

**CALIFORNIA ENERGY COMMISSION**

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SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



August 22, 2012

California Energy Commission

**DOCKETED  
09-AFC-8C**

TN # 66905

AUG 22 2012

Charlyn Mosley-Crump  
Compliance Manager  
Genesis Solar, LLC  
P. O. Box 2370  
Blythe, CA 92225

**SUBJECT: GENESIS SOLAR ENERGY PROJECT (9-AFC-8C), NON-COMPLIANCE WITH CONDITION OF CERTIFICATION CUL-8**

Dear Ms. Mosley-Crump:

This letter is to inform you that the California Energy Commission (Energy Commission) is in receipt of information that the Genesis Solar Energy Project (GSEP) is out of compliance with Condition of Certification **CUL-8** in the Cultural Resources section of the Energy Commission decision of September 29, 2010.

**DESCRIPTION OF INCIDENT**

On July 25, 2012, the Energy Commission's Compliance Project Manager (CPM) learned that, between the hours of 01:00 and 05:45 of the same morning, an on-site grading/excavation contractor began excavation on a 12-foot-wide x 17-foot-long x 9-foot-deep hole in native soil to accommodate the transformer foundation in Power Block 2. NextEra's contracted personnel responsible for scheduling Cultural Resources Monitors (CRMs) and Native American Monitors (NAMs) were not informed of the contractor's plan to excavate this hole until 05:00 that same day. Thus, the required monitors were not mobilized to observe the excavation until after it was well underway. When monitors arrived at 07:00, excavation then continued under their observation until the completion of the work. As the excavation work was being completed, monitors also evaluated the spoils excavated during the night, eventually determining that there was nothing of significance in the spoils.

**CONDITION OF CERTIFICATION COMPLIANCE**

Per Public Resources Code (PRC), Section 25532, the Energy Commission is required to assure that any facility certified under this division is operating in compliance with conditions adopted or established by the Energy Commission or specified in the written decision on the project's application for certification. In addition, California Code of Regulations, Title 20, Section 1770 states that the Energy Commission shall provide adequate monitoring of all conditions and measures, set forth in the final decision, required to mitigate potential impacts and to assure that the facility is operated in compliance with all applicable laws.

Regarding the requirement for archaeological monitoring, Condition of Certification **CUL-8** states:

Staff expects the Qoaf alluvium to be reached during grading across most of the site. The project owner shall ensure that the CRS, alternate CRS, or CRMs monitor full time all ground disturbance, if allowed by the BLM, until the CRS, alternate CRS, or CRMs certify that the sterile Qoaf alluvium has been reached. This will include ground disturbance at the project site, along the linear facilities routes, and at laydown areas, roads, and other ancillary areas, to ensure there are no impacts to undiscovered resources and to ensure that known resources are not impacted in an unanticipated manner.

Genesis Solar, LLC failed to have a CRM monitor the July 25, 2012 excavation of native soils in an area where the Qoaf Alluvium had not previously been reached resulting in a violation of this requirement of **CUL-8**.

Regarding the requirement for Native American monitoring, Condition of Certification **CUL-8** states in part:

The project owner shall obtain a Native American monitor to monitor ground disturbance if local Native American groups so request...Staff will either identify potential monitors or will allow ground disturbance to proceed without a Native American monitor.

On January 28, 2011, the Agua Caliente Band of Cahuilla Indians invoked the provisions of CUL-8 by requesting that a Native American monitor all ground disturbance at the GSEP site. Since it was determined that excavation was subject to monitoring and there were no monitors present during the July 25, 2012 excavation, Genesis Solar, LLC's failure to have a NAM monitor the excavation of native soils is a violation of this requirement of **CUL-8**.

## **RESTORING THE GSEP TO COMPLIANCE**

The project owner notified the Energy Commission's CPM of these compliance violations within 24 hours as required by the notification requirements of **CUL-8**. On August 2, 2012, the project owner's Project Compliance Manager submitted to the CPM an investigative report on the incident (see attached). This report identified several problems and outlined five steps being taken to prevent such an incident happening again.

To restore the GSEP to ongoing compliance with the cultural resources Conditions of Certification, Energy Commission staff requests, in addition to activities identified in the project owner's investigative report, that the project owner require the CRS to:

- 1) Review the report and provide any clarification or corrections

- 2) Review the steps being taken to determine if any additional corrective actions are needed to ensure the problem will not reoccur, and
- 3) Provide this report in the next Monthly Compliance Report (MCR) for the review of the CPM

Energy Commission staff will continue to work closely with the project owner to ensure conformance with all conditions of certification. However, the project owner should understand that it is ultimately the project owner's responsibility to ensure compliance with the Energy Commission's Conditions of Certification and that failure to prevent another such violation may result in formal Energy Commission action, including the assessment of penalties in accordance with the provisions of PRC Section 25534. Should Energy Commission staff file a complaint, you will be notified pursuant to the provisions of Section 1232, Title 20, California Code of Regulations (20 CCR) and have an opportunity to respond pursuant to the provisions of 20 CCR Sections 1233 and/or 1237.

If you have any questions, please call me at (916) 651-0587, or e-mail me at [cmarxen@energy.ca.gov](mailto:cmarxen@energy.ca.gov).

Sincerely,

**CHRISTOPHER J. MARXEN**  
Compliance Office Manager  
Siting, Transmission, and Environmental Protection  
Division

cc: Docket Unit, California Energy Commission  
Eric Knight, Manager, Energy Commission Environmental Office  
Eric Veerkamp, Energy Commission Compliance Project Manager  
for GSEP  
Holly Roberts, Bureau of Land Management, Palm Springs Field  
Office

Encl: Investigative Results letter from NextEra



11995 Wiley Wells Road  
PO Box 2370  
Blythe, CA 92225

August 2, 2012

Mr. Eric Veerkamp  
Compliance Project Manager  
1516 9<sup>th</sup> Street, MS 2000  
Sacramento, CA. 95814

Subject: 09-AFC-8, Genesis Solar, LLC  
Investigative results

Dear Mr. Veerkamp:

Pursuant to CEC Condition of Certification, CUL-8, the following are the results of the investigation regarding the event of July 24, 2012.

The Genesis Compliance Manager spoke with the monitors, the construction supervisor for Largo, the backhoe operator and the night foreman for Largo. On the night in question, the backhoe operator saw that monitors were on site. During the evening, when the tail gate was being performed the night supervisor went over the duties for the evening, including the digging, as one of the tasks for that night. The monitors were not at this tail gate, I was told that they perform their tail gates separately. The back hoe operator began digging in the power block sometime after the tail gate and after performing regular daily checks of the back hoe. This routine took approximately one and a half hours. The back hoe operator saw monitors in the area and presumed they were there to observe his work as well as the work on the caissons. This practice has been performed daily as well as nightly since night construction began in 2012. The Lead monitor assigns monitoring duties in the morning and for the evening crew, assigning double duties when necessary. There were monitors in the proximity of the dig however; they did not monitor the dig. They were observing the drilling of the caissons. It is not clear of the exact time of the dig however; it appears that the back hoe operator dug in this area of power block two from 1:30 until 5:30.

When the supervisor realized the work was being performed without a monitor, he stopped the work and requested a cultural monitor via the Lead cultural monitor. A monitor was immediately sent to the work area, and the spoils from the dig were spread out in the area and monitored. There were no findings in the spoils.

To ameliorate future night work events Genesis Management performed a root cause analysis and determined the following will be implemented immediately.

- Night shift Genesis Project Foreman will be on site during night work until day shift construction management arrives on site to take the turnover.
- 3 Additional cultural monitors have been requisitioned to remain on nights until the night shift work is complete.
- Tail gate meetings will include the cultural monitors to ensure all work areas are covered with a cultural monitor.
- The Genesis Compliance team will rotate early morning/night shift coverage until the night work is complete.
- Work schedules for the following week is forecast and approved by each contract coordinator to ensure proper coverage.

The Genesis Project Construction Team has reinforced the condition and requirement for monitoring during all excavation activities including special emphasis with Largo to review and vet the lessons learned, as well as the corrective actions. A strict adherence to the schedule has been reiterated and the review of scheduling will be performed by the Genesis compliance team prior to the week in question. A “week look ahead” is performed on Wednesdays for the following week.

Should you have further questions regarding this report, please feel free to call me at 760-831-2651.

Sincerely,

*Charlyn M. Mosley-Crump*

Charlyn Mosley-Crump  
Project Compliance Manager

Enclosures:

Cc: file  
Mosley