

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

DOCKET 09-AFC-5
DATE JUN 17 2010
RECD. JUN 17 2010

In the Matter of:

Application For Certification for the
 Abengoa Mojave Solar Project

) Docket No. 09-AFC-5
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PREHEARING CONFERENCE STATEMENT OF ENERGY COMMISSION STAFF

I. INTRODUCTION

On May 17, 2010, the Application for Certification Committee (“Committee”) in the above-referenced proceeding issued a *Notice of Prehearing Conference and Evidentiary Hearing* (“PHC Notice”). On May 27, 2010, Hearing Officer Vaccaro via email to all parties clarified the instructions contained in the PHC Notice for filing testimony, exhibits, and other prehearing documents. In accordance with the PHC Notice and Hearing Officer Vaccaro’s email clarification, Staff hereby submits this prehearing conference statement.

II. TOPIC AREAS THAT ARE COMPLETE AND READY TO PROCEED TO EVIDENTIARY HEARING

All topic areas except Air Quality, Transmission System Engineering – Appendix A (downstream transmission impacts), and Worker Safety & Fire Protection are complete and ready to proceed to evidentiary hearing. Staff recommends that the three technical areas, Air Quality, Transmission System Engineering – Appendix A, and Worker Safety & Fire Protection, be addressed in their entirety at a subsequent hearing after additional opening and rebuttal testimony are filed to complete them.

Proof of Service (Revised 6/6/10) filed with original.
 Mailed from Sacramento on 6/17/10 [Signature]

III. TOPIC AREAS THAT ARE NOT COMPLETE AND NOT READY TO PROCEED TO EVIDENTIARY HEARING

The technical areas of Air Quality, Transmission System Engineering – Appendix A, and Worker Safety & Fire Protection are not yet ready to proceed to hearing. The Supplemental Staff Assessment (SSA) – Part C, which will contain the final Opening Testimony on Executive Summary and Transmission System Engineering – Appendix A, is anticipated to be filed on June 30, 2010.

The Mohave Desert Air Quality Management District (“MDAQMD” or “Air District”) has informed Staff that it will file a revised Final Determination of Compliance (“FDOC”) in approximately two weeks. The revised FDOC will necessitate Staff filing an Errata to the Air Quality Section of the Supplemental Staff Assessment – Part B (“SSA – Part B”), and Staff anticipates filing the Errata approximately two weeks after receipt of the revised FDOC. The Air District has indicated that changes to the FDOC were prompted by District-wide changes to heat-transfer fluid fugitive emissions monitoring, the need to incorporate recent permit conditions for above-ground gasoline storage tanks, and the need to update boiler information and conditions depending on final input from the Applicant.

Staff has lately received new information from the San Bernardino County Fire Department (“SBCFD”) regarding the mitigation of direct and cumulative impacts to the SBCFD’s emergency response capabilities. Staff accordingly has undertaken a deeper review of the emergency response needs of the Project, in conjunction with similar reviews for other proposed solar power plants. This new information and analysis prevented Staff from finalizing rebuttal testimony on the proposed mitigation for impacts to fire and emergency response capabilities by June 17, 2010 (although Staff did file rebuttal testimony on other issues under Worker Safety & Fire Protection). Staff will file its rebuttal testimony on this matter and on Applicant’s proposed changes to Condition of Certification **WORKER SAFETY-6** as soon as possible and likely within one week.

IV. TOPIC AREAS THAT ARE DISPUTED AND REQUIRE ADJUDICATION

Based on Staff's review of all parties' opening testimony, Staff believes the following areas remain disputed and require adjudication. Staff reserves the right to revise this list pending review of parties' rebuttal testimony, prehearing conference statements, statements made at the prehearing conference, or otherwise.

A. Hazardous Materials

Staff and Applicant disagree on the need for proposed Condition of Certification **HAZ-6** concerning the need for a site-specific security plan.

B. Soils and Water Resources

Staff and Applicant disagree on the efficiency of the Abengoa Mojave Solar Power Project's ("Project's") efficiency of water use, the proper calculation of Applicant's water production rights, and, by extension, the need for proposed Condition of Certification **SOILS&WATER-12**. Staff believes these topics will require adjudication.

Staff and Applicant also disagree on the Project's conformity with applicable law and water policy. Staff does not anticipate that this matter will require adjudication, however, and that this question can be addressed through briefing. Staff would like to inform the Committee and parties that it is preparing to file a Motion to Strike portions of Applicant's Opening Testimony concerning the law of water rights, Applicant's rights under the Mojave Basin Area Adjudication, and legal (as opposed to factual) issues regarding the Project's compliance with LORS. Staff is currently discussing with the Applicant the possibility of stipulating to certain matters and documentary evidence, thus possibly removing the need for Staff to file the Motion to Strike. Should Staff and Applicant not agree to a stipulation, and should the Committee not grant Staff's Motion to Strike (if filed), Staff reserves the right to cross-examine Applicant's witness on Water Rights and any legal issues regarding Project's compliance with LORS.

C. Traffic and Transportation

Applicant disputes and Staff anticipates the need for adjudication on Staff's proposed Condition of Certification **TRANS-4** concerning the need to mitigate the traffic impacts caused by Project construction-related vehicles queuing in the left-turn lane on Highway SR-58 at Harper Lake Road.

D. Worker Safety & Fire Protection

Applicant disputes and Staff anticipates the need for adjudication on the need for Staff's proposed Conditions of Certification **WORKER SAFETY-4**, which concerns payment for services of a Safety Monitor, and **WORKER SAFETY-6**, which concerns mitigation of direct and cumulative impacts to the San Bernardino Fire Department.

V. IDENTITY OF WITNESSES, TOPIC AREAS EACH WITNESS WILL PRESENT, BRIEF SUMMARY OF WITNESSES' TESTIMONY, AND TIME REQUIRED TO PRESENT DIRECT TESTIMONY

Staff will sponsor the following witnesses and anticipates calling them to testify at evidentiary hearing.

Witness: Heather Blair

Summary of Testimony: Biological Resources

Qualifications: Declaration and resume contained in the Preparation Team Section of the SSA – Part B and attached to Staff's Rebuttal Testimony

Time required to present direct testimony: 15 minutes

Witness: Alvin Greenberg, Ph.D.

Summary of Testimony: Hazardous Materials

Qualifications: Declaration and resume contained in the Preparation Team Section of the SSA – Part A and attached to Staff's Rebuttal Testimony

Time required to present direct testimony: 15 minutes

Witness: Christopher Dennis

Summary of Testimony: Soil and Water Resources

Qualifications: Declaration and resume contained in the Preparation Team Section of the SSA – Part B and attached to Staff's Rebuttal Testimony

Time required to present direct testimony: 15 minutes

Witness: Mike Conway

Summary of Testimony: Soil and Water Resources

Qualifications: Declaration and resume contained in the Preparation Team Section of the SSA – Part B and attached to Staff’s Rebuttal Testimony

Time required to present direct testimony: 15 minutes

Witness: John Fio

Summary of Testimony: Soil and Water Resources

Qualifications: Declaration and resume contained in the Preparation Team Section of the SSA – Part B and attached to Staff’s Rebuttal Testimony

Time required to present direct testimony: 15 minutes

Witness: Eugene Yates, P.G., C.H.g.

Summary of Testimony: Soil and Water Resources

Qualifications: Declaration and resume contained in the Preparation Team Section of the SSA – Part B and attached to Staff’s Rebuttal Testimony

Time required to present direct testimony: 15 minutes

Witness: Steven Brown

Summary of Testimony: Traffic and Transportation

Qualifications: Declaration and resume contained in the Preparation Team Section of the SSA – Part A and attached to Staff’s Rebuttal Testimony

Time required to present direct testimony: 15 minutes

Staff does not believe that **Biological Resources** issues are in dispute to the degree that they require adjudication. Staff would, however, like to request the opportunity to present a panel of speakers, including its Biological Resources witness and biologists from the California Department of Fish and Game and the U.S. Fish and Wildlife Service (“USFWS”), and discuss the wildlife agencies’ concurrence with the proposed mitigation and the Endangered Species Act Section 7 consultation process by which the Applicant is seeking a federal Incidental Take Permit from the USFWS.

Depending on whether Staff and Applicant can agree to the Stipulation regarding Water Rights, Staff may also request that an authorized representative of the Mojave Water Agency join Staff witnesses in participating in the hearing and discussing Staff’s proposed mitigation and the project’s proposed use of groundwater.

Staff witnesses in other technical areas can be made available for cross-examination if it is determined at the prehearing conference that their presence at evidentiary hearing is needed. For those matters not subject to dispute by the Applicant or other parties, Staff proposes to enter testimony into the record by declaration. The testimony and sponsoring witnesses are identified below and declarations have been included in the Staff Assessment, Supplemental Staff Assessment – Part A (“SSA – Part A”), SSA – Part B, and Rebuttal Testimony.

- Air Quality – Tao Jiang and William Walters, P.E.
- Alternatives Analysis – Suzanne Phinney
- Cultural Resources – Kathleen Forrest
- Cumulatives Analysis – Suzanne Phinney
- Efficiency – Erin Bright
- Facility Design – Erin Bright
- General Conditions – Chris Davis
- Geology/Paleontology – Michael Lindholm
- Introduction – Craig Hoffman
- Land Use – Negar Vahidi and Susanne Huerta
- Noise and Vibration – Shahab Khoshmashrab
- Project Description – Craig Hoffman
- Public Health – Alvin J. Greenberg, Ph.D.
- Reliability – Erin Bright
- Socioeconomics – Scott Debauche
- Transmission Line Safety & Nuisance – Obed Odoemelam, Ph.D.
- Transmission System Engineering – Ajoy Guha, P.E. and Mark Hesters
- Visual Resources/Visual Plume Modeling – William Kanemoto, James Jewell, and Tom Packard
- Waste Management – Ellie Townsend-Hough

VI. TOPICS, SUMMARY OF SCOPE, AND TIME ESTIMATES FOR CROSS-EXAMINATION

Staff would like to reserve the right to cross-examine Applicant’s witnesses in the following technical areas for the indicated amount of time.

- Hazardous Materials – Brad Merrell – 30 minutes
- Soils and Water Resources – Christopher Hansmeyer – 1 hour
- Traffic and Transportation – Nicholas Abboud – 30 minutes

Staff reserves the right to request either additional time for cross-examination or the opportunity to cross-examine additional witnesses if parties' prepared rebuttal or other testimony, comments contained in prehearing conference statements or made orally at the prehearing conference, or parties' cross-examination of Staff's witnesses indicate that such cross-examination is warranted. Should Staff and Applicant reach agreement on a Stipulation regarding testimony on Water Rights, Staff anticipates withdrawing its request to call Mr. Hansmeyer for cross-examination.

VII. EXHIBIT LIST

In addition to prepared opening and rebuttal testimony, staff will introduce additional exhibits. Staff's exhibit list is attached.

VIII. SCHEDULE PROPOSALS

Staff suggests that Opening Briefs be due ten business days after transcripts become available and that Reply Briefs be due five business days after the due date for Opening Briefs. Briefs on Air Quality and Transmission System Engineering, if necessary, should be filed after hearings on these subjects.

IX. PROPOSED MODIFICATIONS TO PROPOSED CONDITIONS OF CERTIFICATION

Staff anticipates that the Air Quality Conditions of Certification will change, though not significantly, upon receipt of the MDAQMD's revised FDOC.

Staff **does not oppose** the applicant's proposed changes to the following Conditions of Certification:

- BIO-3
- BIO-5
- BIO-17

- NOISE-2
- NOISE-7
- VIS-1
- VIS-4
- WASTE-1

Staff anticipates it can reach agreement with Applicant on modifications to the following

Conditions of Certification:

- NOISE-4
- VIS-2B
- SOILS&WATER-6
- SOILS&WATER-10
- SOILS&WATER-11
- WORKER SAFETY-5

Staff **does oppose** the Applicant's proposed changes to the following Conditions of Certification for the reasons discussed in Staff's Rebuttal Testimony.

- BIO-6
- BIO-18
- BIO-19
- HAZ-6
- TRANS-4
- SOILS&WATER-12
- WORKER SAFETY-4

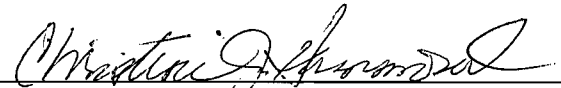
Staff believes that the other conditions proposed in Staff's Opening and Rebuttal Testimony are complete, enforceable, and consistent with the evidence that will be presented at hearings.

X. STAFF'S TENTATIVE EXHIBIT LIST AND COPIES OF WRITTEN TESTIMONIAL AND DOCUMENTARY EVIDENCE

Staff's Tentative Exhibit List and the documents identified as Exhibits 300 through 311 are attached to this PHC Statement (paper copies of the Exhibits was submitted to the Docket Office with this filing; parties on the service list received electronic copies of the Exhibits on a CD attached to this filing)

DATED: June 17, 2010

Respectfully submitted,



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Docket Number: 09-AFC-5

Date: June 17, 2010

Project Name: Abengoa Mojave Solar Project (AMS)

TENTATIVE EXHIBIT LIST

Exhibit	Brief Description	Stipulation	Offered	Admitted	Refused	CEC Use Only
300	<p>Staff Assessment for the Abengoa Mojave Solar Project, dated March 15, 2010 and docketed March 15, 2010.</p> <ul style="list-style-type: none"> (a) Executive Summary (to be superseded by Supplemental Staff Assessment – Part C) (b) Introduction (c) Project Description (superseded by Supplemental Staff Assessment – Part B) (d) Cumulative Analysis (e) Air Quality (superseded by Supplemental Staff Assessment – Part B) (f) Biological Resources (superseded by Supplemental Staff Assessment – Part B) (g) Cultural Resources (superseded by Supplemental Staff Assessment – Part B) (h) Hazardous Materials (superseded by Supplemental Staff Assessment – Part A) (i) Land Use (superseded by Supplemental Staff Assessment – Part B) (j) Noise and Vibration (superseded by Supplemental Staff Assessment – Part A) (k) Public Health (superseded by Supplemental Staff Assessment – Part A) (l) Socioeconomic Resources (m) Soil and Water Resources (superseded by Supplemental Staff Assessment – Part B) (n) Traffic and Transportation (superseded by Supplemental Staff Assessment – Part A) (o) Transmission Line Safety and Nuisance (p) Visual Resources (superseded by Supplemental Staff Assessment – Part A) (q) Waste Management (superseded by Supplemental Staff Assessment – Part A) 					

	<p>Assessment – Part A)</p> <p>(r) Worker Safety and Fire Protection (superseded by Supplemental Staff Assessment – Part A)</p> <p>(s) Facility Design</p> <p>(t) Geology and Paleontology</p> <p>(u) Power Plant Efficiency</p> <p>(v) Power Plant Reliability</p> <p>(w) Transmission System Engineering (superseded by Supplemental Staff Assessment – Part B)</p> <p>(x) Alternatives</p> <p>(y) General Conditions</p> <p>(z) Declarations and Witness Qualifications of:</p> <ul style="list-style-type: none"> • Suzanne Phinney • Erin Bright • Chris Davis • Michael Lindholm • Craig Hoffman • Scott Debauche • Obed Odoemelam, Ph.D. 					
301	Supplemental Staff Assessment – Part A for the Abengoa Mojave Solar Project, dated May 12, 2010 and docketed May 12, 2010.					
302	Supplemental Staff Assessment – Part B for the Abengoa Mojave Solar Project, dated May 25, 2010 and docketed May 25, 2010.					
303	Supplemental Staff Assessment – Part C for the Abengoa Mojave Solar Project (Reserved - to be submitted on June 30, 2010)					
304	CEC Staff's Errata to SSA Part B – Biological Resources, dated June 9, 2010 and docketed on June 9, 2010					
305	CEC Staff's Errata to SSA Part B – Air Quality (Reserved - to be submitted at a later date)					
306	CEC Staff's Rebuttal Testimony to the Applicant's Opening Testimony, dated June 17, 2010 and docketed on June 17, 2010					
307	<i>City of Barstow v. City of Adelanto</i> , Superior Court of Riverside County, No. 208568, Judge Erik Michael Kaiser, "Judgment After Trial" (Jan. 10, 1996)					
308	<i>City of Barstow v. City of Adelanto</i> , Superior Court of Riverside County, No. 208568, Judge Erik Michael Kaiser, "Amended Statement of Decision" (Jan. 2, 1996)					
309	<i>City of Barstow v. Mojave Water Agency</i> (2000) 23 Cal. 4 th 1224					
310	Mojave Basin Area Watermaster Annual Report for Water Year 2008-2009 (May 1, 2010) (without Appendices)					
311	Appendix L of Mojave Basin Area Watermaster Annual Report for Water Year 2008-2009 (May 1, 2010)					



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
FOR THE **ABENGOA MOJAVE**
SOLAR POWER PLANT

Docket No. 09-AFC-5
PROOF OF SERVICE
(Revised 6/8/2010)

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DECLARATION OF SERVICE

I, Scott McDonald, declare that on June 17, 2010, I served and filed copies of the attached PREHEARING CONFERENCE STATEMENT OF ENERGY COMMISSION STAFF, STAFF'S TENTATIVE EXHIBIT LIST, AND STAFF'S EXHIBITS 300-311, dated June 17, 2010. The original documents, filed with the Docket Unit, are accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [<http://www.energy.ca.gov/sitingcases/abengoa/index.html>]. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

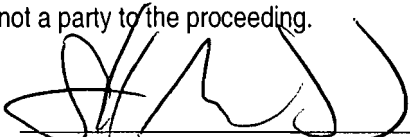
- sending an original paper copy and one electronic copy, hand delivered and emailed respectively, to the address below (preferred method);

OR

- sending an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-5
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



Scott McDonald