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DOCKET	
09-AFC-5	
DATE	<u>NOV 16 2009</u>
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November 16, 2009

Commissioner Julia Levin, Presiding Member
Vice Chair James D. Boyd, Associate Member
Mr. Craig Hoffman, Project Manager
Abengoa Mojave Solar Project (09-AFC-5)
California Energy commission
1516 Ninth Street
Sacramento, CA 95814

Re: Abengoa Mojave Solar Project (09-AFC-5): Notice Pursuant to 20 CCR 1716(f): Data Request Set 1B (nos. 1-86)

Dear Commissioners Levin and Boyd:

Abengoa Solar Inc. (the "Applicant") hereby files this notice as required by Section 1716(f) of the Commission's regulations regarding the need for additional time and the basis for objections to certain Data Requests promulgated by Staff on October 26, 2009.

Applicant may need additional time to respond to certain Data Requests. Several Data Requests, including 5, 6, 7, 10, 11, 12, 15, 16, and 17 require Applicant to retain and direct an historical archeologist to submit testing plans for Staff approval and complete field studies and letter reports. Similarly, Data Requests 19 and 20 call for a geoarchaeologist to conduct literature review, possibly also a field study, and to submit a report. The Applicant has retained the required qualified professionals. Additional time may be needed to complete the requested literature reviews, field studies, and subsequent analyses. Based on the foregoing, the Applicant estimates that it may need an additional 36 days for the following requests: Data Requests 5, 6, 7, 10, 11, 12, 15, 16, 17, 19, and 20.

Applicant may need additional time to respond to certain other Data Requests as well. Several Data Requests, including 21, 22, and 23, call for entirely new data collection, modeling, and analysis that will require additional time to develop. Several other Data Requests, including 30, 31, 35, 37, 38, 40, 41, 43, and 44, request revised model inputs, estimates, or explanations that will involve checking the technical details of the modeling or additional modeling work using the groundwater model developed for the proposed Project and subsequent analysis of the results. Finally, several Data Requests, including 34, 42, and 45, ask the Applicant to conduct literature searches that may take additional time to complete. Based on the foregoing, the

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Applicant estimates that it may need an additional 30 days for the following requests: Data Requests 21, 22, 23, 30, 31, 34, 35, 37, 38, 40, 41, 42, 43, 44, and 45.

Applicant objects to Data Requests 24, 25, and 80 for the reasons stated below. Without waiving any of these objections, Applicant reserves the right to provide responses, in whole or in part, to some or all of these Requests.

Applicant objects to Data Requests 24 and 25 because they call for modeling and evaluation that is irrelevant to the Commission's decision in this proceeding and would be burdensome to produce. Both Data Requests 24 and 25 relate to how the withdrawal rates were represented in the groundwater modeling prepared for the proposed Project in order to demonstrate impacts of the Project's proposed groundwater pumping on neighboring wells. The intent of the modeling was to define the impacts of the long term withdrawals on the system. Therefore, long term average withdrawals were used to represent that impact. The long term average withdrawals give the clearest description of the effects of the continuous withdrawals at Applicant's proposed new wells. While the Applicant reserves the right to provide clarifications of the transient and local effects of the start-up pumping during construction, it is Applicant's position that representing the impacts on this system using these start-up pumping rates as called for in Data Requests 24 and 25 would in fact misrepresent and distort the Project's impacts on groundwater in this system.

Data Request 80 requests the results of field sampling and analysis to characterize the presence of harmful chemicals in order to determine whether there will be any risk to construction or plant personnel. Further, Data Request 80 states: "Sampling and analysis should be consistent with DTSC's 'Interim Guidance for Sampling Agricultural Fields for School Sites'. Samples should be assessed for persistent agricultural chemicals, such as organochlorine pesticides that were applied to the project property." Applicant objects to Data Request 80 because it calls for the use of a wholly inappropriate guidance for sampling on this site, requests site analysis that would be burdensome to produce and would require new, time consuming studies that would substantially delay this proceeding, and is based on the incorrect assumption that organochlorine pesticides were applied to the Project property.

Review of the above-mentioned document indicates that the sampling and testing regimen required is meant specifically for new school sites and/or new construction school expansion projects. The Abengoa Mojave Solar Project is a proposed power plant, not a proposed new school site or school expansion project. Therefore, the use of this sampling guidance is wholly inappropriate. Furthermore, this Data Request asks the Applicant to undertake costly and time consuming studies. The sampling frequency is defined for differing land sizes ranging from one (1) to two (2) acre sites up to one hundred (100) acre sites. For sites greater than one hundred (100) acres it is recommended to consult with the DTSC. The sampling standard for lots up to one hundred (100) acres in size calls for obtaining twenty five (25) composite samples on one (1) acre centers. The Mojave Solar Project site consists of 1765

acres. Extrapolation of these sampling parameters would suggest sampling and testing in the range of 450 samples across the Project site. Sampling and testing at this rate on this Project site would be both time and cost prohibitive.

Moreover, there is no evidence that harmful or persistent agricultural chemicals were ever applied to the proposed Project site. The DTSC's "Interim Guidance for Sampling Agricultural Fields for School Sites" suggests contacting the County Agricultural Commissioner to inquire as to any historical information that may be available. Applicant contacted Mr. John Gardener with the San Bernardino County Department of Agriculture, Weights and Measures. Mr. Gardner is familiar with the Project site area and with past agricultural activities. Mr. Gardner stated that there is no history of heavy chemical use in the area. He stated that the Harper Lake area was used primarily for the farming of alfalfa as crop and that alfalfa is historically not a high user of chemical pesticides. Mr. Gardner added that if any chemicals were used, they were mainly "herbicides" and sprayed to the foliage along roadways and the field perimeters. Such chemicals have half lives of one (1) to two (2) weeks. He added that most agricultural activities in the area began declining in the late seventies and have been virtually non-existent since the late eighties, making the continued presence of agricultural chemicals in the area even more unlikely.

Additionally, a Phase I Environmental Site Assessment (ESA) was performed for this site for the proposed Project. This site assessment referenced a previous Phase I ESA that was performed for the original solar plants constructed just north of the Abengoa Mojave Solar Project site. Both of these ESAs thoroughly investigated the past land use of the site properties and reported the lack of any history of contamination or previous land use that may have caused contamination to the site properties. For all of the reasons stated above, Applicant objects to the field sampling and analysis requested by Data Request 80.

The Applicant appreciates Staff's time and good faith efforts in reviewing the Abengoa Mojave Solar Project. The Applicant looks forward to working with Staff to achieve a complete and satisfactory resolution of all issues in a timely manner.

Thank you for your time and consideration.

Sincerely,



Christopher T. Ellison
Shane E. Conway
Ellison, Schneider & Harris, L.L.P.

Attorneys for Abengoa Solar Inc.

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the)
ABENGOA MOJAVE SOLAR POWER PLANT) Docket No. 09-AFC-5
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PROOF OF SERVICE

I, Eric Janssen, declare that on November 16, 2009, I served the attached *Notice Pursuant to 20 CCR 1716(f): Data Request Set 1B (nos. 1-86)* via electronic mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.

/s/
Eric Janssen

Service List 09-AFC-5
November 16, 2009

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