

State of California
Energy Resources Conservation and Development Commission

In the Matter of:)	Docket No. 08-AFC-4
)	
Application for Certification)	STAFF'S PREHEARING
<u>for the Orange Grove Energy Project</u>)	CONFERENCE STATEMENT

In a notice dated November 6, 2008, the Energy Commission's committee overseeing the Orange Grove Power Plant Project ("Orange Grove") directed parties to file a prehearing conference statement for the December 1, 2008, prehearing conference. The Order stated that the Prehearing Conference Statements must be filed no later than November 25, 2008. This is Staff's Prehearing Conference Statement.

1. Topic areas that are complete and ready to proceed to evidentiary hearing

Staff's analyses in the following areas are complete and ready to proceed to hearing: Air Quality, Biology, Cultural Resources, Geologic Hazards, Socioeconomics, Visual Resources, Hazardous Materials, Geology and Paleontological Resources, Land Use, Noise, Traffic and Transportation, Public Health, Transmission Line Safety, Worker Safety, Transmission Systems Engineering, Facility Design, and Reliability, Soil and Water, and Waste Management.

With respect to Biology, staff is currently consulting with Department of Fish and Game, US Department of Fish and Wildlife Service, and San Diego County on the merits of a creative mitigation measure that the applicant proposed at a November 20, 2008 workshop to address construction impacts on nesting birds. Staff does not take issue with the proposed mitigation. As of November 25, 2008, Department of Fish and Game and US Department of Fish and Wildlife Service have not commented on the newly proposed mitigation measure or on the Biology section of the Staff Assessment.

2. Topic areas that are incomplete and not yet ready to proceed to evidentiary hearing

There are no topic areas that are incomplete.

3. Topic areas that remain disputed and require adjudication

There are no topic areas that are in dispute.

4. The identity of each witness sponsored by each party

Staff will offer the Staff Assessment, as amended after the November 20, 2008 workshop, as an exhibit and proposes admitting staff's testimony in all uncontested areas into the record

through the declarations included within the Staff Assessment. A representative of the Air District will be available to confirm compliance with the District's rules and respond to any questions by the committee. In the event that biology becomes contested or additional testimony is required, Dr. Susan Sanders will be available to testify. Dr. Sanders' qualifications are presented in the Staff Assessment in the Preparation Team section. It is anticipated that Dr. Sanders would need to testify for 15 minutes, not including responding to questions, in the event additional testimony is required to supplement the biology Staff Assessment.

5. Topic areas upon which a party desires to cross-examine witnesses

Staff does not anticipate needing to cross examine any witnesses offered by the applicant. At this time, staff is not aware of any witnesses being produced by the interveners. Staff reserves the right to cross examine interveners' witnesses, if any are offered, and to request a determination by the Committee as to whether the offered witness is an expert as defined in the California Evidence Code, section 720(a).

“A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.”

6. A list of identifying exhibits and declarations that each party intends to offer into evidence

Staff identifies as Exhibit 200, the Staff Assessment, as amended after the November 20, 2008 workshop.

7. Proposals for briefing deadlines

Staff does not anticipate the need for any briefs to be filed.

8. Proposed modifications to the proposed Conditions of Certification based upon enforceability, ease of comprehension and consistency with the evidence

The Staff Assessment, as amended after the November 20, 2008 workshop, will include all changes agreed upon between the applicant and staff at the November 20, 2008 workshop.

With respect to the supplemental questions of the Hearing Officer, asking for clarifications in the Staff Assessment, staff appreciates the advance notice of the Hearing Officer's and Committee's questions. Staff will include in its amended Staff Assessment all the

clarifications based on responses to the Hearing Officer's supplemental questions. Staff plans to file its amended Staff Assessment, with changes and clarifications shown in underline-strikeout format, together with declarations of the witnesses sponsoring the changes, no later than December 12, 2008.

Date: November 25, 2008

Respectfully submitted,

/s/ Jared J. Babula

JARED J. BABULA
Senior Staff Counsel
California Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814
Ph: (916) 651-1462
E-mail: jbabula@energy.state.ca.us