

DOCKETED

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DOCKETED

Docket Number:	16-ENFORCE-03
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Document Title:	California Energy Commission and Mojave Solar, LLC Settlement Agreement and Release
Description:	Regarding the Abengoa Mojar Solar Project
Filer:	Amanda Spellman
Organization:	California Energy Commission
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The California Energy Commission (Energy Commission or Commission) and Mojave Solar, LLC (Mojave Solar) enter into this Settlement Agreement (Agreement).

I. INTRODUCTION

1. Pursuant to California Public Resources Code section 25500, the Energy Commission “shall have the exclusive power to certify all sites and related facilities in the state.” A “facility” includes any thermal powerplant with generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.” (Pub. Resources Code §§ 25110, 25120.)
2. The Abengoa Mojave Solar Project Commission Decision (Final Decision) was issued on September 8, 2010, certifying the Abengoa Mojave Solar Power Project (Project). The Final Decision governs the construction, operation, and decommissioning of the Project.
3. Pursuant to Public Resources Code section 25532, the Energy Commission has established a monitoring system to assure that any facility certified by the Commission is constructed and operated in compliance with conditions specified in the Commission’s Final Decision.
4. Pursuant to California Code of Regulations, title 20, section 1770, the Energy Commission is to provide adequate monitoring of all conditions and measures set forth in the Final Decision required to mitigate potential impacts and to assure that facilities are constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards (LORS).
5. Pursuant to Public Resources Code section 25534, subdivision (a), the Energy Commission may, after one or more hearings, amend the conditions of any facility for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision, and a violation of any regulation or order issued by the Commission.
6. Pursuant to Public Resources Code section 25534, subdivision (b), the Energy Commission may administratively impose a civil penalty against a facility owner for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision. Any civil penalty shall be imposed in accordance with section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation. A civil penalty may be increased by an amount not to exceed \$1,500 for each day the violation occurs or persists, but the total per day penalties may not exceed fifty thousand dollars (\$50,000).
7. Energy Commission staff investigated events occurring on or about July 8, 2015 through July 24, 2015 at the Project, which is owned and operated by Mojave Solar. The investigation included staff site visits, interviews of Project workers, and review of Project-related documents.

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II. SUMMARY OF PERTINENT FINAL DECISION PROVISIONS AND LORS

Condition of Certification GEN-1 states that the project owner shall design, construct, and inspect the Project in accordance with Title 24 regulations, including the California Fire Code, and all other applicable engineering LORS in effect at the time initial design plans are submitted to the Chief Building Official (CBO) for review and approval. Because the initial design plans were submitted in 2011, the 2010 Title 24 regulations apply to this Project.

The specific California Code of Regulations, Title 24, Part 9, Chapter 9, California Fire Code (2010) sections at issue include:

1. 901.6 Inspection, testing and maintenance. (As amended by the Office of the State Fire Marshall, citing California Code of Regulations, Title 19, Division 1, section 3.24 Maintenance of Equipment.). All automatic sprinkler or extinguishing systems shall be maintained in an operable condition at all times. Upon disruption or diminishment of the fire protective qualities of such systems, immediate action shall be instituted to effect a reestablishment of such equipment material or systems to their original normal and operational condition.
2. 901.7 Systems out of service. When a required fire protection system is out of service, the fire department and the fire code official shall be notified immediately. Where required by the fire code official, the building shall either be evacuated or an approved fire watch shall be provided for all occupants left unprotected by the shutdown until the fire protection system has been returned to service. Where utilized, fire watches shall be provided with at least one approved means for notification of the fire department and their only duty shall be to perform constant patrols of the protected premises and keep watch for fires.¹
3. 901.7.2 Tag required. A tag shall be used to indicate that a system, or portion thereof, has been removed from service.
4. 901.7.3 Placement of tag. The tag shall be posted at each fire department connection, system control valve, fire alarm control unit, fire alarm annunciator and fire command center, indicating which system, or part thereof, has been removed from service. The fire code official shall specify where the tag is to be placed.
5. 901.7.4 Preplanned impairment programs. Preplanned impairments shall be authorized by the impairment coordinator. Before authorization is given, a designated individual shall be responsible for verifying that all of the following procedures have been implemented: a determination of the extent and expected duration of the impairment, an inspection of the areas or buildings involved to determine increased risks, notification of fire department, notification of insurance carrier, alarm company, and other authorities that have jurisdiction; implementation of a tag impairment system; and necessary tools and materials are assembled

¹ Mojave Solar agrees with this restatement of Section 901.7 and contends that an approved means of notification is for the fire watch to notify the control room operator, who in turn, will promptly notify the fire department.

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on the impairment site. The impairment coordinator is defined as the person responsible for the maintenance of a particular fire protection system.

6. 901.7.5 Emergency impairments. When unplanned impairments occur, appropriate emergency action shall be taken to minimize potential injury and damage. The impairment coordinator shall implement the steps outlined in Section 901.7.4.

III. ALLEGATIONS, ADMISSIONS, AND DENIALS

1. Energy Commission Staff alleges that on or about, and between July 8, 2015 and July 15, 2015, Mojave Solar failed to maintain the Beta Power Block fire suppression system in operable condition for 8 days by closing two valves and installing one 2.5" fire hose; said closure prevented the prescribed flow and pressure of water into the foam and sprinkler deluge fire suppression systems fed by Valve Shed #2 and rendered the plant without an adequate fire suppression system needed to prevent the spread of fire in the event of accidental ignition of combustible materials, in violation of the Condition of Certification GEN-1 requirement to comply with the California Fire Code, which includes section 901.6.

Mojave Solar admits that it closed two valves along a section of pipe in the fire water system in order to prevent ponding on the site, as prescribed by the Raven Management Plan, Condition of Certification BIO-18. Mojave Solar admits that it installed a fire hose in order to ensure that the fire alarm system remained operational. Mojave Solar denies that these actions rendered the plant without an adequate fire suppression system.

2. Energy Commission Staff alleges that on or about, and between July 16, 2015 and July 24, 2015, Mojave Solar failed to maintain the Beta Power Block with an operable fire suppression system for 9 days by having its subcontractor Summit Fire Protection cut out a section of the fire water main pipe and install one 2.5" fire hose; said action prevented the prescribed flow and pressure of water into the foam and sprinkler deluge fire suppression systems fed by Valve Shed #2 and rendered the plant without an adequate fire suppression system needed to prevent the spread of fire in the event of accidental ignition of combustible materials, in violation of the Condition of Certification GEN-1 requirement to comply with the California Fire Code, which includes section 901.6.

Mojave Solar admits that Summit Fire Protection, a California-licensed fire protection contractor, cut out the section of pipe that was leaking, so that a new section of pipe could be installed, but denies that it "had" the contractor do this and asserts that the removal was performed without the knowledge or consent of Mojave Solar. Mojave Solar denies that the subcontractor installed a firehose, and asserts that the fire hose was installed the day the leak was discovered in order to ensure continued operation of the fire alarm system. Mojave Solar denies that these actions rendered the plant without an adequate fire suppression system because the system for all of Alpha Power Block and a substantial portion of Beta Power Block remained fully operable. Mojave Solar asserts that while a portion of the system for the Beta Power Block was affected by the removal of the section of pipe, a fire truck remained in place at the location of the leak and provided adequate fire protection while the repairs were being performed.

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3. Energy Commission Staff alleges that on or about, and between July 8, 2015 and July 24, 2015, Mojave Solar failed to timely repair the fire suppression system in Beta Power Block which rendered the system without full and adequate water flow and pressure for the foam and sprinkler deluge systems to operate from Valve Shed #2 in violation of the Condition of Certification GEN-1 requirement to comply with the California Fire Code, which includes section 901.6.

Mojave Solar admits that the final repair to the leaking section of pipe was completed after July 24, 2015. Mojave Solar asserts that it immediately implemented temporary measures to isolate the leak, maintain system alarm activation, mitigate the area affected by the leak, and requested repair to the fire suppression system on July 8, 2015, and further asserts that Summit Fire Protection began repairing the system on July 15, 2015. Mojave Solar denies that the repair was not timely, or that the plant was rendered without an adequate fire protection system, for the reasons set forth herein.

4. Energy Commission Staff alleges that on or about, and between July 8, 2015 and July 23, 2015, Mojave Solar failed to immediately notify the San Bernardino County Fire Department (SBCFD) and the fire code official that the Beta Power Block fire suppression systems were impaired, and further failed to perform constant patrols of the protected premises, and keep watch for fires, in violation of the Condition of Certification GEN-1 requirement to comply with the California Fire Code, which includes section 901.7 (2010 Edition).

Mojave Solar admits that when a required fire protection system is out of service, the fire department and the fire code official should be notified immediately. Section 902.1 of the California Fire Code (2010) defines "fire code official" as the fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative. Mojave Solar asserts that Bureau Veritas was the fire code official for the site pursuant to the *Memorandum of Understanding Between the California Energy Commission and Bureau Veritas North America, Inc.* whereby the Energy Commission delegated to Bureau Veritas the authority for enforcement of local building codes; the California Building Standards Code, which includes the California Fire Code sections referenced above. Mojave Solar asserts that Bureau Veritas was notified the day the leak was discovered. (See, Mojave Solar LLC ASI Operations, Equipment/Property Damage report No. 2015708.) Mojave Solar is unaware of when the SBCFD was first notified of the leaking pipe, but asserts that the agreement between Bureau Veritas (acting as the CBO and Fire Marshal) and Mojave Solar requires Bureau Veritas to coordinate with the SBCFD relating to fire protection. Mojave Solar further denies that it failed to perform constant patrols of the protected premises, and maintains that it implemented fire watches to keep watch for fires.

5. Energy Commission Staff asserts that on or about, and between July 8, 2015 and July 23, 2015, Mojave Solar failed to post tags to indicate that the system was removed from service at each fire department connection, system control valve, fire alarm control unit, fire alarm annunciator and fire command center, and failed to report to the fire code official as required for the fire code official to specify where tags are to be placed in violation of the Condition of Certification GEN-1 requirement to comply with the California Fire Code, which includes sections 901.7.2. and 901.7.3 (2010 Edition).

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Mojave Solar denies that it failed to post tags as required by the California Fire Code. Mojave Solar denies that it failed to report to the fire code official and asserts that the fire code official had full knowledge of the leak and the placement of the tags.

6. Energy Commission Staff alleges that on or about, and between July 8, 2015 and July 15, 2015, Mojave Solar failed to take appropriate emergency action to minimize potential worker injury and critical energy infrastructure damage during the period of the unplanned impairment of the Beta Power Block fire suppression systems by not implementing required procedures, including notifying the SBCFD, fire code official, and the Energy Commission of the unplanned impairment, in violation of the Condition of Certification GEN-1 requirement to comply with the California Fire Code, which includes section 901.7.5 (2010 Edition).

Mojave Solar denies that it failed to notify the fire code official of the leak in the pipe. Mojave Solar asserts that Bureau Veritas was the fire code official for the site pursuant to the *Memorandum of Understanding Between the California Energy Commission and Bureau Veritas North America, Inc.* whereby the Energy Commission delegated to Bureau Veritas the authority for enforcement of local building codes; and the California Building Standards Code, which includes the California Fire Code sections referenced above. Mojave Solar asserts that Bureau Veritas was present when the leak was discovered, and notified. (See, Mojave Solar LLC ASI Operations, Equipment/Property Damage Report No. 2015708.) Mojave Solar denies that it was required by the Fire Code or any condition of the Final Decision to notify the Energy Commission of the unplanned impairment because the designated CBO was acting as the fire official and Energy Commission's delegate.

7. Energy Commission Staff alleges that on or about, and between July 16, 2015 and July 24, 2015, Mojave Solar failed to ensure worker safety and failed to safeguard critical energy infrastructure from damage during a preplanned impairment of the Beta Power Block fire suppression systems by not implementing required procedures, including not having the necessary tools and materials assembled on the impairment site – specifically by not placing blind flanges on the cut ends of the fire water main pipe to provide adequate water flow to Valve Shed #2, in violation of the Condition of Certification GEN-1 requirement to comply with the California Fire Code, which includes section 901.7.4 (2010 Edition).

Mojave Solar admits that it did not place blind flanges on the ends of the water main pipe, and that blind flanges were not installed on the cut ends of the fire water main pipe until July 24, 2015, but denies that placing blind flanges on the ends of the water main pipe were required by the Fire Code or any condition of certification. Mojave Solar asserts that the repairs were performed by a California-licensed fire protection contractor which should be expected to know and comply with applicable provisions of the Fire Code. Mojave Solar denies the alleged actions or inactions posed a risk to worker safety or critical infrastructure.

8. Energy Commission Staff alleges that the Project was out of compliance with Final Decision Condition of Certification GEN-1 and related LORS as specifically identified above.

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9. Mojave Solar generally denies that the project was out of compliance with Condition GEN-1 and any applicable LORS, and makes no admission of fact or liability, except as expressly noted above, with respect to such allegations.

IV. TERMS

In order to resolve the above-described alleged violations and terminate and settle this matter and, in consideration of Energy Commission Staff not pursuing an administrative action under Public Resources Code section 25534 or otherwise filing a legal action against Mojave Solar for the above-described alleged violations, the Energy Commission and Mojave Solar agree as follows:

1. The requirements set forth in the attached Conditions of Certification GEN-1.1, GEN-1.2, and GEN-1.3, are intended to be, and are, amendments augmenting the terms of the Final Decision. Any failure by Mojave Solar to comply with these requirements will constitute a significant failure to comply with the Final Decision terms or conditions of approval of the application for certification.
2. Mojave Solar shall execute the Agreement and provide a copy no later than December 9, 2016, to the attention of:

Michael D. Lewis
Deputy Director, Siting Transmission and Environmental Protection Division
California Energy Commission, MS-16
1516 9th Street
Sacramento, CA 95814

3. Mojave Solar shall submit to the California Energy Commission a payment in the amount of Fifty-One Thousand Dollars (\$51,000) to settle these matters. The payment is due within 14 days after Mojave Solar receives written notification by the CPM of the execution of the Settlement Agreement by the Executive Director. Payment shall be made by electronic transfer to the California Energy Commission. Banking information and instructions necessary to complete the electronic transfer shall be provided by the Energy Commission.
4. If the Energy Commission does not approve the Agreement, it shall become null and void. Mojave Solar further agrees that if this matter comes before the Energy Commission in an administrative adjudication, members of the Energy Commission and the Executive Director shall not be disqualified from participation because of prior consideration of this Agreement.
5. This Agreement shall apply to and be binding upon Mojave Solar and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary corporations, and upon the Energy Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
6. This Agreement shall constitute the a full and final settlement of the matters identified in Section III herein, subject to: (1) Mojave Solar's payment of the amount specified in section

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6 above; (2) Mojave Solar's completion of all activities set forth in Conditions of Certification GEN-1.1, GEN-1.2, and GEN-1.3; and (3) the Energy Commission's determination as set forth by the Executive Director, that Mojave Solar has so complied.

7. This Agreement does not preclude an action by the Energy Commission under Public Resources Code section 25534 or by other legal action with respect to the matters in this Agreement if, after the Agreement is approved by the Energy Commission and executed by its Executive Director, the Energy Commission becomes aware of any material false statements by Mojave Solar or its agents, or any successors thereto, made during the negotiation of, or compliance with, this Agreement or, Mojave Solar fails to complete all of the requirements set forth in this Agreement.
8. This Agreement constitutes the entire agreement and understanding between the Energy Commission and Mojave Solar, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind regarding the matters herein, whether written or oral, between the Energy Commission and Mojave Solar.
9. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
10. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
11. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
12. Any civil litigation to enforce this Agreement shall be filed in the Superior Court of California, County of Sacramento.
13. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
14. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
15. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.

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16. If any public statement is made by either Party about the Agreement or the underlying facts or process leading up to the settlement, to the extent feasible the Party will provide advance notice of the intended public statement to the other Party.
17. The undersigned represent that they have the authority to execute this Agreement.
18. The Parties agree that fax or pdf signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

California Energy Commission

By: _____
Name: Robert P. Oglesby
Title: Executive Director
Date:

Mojave Solar, LLC



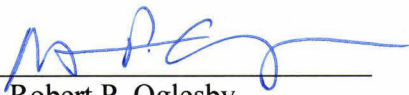
By: _____
Name: Emiliano Garcia Sanz
Title: Treasurer
Date: December 7, 2016

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16. If any public statement is made by either Party about the Agreement or the underlying facts or process leading up to the settlement, to the extent feasible the Party will provide advance notice of the intended public statement to the other Party.
17. The undersigned represent that they have the authority to execute this Agreement.
18. The Parties agree that fax or pdf signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

California Energy Commission

Mojave Solar, LLC

By: 
Name: Robert P. Oglesby
Title: Executive Director
Date: December 14, 2016

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT TO SETTLEMENT AGREEMENT
CALIFORNIA ENERGY COMMISSION AND MOJAVE SOLAR, LLC

GEN-1.1 Mojave Solar shall provide to the Energy Commission Compliance Project Manager (CPM) information about each occurrence of damage to or failure of the fire water mains (including hydrants) in the Alpha and Beta Blocks from the start of construction through the date the Settlement Agreement is fully executed.

- a. For each occurrence of damage to or failure of fire water mains, Mojave Solar shall provide:
 - i. the date discovered;
 - ii. the location, noted on an As-Built Site Fire Protection Drawing;
 - iii. a short explanation of the circumstances of the event;
 - iv. an explanation of how the damage or failure was repaired, including CBO or SBCFD recommendations, if any; the repair method used; and additional engineering drawings, if any were required;
 - v. the date repair was completed;
 - vi. a copy of the CBO or SBCFD's inspection report if CBO or SBCFD inspections were required after the repair; and
 - vii. any photographs taken for each occurrence.

- b. Beginning the day after the Settlement Agreement is fully executed, and continuing until the Project is decommissioned, Mojave Solar shall provide the CPM with the information specified in section 1.a., i-iii after discovery of an occurrence of damage or failure, and provide the CPM with the information specified in section 1.a., iv-vii, after any repairs or remediation.

VERIFICATION: On or before 90 days after Mojave Solar receives written notification by CPM of the execution of the Settlement Agreement by the Executive Director, Mojave Solar shall provide to the Energy Commission Compliance Project Manager (CPM) information about each occurrence of damage to or failure of the fire water mains (including hydrants) in the Alpha and Beta Blocks from the start of construction through the date the Settlement Agreement is fully executed. Beginning the day after the Settlement Agreement is fully executed, and continuing until the Project is decommissioned, Mojave Solar shall provide the CPM with the information specified in section 1.a., i-iii and vii, within 12 hours of the discovery of an occurrence of damage or failure, and provide the CPM with the information specified in section 1.a., iv-v and 1.a.vii, within 24 hours of any repairs or remediation.

GEN-1.2 Mojave Solar shall retain FM Global, or other mutually agreed upon entity, to conduct a Fire Systems Assessment (Assessment) which shall include:

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- a. conducting a root cause analysis of each occurrence of damage to or failure of the fire protection water mains (including hydrants) at both the Alpha and Beta blocks, and
- b. an assessment of the operational readiness and reliability of the fire protection water mains (including hydrants) at both the Alpha and Beta blocks.

Mojave Solar shall implement all recommendations in the Final Assessment required to bring the fire protection water mains (including hydrants) at both the Alpha and Beta blocks into compliance with the California Fire Code. If any project modifications are required, Mojave Solar shall file a Petition to Amend under Title 20, Cal. Code Reg., section 1769.

VERIFICATION: No later than 30 days after Mojave Solar receives written notification by the CPM of the execution of the Settlement Agreement by the Executive Director, Mojave Solar shall prepare a contract to define the scope of work and specific tasks to be performed. The contract shall be reviewed and approved by the CPM. Upon approval of the contract by the CPM, Mojave Solar shall enter into the contract with FM Global, or other mutually agreed upon entity. Mojave Solar shall direct FM Global, or other mutually agreed upon entity, to complete a Draft Assessment and distribute it to Mojave Solar, the CPM, and the SBCFD no later than 90 days after contract execution, or a later date if approved by the CPM, for review and comment by Mojave Solar, the CPM and SBCFD. The CPM shall have 30 days to coordinate with the SBCFD and return all comments back to Mojave Solar and FM Global, or other mutually agreed upon entity. Mojave Solar shall direct FM Global, or other mutually agreed upon entity, to review all comments received from the CPM and the SBCFD on the Draft Assessment, revise the Draft Assessment, and distribute to Mojave Solar, the CPM, and SBCFD a Final Assessment containing final recommendations 30 days after receiving comments from the CPM and SBCFD, or at such later date approved by the CPM. The CPM shall have 30 days to approve the Final Assessment. Mojave Solar shall implement the recommendations in the Final Assessment in accordance with the timeframes recommended in the Final Assessment, provided however, that such timeframes shall be extended, with agreement by the CPM, so as to avoid any interruption in the operation of the facility or as otherwise agreed to by the CPM.

GEN-1.3 Mojave Solar shall update the Fire Protection Plan to include a section on fire protection system impairment practices and procedures, and shall provide the updated plan to the CPM for review and approval.

VERIFICATION: On or before 30 days after Mojave Solar receives written notification by the CPM of the execution of the Settlement Agreement by the Executive Director, Mojave Solar shall update the Fire Protection Plan to include a section on fire protection system impairment practices and procedures, and shall provide the updated plan to the CPM for review and approval.