

<b>DOCKET</b>	
<b>09-AFC-5</b>	
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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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**ABENGOA MOJAVE SOLAR PROJECT'S  
RESPONSE TO COMMITTEE'S JULY 8 ORDER REGARDING VARIOUS ISSUES  
RELEVANT TO THE JULY 15 HEARING**

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Attorneys for Abengoa Mojave Solar Project

Pursuant to the Committee's email Order of July 8, 2010, Abengoa Mojave Solar Project ("Applicant" or "Project") hereby responds to the following Committee's directive:

The parties are hereby directed to reply to this email by 4:00 p.m. tomorrow advising the Committee (1) whether the topics of Air Quality, TSE, Executive Summary, and the conclusion of Biological Resources are ready to proceed to hearing on the July 15 and if so, whether the evidence will be submitted on the papers; (2) whether Worker Safety will be ready for hearing on July 15 and if not, then when, and (3) whether, based on the evidence in the record and that which might be submitted on July 15, the parties can agree to submitting for Committee consideration a condition such as the one below from Colusa Generating Station (06-AFC-09) and move forward on July 15 on this topic.

Applicant's responses to the three directives above are as follows.

**I. Whether The Topics Of Air Quality, TSE, Executive Summary, And The Conclusion Of Biological Resources Are Ready To Proceed To Hearing On The July 15 And If So, Whether The Evidence Will Be Submitted On The Papers.**

Applicant believes that all of the above-referenced topics are ready to proceed to hearing on July 15 and can be submitted on the papers.

**II. Whether Worker Safety Will Be Ready For Hearing On July 15 And If Not, Then When.**

Absent agreement by the Parties to the Committee's suggested condition discussed in Section III, below, or granting of the Applicant's attached Motion to Strike, the topic of worker safety will not be ready for hearing on July 15. Staff violated the intent and spirit of the Committee's June 23, 2010, Order allowing supplemental testimony by this week submitting testimony that is not at all "supplemental" to its prior position put forward in the FSA. Instead, Staff has entirely changed its position, increasing the required mitigation *by a factor of seven times* to a total of \$24.6 million for this issue alone— a level that would render this Project economically infeasible. Moreover, Staff seeks to support this surprise position with massive

amounts of new technical evidence and a method never before used in any Commission proceeding.

Thus, this testimony is not only entirely new for *this* case, it also constitutes a dramatic departure from how the Commission has addressed this issue in all other past and pending cases. As such, Staff seeks to sandbag this record and unfairly surprise the Applicant in a manner that would make it impossible for the Applicant to reasonably respond within one week per the schedule set by the Committee. Accordingly, *as important as maintaining the schedule is to the Applicant and the State given the ARRA deadlines*, the Applicant has no choice but to seek more time to adequately respond should Staff decline the Committee's invitation to adopt the position Staff agreed to in the Colusa case. Specifically, Applicant would need to defer the Worker Safety issue for 30 days in order to hire a consultant to review and submit testimony regarding the Staff's new position and method and perhaps even to conduct discovery regarding the Staff's new method.

That Staff's position released just this Monday is both an unfair surprise and an astounding departure from prior Commission cases is indisputable. Consider the following:

- Staff has raised its proposed Worker Safety mitigation requirement from \$3.5 million to \$24.6 million— a seven *fold* increase.
- This would render the Mohave Solar Project economically infeasible.<sup>1</sup>

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<sup>1</sup> Applicant wishes to make this point crystal clear to all concerned: if these costs are imposed on this Project, *it will not be built*. The Applicant will testify to this fact under oath if called upon to do so. Thus, rather than increasing County funds and emergency response capability, the real-world impact of Staff's position would be to deny the County the substantial taxes, jobs and other economic benefits described elsewhere in this record and thereby *diminish* its capabilities.

- Staff supports its astounding new proposal with a “matrix” method that has never been released, reviewed or subject to peer review or public comment and which lacks supporting work papers or other documentation.
- This \$24.6 million seeks to mitigate an increase in calls for County emergency services that Staff’s own evidence shows will be a negligible fraction of all emergency calls within the North Desert Division.<sup>2</sup>
- In similar solar projects now pending before the Commission such as Ivanpah, projects that will directly compete with this Project in competitive solicitations—Staff has agreed that the impact on emergency services is not significant and requires *no mitigation at all*.<sup>3</sup>

Given the scope and magnitude of the revisions in Staff’s new testimony, the Committee should strike the testimony pursuant to the attached Motion because it clearly exceeds the authorization to file “Supplemental” testimony and would constitute extreme prejudice to the Applicant if Staff were permitted to sandbag the record with this volume of new data at this very late stage of the proceeding. Absent that action, Worker Safety can only be fairly heard on July 15 if Staff agrees to the type of conditions it has previously supported in the Colusa case as

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<sup>2</sup> Staff’s own evidence shows that the similar (indeed more hazardous) existing solar facility immediately adjacent to the proposed Project has accounted for only 2 or 3 of over 20,000 calls for the County’s North Desert Division emergency services annually. (According to the 2009 Annual Report of the San Bernardino County Fire Department, there were approximately 20,000 calls for service in the North Desert Division in both 2008 and 2009. (Annual Report, p. 10; [http://www.sbcfire.org/admin/AnnualReports/2009\\_fire\\_annual\\_report.pdf](http://www.sbcfire.org/admin/AnnualReports/2009_fire_annual_report.pdf))

<sup>3</sup> In the case of the Ivanpah project, also located in San Bernardino County, Staff concluded “that the proposed project would not have impacts on local fire protection services that would be significant with respect to CEQA or NEPA.” (Ivanpah Solar Project, 07-AFC-5, Final Staff Assessment, October 2009, at p. 6.14-1). Staff reached this conclusion even though the response time to the Ivanpah project is longer than the response time to the Abengoa project. As a result of this conclusion, Staff recommended no mitigation payment to San Bernardino County for fire services. It is difficult to reconcile a difference of \$24,000,000 in mitigation payments for two renewable energy power projects located in the same fire district and licensed by the Commission in the same time period.

suggested by the Committee in its Order. As set forth in the next section of this response, the Applicant is willing to stipulate to that type of mitigation condition to maintain the schedule even though even this proposal exceeds the mitigation required of some other similar solar projects.

As this Committee is well aware, the Applicant has made major compromises with Staff and others to expedite this proceeding. For example, it has withdrawn objections to Staff proposals that violate the company's judicially-determined water rights, reached agreement with CURE and all other interveners and agreed to costly mitigation for alleged biological, agricultural and transportation impacts. It has sought to avoid contesting issues wherever possible due to the importance of maintaining an expedited schedule needed to obtain ARRA funding for California.

But there is no point in worrying about ARRA funding for a Project that can never be built because it has been rendered economically infeasible. Accordingly, as important as the schedule has been for the Applicant, being given a full and fair opportunity to respond to the Staff's new position and evidence is even more important. Absent agreement from the Staff to a reasonable mitigation proposal, such as put forward by the Committee, Applicant has no choice but to hire additional expert consultants, conduct discovery regarding Staff's newly released matrix and take all the actions necessary to disprove the many incorrect assertions put forward by Staff. That will require at least the 30-day continuance proposed here.

**III. Whether, Based On The Evidence In The Record And That Which Might Be Submitted On July 15, The Parties Can Agree To Submitting For Committee Consideration A Condition Such As The One Below From Colusa Generating Station (06-AFC-09) And Move Forward On July 15 On This Topic.**

Applicant has reviewed the conditions of certification identified by the Committee and can agree to this proposal, including advance funding of \$230,000 or a similar amount as set

forth in proposed condition No. 7. (Indeed, these conditions from the Colusa case illustrate how out of step Staff's latest proposal is with the Commission precedent and the treatment of other facilities that would compete with the Mohave Solar Project in the market.) With the concurrence of Staff to this proposal, Applicant agrees that Worker Safety can move forward on July 15.

**IV. Conclusion**

Applicant very much appreciates the Committee's prompt and constructive response to Staff's remarkable testimony and the untenable position in which it places the Applicant. Needless to say, the Applicant hopes that Staff also recognizes the efficacy of the Committee's suggested resolution of this issue. In any event, however, because Applicant currently has filing obligations of July 13 and 14, it needs to know immediately how the Committee intends to proceed in response to these comments and the responses of other parties to the Committee's directive.

Dated: July 9, 2010

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  \_\_\_\_\_

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**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on July 9, 2010, I served the attached *ABENGOA MOJAVE SOLAR PROJECT'S RESPONSE TO COMMITTEE'S JULY 8 ORDER REGARDING VARIOUS ISSUES RELEVANT TO THE JULY 15 HEARING* via electronic and U.S. mail to all parties on the attached service list.

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



\_\_\_\_\_  
Karen A. Mitchell

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