

<b>DOCKET</b> 09-AFC-5
DATE JUN 18 2010
RECD. JUN 18 2010

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

Application for Certification for the )  
ABENGOA MOJAVE SOLAR POWER PLANT )  
\_\_\_\_\_) )

Docket No. 09-AFC-5

**APPLICANT'S PREHEARING  
CONFERENCE STATEMENT**

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On May 17, 2010, the Commission issued a Notice of Prehearing Conference and Evidentiary Hearing. In response to this Notice, this Prehearing Conference Statement contains the following information:

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

All topics are complete and ready to proceed.

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

All topics are complete and ready to proceed.

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

Hazardous Materials will require adjudication. The Applicant disagrees with the site security measures proposed by Staff. The proposed Mojave Solar facility is not subject to the U.S. Department of Homeland Security's Interim Final Rule requiring facilities that use and store certain hazardous materials to implement certain of the security measures included in Staff's proposed Condition. Although the Applicant proposes deletion of this specific Condition, the facility will have 24-hour security personnel that will provide all necessary security for the facility.

Soil and Water Resources will require adjudication. The Applicant disagrees with Staff's proposed mitigation measures to address the project's proposed water use. Applicant's testimony demonstrates that the project's proposed water use complies with all applicable LORS. Nonetheless, to address Staff's concerns with the project's water use, the Applicant has proposed a water conservation measure to annually sequester a volume of groundwater in the Harper Lake area equal to the annual volume of groundwater used by the project. While accepting this conservation proposal, Staff argued the Applicant does not currently have sufficient water rights and Free Production Allowance ("FPA") available to offset and sequester the volume of groundwater proposed under a "worst-case scenario". In the pre-filed testimony submitted June 1, 2010, the Applicant submitted a revised calculation showing that it will likely have water rights and FPA sufficient to offset and sequester project water use in every year for the life of the project. Staff revised their calculation in Rebuttal Testimony filed June 17, 2010 but disagree that conservation will be sufficient under the "worst-case scenario" and argue additional conservation is needed.

The Applicant proposes deletion of Staff's proposed Condition requiring an annual payment to the Mojave Water Agency because it is unnecessary given the water conservation Condition discussed above. Additional conservation is not needed or required.

Traffic and Transportation may require adjudication. The Applicant disagrees with Staff's proposed Condition requiring the lengthening of the left turn lane on SR-58 at Harper Lake Road. The Applicant's testimony demonstrates that the traffic levels expected as a result of the project, even the worst-case scenario at the peak of construction, do not warrant an extension. The Applicant submitted additional analysis on this issue in its pre-filed testimony submitted June 1, 2010. In Rebuttal Testimony, Staff identified alternative mitigation measures that the Applicant could agree to implement in lieu of TRANS-4. The Applicant and Staff may reach consensus on this issue after an opportunity to meet and confer that may avoid the need for an evidentiary hearing on this issue.

Worker Safety will require adjudication. The Applicant disagrees with Staff's proposed Condition requiring a Safety Monitor. Because the Applicant will: (1) use an EPC contractor for construction, (2) require a safety person with each subcontractor and (3) require a dedicated full time safety person when each group exceeds 15 people, the function and benefit of an additional Safety Monitor is unnecessary. Therefore, the Applicant proposes deletion of this condition.

The Applicant disagrees with Staff's proposed mitigation for cumulative impacts on the local fire department and proposed deletion of the fixed amount from Staff's proposed Condition requiring negotiation with the San Bernardino County Fire Department regarding funding of its project-related impacts. The Applicant believes it is best to leave the matter to negotiation subject to oversight by the CPM without prejudicing the outcome, and proposed modifications to that effect.

Finally, in the event that any party may dispute that this project is required for public convenience and necessity, the Applicant's witnesses will provide a summary of major project features, the purpose and need for the project, the basic project objectives, and the policy issues associated with siting this facility. This discussion is in furtherance of the Applicant's satisfying its burden of proof for approval of the project and provide important context for consideration of other issues in this proceeding. The Applicant would request 30 minutes at the Evidentiary Hearing for the presentation of this testimony.

The Applicant has suggested modifications to certain Conditions of Certification that Staff accepted in Rebuttal Testimony filed on June 17, 2010 which eliminated the need for evidentiary hearings on those issues. In other areas, the Applicant has suggested improvements to certain Conditions of Certification, as discussed below. However, those issues are not factual in nature, do not require adjudication, and can be addressed in briefs.

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 pre-filed testimony filed on June 1, 2010. A 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 Soil and Water Resources and on Worker Safety to be 30 minutes each, and direct examination on Project Description, Hazardous Materials and Traffic and Transportation to be 15 minutes each. Again, with some of these issues, Applicant hopes that Staff may agree with proposed modifications that would reduce or eliminate the need for adjudication of these issues.

**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 CEC Staff on Soil and Water Resources and on Worker Safety to be 30 minutes each, and on Hazardous Materials and Traffic and Transportation to be 15 minutes each, if it proves necessary to adjudicate them after review of Applicant's proposed clarifications and modifications. The Applicant also requests that the San Bernardino County Fire Department produce a witness regarding the proposed mitigation for the project's impacts on the Department. The Applicant anticipates cross-examination of the Department's witness to be 30 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 exhibit list is attached hereto as Attachment 2. The Declarations are attached to Applicant's pre-filed testimony, submitted June 1, 2010.

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

On December 17, 2009, the Committee issued an order setting forth the Schedule for this case. Revisions to the Schedule were discussed during the April 15, 2010 Committee Conference. Further revisions to the Schedule were discussed during the May 6, 2010 Committee Conference. The dates set for Evidentiary Hearings remained June 28 and 29, 2010, but the dates following the Hearings were not set. The revised Schedule is included in the May 17, 2010, Notice of Prehearing Conference and Evidentiary Hearing. The Schedule with Applicant's proposed briefing deadlines and other post-hearing events is attached hereto as Attachment 3. The Applicant requests deadlines of July 16, 2010 for opening briefs and July 26, 2010 for reply briefs. In addition, the Committee should request an expedited transcript of the Evidentiary Hearings.

The Applicant requests that Soil and Water Resources be addressed on Monday, June 28 due to witness availability. All of Applicant's other witnesses are available for hearings on June 28 and 29.

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.***

Suggested improvements to the Conditions are incorporated in the Applicant's pre-filed testimony. Several of Applicant's proposed changes were for clarification purposes. Other proposed modifications fall into the following categories:

- Reducing Delay and Redundancy in Approval Process: Applicant has suggested methods to reduce delay and redundancy in obtaining approvals of certain plans and other conditions required for Biological Resources. The Applicant also proposed accelerated time frames to receive CPM approvals to help maintain the project's schedule. In Rebuttal Testimony filed June 17, 2010, Staff accepted some of Applicant's proposed changes or proposed alternative time frames and modifications. The Applicant anticipates reaching consensus with Staff after an opportunity to meet and confer; otherwise, these issues can be addressed in briefs. In addition, the Applicant has suggested specific time frames for approvals of plans required for Visual Resources to avoid unnecessary delays which Staff accepted in Rebuttal Testimony filed June 17, 2010.
- Preservation of the Commission's Exclusive Siting Authority: Conditions that the Applicant believed unlawfully delegate the Commission's one-stop, in-lieu permitting authority to other local entities were revised to reflect the Commission's exclusive authority. As to all state and local law issues, materials must be submitted to the CPM for "review and approval" and to other relevant local entities for "review and comment." In Rebuttal Testimony filed June 17, 2010, Staff agreed with changes to this effect in Waste Management but not Soil and Water Resources. Upon review of

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Staff's Testimony regarding the requirement to obtain a permit from the County to operate a non-community, non-transient water system, the Applicant agrees with this Condition.

June 18, 2010

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

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**ATTACHMENT 1**  
**Applicant's Proposed Schedule**

<b>ITEM</b>	<b>DATE</b>
Prehearing Conference	Monday, June 21, 2010
Evidentiary Hearings	Monday, June 28 – Tuesday, June 29, 2010
Post Hearing Briefs filed (if necessary)	July 16, 2010
Reply Briefs filed (if necessary)	July 26, 2010



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA 1516 NINTH STREET, SACRAMENTO, CA 95814 - 1-800-822-6228 - WWW.ENERGY.CA.GOV

Docket Number: 09-AFC-5

Date: June 18, 2010

Project Name: Abengoa Mojave Solar Project

**APPLICANT'S EXHIBIT LIST**

Exhibit	Brief Description	Stipulation	Offered	Admitted	Refused	CEC Use Only
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 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					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
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 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					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
28	Transmission Interconnection Map – Docket ID 56359					
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 2/26/10, Docket ID 55775					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
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 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					

<b>Exhibit</b>	<b>Brief Description</b>	<b>Stipulation</b>	<b>Offered</b>	<b>Admitted</b>	<b>Refused</b>	<b>CEC Use Only</b>
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					
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					

**ATTACHMENT 3**  
Applicant's Witnesses and Topic Areas

<b>TOPIC</b>	<b>WITNESS</b>
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
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

STATE OF CALIFORNIA

Energy Resources Conservation  
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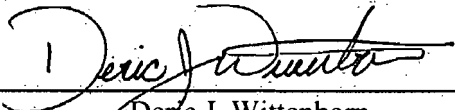
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ABENGOA MOJAVE SOLAR POWER PLANT )  
\_\_\_\_\_ )

Docket No. 09-AFC-5

**PROOF OF SERVICE**

I, Deric J. Wittenborn, declare that on June 18, 2010, I served the attached  
*APPLICANT'S PREHEARING CONFERENCE 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.

  
\_\_\_\_\_  
Deric J. Wittenborn

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

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