

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

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

DOCKET NO. 08-AFC-4
(AFC filed 06/20/08)

ORANGE GROVE, L.P.'S
OPPOSITION TO PETITION TO INTERVENE BY
ALLIANCE FOR A CLEANER TOMORROW

DOCKET
08-AFC-4

DATE OCT 08 2008

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October 10, 2008

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COMMISSION OF THE STATE OF CALIFORNIA**

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Orange Grove Energy, L.P. (“Applicant”) filed with the California Energy Commission (“Commission”) an Application for Certification (“AFC”) for the Orange Grove Project on June 20, 2008. The Commission deemed the AFC data adequate on July 16, 2008. Alliance for a Cleaner Tomorrow (“ACT”) filed a Petition to Intervene in this proceeding on September 22, 2008 (the “Petition”). Due to the issues presented by the Petition, Applicant hereby files this Opposition to the Petition.

I. Only Reasonable and Relevant Issues Should Be Examined During the Commission Processing of the Orange Grove AFC

California law limits the participation of intervenors in matters before the Commission to matters which are relevant to the proceedings. Section 1207(c) of Title 20 of the California Code of Regulations permits the presiding member of the Commission to grant leave to intervene to any petitioner to the extent he deems “reasonable and relevant.” The issues which are relevant to the Commission’s proceedings are provided in the California Public Resources Code, Sections 25500-25543. Section 25500 provides that “the commission shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility.” Therefore, the Commission’s authority extends only to siting, and it should allow an intervenor only if that intervenor will provide information relevant to siting.

II. ACT Should Not Be Allowed to Manipulate the Commission's Siting Proceedings to Pursue Its Agenda of Opposing Union Labor and Obtaining Employment for its Members

Applicant would like to clarify the purpose of ACT's Petition to Intervene and to make the following objection to ACT's Petition.

In its petition, ACT raises environmental issues, but given the vagueness of its stated concerns, Applicant suggests that ACT is misusing the Commission's environmental review process to counter similar petitions from opposing labor groups with mutually exclusive commercial interests. The Commission should not permit its process to become a proxy battleground for competing commercial interests.

ACT states in the Petition that it is generally concerned about "construction without concern for the environment" and "helping to minimize the impacts of projects that would degrade the environment." The Petition to Intervene points out that members "live in the communities that will likely suffer the impacts of environmentally detrimental projects." ACT does not identify any such members that live in proximity to the project, or even in San Diego County and what specific issues such members might have with the project. The communities in proximity to Orange Grove have had ample time to review the environmental characteristics of the project and have yet object to the Application or identify specific issues with its impacts. The Petition to Intervene addresses broad environmental issues that are not consistent with the late stage development of the project. Without more specifics, it is reasonable to conclude that the Petition to Intervene is using general environmental concerns as leverage in the market for labor used on the project. This is beyond the scope of this siting case and a misuse of the Commission's process, expending limited Commission resources to influence competition in the labor market.

III. The Commission's Certification Process Is a Forum to Analyze a Proposal for a Power Plant On Its Own Merits, Not to Discuss the Use of Union Labor

The proceedings relating to the Orange Grove Project are held to determine whether a power plant should be sited in the area. This is the sole purpose of these proceedings. Entities which seek to use these proceedings as a forum to achieve a goal unrelated to the purpose of the AFC process should not be allowed to intervene. Orange Grove does not support the misuse of the Commission proceedings to address contract labor issues regardless of whether they are raised by ACT or California Unions for Reliable Energy.

IV. If the Petition to Intervene is Granted, the Commission Should End Discovery and Disallow Any Further Data Requests

The Orange Grove Project is nearing the point at which Commission Staff will issue its assessment. All data responses have been submitted by the applicant, with the exception of the modeling result for the cumulative analysis for air. ACT has had every opportunity to intervene earlier in this proceeding or its predecessor small power plant exemption proceeding, which was first initiated and well publicized in the ordinary course of the Commission's licensing process in 2007, and chose not to intervene. Therefore, even if the Commission decides to grant the Petition to Intervene, it should require acceptance of the record in its current state and disallow data requests. This will ensure that the proceedings will continue as scheduled.

V. Conclusion

ACT's concerns about the Orange Grove Project are irrelevant to the true purpose of the Commission's proceedings, which is the siting of a power plant. In the interest of conserving

Commission resources to issues relevant and reasonable within this siting case, the Commission should deny the request to intervene.

DATED: October 10, 2008

DOWNEY BRAND LLP

By:

A handwritten signature in cursive script, appearing to read "Jane E. Luckhardt", written over a horizontal line.

Jane Luckhardt

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COMMISSION OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION
ORANGE GROVE POWER PLANT**

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**PROOF OF SERVICE
(Revised 8/25/08)**

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

<p><u>APPLICANT</u></p> <p>Stephen Thome J-Power USA Development 1900 East Golf Road, Suite 1030 Schaumburg, IL 60173 sthome@jpowerusa.com</p>	<p><u>COUNSEL FOR APPLICANT</u></p> <p>Jane Luckhardt Downey Brand, LLP 555 Capital Mall, 10th Floor Sacramento, CA 95814 jluckhardt@downeybrand.com</p>
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<p><u>APPLICANT CONSULTANT</u></p> <p>Joe Stenger, PG. REA TRC 21 Technology Drive Irvine, CA 92619 usingh@trcsolutions.com</p>	<p><u>INTERESTED AGENCIES</u></p> <p>Ca. Independent System Operator 151 Blue Ravine Road Folsom, CA 95630 e-recipient@caiso.com</p>

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DECLARATION OF SERVICE

I, Lois Navarrot, declare that on October 10, 2008, I deposited a copy of the attached **Orange Grove's Energy, L.P.'s Opposition to Alliance for a Cleaner Tomorrow's Petition to Intervene**, in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5 and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, reading "Lois Navarrot", is written above a horizontal line.

Lois Navarrot