

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)

DOCKET

08-AFC-4

DATE MAR 09 2009

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ORANGE GROVE ENERGY, L.P.'S COMMENTS ON THE
PRESIDING MEMBER'S PROPOSED DECISION

Jane E. Luckhardt
Nicholas H. Rabinowitsh
DOWNEY BRAND LLP
621 Capitol Mall, 18th Floor
Sacramento, California 95814
Telephone: (916) 444-1000
FAX: (916) 444-2100
E-mail: jluckhardt@downeybrand.com
Attorneys for Orange Grove Energy, LP

March 9, 2009

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Pursuant to Title 20 of the California Code of Regulations Section 1749(b) and the Notice of Availability of the Presiding Member's Proposed Decision and Notice of Evidentiary Hearing and Notice of Committee Conference, Orange Grove Energy, L.P. ("Orange Grove") hereby files comments on the Presiding Member's Proposed Decision ("PMPD").

I. Air Quality

Orange Grove believes that a paragraph from the Air Quality section of the PMPD may be editorial in nature and that the inclusion of this paragraph in the PMPD may have been inadvertent. This paragraph reads as follows:

Parties will brief whether ARB conducts analysis. Parties will brief whether Pala and Fallbrook are in cumulative analysis but cumulative analysis was explained by Staff's expert at the evidentiary hearing where Ms. Day-Wilson was present. (12/19/08 RT 65:21 to 66:5; 67:21 to 69:7). There is a complete explanation of the project's green house gasses in Appendix A of Staff's Assessment, which also discusses and describes ARB's scoping plan. (Ex. 200, pp. 4.1-91 to 4.1- 102; Air Appendix A.)
(PMPD at 157.)

Orange Grove understands the issue described in the paragraph above regarding "whether ARB conducts analysis" refers to a comment from DFI Funding, Inc. ("DFI"). In this comment, DFI stated that "[t]he 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 §

922.5.3(b).” (DFI Comment Letter [dated December 18, 2008] at 3.) Both Orange Grove and Staff responded to this comment. (See California Energy Commission Staff’s [“Staff”] Brief in Response to DFI Funding, Inc.’s Comments [filed January 29, 2009] at 2; see also Orange Grove’s Response to Comments by DFI Funding, Inc. [filed January 29, 2009] at 2.) This comment was also discussed in the PMPD. (PMPD at 155.)

The paragraph above also contains another issue, described as “whether Pala and Fallbrook are in cumulative analysis.” Orange Grove understands this to refer to another comment from DFI claiming that “the Assessment fails to include any data referencing the emissions from the communities of Pala and Fallbrook.” (DFI Comment Letter at 4.) Orange Grove has addressed this comment as well. (See Orange Grove’s Response to Comments by DFI Funding, Inc. at 3-4.) The PMPD also addresses this issue. (PMPD at 156-157.)

The paragraph above also refers to “a complete explanation of the project’s green house gasses in Appendix A of Staff’s Assessment, which also discusses and describes ARB’s scoping plan.” The PMPD also discusses the Project’s greenhouse gas impacts (PMPD at 142-148) and ARB’s scoping plan (PMPD at 143).

Orange Grove recommends that the paragraph described above be removed from the PMPD in its entirety, as it is confusing and redundant.

II. Alternatives

Orange Grove’s only comment in this area addresses the Committee’s concern from its Notice of Supplemental Evidentiary Hearing regarding a discrepancy in water usage figures between the Alternatives and Soil and Water Resources sections of the Staff Assessment. (See Exhibit 200 at 4.9-7 and 6-9.) This issue is addressed in Orange Grove’s Supplemental Testimony, filed along with these comments on March 9, 2009, which provides that the 87.3 acre-feet per year (“AFY”) water usage figure from the Alternatives section of the Staff Assessment is erroneous. The correct water usage rates for the Project are as follows. The expected water usage rates are 21.1 AFY for fresh water and 12.1 AFY for recycled water. (See Exhibit 200 at 4.9-7; Exhibit 1 at § 6.5.2.2.1.) The maximum design water usage rates are 62 AFY for fresh water and 38.7 AFY for recycled water. (See *id.*)

III. Biological Resources

Page 252 of the PMPD incorrectly identifies the San Diego desert woodrat as being confirmed present in the Project vicinity based on survey results, and the presence of the Quino checkerspot butterfly and Stephen's kangaroo rat as not being ruled out. The evidence indicates that either the San Diego desert woodrat or the Dusky-footed woodrat, a non-special-status species, is present, and there is no evidence to confirm which of these species is responsible for the sign observed. (Exhibit 200 at 4.2-14.) To be conservative, Staff has considered the special-status San Diego desert woodrat to present. (*Id.*) Focused surveys were conducted for the Quino checkerspot butterfly, and the species was not detected. (Exhibit 1 at 6.6-25, 6.6-30 and Appendix 6.6-C.) The Stephen's kangaroo rat has not been identified by Staff to be present or potentially present in the Project area. (Exhibit 200 at 4.2-13.) The Applicant determined that there is no suitable habitat for the Stephen's kangaroo rat in the project area. (Exhibit 1 at Appendix 6.6-E.) Considering these factors, Orange Grove proposes that the final paragraph of PMPD page 252 be revised as follows:

Based on survey results, ~~nine~~ ten endangered, threatened, or special-status species were confirmed present at or near the site. They are: Engelmann oak, Parry's tetracoccus, ~~San Diego Desert Woodrat~~, Coastal California gnatcatcher, Cooper's hawk, Least Bell's vireo, Southern California rufous-crowned sparrow, Southwestern willow flycatchers, San Diego horned lizard, Northern red diamond rattlesnake, and arroyo toad; ~~an~~ one additional ~~two~~ special-status species (~~Quino checkerspot butterfly and Stephen's kangaroo rat~~ San Diego desert woodrat) could not be ruled out because suitable habitat is available and surveys did not conclusively demonstrate their absence. (Ex. 200, pp. 4.2-13 to 4.2-15.)

Page 257 of the PMPD includes a fragmented sentence in the first full paragraph. Orange Grove proposes that the Committee complete the fragmented sentence as follows:

As discussed in the Noise and Vibration section of this Decision, project noise control design features will reduce plant noise impacts to below the level of significance, in accordance with all applicable state and local laws, ordinances, regulations and standards.

Page 274 of the PMPD includes a fragmented sentence for the Verification of Condition of Certification BIO-10. Orange Grove proposes that the Committee complete the fragmented sentence to be consistent with the Amended Staff Assessment, as follows:

At least 30 days prior to the start of any project-related ground disturbance activities, the project owner shall provide evidence to the CPM of having secured 18.6 acres of Diegan coastal sage scrub and 6.8 acres of non-native annual grassland has been secured in a mitigation bank approved by the California Department of Fish & Game and the U.S. Fish and Wildlife Service, and that the project owner has implemented all mitigation requirements based on compliance with the Natural Communities Conservation Program Plan and as incorporated into the BRMIMP.

IV. Land Use

In its Notice of Supplemental Evidentiary Hearing, the Committee requested the parties to address the issue of the leasing arrangement for the Project site. The Committee inquired whether such a lease would create a subdivision under the Subdivision Map Act and, if so, whether the subdivision would violate the minimum lot size for the zone. Part A of this section addresses the issue identified by the Committee regarding the basis for Orange Grove's use of the Project site. Part B of this section addresses the Committee's questions with regard to the applicability of the Subdivision Map Act to the Project. Part C of this section addresses the Committee's questions with regard to the impacts of any potential subdivision on the minimum lot size for the zone. Part D of this section addresses an additional concern of Orange Grove involving references to heat recovery steam generators in the PMPD. Part E of this section addresses a clarification regarding the site parcel. Finally, Part F of this section adds suggested revisions to Condition of Certification LAND-1.

A. Orange Grove's Right to Use the Project Site

As discussed above, the Committee inquired about the Project's arrangements for the use of the real property at the site. Orange Grove has addressed this issue in its Supplemental Testimony filed on March 9, 2009, which provides that Orange Grove will enter into a lease for the Project site and a tolling agreement for the sale of the energy and capacity from the Project.

B. Applicability of the Subdivision Map Act to the Orange Grove Project

In response to the Committee's question from its Notice of Supplemental Evidentiary Hearing, the Project's lease arrangement will not create a subdivision under the Subdivision Map Act (the "Act"). A lease can constitute a "subdivision" as that term is used in the Act. (Cal. Govt. Code § 66424.) However, section 66412.1(a) of the Government Code provides that the Act does not

apply to the leasing of any parcel of land, or any portion thereof, in conjunction with the construction of commercial or industrial buildings on a single parcel, unless the project is not subject to review under other local agency ordinances regulating design and improvement.

As part of the California Energy Commission's ("Commission") site certification process, the Commission takes into account all applicable laws, ordinances, regulations, and standards. (20 C.C.R. § 1744.) This includes all local agency ordinances regulating design and improvement. Therefore, because the Project involves a lease of a portion of a parcel in conjunction with the construction of industrial buildings thereon, and the Project's design and improvements are subject to review under the Commission's site certification process, the Act does not apply and the Project's lease does not create a "subdivision" under the Act. Furthermore, the Project's design and improvements are subject to review under the Habitat Loss Permit process by the County of San Diego (the "County").

In addition, the County has noted that the Act contains another exemption for land conveyed to or from a public utility based upon Section 66428(a)(2). (*See* Cal. Govt. Code § 66428(a)(2); *see also* Letter from the County of San Diego, Department of Planning and Land Use [January 7, 2009] [included with these comments as Attachment A].)

A parcel map shall not be required for either of the following:

...

(2) Land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

This exemption applies unless a showing is made in an individual case on substantial evidence that public policy necessitates a parcel map. There is no evidence in the record that would support a finding that public policy necessitates a parcel map. Furthermore, San Diego Gas and

Electric (“SDG&E”) is a public utility, and a lease is a conveyance of land, so this exemption also applies in this case.¹

SDG&E has also indicated to Orange Grove by email that the Act will not apply to the Project. In arriving at this conclusion, SDG&E cited sections 66412.1 and 66428(a)(2) of the Government Code, discussed above.

C. Impact of the Project’s Lease on the Minimum Lot Size for the Zone

As discussed above, the Act does not apply to the Project’s leasing arrangement. This means the Project’s lease will not result in any “subdivision” whatsoever under the Act. The lease will not affect the size of any existing lot at the Project site. Therefore, the Project will not violate the minimum lot size for the zone at the Project site.

D. Sections Referencing Heat Recovery Steam Generators

1. *General Comment*

The PMPD contains several references to the use of heat recovery steam generators (“HRSGs”) as part of the Project. As explained in Orange Grove’s Prehearing Conference Statement (filed November 25, 2008), the Project will not employ HRSGs. The Project is a simple cycle peaking plant and does not contain a steam cycle or HRSGs. (See Exhibit 1 at § 1.1; Exhibit 200 at 1-2.) Therefore, the Project will not have any HRSGs, and the tallest Project structures will be the two exhaust stacks for the combustion turbine generators (“CTGs”).

2. *Specific Changes*

Orange Grove proposes that the Committee make the following modifications of select sections from the PMPD to reflect the information discussed above:

¹ The Act does not contain a definition of “public utility.” However, the California Constitution states that private corporations that own, operate, control, or manage a line, plant, or system for the production, generation, transmission, or furnishing of power, directly or indirectly, to or for the public, are public utilities subject to control by the Legislature. (Cal Const., Art. 12, § 3.) Also, the Public Utilities Code includes the definition of a “public utility.” This section defines a “public utility” as including every common carrier, pipeline corporation, gas corporation, and electrical corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof. (Cal. Pub. Util. Code § 216.) San Diego Gas and Electric is a public utility under either of these definitions.

a. PMPD page 356:

There is no evidence that San Diego County recommended height limitations for the Orange Grove Project. The tallest project structures will be the two HRSGs exhaust stacks which are 80 feet in height. No other structures exceed 60 feet in height. (Ex. 200 p. 4.12-4). Since the record indicates that the project would meet the requirements for an MUP, we find that it is exempt from the County's height limitations.

b. PMPD page 400, at Visual Resources Table 2:

Visual Resources Table 2 provides a "Summary of Major Publicly Visible Structures." This list of visible structures incorrectly includes two HRSGs. Orange Grove proposes to replace the word "HRSGs" in this table with "exhaust stacks."

c. PMPD page 404:

Visual Change. For eastbound motorists on SR-76, the project structures will be clearly visible from KOP 1. From other segments of SR-76, the project will be partially screened by tree canopy, with the upper portions of the exhaust stacks; ~~heat recovery steam generators (HRSGs) and intake structures~~ sound walls visible above the canopy. In both views, the project introduces contrasting elements of vertical and rectilinear form and line, light and contrastive coloring in relation to the visual foreground of natural grasses, resulting in a moderate level of contrast. (Ex. 200, p. 4.12-8.)

Overall visual dominance of the project will remain subordinate to the hillsides in the background but the vertical form and line of ~~stacks and HRSGs~~ the exhaust stacks and sound walls will silhouette against the hillside, increasing dominance and attracting attention to a moderate degree. However, the project's features will not block high quality or scenic views in the vicinity. Due to the moderate level of contrast, subordinate visual dominance, and low view blockage, overall visual change will be low to moderate. (Ex. 200, pp. 4.12-8 to 4.12-9, Visual Resources Figure 3B.)

d. PMPD page 411:

Project components that could affect visual resources include the ~~two heat recovery steam generators~~ sound walls, the turbine enclosures, the chiller system, the emission control system, and the demineralized water and raw water storage tanks.

e. PMPD page 413:

VIS-1

The project owner shall treat the surfaces of all project structures and buildings visible to the public such that a) their colors minimize visual intrusion and contrast by blending with the landscape; b) their colors and finishes do not create excessive glare; and c) their colors and finishes are consistent with local policies and ordinances. Surface color treatment shall include painting of HRSGs sound walls, exhaust stacks, turbine inlet filters, and other features in an earth tone color and value to match the surrounding hillsides.

E. Clarification of the Site Parcel

Page 348 of the PMPD states that “[t]he site covers an 8.5 acre area, formerly cultivated as a citrus grove, which is situated on two parcels identified by parcel number (APN) 110-072-26 (41 acres) and APN 110-370-01 (14 acres). Project facilities will be constructed on APN 110-072-26 and ancillary uses such as lay down and parking will occur on APN 110-370-01 adjacent to the existing Pala Substation and a fenced SDG&E storage area located on that parcel.”

Orange Grove suggests that this paragraph be revised to clarify that the 8.5 acre site is located entirely on APN 110-072-26, and that except for linear facilities and site access, ancillary uses on APN 110-370-01 such as laydown and parking will occur only for construction.

F. Revision to Verification in Condition of Certification LAND-1

Orange Grove is concerned that it will be unable to comply with the verification for Condition of Certification LAND-1 (PMPD page 359) as it is currently written, since building inspection is not possible until there is a building to inspect. Furthermore, the Department of Public Works is the primary point of contact for all plan design and code review. Therefore, there is no need to send the requested documents to the Planning and Land Use Department. Orange Grove therefore proposes that the verification for LAND-1 be revised as follows:

Verification: At least sixty (60) days prior to the start of construction, the project owner shall submit to the Compliance Project Manager (CPM) applicable design standards and building codes and evidence of design review ~~and building inspection~~ by the County of San Diego Environmental Health, and Public Works, ~~Planning and Land Use (Building)~~ Departments and Chief Building Official.

V. **Project Description**

Orange Grove provides the following comments regarding the Project Description section of the PMPD:

A. Orange Grove's Right to Use the Project Site

The Committee requested Orange Grove to provide information regarding the basis for Orange Grove's use of the Project site. As stated in Part A of the Land Use section above, Orange Grove will enter into both a lease for the Project site and a tolling agreement for the sale of energy and capacity from the Project.

B. Size of the Demineralized Water Storage Tank

The PMPD states that the Project will include "a 100,000 275,000 gallon demineralized water storage tank." (PMPD at 9.) The 275,000 gallon figure should be stricken, as shown in the Staff Assessment. (See Exhibit 200 at 3-2.) The actual size of the demineralized water storage tank will be 100,000 gallons. (See *id*; see also Exhibit 1 at § 2.6.2.3.)

VI. **Soil and Water Resources**

A. Discrepancy in Water Use Figures

The Committee requested that Orange Grove address a discrepancy in the water use figures between the Soil and Water Resources and the Project Alternatives sections of the Amended Staff Assessment. Orange Grove has addressed these issues above in the Alternatives section and in their Supplemental Testimony of Joseph Stenger Regarding Soil and Water Resources, filed March 9, 2009.

B. Revision to Verification in Condition of Certification SOIL & WATER-8

Orange Grove is concerned that as it is currently written, the verification for Condition of Certification LAND-1 (PMPD page 308) will not allow sufficient time for agencies to comment on the Title 22 Engineer's Report. Orange Grove therefore proposes that the verification for SOIL & WATER-8 be revised as follows:

Verification: ~~Not less than 30 days Prior to beginning any site mobilization activities~~ the start of project construction, the project owner shall submit to the

CPM a water supply and distribution system design, an Engineer's Report for the Production, Distribution and Use of Recycled Water (Engineer's Report), and copies of any comments on the documents from CDPH and the San Diego RWQCB for review and approval by the CPM. The water supply and distribution system design shall also be included in the final project design drawings submitted to the CPM.

VII. **Traffic and Transportation**

A. Pipeline Construction Parameters

The Committee requested Orange Grove to address the duration of pipeline construction, the hours of construction, where or when the flagmen will be needed and why the Project will have no significant impact on traffic flow. Orange Grove has addressed these issues in their Supplemental Testimony of Joseph Stenger Regarding Traffic and Transportation, filed March 9, 2009.

B. Access Rights to Pala Del Norte Road

The Committee requested Orange Grove to address the nature of Orange Grove's authorization to use Pala Del Norte Road for access to the Project site. Orange Grove has addressed this issue in its Supplemental Testimony, filed March 9, 2009. As discussed in the Supplemental Testimony, Pala Del Norte Road is a private road providing access to land owned by several different owners. (See Exhibit 1 at 2-2; Exhibit 200 at 4.1-1.) SDG&E holds rights to use Pala Del Norte Road. As part of its leasing arrangement with SDG&E, Orange Grove will hold a license to use Pala Del Norte Road.

C. Clarification of Project Traffic Counts

1. *General Comment*

Pages 367 and 373 of the PMPD contain references to the number of project construction worker vehicle trips. At the peak of construction activities, the project is expected to require approximately 105 construction workers, and the average number of construction workers during the 6-month construction period is estimated to be 70 workers. (Exhibit 1 at 2-34, 6.11-12.) An estimated 20 percent carpooling rate is assumed, resulting 84 construction worker round trips per work day when peak construction activities are occurring. (Exhibit 1 at 6.11-11, 6.11-12.) The

average number of 70 construction workers over the 6 month construction period will generate approximately 56 round trips per workday considering 20 percent carpooling. (Exhibit 1 at 6.11-11.)

2. *Specific Changes*

Orange Grove proposes that the Committee make the following modifications to reflect the information discussed above:

a. PMPD page 367:

The average number of construction worker round trips will be 56 per day, while the peak workforce is expected to result in 84 worker round trips per day during a one month period.

b. PMPD page 373:

The uncontroverted evidence establishes that the project will average 70 workers per day, resulting in 56 construction worker round trips per day considering the assumption of 20 percent carpooling established in the record. (Ex. 1, p. 2-34, 6.11-1; Ex. 200, p. 4.10-5.) Even if none of them ever carpool, the net daily increase in construction traffic would be a mere 140 round trips per day which is de minimus.

D. Clarification of Rosemary's Mountain Quarry Schedule

Orange Grove proposes that the Committee make the following clarifications regarding the schedule for Rosemary's Mountain Quarry in the second paragraph on page 369 of the PMPD:

The two major traffic impacts of the Rosemary's Mountain Quarry project will be the widening of SR-76, expected to take about one year, and the estimated 150 to 180 truck round trips per day during the three year quarry construction process; ~~which~~ The SR-76 widening and quarry construction began in June, 2008. The SR-76 widening construction should be completed by May, 2009, and quarry construction should be completed in 2011.

E. Correction for Water Truck Vehicle Weight

There appears to be a math or typographical error on page 372 of the PMPD. Orange Grove proposes that the Committee make the following correction regarding the water truck vehicle

weight in the second full paragraph on page 372:

Therefore, the trucks themselves must weigh ~~14,900~~ 24,900 pounds to stay within the legal weight limit.

F. Clarification to TRANS-4

The current language of TRANS-4 would require all water delivery trucks, including those hauling potable water, to have a recycled water sign. To remedy this, Orange Grove proposes that the Committee make the following clarification to the third sentence of TRANS-3 on page 376 of the PMPD:

All water delivery trucks carrying recycled water shall contain signage consistent with 22 C.C.R. 60310[g] which reads: “Recycled water – do not drink.” and All water delivery trucks shall display a notice in large type face on the back of each truck that provides a phone number to call to register complaints about the water delivery trucks.

VIII. **Transmission Line Safety and Nuisance**

The first paragraph of page 111 of the PMPD appears to contain an inaccurate citation to “Ex. 200, pp. 4.1-1, 4.1-4.” Orange Grove proposes that the Committee correct this citation to read “Ex. 200, pp. 4.11-1, 4.11-4.”

IX. **Visual Resources**

A. Sound Walls

Sound walls will surround the power plant turbines and certain other major equipment on three sides, and will act as a screen for views of most major equipment. (Exhibit 1 at 2-10, 6.13-2, Appendix 6.13 at 6.13-A-8, 6.13-A-9, Figures 6.13-A-8 to 6.13-A-16; *see also* Exhibit 1 Appendix 2-A, Drawings C100 and GA100.) Orange Grove recommends that the sound walls be acknowledged in Visual Resources Table 2 on page 400 of the PMPD as follows:

PROJECT COMPONENT	NUMBER OF UNITS	LENGTH AND WIDTH (APPROXIMATELY)	HEIGHT (APPROXIMATELY)
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Sound Walls	2 Sets	915 linear feet (total)	24 and 48 feet
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In addition, specific changes proposed in Section IV.D.2 of these comments provide additional proposed acknowledgement of the sound walls.

B. Scenic Highway Eligibility

Orange Grove recommends that the following modifications be made to the second full paragraph on page 402 of the PMPD in order to be more reflective of the cited reference:

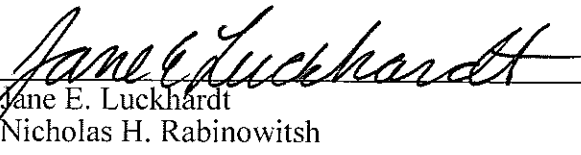
The evidence indicates that this portion of SR-76 is not designated as a State Scenic Highway ~~nor~~ and that it is listed as eligible by the California Department of Transportation but has not received that designation. (12/4819/08 RT 196-198.)

X. **Other Comment**

The Exhibit List, included as Attachment B to the PMPD, lists the incorrect version of the Staff Assessment as Exhibit 200. The Exhibit List refers to the “Final Staff Assessment, dated November 6, 2008, and docketed on November 6, 2008.” Orange Grove proposes that the description for Exhibit 200 should be revised as follows: “Amended Staff Assessment, dated December 2008, and docketed December 11, 2008.”

DATED: March 9, 2009

DOWNEY BRAND LLP

By: 
 Jane E. Luckhardt
 Nicholas H. Rabinowitsh

ATTACHMENT A

LETTER FROM BRIAN BACA, SAN DIEGO COUNTY DEPARTMENT OF PLANNING
AND LAND USE, TO STEPHEN THOME, ORANGE GROVE ENERGY, L.P., DATED
JANUARY 7, 2009



County of San Diego

ERIC GIBSON
DIRECTOR

DEPARTMENT OF PLANNING AND LAND USE

5201 RUFFIN ROAD, SUITE B, SAN DIEGO, CALIFORNIA 92123-1666
INFORMATION (858) 694-2960
TOLL FREE (800) 411-0017
www.sdcounty.ca.gov/dplu

January 7, 2009

Stephen Thome
Orange Grove Energy, L.P.
Suite 1030
1900 E. Golf Road
Schaumburg, IL 60010

Dear Mr. Thome;

This letter is provided at the request of Orange Grove Energy, L.P., who we understand is undertaking a project located near the intersection of Pala Del Norte Road and Highway 76 in the Pala-Pauma Community Plan area of the unincorporated area of San Diego County (APN 110-072-26). It is hereby confirmed that the 25-year lease of an 8.5-acre portion of land owned by San Diego Gas and Electric Company (SDG&E) to the applicant is exempt from the requirements of the Subdivision Map Act.

The applicant has informed the County of San Diego that SDG&E will lease the site to Orange Grove for a power generation facility, and SDG&E will continue operation of the facility after the end of the lease. As stated by the applicant, Orange Grove will separately finance this project and collaterally assign this lease to its lenders. This letter also confirms that this collateral assignment of the lease by Orange Grove to its lenders and their assignees is exempt from the Subdivision Map Act.

California Government Code Section 66428(a)(2) provides for this exemption, as follows:

"...A parcel map shall not be required for....[]and conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a

subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interests, a leasehold interest, an easement, or a license."

The County is not aware of any showing having been made in this individual case, that public policy necessitates a parcel map. Further, the applicant has informed the County that the leasing of utility property is subject to the purview of the California Public Utilities Commission and that SDG&E has already received approval for the lease of the site by the Public Utilities Commission. Accordingly, it is understood that the leasing and financing of the SDG&E land for this project is exempt from the Subdivision Map Act under Section 66428(a)(2) and does not require a parcel map.

Please let me know if you have any questions at (858) 694-3789.

Sincerely,



Brian R. Baca
Chief, Regulatory Planning
Department of Planning and Land Use

cc: Ruth Love, San Diego Gas & Electric Company, 8335 Century Park Court, CP11D,
San Diego, CA 92123
Jarrett Ramaiya, Project Manager, Department of Planning and Land Use,
M.S. O-650
File

**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 2/17/09)**

<u>APPLICANT</u>	<u>INTERESTED AGENCIES</u>	<u>ENERGY COMMISSION</u>
<p>Stephen Thome J-Power USA Development 1900 East Golf Rd., Ste. 1030 Schaumburg, IL 60173 sthome@jpowerusa.com</p> <p>Mike Dubois J-Power USA Development 1900 East Golf Rd., Ste. 1030 Schaumburg, IL 60173 mdubois@jpowerusa.com</p>	<p>California ISO 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>James D. Boyd Vice Chairman and Presiding Member jboyd@energy.state.ca.us</p> <p>Arthur Rosenfeld Commissioner and Associate Member pflint@energy.state.ca.us</p>
<u>APPLICANT'S CONSULTANT</u>	<u>INTERVENORS</u>	<p>Kenneth Celli Hearing Officer kcelli@energy.state.ca.us</p> <p>Felicia Miller Project Manager fmiller@energy.state.ca.us</p>
<p>Joe Stenger, PG, REA TRC 2666 Rodman Drive Los Osos, CA 93402 jstenger@trcsolutions.com</p>	<p>Anthony J. Arand 219 Rancho Bonito Fallbrook, CA 92028 tony@envirepel.com</p>	
<u>COUNSEL FOR APPLICANT</u>	<p>Alliance for a Cleaner Tomorrow (ACT) c/o Arthur S. Moreau Klinedinst.PC 501 West Broadway, Ste. 600 San Diego, CA 92101 amoreau@klinedinstlaw.com</p> <p>Archie D. McPhee 40482 Gavilan Mountain Rd. Fallbrook, CA 92028 Archied1@earthlink.net</p>	<p>Jared Babula Staff Counsel jbabula@energy.state.ca.us</p> <p>Public Adviser's Office publicadviser@energy.state.ca.us</p>
<p>Jane E. Luckhardt Downey Brand, LLP 621 Capitol Mall, 18th Floor Sacramento, CA 95814 jluckhardt@downeybrand.com</p> <p>Wayne Song Morgan, Lewis & Bockius LLP 300 S. Grand Ave., 22nd Floor Los Angeles, CA 90071 wsong@morganlewis.com</p>		

Declaration of Service

I, Lois Navarrot, declare that on March 9, 2009, I served and filed copies of the attached **Orange Grove Energy Project's Comments on the Presiding Member's Proposed Decision**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/orangegrovepeaker. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service List) and to the Commission's Docket Unit, in the following manner:

(check all that apply)

For Service to All Other Parties

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service List above to those addresses **NOT** marked "email preferred."

AND

For Filing with the Energy Commission

sending an original paper copy and one electronic copy, mailed and e-mailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies as follow:

California Energy Commission
Attn: Docket No. 08-AFC-4
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

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



Lois Navarrot