

**DOCKET**

**09-AFC-5**

DATE JUL 13 2010

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STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

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

**APPLICANT'S  
HEARING STATEMENT**

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Attorneys for Abengoa Mojave Solar Project

On June 23, 2010, the Commission issued a Revised Notice of Evidentiary Hearing directing Applicant to file Supplemental Opening Testimony and a Hearing Statement on the topics of (1) Worker Safety & Fire Protection, (2) Air Quality, and (3) Transmission Safety Engineering. In response to this Notice, this Hearing Statement contains the following information:

1. ***The topic areas that are complete and ready to proceed to evidentiary hearing.***

As stated in the Applicant's Response to Committee's July 8 Order Regarding Various Issues Relevant to the July 15 Hearing ("Response"), submitted July 9, 2010, Applicant believes that the topics of Air Quality, Transmission Safety Engineering, Executive Summary, and the conclusion of Biological Resources are ready to proceed to hearing on July 15 and can be submitted on the papers.

2. ***The topic areas that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefor.***

As explained below, the topic area Worker Safety & Fire Protection will not be ready for submission and closing the record on July 15, absent either: (1) agreement by the Parties to the Committee's suggested Worker Safety conditions, or (2) a statement from the Committee that it intends to adopt its suggested conditions.

Applicant reiterates its objection to proceeding to a complete hearing on July 15 as set forth in its Response and attached Motion to Strike. Further, Applicant notes that Staff has stated its intent to add to the unfairness by submitting an errata to its Supplemental Opening Testimony on Worker Safety. (Email from Christine Hammond to all parties, sent July 9). Applicant hereby objects to such further surprise testimony subject to discussion with the Parties and the Committee at the hearing.

Without waiving its objections, Applicant is filing as much direct testimony today responding to Staff and the County's surprise new positions and evidence as it has been able to prepare in the limited time allowed. Applicant is prepared to discuss this issue with the Committee and all parties on July 15. Applicant will also have its witnesses available such that evidence can be submitted if that is the Committee's direction. Further, Applicant will come as prepared as possible to examine other parties' witnesses, recognizing that Applicant has not had sufficient time to conduct discovery and prepare a full examination of such witnesses. Said differently, Applicant will come prepared to do as much as possible at the hearing without waiving its objection to closing the record on this issue at the July 15 hearing.

3. ***The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic.***

The topic area Worker Safety & Fire Protection remains disputed and will require adjudication. Applicant believes that, similar to other pending solar projects such as Ivanpah, that the MSP does not pose any significant adverse impact regarding Worker Safety requiring mitigation. Further, even if mitigation were appropriate, Applicant

estimates a much lower cost to serve the Project and mitigate for any fire services impacts and disagrees with Staff's original and now dramatically increased estimates of appropriate mitigation.

In its July 8 Order, the Committee asked the parties to comment on the efficacy of adopting Worker Safety conditions patterned after those adopted by the Commission in the Colusa AFC (email from Hearing Officer Vaccaro to all parties, sent July 8, *citing* Final Commission Decision for Colusa Generating Station, 06-AFC-9). As noted in our Response, Applicant is prepared to accept such conditions as yet another compromise to maintain the schedule. (This is a significant compromise given that Applicant's position is that in this case, like Ivanpah and other similar cases, there is no significant adverse Worker Safety impact and that no mitigation is appropriate.) Applicant notes Staff's objection to this proposal on the grounds that such conditions are unlawful as "deferred mitigation" and "unlawful delegation." This is a truly remarkable position given that: 1) the Commission has adopted these conditions in the Colusa AFC and has therefore, as a matter of *stare decisis*, determined they are lawful; and 2) the Commission did so in the Colusa case *upon the Staff's recommendation*. Applicant is frankly astounded that Staff would propose such conditions to resolve the last remaining issue in a PG&E-sponsored fossil-fired application and then claim they are unlawful to resolve the same issue when it is the last one in this ARRA-eligible renewable application.

Notwithstanding its objections stated above, Applicant believes the record as of July 15 will likely be sufficient for the Committee to adopt conditions patterned on the Colusa AFC, since those conditions do not depend on evidence regarding the amount of money to be paid. Applicant will be prepared to present oral argument regarding the legality of such conditions should the Committee so desire. Thus, should the parties stipulate at the hearing to the Colusa conditions, or should the Committee state its intent to adopt this approach over any objections, Applicant is prepared to waive its objections and stipulate to closing the record on July 15.

4. ***The identity of each witness sponsored by each party (note: witnesses must have professional expertise in the scope of their testimony); the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness.***

The Applicant's witnesses, their topic areas, a brief summary of their testimony, and their qualifications are set forth in the Applicant's Supplemental Opening Testimony filed along with this statement today, July 13, 2010. A revised list of the Applicant's witnesses and their topic areas is attached hereto as Attachment 1.

As for direct examination, the Applicant anticipates direct examination on Worker Safety to be 60 minutes.

5. ***Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of such cross-examination, and the time desired for such cross-examination.***

The Applicant anticipates cross-examination of Commission Staff on Worker Safety to be 60 minutes.

6. ***An exhibit list identifying exhibits and declarations that each party intends to offer into evidence (see attached sample for required format). The Hearing Officer will provide the parties with a Word version of the Exhibit List template.***

The Applicant's revised exhibit list is attached hereto as Attachment 2. The Declarations are attached to Applicant's Supplemental Opening Testimony, filed along with this statement today, July 13, 2010.

7. ***Proposals for briefing deadlines, vacation schedules, and other scheduling matters.***

Applicant has no further scheduling proposals at this time.

8. ***For all topics, the parties shall review the Proposed Conditions of Certification listed in the Supplemental Staff Assessment for enforceability, comprehension, and consistency with the evidence, and submit any proposed modifications.***

With the exception of Worker Safety-6, discussed in section 3 above, the Applicant has no proposed modifications on the Proposed Conditions of Certification contained in the Supplemental Staff Assessment Part C or Staff's Errata to Supplemental Staff Assessment Part B on Air Quality.

July 13, 2010

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: 

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## ATTACHMENT 1

### Applicant's Revised Witness/Topic List

(revisions are in bold/italicized font)

TOPIC	WITNESS
Project Description and Facility Design	Frederick Redell
Air Quality – General	Gregory S. Darwin
Air Quality/Public Health – Heat Transfer Fluid Recovery System	Frederick Redell
Biological Resources	Lyndon Quon, Alice Karl, Philip Leitner, and Joshua Zinn
Cultural Resources	Maria K. “Trina” Meiser and Theodore Cooley
Hazardous Materials	Brad Merrell
Land Use	William Graham
Noise and Vibration	Bob Mantey
Public Health	Richard B. Booth
Socioeconomic Resources	William Graham
Soil and Water Resources – Soil Resources, Surface Water, and Stormwater Runoff	Brad Merrell
Soil and Water Resources – Groundwater Modeling	Jack Wittman and Vic Kelson
Soil and Water Resources – Plant Water Demand Calculations	Frederick Redell
Soil and Water Resources – Water Rights	Christopher Hansmeyer
Traffic and Transportation	Nicholas Abboud
Transmission Line Safety and Nuisance	David Larsen
Visual Resources – General	Timothy Zack and Lee Anderson
Visual Resources – Impacts from Solar Collector Arrays	Frederick Redell
Visual Resources – Visual Plume	Gregory S. Darwin
Waste Management	Brad Merrell
Worker Safety	Frederick Redell <i>Stuart Thomas (Tom) Couch</i> <i>Eric Nickell</i>
Geology and Paleontology – Geologic Resources	Gregory Farrand
Geology and Paleontology – Paleontological Resources	Cara Corsetti and Jessica DeBusk
Power Plant Efficiency	Frederick Redell
Power Plant Reliability	Frederick Redell
Transmission System Engineering	David Larsen
Alternatives	Frederick Redell

## ATTACHMENT 2

### Applicant's Revised Exhibit List (revisions are in bold/italicized font)

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
1	Mojave Solar One's Application for Certification – Volumes 1, 2 and 3, dated 7/2009, Docket ID 52813 [DOCUMENT AVAILABLE UPON REQUEST]					
2	Data Adequacy Supplement dated 9/24/2009, Docket ID 53375					
3	Data Response to Set 1A – dated 11/23/09, Docket ID 54243					
4	Data Response to Set 1B – dated 11/25/09, Docket ID 54268					
5	Supplemental Data Response to Set 1A – dated 12/23/09, Docket ID 54582					
6	Supplemental Data Response to Set 1B – dated 12/23/09, Docket ID 54581					
7	Modeling files for Soil and Water Resources – dated 12/23/09, Docket ID 54595					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
8	Supplemental Data Response to Set 1B Cultural – dated 1/5/10, Docket ID 54685					
9	Supplementary MODFLOW Files - dated 12/30/2009, Docket ID 54698					
10	Replacement Written Response to Visual Resources - dated 1/8/10, Docket ID 54730					
11	Supplemental Data Response to Set 1A Air Quality and Public Health – dated 1/11/10, Docket ID 54756					
12	Groundwater Modeling Analysis -dated 1/15/10, Docket ID 54856					
13	Second Supplemental Data Response for Set 1A for Air Quality and Public Health – dated 2/2/10; Docket ID 55150					
14	Second Supplemental Data Response for Set 1B Water Resources - 2/16/10, Docket ID 55435					
15	Revised Figure for Supplemental Data Response for Set					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
	1B Water Resources – dated 2/17/10; Docket ID 55468					
16	Second Supplemental Response to Data Request Set 1B Cultural Resources - 2/17/10, Docket ID 55470					
17	Response to Memo from Heather Blair re Time Sensitive Issues – dated 2/24/10, Docket ID 55634					
18	Interconnection Study - dated 1/14/2010, Docket ID 55679					
19	Revised Second Supplemental Response to Data Request Set 1A Air Quality and Public Health – dated 2/25/10, Docket ID 55678					
20	Site Material Sampling Report - dated 4/5/2010, Docket ID 56127					
21	Draft Desert Tortoise Clearance and Relocation/Translocation Plan submitted 4/6/10, Docket ID 56126					
22	Information provided to the Regional Water					



<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
	Quality Control Board Lahontan Region for Report of Waste Discharge application - 4/16/10, Docket ID 56270					
23	Responses to CURE's Data Requests Set 1 - 4/16/10, Docket ID 56311					
24	Burrowing Owl Monitoring and Mitigation Plan – dated 4/19/10, Docket ID 56301					
25	Site Sampling Analysis - dated 4/16/10, Docket ID 56310 and 56326					
26	Applicant's Comments on Staff Assessment - dated 4/21/10, Docket ID 56350					
27	Environmental Analysis for the Lockhart Substation Interconnection and Communications Facility – dated 4/16/10, Docket ID 56359					
28	Transmission Interconnection Map – Docket ID 56359					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
29	Biological Resources Appendix – dated 4/20/10, Docket ID 56358					
30	Draft Biological Assessment – dated 4/27/10, Docket ID 56418					
31	Golden Eagle Nest Survey Results – dated 5/4/10, Docket ID 56516					
32	Revised Mojave Solar 1-hour NO2 Modeling Assessment – dated 5/4/10, Docket ID 56545					
33	One-line diagram of interconnection to Lockhart Substation - 5/4/10, Docket ID 56546					
34	Surface Soil Sampling – dated 1/26/10, Docket ID 55001					
35	Areas of Critical Ecological Concern Mapping Corrections - Dated 10/12/09, Docket ID 53625					
36	U.S. Army Corps of Engineers Determination Regarding Requirement for U.S. Army Corps of Engineers Permit – dated					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
	2/26/10, Docket ID 55775					
37	U.S. Army Corps of Engineers Approved Jurisdictional Determination Regarding Absence of Geographical Jurisdiction – dated 2/26/10, Docket ID 55776					
38	Mitigation Site Assessment, Docket ID 56276					
39	Authority to Construct Permit Application, July 20, 2009, Docketed with the AFC					
40	SWCA, Application for Confidential Designation and “Geoarcheological Testing Report for the Mojave Solar Project, Lockhart, California,” dated December 23, 2009, Docket ID 54601 [CONFIDENTIAL DOCUMENT – NOT INCLUDED IN FILES]					
41	Storm Channel Surface Profile, Docket ID 56263					
42	CA Department of Conservation’s					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
	Letter Re Agriculture Mitigation, dated April 7, 2010, Docket ID 56177					
43	Department of Conservation's Revised Abengoa LESA model, dated May 4, 2010, Docket ID 56547					
44	Letter regarding Power Purchase Agreement – dated 10/8/09, Docket ID 53595					
45	Applicant's Letter regarding Transmission Interconnection dated February 5, 2010, Docket ID 55215					
46	Letter from N. Abboud regarding Queuing Analysis for the SR58 left turn lane at Harper Lake Road – dated 5/27/10, Docket ID 56970					
47	HCM Unsignalized Intersection Capacity Analysis – dated 5/26/10, Docket ID 56970					
48	Applicant's Opening Testimony – dated 6/1/10, Docket ID 56790					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
49	Preliminary Determination of Compliance – dated 3/1/10, Docket ID 55711					
50	Final Determination of Compliance – dated 5/17/2010, Docket ID 56808					
51	Supplemental Response to CURE’s Data Requests – Set 1 – dated 4/28/10, Docket ID 56462					
52	<i>Applicant’s Supplemental Opening Testimony on Worker Safety and Fire Protection</i>					
53	<i>Applicant’s Supplemental Rebuttal Testimony on Worker Safety and Fire Protection (if necessary)</i>					

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, Karen A. Mitchell, declare that on July 13, 2010, I served the attached *APPLICANT'S HEARING STATEMENT* 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

**SERVICE LIST**  
**09-AFC-5**

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