

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

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

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

ORANGE GROVE ENERGY, L.P.'s
OPPOSITION TO DFI FUNDING, INC.'s
APPEAL OF DENIAL OF PETITION FOR INTERVENTION

DOCKET	
08-AFC-4	
DATE	<u>JAN 20 2009</u>
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January 20, 2009

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DFI Funding Inc. (“DFI”) has failed to show that the Committee erred when it denied DFI’s Petition for Intervention. The Commission should adopt the conclusion reached by the Committee¹ and deny DFI’s request.

Orange Grove Energy, L.P. (“Orange Grove”) filed with the California Energy Commission (“Commission”) an Application for Certification (“AFC”) for the Orange Grove Power Plant Project (the “Project”) on June 20, 2008. The Commission deemed the AFC data adequate on July 16, 2008. DFI Funding, Inc. (“DFI”) filed a Petition for Intervention in this proceeding on December 16, 2008 (the “Petition”), claiming an interest as a lender in the following parcels, listed by APN: 110-07-5, 110-07-13, 110-07-14, and 110-07-17. At the evidentiary hearing on December 19, 2008, the Committee denied DFI’s Petition for Intervention. On December 31, 2008, DFI filed an appeal to the Committee’s denial of its Petition to Intervention (the “DFI Appeal”). This filing included DFI’s Memorandum of Points and Authorities In Support of Appeal of Denial of Petition for Intervention (the “DFI Appeal Memorandum”). Orange Grove hereby files this Opposition to the Appeal.

¹ The Committee consists of Presiding Member Jim Boyd, Associate Member Arthur Rosenfeld and Hearing Officer Ken Celli.

**I. The Commission May Only Grant a Late Petition for Intervention
Upon a Showing of Good Cause**

Title 20 of the California Code of Regulations provides that a Petition for Intervention in a power plant siting case “shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 . . . whichever is earlier, subject to the exception in subsection (c).” (20 C.C.R. § 1207[b].) The Committee’s November 6, 2008 Notice of Prehearing Conference and Notice of Evidentiary Hearing also stated that the deadline to file a Petition for Intervention in the Orange Grove case was 9:00 a.m., Monday, December 1, 2008. This notice also provided that time extensions would not be granted for intervenors to review case materials since this proceeding has been ongoing since June 19, 2008. Since this case was filed initially as a Small Power Plant Exemption, the case has been before this Commission since July 19, 2007. The time has passed for intervention, according to both Commission regulations and the notice provided by the Committee. Therefore, the Committee properly denied DFI’s Petition for Intervention, and the Committee should affirm that decision.

**II. DFI Funding, Inc. Has Failed to Make a Showing of Good Cause
to Support a Late Petition for Intervention**

The Title 20 regulations provide that the presiding committee member “may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner.” (20 C.C.R. § 1207[c].) In its Petition for Intervention, DFI asserts that “good cause exists for the intervention of DFI at this time due to lack of notice of the proposed project and hearings related to the proposed project.” DFI continues to make this argument on appeal. (DFI Appeal Memorandum at 4-5.) The Commission should affirm its denial of DFI’s Petition for Intervention because all of the notice requirements in this proceeding have been satisfied, and therefore, DFI has no good cause to support a late intervention.

A. The Commission and Orange Grove Provided All Legally Required Notice

DFI contends that “good cause exists where notice of a proceeding was improper or inadequate.” (DFI Appeal Memorandum at 4.) However, in this case no good cause exists to support approval of a late Petition for Intervention because the notice in this case was not

“improper or inadequate,” as DFI contends. Staff and Orange Grove provided proper notice which was more than adequate to satisfy all applicable notice requirements. Orange Grove’s original opposition to DFI’s Petition for Intervention explained many of the steps taken to notify adjacent landowners and the public in general. (*See Orange Grove’s Opposition to DFI’s Petition for Intervention*, filed December 19, 2008.) Furthermore, while DFI frequently asserts that Staff and Orange Grove failed to give proper notice, DFI has failed to identify a single actual notice requirement that was not fulfilled in this case.

1. *The Provisions Regarding Notice to Property Owners Do Not Apply to DFI Because DFI Is Not an Owner*

To support its contention that it did not receive notice as required by law, DFI simply lists the Commission’s notice requirements and states that it received no notice. (DFI Appeal Memorandum at 4-5.) DFI lays out the requirements for an applicant to submit a list of neighboring property owners and for the Commission to mail notice of the first informational presentation for a project to these neighboring property owners. (DFI Appeal Memorandum at 4.) DFI also notes that the Commission must notify all property owners who are within or adjacent to a proposed transmission corridor zone. (DFI Appeal Memorandum at 5.) However, DFI fails to address the threshold issue of whether these notice requirements apply to DFI in the first place. This is because these notice requirements actually do not apply to DFI, as DFI is not an owner of any land to which these notice requirements apply.

Between its Petition for Intervention, the Declaration of Steve Anderson, the testimony given at the evidentiary hearing, and its Appeal Memorandum, DFI seems to alternate between portraying itself as a mere lender and suggesting that it is an owner of the Pala Del Norte properties. In particular, DFI implies throughout its Appeal Memorandum that it is an owner of these properties. (DFI Appeal Memorandum at 2 [“Prominence Partners conveyed to DFI, as trustee, the real property....”]; at 5 [“DFI has no knowledge as to whether the Commission staff adequately provided notice to other neighboring property owners....”]; at 6 [characterizing Prominence Partners as merely “one of the parties with an ownership interest in the Pala Del Norte properties....”]; at 7 [characterizing DFI as a “trustee”].) As a basis for this contention, DFI explains that it holds a deed of trust from Prominence Partners. (DFI Appeal Memorandum

at 2.) Orange Grove would like to make clear that DFI is nothing more than a lender and a lienholder. DFI is not an owner of the subject properties. A deed of trust creates no ownership interest on behalf of its holder in the property subject to the deed. (*See Hagge v. Drew*, 27 Cal. 2d 368, 376 [1945]; *Bank of Italy Nat. Trust & Sav. Ass'n v. Bentley*, 217 Cal. 644, 656 [1933]; *Hollywood Lumber Co. v. Love*, 155 Cal. 270, 273 [1909]; *Sacramento Bank v. Alcorn*, 121 Cal. 379, 383-384 [1898].) A deed of trust is not a true trust at all. (*See Field v. Acres*, 9 Cal. 2d 110, 113 [1937]; *Burns v. Peters*, 5 Cal. 2d 619, 622 [1936].) It is merely a lien, and therefore, DFI's characterization of itself as a "trustee" of the Pala Del Norte properties is misleading and legally inaccurate. The only owners of the Pala Del Norte properties at all times relevant to the applicable notice requirements are and have been Tesla Gray and Prominence Partners. The list submitted by Orange Grove includes both Tesla Gray and Prominence Partners. (*See Exhibit 1, Appendix 1-A – Adjacent Land Owners Names and Addresses.*) The Public Advisor has confirmed that the Commission indeed sent notice to both Tesla Gray and Prominence Partners, both when the Project was originally filed under the Small Power Plant Exemption ("SPPE") and when the Application for Certification ("AFC") for the Project as currently proposed was filed. (Evidentiary Hearing Transcript ["Transcript"] at 19:5-13.) Therefore, Staff and Orange Grove have satisfied all obligations with regard to notification of nearby land owners.

DFI complains that other lenders were included on the list of nearby property owners provided by Orange Grove. (DFI Appeal Memorandum at 2.) However, DFI fails to mention that at the time notice was given, these lenders were actually owners of the parcels listed. The bare fact that they are lending institutions does not mean that they are merely lenders with regard to the properties listed. The relevant fact is that DFI is a lender rather than an owner, and as discussed above, notice is not required for a mere lender.

DFI contends that Staff and Orange Grove would have included DFI on their notice lists if they had conducted an adequate title search of the properties in the Project area. (DFI Appeal Memorandum at 7.) However, performing a title search for all properties surrounding a power project and the linear facilities is neither necessary nor required to ensure adequate notice to the surrounding community. Performing title searches for the surrounding properties would likely be of dubious value because debt is bought, sold, and modified much more frequently than the land itself. For example, the deeds of trust submitted as attachments to DFI's Appeal of Denial

of Petition for Intervention demonstrate that the lending agreements have been modified several times since 2005, while the ownership of the parcels has remained the same.

DFI complains that it is “unreasonable to assume that because Prominence Partners received notice of the [Project] proceedings, that Prominence Partners relayed that information to DFI in an timely manner.” (DFI Appeal Memorandum at 6.) However, the Commission and Orange Grove are not DFI’s only source of notification. Prominence Partners provided DFI with at least some level of timely notice of the Project. In December 2007, Ray Gray of Prominence Partners sent an e-mail to Steve Thome, Orange Grove’s Vice President of Development, and copied to steve@dfifunding.com (an address listed on DFI’s website as belonging to Steve Anderson). This email discussed power plants and whether there was any feedback on Ray Gray’s “350 acre project in Pala.” (See Attachment B, below.) Therefore, Prominence Partners provided DFI, its lender, with notice of the proposed power plant.

A lender is often made aware of events potentially affecting the encumbered land by the borrower, pursuant to an express covenant in the deed of trust. This helps lenders keep abreast of developments that the property owner alone would otherwise have occasion to know about. The deeds of trust for parcels 110-072-05, 110-072-13 and 110-072-14 each contain a covenant requiring the borrower to “promptly communicate to Lender” any “notices or demands” from “governmental agencies, utilities..., contractors, subcontractors or suppliers.” (See DFI’s Appeal of Denial of Petition for Intervention, Exhibits 1 and 4 at covenant 7[q].) Therefore, Prominence Partners may have been obligated under the terms of these agreements to notify DFI of any notice received from the Commission. Prominence Partners did provide DFI with some level of notice of the Project, as described above, by copying DFI on some of its communications with Orange Grove.

2. *The Commission and Orange Grove Satisfied All Other Notice Requirements and Gave More Notice Than Legally Required*

Pursuant to the Title 20 regulations, Staff and Orange Grove also gave other forms of notice regarding the Project. These forms of notice were described in Orange Grove’s Opposition to DFI’s Petition for Intervention (“Orange Grove Opposition”) at section II(A). Furthermore, as discussed in Orange Grove’s Opposition, the Project has resulted in twice the

usual amount of notice because it was originally filed under the SPPE, and subsequently re-filed pursuant to the Commission's standard application process. (Orange Grove Opposition at section II[A].)

DFI argues that because it is located in Northern California, it had no opportunity to obtain actual or constructive notice of the Project's AFC proceedings. (DFI Appeal Memorandum at 5-6.) As discussed below, DFI did have actual notice of the Project itself. (See section II[C] of this opposition.) Furthermore, the law does not require the Commission and Orange Grove to notify every person in the state. The Commission's notice requirements and policies attempt to notify those who will likely have an interest in the project, which includes those who own neighboring property and those who are involved in the local community surrounding the Project. The Commission and Orange Grove more than accomplished this goal, and the notice they gave was sufficient.

3. *Specific Notice of the Evidentiary Hearings Is Not Required*

DFI complains that it did not receive notice of the evidentiary hearings relating to the Project until December 11, 2008. (DFI Appeal Memorandum at 3; Transcript at 10:22.) However, the Commission never sends out specific notice of evidentiary hearings to the general public. As discussed above, the Commission gives notice for the first informational hearing. (20 C.C.R. §§ 1709.7[a].) As a courtesy, the Commission offers a mailing list for interested parties to keep informed of events relating to the proceedings. To receive information from this list, the interested party must take action and sign up for him or herself. The Commission will not simply add people to this mailing list without some indication that people are interested. DFI has been aware of the proceedings for the Project since 2007, and yet DFI has still not indicated that it has made any effort before December 2008 to inquire about the Project. The Commission is not required to find and notify every person who could potentially have any interest in the proceedings of every phase of those proceedings. The Commission has more than satisfied the notice requirements in this case.

4. *DFI Received Due Process As Part Of the Title 20 Notice Procedures*

DFI claims that "due process requires the Commission to allow DFI to intervene in the

case.” (DFI Appeal Memorandum at 7.) DFI cites no authority to support its contention that it was denied due process. This bare assertion is essentially meaningless without some further explanation. Furthermore, the Commission’s notice requirements and practices satisfy any due process obligation the Commission may have. DFI’s interest in the Orange Grove proceedings is minor. As discussed above, DFI is merely a lender to the owners of the Pala Del Norte properties, and DFI holds no ownership interest whatsoever in these properties. As DFI notes in its Appeal Memorandum, the Commission’s power plant siting proceedings were designed to encourage extensive public participation. (DFI Appeal Memorandum at 7.) This is precisely what has been done during the Project proceedings. In order to accomplish this goal, due process does not require the Commission to allow everyone to intervene at any time desired.

B. The Owners of Record of the Parcels In Which DFI Has an Interest Were Well Aware of the Orange Grove Project From Recurring Communications With Orange Grove

As described in Attachment A below, since at least as early as September of 2007, the owners of the parcels at issue have engaged in dialog with Orange Grove. In September and October of 2007, Orange Grove’s consultant, Joe Stenger, exchanged a series of e-mails with Rick Gittings of Hilltop Group and Angie Wolf of Gray Investment Group, seeking permission to conduct an archaeological resources survey on the part of the property adjacent to Pala Del Norte Road. These messages discussed the Project, and Angie Wolf requested copies of the documents relevant to the Project. From December 3, 2007 to January 17, 2008, Steve Thome, Orange Grove’s Vice President of Development, exchanged e-mails with Ray Gray of Prominence Partners regarding potential uses of Mr. Gray’s 350 acres in the power project, and also requested permission to conduct a biological survey on Mr. Gray’s property. Finally, on April 17, 2008, Gray Investment Group sent a letter to San Diego Gas and Electric (“SDG&E”) offering to sell the 350 acres consisting of APNs 110-072-05, -13, -14 and -17. This letter expressly acknowledged that “Jpower [sic] is proposing two 49 megawatt peaker power plants on the SDG&E property. Which would be located immediately adjacent to our property....” (See Attachment C, below.) Therefore, the owners of these parcels unquestionably had notice of the Orange Grove Project long before the AFC was even filed.

C. DFI Had Notice of the Project Since December of 2007

While DFI complains that it was unaware of the Project proceedings, as described above, DFI has had actual notice of the Project since at least as long ago as December 2007. In December 2007, Ray Gray exchanged emails with Orange Grove, discussing power plants and whether there was any feedback on Ray Gray's "350 acre project in Pala." These emails were copied to DFI. (See Attachment B, below.) Therefore, Prominence Partners provided DFI, its lender, with notice of the proposed power plant. Since DFI itself essentially admits that it has had notice of the Project since this time, it is unclear what more DFI would require of the Commission and of Orange Grove.

DFI claims that without notice, "an ordinary member of the public would have no idea about the power plant siting process, or the Commission's role in approving power plant projects." (DFI Appeal Memorandum at 6-7.) However, despite having knowledge of the Project for a full year before filing its Petition for Intervention, DFI has never indicated that it made any inquiry whatsoever, to any person or entity, about the Project. The Project is not a surprise to DFI. As discussed above, DFI was in contact with Prominence Partners and Orange Grove's Vice President of Development regarding the Project in late 2007. Yet DFI failed to even send an email in response asking for more information about the Project. Furthermore, DFI is a sophisticated lender, not an "ordinary member of the public." DFI has access to resources that most nearby land owners would not, especially since DFI is in the business of investing in land. Because it is not an ordinary member of the public, DFI should be generally aware of the development process and able to become involved in the intervention process in a timely and reasonable manner.

DFI takes issue with Orange Grove's contention that "DFI's general knowledge of the Project was sufficient to give DFI notice of the AFC proceedings." (DFI Appeal Memorandum at 6.) DFI complains that Orange Grove's opposition focused on DFI's alleged failure to act on its general knowledge of the Project. (*Id.*) However, DFI then moves on to other topics and never explains why it failed to act on its general knowledge of the Project. There is no indication that DFI ever showed any interest in the Project until December 11, 2008. DFI has made no effort whatsoever to become involved in the proceedings until now, at a point when the

environmental review is essentially complete and the Project is nearing a decision. DFI claims that it has a substantial interest in the Project proceedings. However, DFI simply cannot substantiate these claims with the record in this case. Until December 2008, it appears that DFI remained completely uninvolved and seemingly uninterested in the Project, and there is no reason to provide special accommodation to DFI in this proceeding.

III. Approving DFI's Petition for Intervention Would Materially Prejudice the Parties and the Project Proceedings

DFI contends that allowing it to intervene would not prejudice the parties or the proceedings because the parties "already have notice of DFI's position on the project, and potential arguments against project approval." (DFI Appeal Memorandum at 7.) However, this argument demonstrates a lack of appreciation and respect for the Commission's procedures. The Commission has valid reasons for setting time restrictions for intervention and other actions during the site certification process. The Commission establishes these time restrictions to ensure the efficient and effective resolution of issues. Furthermore, these time restrictions enable the Commission to organize its hearings in an orderly manner, and they allow the parties to make informed decisions regarding the submission of evidence and the introduction of witnesses at the hearings. DFI has shown up after all of the workshops and evidentiary hearings have been completed to attempt to discuss and resolve issues with comments. Although DFI filed comments on the Staff Assessment, it was not prepared for the hearings. DFI has stated that it opposes the Project on financial grounds. DFI is likely to demand time to hire consultants, to compile and submit evidence, and to perform more extensive briefing of its concerns with the Project. Staff and Orange Grove may then need to respond to all of the new material prepared by DFI, which could create significant delays to the Project.

Orange Grove cannot overemphasize the time constrictions for this project. The Project is nearing the end of its review process. In order to accomplish its online date of October 2009, the Project cannot encounter any unnecessary delays in the certification process. The remaining process in this case involves commenting on the Presiding Member's Proposed Decision, which DFI can do regardless of whether it is a party to the proceedings. Therefore, since a late intervention by DFI would materially prejudice the parties, and since DFI need not intervene to

protect its interests, the Commission should affirm its denial of DFI's Petition for Intervention.

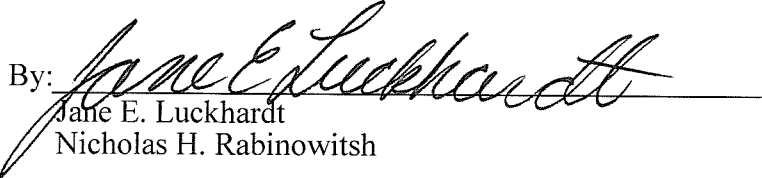
IV. Conclusion

DFI is a sophisticated lender and it has known about the Project for over a year. Yet DFI has failed to demonstrate that it has ever shown any interest in the Project prior to December 2008. The notice provided by the Commission and by Orange Grove has been more than sufficient in this case. Instead of showing genuine interest in the Project proceedings, DFI's late Petition for Intervention demonstrates that DFI simply intends to delay the Commission's review of the Project by lengthy untimely filings and unnecessary and often uninformed comments regarding the Project. The Commission should affirm its denial of DFI's petition for intervention.

DATED: January 20, 2009

DOWNEY BRAND LLP

By:


Jane E. Luckhardt
Nicholas H. Rabinowitsh

ATTACHMENT A

Timeline of the Orange Grove Project Proceedings and Contact With the Owners of APNs 110-072-5, 110-072-13, 110-072-14 and 110-072-17

Date	Event	Details
7/07	Small Power Plant Exemption application filed	
9/4/07	Application for Major Use Permit filed	
9/21/07	E-mail from Joe Stenger of TRC Consulting to Rick Gittings of Hilltop Group, Inc.	Joe Stenger followed up on a phone call earlier in the same week seeking permission to access the Prominence Partners and Tesla Gray Properties adjacent to Pala Del Norte Road for an archaeological resources survey.
9/27/07	E-mail from Joe Stenger of TRC Consulting to Rick Gittings of Hilltop Group, Inc.	Joe Stenger again inquired about obtaining permission to access the portion of Ray Gray's property adjacent to Pala Del Norte Road for an archaeological resources survey.
9/28/07	E-mail from Angie Wolf of Gray Investment Group to Joe Stenger of TRC Consulting	Angie Wolf responded to Joe Stenger's 9/27/07 E-mail. Ms. Wolf informed Mr. Stenger that she was an employee of the property owner and that the property owner was not currently interested in speaking with Joe Stenger.
9/28/07	E-mail from Joe Stenger of TRC Consulting to Angie Wolf of Gray Investment Group	Joe Stenger apologized for any inconvenience to the property owner, and indicated that a simple verbal approval to conduct would be sufficient if the owner is busy.
10/1/07	E-mail from Angie Wolf of Gray Investment Group to Joe Stenger of TRC Consulting	Angie Wolf informed Joe Stenger that the property owner still did not consent to Joe Stenger's request for access to conduct the archaeological resources survey.
10/1/07	E-mail from Joe Stenger of TRC Consulting to Angie Wolf of Gray Investment Group	Joe Stenger informed Angie Wolf that he would be glad to answer any questions she may have "regarding the proposed plant."

10/1/07	E-mail from Angie Wolf of Gray Investment Group to Joe Stenger of TRC Consulting	Angie Wolf requested copies of everything being done regarding the peaker plant, and stated that these documents needed to be reviewed before any permission to access the property would be granted.
12/3/07	E-mail from Ray Gray to Steve Thome of J-Power, CC'd to Steve Anderson of DFI Funding	Discussion regarding "power plants" expressly referenced Ray Gray's "350 acre site in Pala."
12/5/07	E-mail from Steve Thome of J-Power to Ray Gray, CC'd to Steve Anderson of DFI Funding	Steve Thome indicated to Ray Gray that he spoke to San Diego Gas & Electric about Ray Gray's 350 acres.
1/17/08	E-mail from Steve Thome of J-Power to Ray Gray	Steve Thome requested permission to conduct a biological survey of Ray Gray's Pala del Norte property to establish whether endangered species were present.
4/17/08	Letter from Angie Wolf of Gray Investment Group to San Diego Gas & Electric	The letter offered to sell 350 acres (APNs 110-072-13, -05, -14 and -17, TM5321) to SDG&E. The letter expressed Gray Investment Group's concern with the impact of J-Power's proposed peaker power plant on the value of the 350 acres.
6/19/08	Application for Certification filed	
7/16/08	First Business Meeting (Data Adequacy)	
7/23/08	Issues Identification Report provided by Staff	
7/29/08	Informational Hearing, Issues Identification, and Scheduling Conference	

7/31/08	Notice of Receipt of Application for Certification – Orange Grove Project	Notice of Receipt was mailed to property owners located adjacent to the project site or any of the project-related facilities. This notice also gave all recipients the opportunity to sign up for the mailing list, which causes anyone who signed up to receive notices of all project-related activities and notice when documents related to the project's review are available.
8/1/08	Staff provided data requests to Applicant	
8/29/08	Applicant submitted data responses	
9/11/08	Data response and issue resolution workshop	
9/15/08	Status Report #1	
11/6/08	Staff Assessment published	
11/17/08	Staff Assessment Workshop	
11/25/08	Prehearing Conference Statements due	
12/1/08	Prehearing Conference	
12/11/08	Amended Staff Assessment published	
12/16/08	DFI Funding, Inc. filed Petition for Intervention	
12/19/08	Evidentiary Hearings begin	
12/31/08	DFI files its Appeal of Denial of Petition for Intervention	
1/9/09	All parties' Opening Briefs due	

1/23/09	All parties' Reply Briefs due	
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ATTACHMENT B

**E-mail Messages Between Orange Grove and Ray Gray of Prominence Partners,
Copied to Steve Anderson of DFI Funding, Inc.**

Rabinowitsh, Nicholas

From: Steve Thome [sthome@jpowerusa.com]
Sent: Wednesday, December 05, 2007 10:12 AM
To: raylinte@adelphia.net
Cc: steve@dfifunding.com
Subject: RE: Power plants

Ray,

I have spoken to SDG&E about your 350 acres. They are going to pass the information internally to their real estate people. No one seems to move very quickly and no one seems to have authority to do much of anything. I can't imagine that we will get any sort of response before the holidays.

Your timing on PG&E may be very good. They are coming out with an RFP in the next couple of months. There should be a resource plan that gives a hint of what they are looking for. Given your site, the following are plausible options:

- large 500-1,000 MW combined-cycle power station.
- a 50-100 MW solar facility (depending on how sunny the location is). You will need at least 5 acres per MW for a plant.
- a hybrid combined-cycle and solar facility... this is my best version of a quasi-green large power plant. I think a similar plant is being developed in Victorville.

J-Power owns a number of large combined-cycle facilities. We have recently investigated a solar thermal project in California City (western side of the Mohave Desert).

Steve

Stephen Thome
Vice President of Development
J-Power USA

847-908-2876 Office
720-221-7954 Mobile
720-221-0662 Fax

sthome@jpowerusa.com

-----Original Message-----

From: raylinte@adelphia.net [mailto:raylinte@adelphia.net]
Sent: Monday, December 03, 2007 1:58 PM
To: Steve Thome
Cc: steve@dfifunding.com
Subject: Power plants

Steve--I had my ranch manager check out the power lines on my ranch up north near Hollister. Good news--the main power lines actually cross two separate areas of my ranches. One of them crosses a ranch I have on Little Panoche Road, aka Shields Rd, in San Benito County. My consultant, Rick Gittings (ex-city manager of San Marcos, CA), who met with SDGE in reference to your Peaker Plant, thinks that the

12/18/2008

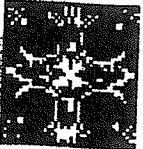
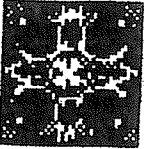
above location on my 11,000 acre ranch could be ideal for a quasi-green, large-megawatt power plan. He was involved in one for the City of San Marcos. The other ranch that power lines cross is on Panoche Road off of Hwy. 5. It crosses over a 1000 acre ranch that I have in Fresno County. Let's sell power to PGE!

Any feedback on my 350 acre project in Pala?

Thanks...Ray Gray

ATTACHMENT C

**Letter From Gray Investment Group to San Diego Gas & Electric
Offering to Sell 350 Acres**



Gray Investment Group

P.O. Box 53
Pala, CA 92059
Cell: (760) 533-5450
Office/Fax: (760) 742-4206

April 17, 2008

San Diego Gas & Electric
Attn: Juanita Hayes
571 Enterprise Street
Escondido, CA 92029

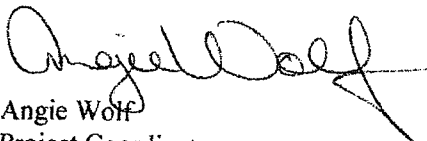
Re: Offer to Sell 350 acres immediately adjacent to the SDG&E property (substation) north of Highway 76, east of Interstate 15. Ocean view property, overlooking the San Luis Rey River. (APN's 110-072-13, -05, -14 & -17, TM5321)

To Whom It May Concern,

This letter is an offer to sell 350 acres referenced above to SDG&E, in order to provide the corporation a property that has development potential as well as habitat for the other power projects that the corporation is contemplating within its service territory. As you are aware Jpower is proposing two 49 megawatt peaker power plants on the SDG&E property. Which would be located immediately adjacent to our property and we see no way the proposed project would not have major negative impacts on our property and its value. Our property is currently being processed for 30 Single Family Ocean View Estates, with individual values of \$1,000,000.00 or more. To place such a heavy industrial use in a pristine area, which is currently an exclusively very expensive Single Family Ocean View Estates area, is not a use that can be mitigated in any way that would make economic sense for our property. It is for that reason that we would be willing to sell the property to either SDG&E or the proponent of the peaker plants

If we are unable to come to a mutually agreeable transaction, we will have no other recourse than to actively oppose the proposed use on your property. Which we see as having an extremely negative and deleterious impact on our property values. We would appreciate a response in the very near future, so we can determine our next steps in protecting our property rights and it's value.

Sincerely,



Angie Wolf
Project Coordinator

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

**APPLICATION FOR CERTIFICATION
ORANGE GROVE POWER PLANT**

DOCKET NO. 08-AFC-4

**PROOF OF SERVICE
(Revised 10/27/08)**

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

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-4
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 621 Capital Mall, 18th Floor Sacramento, CA 95814 jluckhardt@downeybrand.com</p>
<p>Mike Dubois J-Power USA Development 1900 East Golf Road, Suite 1030 Schaumburg, IL 60173 mdubois@jpowerusa.com</p>	<p>Wayne Song Morgan, Lewis & Bockius LLP 300 S Grand Avenue, 22nd Floor Los Angeles, CA 90071 wsong@morganlewis.com</p>
<p><u>APPLICANT CONSULTANT</u></p> <p>Joe Stenger, PG. REA TRC 2666 Rodman Drive Los Osos, CA 93402 jstenger@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>

<p>Steve Taylor San Diego Gas & Electric 8306 Century Park Court San Diego, CA 92123 srtaylor@semprautilities.com</p>	<p><u>ENERGY COMMISSION</u></p> <p>JAMES D. BOYD Presiding Member jboyd@energy.state.ca.us</p>
	<p>ARTHUR ROSENFELD Associate Member pflint@energy.state.ca.us</p>
<p><u>INTERVENORS</u></p> <p>Anthony J. Arand 219 Rancho Bonito Fallbrook, CA 92028 (760) 728-7388 Voice tony@envirepel.com</p>	<p>Kenneth Celli Hearing Officer kcelli@energy.state.ca.us</p> <p>Felicia Miller Project Manager fmiller@energy.state.ca.us</p>
<p>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</p>	<p>Jared Babula Staff Counsel jbabula@energy.state.ca.us</p> <p>Public Adviser's Office pao@energy.state.ca.us</p>
<p>Archie D. McPhee 40482 Gavilan Mountain Road Fallbrook, CA 92028 Archied1@earthlink.net</p>	<p><u>Courtesy Copy</u></p> <p>DFI Funding, Inc. c/o Best Best & Krieger LLP Melissa W. Woo Cyndy Day-Wilson 655 West Broadway, 15th Floor San Diego, CA 92101 Melissa.woo@bbklaw.com Cyndy.day-wilson@bbklaw.com</p>

DECLARATION OF SERVICE

I, Lois Navarrot, declare that on January 20, 2009, I deposited a copy of the attached **ORANGE GROVE ENERGY, L.P.'s OPPOSITION TO COMMENTS BY DFI FUNDING, INC.'s APPEAL OF DENIAL OF PETITION FOR INTERVENTION** in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

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

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



Lois Navarrot