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**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 RESPONSE TO COMMENTS BY THE
COUNTY OF SAN DIEGO DEPARTMENT OF ENVIRONMENTAL HEALTH,
LAND AND WATER QUALITY DIVISION**

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April 2, 2009

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On March 18, 2009, the County of San Diego's (the "County") Department of Environmental Health, Land and Water Quality Division ("DEH") submitted a letter (the "DEH Letter") to the California Energy Commission ("Commission") containing its comments on the Orange Grove Power Plant Project (the "Project"). In addition, in an email sent on March 30, 2009, the Orange Grove AFC Committee (the "Committee") asked the parties to address the DEH Letter. The Committee also asked the parties to indicate whether the Commission's consideration of the Presiding Member's Proposed Decision ("PMPD") for the Project should be removed from the April 8, 2009 Business Meeting agenda based on the information in the DEH Letter. Orange Grove notes that DEH's comments relate to the requirements for obtaining a septic system permit. This response to comments addresses the comments from the DEH Letter and the questions from the Committee's email.

I. RESPONSES TO THE COMMITTEE'S QUESTIONS

Before addressing DEH's specific concerns, Orange Grove wishes to address the Committee's questions from its March 30 email.

A. The County Did Not Indicate That It Would Not Grant an Onsite Water Treatment Systems Permit for the Project.

The Committee stated in its March 30 email that DEH “will not grant an Onsite Water Treatment Systems permit for this project as required in Condition of Certification Soils and Water-9.” However, Orange Grove notes that DEH never said it would not grant a permit. DEH indicated that it has “multiple public health and basic sanitation concerns related to water for this project,” but it did not conclude that it would not grant the permit. Furthermore, as discussed in more detail below, the Project as proposed contains mechanisms for addressing all of DEH’s concerns from its letter.

B. The PMPD Hearing Should Remain On the Agenda for the April 8, 2009 Business Meeting, As Planned.

The Committee also asked the parties to indicate whether the Commission’s consideration of the Project’s PMPD should be removed from the April 8, 2009 Business Meeting agenda based on the information in the DEH Letter. Orange Grove responds that there is absolutely no reason to remove the PMPD hearing from the April 8, 2009 Business Meeting agenda. As discussed below, the Project as described in the PMPD contains existing measures which will address all of DEH’s concerns, and the Project is ready for the Committee’s consideration at the April 8 Business Meeting.

II. GENERAL NOTE REGARDING ORANGE GROVE’S INTERACTION WITH THE COUNTY DURING THE PROJECT PROCEEDINGS

Orange Grove notes that many different departments within the County have participated in one or both proceedings on the Project. The Project began under the Small Power Plant Exemption (“SPPE”) process, and Orange Grove worked extensively with the County on that initial permitting effort. The County provided extensive comments on the Project and the California Energy Commission process, all of which have been addressed in the SPPE and in subsequent submittals. Orange Grove has continued to work with the County through the second permitting process, the Application for Certification process, to understand any concerns of various County departments. Many County departments have provided comment letters and have participated in workshops during the discovery and issue resolution phases of the permitting proceedings. For example, the County has processed the Habitat Loss Permit,

requiring the County to coordinate not only with California Energy Commission Staff (“Staff”), but also with the California Department of Fish and Game and the United States Fish and Wildlife Service. The County also provided comments on the mitigation requirements and their potential impact on the requirements for the Gregory Canyon Landfill in December 2008. Furthermore, Orange Grove has worked extensively with the County on issues related to fire protection.

In addition, Orange Grove continues to work with the County in order to comply with the Conditions of Certification included in the Presiding Member’s Proposed Decision. In this instance, Orange Grove is working with DEH to address the septic system requirements. Condition of Certification SOIL & WATER-11 requires the following:

SOIL & WATER-11: The project owner shall comply with all San Diego County Onsite Wastewater Treatment System (OWTS) Ordinance requirements for construction and operation of the project’s sanitary waste septic system and leach field. Project construction shall not proceed until documentation equivalent to the county’s required onsite wastewater treatment system permit is issued by the county and approved by the CPM. The project owner shall remain in compliance with the county OWTS requirements for the life of the project.

Verification: At least 90 days prior to the start of project construction, the project owner shall submit a sanitary waste management information packet to the San Diego County Department of Environmental Health containing all necessary documentation, plans, and fees required for the county’s onsite wastewater treatment system (septic system) construction and operation permits and authorizations....

(PMPD at 309-311.) This required submittal was made to the County on August 25, 2008.

III. SPECIFIC RESPONSES TO THE COUNTY’S COMMENTS

Orange Grove provides the following specific responses to the DEH Letter. The DEH Letter provides comments in three areas: requirements for a septic system, the use of recycled water and basic sanitation. Orange Grove notes the use of recycled water is highly encouraged by the Commission and many of the areas of concern expressed by DEH in its letter would, if implemented by the Commission, discourage power plant developers from using recycled water in the future. (See PMPD at 298.) As the PMPD recognizes, there are no feasible means of

delivering water to the Project by pipeline. (PMPD at 30-31.) Therefore, Project water supplies for process, site uses and toilets will be trucked to the site. (PMPD at 283.) Bottled water will be used for drinking and, contrary to DEH's assertions in its letter, for hand washing as well. (*See id.*)

A. The PMPD Provides a Comprehensive Framework for Addressing DEH's Concerns.

The PMPD provides a comprehensive framework that will assure the requirements identified in the DEH Letter will be appropriately applied in the final project design. The PMPD analysis is based on the Project's preliminary design stage. (PMPD at 60.) The PMPD includes adequate assurances that the Project will comply with all applicable Laws, Ordinances, Regulations and Standards ("LORS") relevant to water supply, distribution and protection of potable water quality.

The Project is designed to be served by three sources of water: (1) Fresh Water from Fallbrook Public Utility District's ("FPUD") potable water supply; (2) Disinfected Tertiary Recycled Water from FPUD's Wastewater Treatment Plant No. 1; and (3) bottled potable water. (Ex. 1 at 2-17 to 2-20, Ex. 200 at 4.9-7, 4.9-9 and 4.9-10.) With regard to recycled water use, Condition of Certification SOIL & WATER-9 ensures that the Project's use of recycled water in lieu of potable water will comply with all applicable LORS. SOIL & WATER-9 provides:

SOIL & WATER-9: Prior to the start of project construction, the project owner shall ensure that project use of recycled water in lieu of potable water for landscaping, fire protection, facility wash down, safety showers/eye wash, sanitary systems, and any other non-turbine water uses will comply with all applicable LORS, and identify what operational changes would be necessary if recycled water is used in the raw water storage tank during interruptions of potable water supplies.

Verification: At least 30 days prior to the start of project operation, the project owner shall submit to the CPM documentation identifying which of the five elements listed above could use recycled water in lieu of potable water without changes to project systems. For those elements that cannot use recycled water without changes to project systems or project operations, the project owner shall submit a plan to the CPM detailing how project system configurations or operations will be changed to accommodate recycled water use in the raw water storage tank, or how the project owner will provide adequate potable quality water during short-term potable water interruptions. The CPM shall review and

approve the plan and the project owner shall implement the plan during short-term use of recycled water in the raw water storage tank. (PMPD at 308-309.)

Furthermore, Condition of Certification SOIL & WATER-8 requires the Project to comply with all recycled water use requirements established in Title 22 and Title 17 of the California Code of Regulations, as well as all applicable local recycled water use ordinances. (PMPD at 308.) SOIL & WATER-8 also requires the Project owner to submit a Title 22 Engineering Report. (PMPD at 308.) In fact, most of the concerns expressed in the DEH Letter were already being resolved by Orange Grove in conjunction with development of the Engineering Report required by SOIL & WATER-8.¹ (PMPD at 308.) In the pending submittal of the Engineering Report, Orange Grove will clarify that safety showers and eye washes will be self-contained, and bottled water will be provided for hand washing as well as drinking, so that potable quality water is assured as required for these uses. Also, Orange Grove's Engineering Report will clarify that the water obtained from FPUD's potable water supply will be managed by the Project as "non-potable," to alleviate concerns of meeting requirements for potable water quality.

In addition, as discussed in further detail below, Orange Grove's Engineering Report will be submitted to DEH via Condition of Certification SOIL & WATER-11. (PMPD at 309-310.) The Engineering Report will identify hand washing and drinking as uses onsite requiring potable quality water, and that bottled potable water will be provided for these uses to assure the sanitary needs of employees.

Further assurances of the Project's compliance with all applicable LORS include:

- Requirement for compliance with LORS, including the building and health codes referenced in the DEH Letter. (PMPD at 61, 301, 308, 309, 310, 359, 376, 377.)

¹ While Condition of Certification SOIL & WATER-8 mainly concerns recycled water use at the Project, the Engineering Report that it requires will also address potable water issues. Because of the potential for FPUD to require that the facility take only Disinfected Tertiary Recycled Water during drought conditions, Orange Grove intends to operate the facility as if only Disinfected Tertiary Recycled Water were available, even when water from FPUD's potable water supply is available. The Engineering Report will implement these practices.

- All final plans and specifications for plant piping and plumbing systems must be submitted to the Commission for approval by the Chief Building Official (“CBO”) prior to construction. (PMPD at 75.)
- Constructed plant piping and plumbing systems subject to inspection by the CBO. (PMPD at 76.)
- Applicant submittal of an Engineering Report to the Commission, the California Department of Public Health, and regional water quality control board to provide details of compliance measures for recycled water. (PMPD at 308.)
- Commission inspections for the life of operations. (PMPD at 40.)
- Annual Compliance Reporting for the life of operations. (PMPD at 45.)

With these assurances already incorporated, the PMPD will ensure compliance with applicable LORS related to the three types of water onsite, including all applicable labeling and signage requirements for non-potable water, and health and sanitation requirements for potable water. As discussed in the next section (below), the record related to water supply and use is adequate and supports the PMPD as written.

B. The Project Has an Adequate Potable Water Supply.

The DEH Letter expresses a concern that trucking water to the site does not provide an adequate potable water supply because the water will no longer be potable based upon the fact that it will be trucked to the site. (DEH Letter at 1.) However, the Project does not intend to use trucked potable water for sanitary purposes. Rather, bottled water would be used for these purposes. The DEH Letter further rejects the use of bottled water for sanitary purposes. (DEH Letter at 2.) DEH relies upon San Diego County Code Section 68.326, which requires a showing of an adequate potable water supply before the County will issue an OWTS permit for a septic system.²

As the Committee is aware, based upon the Commission’s jurisdiction, the County will not issue a permit but instead (and consistent with the requirements of SOIL & WATER-11) will

² The only definition for “potable water” in the County Code appears in the Water Recycling Ordinance, which defines potable water as “water which conforms to the federal, state and local standards for human consumption.” (County Code § 67.502[g].) The California Plumbing Code defines “potable water” as “water that is satisfactory for drinking, culinary, and domestic purposes and that meets the requirements of the Health Authority Having Jurisdiction.” (Cal. Plumbing Code § 218.0.)

review the Project for consistency with County requirements. (PMPD at 309-310; *see* Cal. Pub. Res. Code § 25500.) Orange Grove has not found a definition of “adequate” potable water supply in the County Code. Thus, the determination of what constitutes an adequate potable water supply is left to the Commission. Orange Grove notes that there are a great number of devices readily available on the market that are designed specifically to make the use of bottled water convenient for sanitary purposes. In the context of a non-public, non-commercial facility with a very limited number of employees, such as the Project, use of bottled water for sanitary purposes constitutes an adequate supply.

The record shows that substantial analysis was devoted to the plan for trucking of water, including reliability of the source, truck hauling capacity, and onsite storage capacity and use. (Ex. 1. at 2-19, 2-20, 2-30, 2-31, 6.5-13, 6.5-14, 6.11-6, 6.11-7, 6.11-8, 6.11-19, Appendix 6.5-G.1; Ex. 2 at 9; Ex. 7 at 3, 4, 38, 39; Ex. 10 at 12; Ex. 23 at Q5 to A12; Ex. 200 at 3-2, 3-3, 4.1-22, 4.1-23, 4.1-27, 4.1-36, 4.1-37, 4.1-57, 4.1-58, 4.1-59, 4.7-17, 4.7-18, 4.7-19, 4.9-7, 4.9-9 to 4.9-12, 4.9-21 to 4.9-24, 4.9-26, 4.9-27, 4.9-29, 4.9-30, 4.9-35 to 4.9-38, 4.10-8, 4.10-13, 4.10-14, 5.4-4, 5.4-5; 12/19/08 RT at 79:20-24, 81:1-25, 82:1-25, 83:1-19, 84:24-25, 85:1-9, 87:2-24, 90:14-25, 91:1-19, 92:9-25, 93:1-9, 103:25, 104:1-5, 107:1-7, 107:18-25, 108:1-18, 119:4-21.) The record establishes that there will be delivery of fresh water, Disinfected Tertiary Recycled Water and bottled potable water to the site. Staff has determined these water supplies to be reliable. (Ex. 200 at 5.4-5.) Since the water supply has been determined to be reliable, it is adequate in terms of quantity. The reliability of water quality is addressed below. Since water supply quantity is adequate, and since there are multiple available mechanisms to achieve the required quality for potable water onsite as described in further detail below, the Project’s water supply is adequate in all regards.

C. Bottled Water Will Satisfy the Requirements of the Plumbing Code.

The DEH Letter concludes that Chapter 6 of the California Plumbing Code³ will not allow the use of bottled water for the Project’s potable water needs because it requires an adequate supply of running water pressurized at a minimum pressure of 15 pounds per square inch. The pertinent sections of the California Plumbing Code provide as follows:

Running Water Required. Except where not deemed necessary for safety or sanitation by the Authority Having Jurisdiction, each plumbing fixture shall be provided with an adequate supply of potable running water piped thereto in an approved manner, so arranged as to flush and keep it in a clean and sanitary condition without danger of backflow or cross-connection. (Cal. Plumbing Code § 601.1.)

Inadequate Water Pressure. Whenever the water pressure in the main or other source of supply will not provide a residual water pressure of at least fifteen (15) pounds per square inch (103.4 kPa), after allowing for friction and other pressure losses, a tank and a pump or other means that will provide said fifteen (15) pound (103.4 kPa) pressure shall be installed. Whenever fixtures and/or fixture fittings are installed that require residual pressure higher than fifteen (15) pounds per square inch (103.4 kPa), that minimum residual pressure shall be provided. (Cal. Plumbing Code § 608.1.)

The code provides for considerable flexibility in providing safety and sanitation for water supply. For example, the requirement of an adequate supply of potable running water is subject to waiver by the Authority Having Jurisdiction if that authority deems it not necessary for safety or sanitation. (Cal. Plumbing Code Section 601.1.) In this case, the Commission is the Authority Having Jurisdiction. (Cal. Pub. Res. Code § 25500.) Furthermore, the term “adequate supply” is undefined by the Plumbing Code or the County’s ordinances, and it therefore allows for flexibility in interpretation. As the regulating entity, the determination of adequate supply has been left to the Commission. As discussed above, the evidence demonstrates that the Project’s proposed water supply is adequate. (PMPD at 294-295.)

Furthermore, the pressure requirements contained in the Plumbing Code can be provided, if needed, by bottled water using booster pumps. As noted above, devices are readily available to allow for the convenient use of bottled water at the requisite pressure and flow rate. As expected, this level of detail will be provided in the final design of the facility and included in the Engineering Report required by Condition of Certification SOIL & WATER-8, and in the analysis and documentation required by SOIL & WATER-9. (PMPD at 308-309.)

In addition, via SOIL & WATER-11, the Engineering Report will be provided to DEH as required by state guidelines for an Engineering Report. The state guidelines require that

³ Available at <http://www.iapmo.org/Pages/californiaplumbingcode.aspx>.

“governmental entities which may have regulatory jurisdiction over the re-use site...be provided with a copy of the Title 22 Engineering Report for review and comment.” (California Department of Health Services, *Guidelines for the Preparation of an Engineering Report for the Production, Distribution and Use of Recycled Water* [March 2001] at 6.⁴) The Engineering Report will identify hand washing and drinking as uses onsite requiring potable quality water, and that bottled potable water will be provided for these uses to assure the sanitary needs of employees.

Furthermore, safety showers and eye wash stations will be self-contained units meeting all applicable safety LORS. Self-contained safety showers and eye wash stations are readily available on the market and are currently in widespread use for these purposes. Through SOIL & WATER-8, SOIL & WATER-9, SOIL & WATER-11, and other assurances in the PMPD identified above, the PMPD ensures that all applicable LORS will be followed through final project design, construction, and operations.

D. A Water Well is Not Needed To Provide an Adequate Potable Water Supply.

The DEH Letter suggests that the only alternative appears to be the installation of a water well to meet the needs for the potable water supply. (DEH Letter at 2.)

The record shows that substantial analysis was devoted to alternative water supplies. (Ex. 1 at 5-6, 5-7, 5-8; Ex. 200 at 6-10; PMPD at 28 to 30.) The evidence establishes that use of groundwater as a source for the Project is unreliable and environmentally undesirable. (Ex. 1 at 5-7; PMPD at 31.) The existing proposed water sources were selected in order to minimize potential impacts to the environment, while still meeting the Project’s water supply needs. (See PMPD at 31.) The evidence shows that no feasible water supply has been identified other than those currently proposed for the Project. (Ex. 1 at 1-5, 5-8; PMPD at 30-31.) The Project site is located on very old alluvium and plutonic basement rock which does not yield significant groundwater to wells. (Ex. 1 at 6.5-3, 6.5-4, Figure 6.3-2, Figure 6.3-3, Figure 6.5-5.) In contrast, the water-bearing formation in the area where wells do yield significant water is the younger alluvium that occurs south of SR-76. (*Id.*) This formation does not occur at the site.

⁴ Available at <http://www.cdph.ca.gov/certlic/drinkingwater/Documents/Recharge/ERGUIDE2001.PDF>.

(*Id.*) Orange Grove does not hold a right to the water in the aquifer south of SR-76. For these reasons, groundwater would not provide a reliable supply.

E. The Project As Proposed Already Incorporates Mechanisms for Operating During Interruptions to Potable Water Supplies.

As described in the PMPD, a lack of potable water at the Project site is already addressed. (PMPD at 289-230.) The Project's potable water option agreement with FPUD requires that in times of drought, Disinfected Tertiary Recycled Water be substituted for certain uses. (PMPD at 289.) Orange Grove anticipates that FPUD will declare that such a drought condition exists sometime during the summer of 2009. (3/16/09 RT at 41:21-42:17.) Condition of Certification SOIL & WATER-9 requires the Project owner to "ensure that project use of recycled water in lieu of potable water for landscaping, fire protection, facility wash down, safety showers/eye wash, sanitary systems, and any other non-turbine water uses will comply with all applicable LORS, and identify what operational changes would be necessary if recycled water is used in the raw water storage tank during interruptions of potable water supplies." (PMPD at 308-309.) Therefore, the Project will only be able to use recycled water for these purposes as permitted by law. The Project is incorporating such facility design and operational changes as are necessary to respond to SOIL & WATER-9 now, rather than as provided for in the Verification (30 days prior to the start of project operation).

F. Residual Chlorine will be Addressed in the Engineering Report.

The DEH Letter further identifies residual chlorine as a parameter that will need to be addressed for the onsite septic system to assure that the system functions properly. (DEH Letter at 2.)

Orange Grove intends to address this issue through the Engineering Report required by SOIL & WATER-8. (PMPD at 308.) The residual chlorine content of the Disinfected Tertiary Recycled Water is expected to be low when the water is received and, since chlorine is unstable, residual chlorine is expected to be near zero concentration by the time water reaches the septic system. Orange Grove expects that that the Engineering Report will adequately demonstrate that

the septic system will perform adequately using Disinfected Tertiary Recycled Water. This type of water is specifically allowed to be used for flushing toilets and urinals pursuant to 22 C.C.R. section 60307(a)(1).

DATED: April 2, 2009

DOWNEY BRAND LLP

By: _____/s/_____
Jane E. Luckhardt

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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)**

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Declaration of Service

I, Lois Navarrot, declare that on April 2, 2009, I served and filed copies of the attached **Orange Grove Energy L.P.’s Response to Comments by the County of San Diego Department of Environmental Health, Land and Water Quality Division**. 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.

/s/
Lois Navarrot