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March 30, 2012

DOCKET
09-AFC-5C
DATE <u>MAR 30 2012</u>
RECD. <u>MAR 30 2012</u>

Dale Rundquist
Project Manager
California Energy Commission
Siting, Transmission and Environmental Protection Division
1516 Ninth Street, MS 15
Sacramento, CA 95814

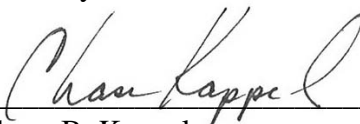
**RE: Abengoa Mojave Solar Power Project
Docket No. 09-AFC-5C
Petition to Modify BIO-7's Speed Limitation on Harper Lake Road**

Dear Mr. Rundquist:

Enclosed please find Abengoa Solar Inc.'s petition to amend Docket No. 09-AFC-5C. The petition requests that Condition of Certification BIO-7 be amended to remove the 25 mile per hour speed limit for Abengoa Mojave Solar Power Project construction and operation traffic travelling on Harper Lake Road.

Should you have any questions or need additional information regarding this submittal, please contact me at (916) 447-2166 or cbk@eslawfirm.com, or Matt Stucky of Abengoa Solar, Inc. at (415) 391-1685 or Matt.Stucky@solar.abengoa.com.

Sincerely,


Chase B. Kappel
Ellison, Schneider & Harris, LLP
Attorneys for Abengoa Solar, Inc.

cc: Kevin Bell

**PETITION TO AMEND THE COMMISSION'S DECISION FOR THE
ABENGOA MOJAVE SOLAR POWER PROJECT**

09-AFC-5C

March 30, 2012

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1.0 Introduction and Overview of Proposed Amendment

Pursuant to Section 1769 of the Commission’s Siting Regulations,¹ Abengoa Solar Inc. (“Abengoa”) hereby petitions the California Energy Commission (“Commission” or “CEC”) to amend Condition of Certification BIO-7 of the Commission’s Decision (“Decision”) licensing the Abengoa Mojave Solar Project (the “Project”).²

The complete description of the proposed amendment and its necessity are discussed below. The proposed amendment will improve the safety of the public and Project employees, will be in compliance with all applicable LORS, and will not affect nearby property owners or the public.

2.0 Description of Proposed Amendment

Section 1769 (a)(1)(D) of the Commission’s Siting Regulations requires a discussion of whether the proposed amendment is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision. Section 1769(C) states that “if the modification is based on information that was known by the petitioner during the certification proceeding, [the petition must contain] an explanation why the issue was not raised at that time.” This section provides the required discussion and also provides an explanation of why the proposed amendment should be permitted.

The proposed amendment removes the condition in BIO-7 requiring vehicular traffic during project construction and operation not to exceed a speed of 25 miles per hour (mph) on Harper Lake Road. Harper Lake Road is a two-lane road spanning rolling hills, and the road is needed to access the Project site. The actual speed limit set for Harper Lake Road is 55 mph. Since the start of construction, Abengoa has discovered that travelling 25 mph on Harper Lake Road is unsafe for construction vehicles and employees travelling to the Project site because the general public travels at or above the legal speed limit. Where the road undulates or bends, drivers travelling faster than 25 mph often do not see slower vehicles that are on the other side of a hill or bend in the road in sufficient time to safely slow down. Drivers also often pass slower construction vehicles by changing lanes into the oncoming lane, sometimes passing multiple vehicles at once, thereby increasing unsafe conditions on the road. Simply put, the significant difference between the posted speed limit and the limit imposed by the Commission’s license poses a public safety hazard.

Abengoa’s real world experience with this condition was not available to the Commission staff during the certification proceedings and Staff was therefore unaware that compliance with BIO-7’s 25 mph speed limit on Harper Lake Road would create a safety hazard.

Accordingly, this proposed amendment is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the Decision, and this information was not known at the time of certification.

¹ Cal. Code Regs., tit. 20, § 1769.

² Abengoa Mojave Solar Project Commission Decision, Doc. No. 09-AFC-5, CEC-800-2010-008-CMF, Sept. 2010.

3.0 Necessity of Proposed Amendment

Section 1769 (a)(1)(B) of the Commission Siting Regulations requires that a petition for modification provide a discussion of the necessity for the proposed modification. As discussed in section 2.0 above, this amendment is necessary for the safety of Project-related traffic and public traffic travelling on Harper Lake Road. Additionally, the authority to command a certain speed limit on a public road is not within the jurisdiction of the Energy Commission as speed limits on state highways and streets are established by the Department of Transportation or an appropriate local agency pursuant to the California Vehicle Code, Division 11, Chapter 7.³ Furthermore, the Vehicle Code specifically provides that “no person shall drive upon a highway at such a slow speed as to impede or block the normal and reasonable movement of traffic unless the reduced speed is necessary for the safe operation, because of grade, or in compliance with law.”⁴

This proposed amendment is therefore necessary for purposes of public safety and for consistency with California law. Consequently, Abengoa requests that the Commission remove BIO-7’s 25 mph speed limit on Project-related traffic for Harper Lake Road.

4.0 Environmental Analysis and Compliance with Applicable Laws, Ordinances, Regulations and Standards

Section 1769 (a)(1)(E) of the Commission Siting Regulations requires that an analysis be conducted that addresses the impacts a modification might have on the environment and proposed measures to mitigate any significant adverse impacts. The proposed amendment will not result in any physical change to the natural environment, and will in fact improve traffic safety on Harper Lake Road.

At the time of certification, Staff may have believed that the speed limit would help reduce the chance of impacts to desert tortoises crossing Harper Lake Road. However, desert tortoise exclusion fencing exists on both sides of the road for nearly the entire length of the Project access route, and the low density of tortoise burrows near the road suggests that tortoise use of habitat adjacent to the road is low. Moreover, because some traffic on the road is not subject to the reduced speed limit, the protection it affords is marginal at best.

Section 1769 (a)(1)(F) requires a discussion of the impacts a modification might have on the project's ability to comply with applicable laws, ordinances, regulations and standards (“LORS”). All project-related traffic will travel at the established speed limit for Harper Lake Road, resulting in travel at speeds that do not impede or block the normal and reasonable movement of traffic, and this proposed amendment is therefore in compliance with LORS.

³ See, e.g., Veh. Code §§ 22349, 22354-22359.

⁴ Veh. Code § 22400. “Highway” is defined as “a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.” (Veh. Code § 360.)

5.0 Proposed Modification to the Conditions of Certification Related to the Requested Amendment

Consistent with the requirements of the Commission Siting Regulations Section 1769 (a)(1)(A), this section sets forth the proposed modification to subpart 3 of BIO-7, as follows:

- 3. Minimize Traffic Impacts. Vehicular traffic during project construction and operation shall be confined to existing routes of travel to and from the project site, and cross country vehicle and equipment use outside designated work areas shall be prohibited. The speed limit shall not exceed 25 miles per hour ~~on Harper Lake Road~~ and within fenced areas that have been cleared of tortoises and other wildlife. The speed limit shall not exceed 15 miles per hour within unfenced areas and secondary unpaved access roads.

6.0 Potential Effects on the Public Related to the Proposed Amendment

Section 1769(a)(1)(F) requires a petition discuss how the modification affects the public. The proposed amendment eliminates an unsafe speed limit on Harper Lake Road imposed by the Decision. The proposed amendment will therefore enhance public safety, with no adverse impact on the public.

7.0 Potential Effects on Property Owners and List of Property Owners Related to the Proposed Amendment

Section 1769(a)(1)(H) requires a list of property owners potentially affected by the modification. The proposed amendment eliminates an unsafe speed limit on Harper Lake Road imposed by the Decision, and therefore property owners will be beneficially affected by the proposed amendment. The following table lists property owners within two miles of the Project, all of whom use Harper Lake Road.

<u>APN</u>	<u>Owner Name</u>	<u>Address</u>	<u>Description of Use</u>
049017111	Leimbach, Walter W.	15635 Lockhart Rd, Hinkley, CA 92347	Manufactured home on fee land, in subdivision
04901711	Cardiel, Maria L.	15563 Lockhart Rd, Hinkley, CA 92347	Two Single Family Residences
049012116	Holmes, Constance M.	41374 Harper Lake Rd, Hinkley, CA 92347	Manufactured Home, fee land

04901711	Sciortino, Vito	15563 Lockhart Ranch Rd, Hinkley, CA 92347	Single Family Residence
049017133	Kalk, Barbara J.	41361 Edie Rd, Hinkley, CA 92347	Single Family Residence
04901713	Lucy, Edna M.	15654 Roy St, Hinkley, CA 92347	Manufactured Home, fee land
049012137	Grieder, Raymond	41234 Harper Lake Rd, Hinkley, CA 92347	Bees, worms, etc.