited permitting path for projects that can *clearly* demonstrate that there are no major potential environmental impacts that can come from the project, if the local permitting process requirements can be met and do not require a full EIR.

The Orange Grove Project has not been successful in demonstrating this basic tenant, and therefore, does not qualify to be included in the SPPE process and should be denied.

In the SPPE application paperwork, as any permit application paper work in the State of California, the applicant must sign that the application is accurate and *appropriate* for the permit being sought, and that the information submitted is truthful.

The burden of proof is upon the applicant, NOT the Agency, to demonstrate the appropriate permitting path is followed, and this burden of proof clearly has not been met by the Orange Grove project, as I have pointed out in my data request document."

My previous comments have identified items 1 and 3 on the Notice for Rebuttal statements email, and I would like to further expand my points.

In regards to the SPPE process, there is a minimum set of standards that must be met prior to filing the SPPE with the CEC. Normally this is done on an honor system, where the Applicant ensures that the pre-requisites of the SPPE permitting process are in place prior to filing.

The Orange Grove Project did not accomplish this basic tenant of the permit application process, and although it has become apparent after the process was started, the fact remains that no evidentiary record has been opened on the project by the CEC, and therefore, "it doesn't exist" on the record. Even the actions of the CEC point to this being the case, basically, if you can't fill out the form completely, you don't start the process.

The SPPE should be denied, as it has yet to be formally started. The one fact that the Applicant does not have water service to the project site, nor a firm commitment to get it to the site, is grounds enough for dismissal as it is a basic requirement to have in place *prior* to filing the SPPE permit application. The applicant may have a water meter receipt, but the face of the document states that the source of water for the meter is unknown.

To the issue of Conversion of the SPPE to the AFC process is mute. There is no “conversion” process, regulation or precedent to allow an SPPE application to be converted to the AFC format, especially if the Applicant hasn’t met the basic tenant of qualifying to be in the SPPE permitting process in the first place. If the Committee elected this route they would be inviting litigation from many additional stakeholders that have previously had to face similar choices and elected to go the full AFC route (or drop a project entirely), because there was no “conversion” option at that time.

The only choice available to the Applicant that meets the environmental laws and regulations of this State, plus the permitting requirements of the Energy Commission, and precedent, is to submit a full Title 20 AFC application for this project for data adequacy evaluation to the Commission. Either they meet the requirement to proceed, or they don’t. There are no shades of gray on this issue, and if they meet the requirements for data adequacy, they can start the 12 Month process like any other applicant.

The Agency has a very complete 65 page checklist that the Applicant can download from the Energy Commission website that will show them everything they need to submit to ensure data adequacy can be met for their project. If they have questions they can also download the Applicants Guide for Permitting which lays out very clearly the appropriate permitting process and timelines.

The Applicant is responsible for their choices and actions in these matters. I personally informed the Applicant of these issues prior to them starting the permitting process, and offered our assistance with the rather large environmental data set I have for this project area, which includes two State Clearinghouse Listed EIR reports and exceed 5,000 pages of endangered species information, water quality issues, air issues, cultural issues, etc.

That the Applicant made unsound decisions in trying to short cut the appropriate permitting routes and procedures is their problem, not the Energy Commission’s. That the Applicant has spent significant monies chasing a poorly thought out permitting strategy is not the fault of Staff, or the Agency, it was an irresponsible decision made by the Applicant.

Agencies of the State of California bear no responsibility for the poor choices made by private companies in the permitting process for any reason. That Staff has gone out of its way to try and assist the Applicant in finding the correct permitting path is unprecedented in most other States, but a very common occurrence at the CEC, a tribute to the quality of Staff that the State of California has consolidated in this Agency.

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

**ORANGE GROVE POWER
PLANT REPLACEMENT PROJECT
SMALL POWER PLANT EXEMPTION**

Docket No. 07-SPPE -2
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:

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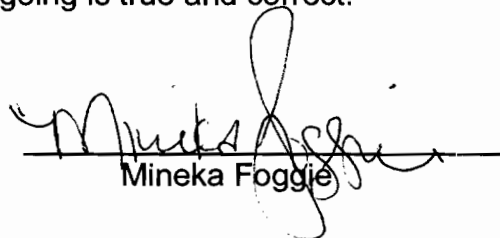
DECLARATION OF SERVICE

I, Mineka Foggie, declare that on April 15, 2008 I deposited copies of the attached Orange Grove Energy Project Rebuttal Brief in Response to your E-Mail Dated April 4, 2008 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 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.



Mineka Foggie