

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
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November 10, 2009

Carrie Hyke, Principal Planner
County of San Bernardino
Land Use Services Department
Advance Planning Division
County Government Center
385 North Arrowhead Avenue, First Floor
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DOCKET**09-AFC-5**

DATE	NOV 10 2009
RECD	NOV 10 2009

**RE: Request for County Analyses, Comments, and Recommendations on
Abengoa Mojave Solar Project (09-AFC-5)**

Dear Ms. Hyke:

The purpose of this letter is to request San Bernardino County's comments on an Application for Certification (AFC) recently filed at the California Energy Commission. In accordance with California Code of Regulations, title 20, section 1714 *et seq.*, the Energy Commission staff requests that San Bernardino County provide a letter **by December 7, 2009**, containing its analyses, comments, and recommendations on the land use, traffic/transportation, soil and water resources, and visual resources issues identified in this letter and contained in the AFC.

On August 10, 2009, the California Energy Commission received an AFC from Abengoa Solar Inc. (applicant - the sole member of Mojave Solar LLC). Abengoa Solar Inc. proposes to construct and operate a nominal 250-megawatt (MW) solar electric generating facility (the Project) near Harper Dry Lake on approximately 1,765 acres in an unincorporated area of San Bernardino County. The Project would be located approximately halfway between Barstow and Kramer Junction, nine miles northwest of Hinkley. The AFC and other Project information can be found at the following web link: <http://www.energy.ca.gov/sitingcases/abengoa/index.html>.

The Energy Commission has the exclusive authority to license all new power plants and additions, 50 MW or greater in the state (Pub. Resources Code, §§ 25110, 25120, and 25500). The Energy Commission's license takes the place of other state, regional, and local permits (e.g., conditional use permit and variance), and other entitlements that would otherwise be required. The Energy Commission's facility certification process carefully examines public health and safety, environmental impacts, and engineering aspects of proposed power plants, and all related facilities such as electric transmission lines and natural gas and water pipelines that would serve the project. The Energy Commission is the lead agency under the California Environmental Quality Act (CEQA) for all AFCs and has a certified regulatory program under CEQA.

As part of the licensing process, the Energy Commission must determine whether a proposed facility complies with all applicable state, regional, and local laws, ordinances,

PROOF OF SERVICE (REVISED 10/21/09) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 11/10/09

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regulations, and standards (LORS) (Pub. Resources Code, § 25523(d)(1)). The Energy Commission must either find that a project conforms to all applicable LORS or make specific findings that a project is needed for public convenience and necessity even where the project is not in conformity with all applicable LORS (Pub. Resources Code §25525). For the Energy Commission to determine whether a proposed power plant project would comply with applicable LORS, we seek out and welcome input from state, regional, and local agencies.

Energy Commission staff have begun an assessment of the project (a summary of our licensing process for this project is attached). As part of our assessment, we are interested in the county's position related to land use, traffic/transportation, soil and water resources, visual resources, and any other aspects of the Project that may be of concern to your agency (Title 20, California Code of Regulations section 1714.5). We would like to incorporate the county's input and address any concerns in our Staff Assessment (SA).

Land Use

According to the AFC, San Bernardino County has adopted a "one-map approach" for both the General Plan land use designations and zoning classifications to assure land use consistency between the county's General Plan and its zoning code. The land use and zoning designations for the Project site are RL (Rural Living), which allows the following uses: 1 unit per 2-1/2 acres with a 2-1/2 gross acre parcel size; 20 percent maximum building coverage; and a 35-foot height limit. In addition, RL is a zone that allows agricultural and open space uses (AFC page 5.7-8).

As stated in AFC Section 2.1 (page 2.0-1), the Project would have two independently-operable solar fields (i.e., plants) identified as Alpha and Beta, which will be 884 and 800 acres, respectively. AFC page 2.0-5 further states, "...[e]ach plant site utilizes approximately 710 acres of the total land for solar thermal collector arrays." These two plant sites exceed the 20 percent maximum building coverage for the RL zone.

In addition, in AFC Section 2.6.2.1 (page 2.0-32), the applicant states,

...[t]he entire length of the transmission gen-tie line is located on the Project site and will be installed on approximately 23 new steel/concrete mono-poles from the Alpha Plant site and approximately nine poles from the Beta Plant site. The poles are expected to average about 80 feet in height (maximum pole height of 110 feet).

These tower heights would exceed the 35-foot height limit of the RL zone.

Electric power generation is listed as a use that requires a conditional use permit (CUP) [San Bernardino County Development Code, Table 82-7], and a General Plan Amendment, which would facilitate the application of the Energy Facilities (EN) Overlay. As stated in Section 85.06.010(a) of the San Bernardino County Development Code,

“[a] Conditional Use Permit provides a process for reviewing uses and activities that may be appropriate in the applicable land use zoning district, but whose effects on a site and surroundings cannot be determined before being proposed for a specific site.” A General Plan Amendment requires the county to make findings and decisions in compliance with San Bernardino County Code Section 86.12.060(a) (Findings for General Plan, Community Plan or Area Plan Amendments).

In the AFC (on page 5.7-7), the applicant states, “...[t]he EN Overlay does not apply to generation and transmission facilities that are regulated by state and federal agencies.” However, as required by California Code of Regulations, title 20, section 1744, Energy Commission staff evaluates the information provided by the applicant in the AFC to determine if elements of the Project would conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project, or that would normally have jurisdiction over the project except for the Energy Commission’s exclusive authority (Pub. Resources Code, §§25500-25543). This includes all applicable federal, state, and local LORS. As part of the licensing process, the Energy Commission must determine whether a proposed facility complies with all applicable state, regional, and local LORS (Pub. Resources Code, §25523[d][1]).

As such, for the Land Use section of the SA, Energy Commission staff needs information regarding the County of San Bernardino’s interpretation of its own policy guidance documents, including its General Plan and Development Code. As acknowledged by the applicant in its AFC Mitigation Measure **LAND-1** (AFC page 5.7-20), the applicant intends to work with the county to resolve any land use conflicts and comply with county CUP requirements. This activity must occur before the evidentiary hearing conducted by the Commission on this project.

As indicated by the above information, the Project would require the issuance of a CUP and a General Plan Amendment by San Bernardino County, but for the Energy Commission’s exclusive authority to license the Project.

Staff is currently in the discovery phase and is researching land use issues related to the Project. Energy Commission staff would appreciate input from the county regarding the county’s interpretation of its own policy guidance documents. Prior to making findings for its license, the Energy Commission staff would like the county to indicate the CUP findings it would make regarding the MSP and what conditions San Bernardino County would attach to the Project, were it the permitting agency. Any conditions recommended by the county as part of a CUP will be considered by Energy Commission staff for inclusion in the conditions of certification for the project. In addition, Energy Commission staff would like to San Bernardino County to confirm the need for a General Plan Amendment for the Project and when the county would expect to process and complete the amendment.

Traffic and Transportation

The Traffic and Transportation section of the AFC (Section 5.13) presents the applicant's assessment of the proposed project's consistency with the county's traffic and transportation plan, policies and regulations. Energy Commission staff would like to know whether the applicant's traffic/transportation information is complete and accurate and what traffic/transportation conditions, if any, would be required.

Soil and Water Resources

The Project proposes pumping groundwater from the Mojave River Basin for construction and operation of the proposed power plant. Information presented by the applicant shows that groundwater would be extracted from a portion of the basin that is high in total dissolved solids and can be considered impaired for most municipal and potable water uses. However, overdraft conditions have led to adjudication of the MRB and the basin is now managed by a court appointed Watermaster. In addition, a biologically sensitive marsh is located immediately downgradient of the proposed project along the southern edge of the Harper Lake. This marsh area is maintained artificially and changes in stormwater flow, sediment deposition, and perhaps construction dust could impact the marsh area.

Energy Commission staff are concerned that even though the Project may be able to assert itself as a groundwater pumper in the basin, and stipulate to the physical solution implemented by the Watermaster, the basin is in an overdraft condition and any additional pumping could result in significant impacts to other users and the marsh. Staff are also concerned that improper stormwater control could result in impacts to the marsh area. In addition to working with the State Water Resources Control Board, the Lahontan Regional Water Quality Control Board, and the Watermaster, we would like to work with San Bernardino County, specifically regarding the Desert Groundwater Management Ordinance, to fully evaluate potential impacts and feasible mitigation measures to resolve these issues.

Visual Resources

The Visual Resources section of the AFC (Section 5.15) outlines the applicant's assessment of the proposed project's consistency with the county's aesthetic/visual regulations. Energy Commission staff would like to know whether the applicant's visual information is complete and accurate and what aesthetic/visual conditions, if any, would be required.

Request for County Analysis, Comments, and Recommendations

We request that San Bernardino County provide a letter by December 7, 2009, addressing the land use, traffic/transportation, soil and water, and visual resources

issues noted above. In accordance with California Code of Regulations, title 20, section 1714.5, we also request that San Bernardino County do each of the following:

- (1) Perform or conduct such analyses or studies as needed to resolve any significant concerns of the county, or to satisfy any remaining substantive requirements for the issuance of a final permit by the county which would have jurisdiction but for the Energy Commission's exclusive authority, or for the certification by the Energy Commission for the construction, operation, and use of the proposed site and related facilities; and
- (2) Submit to the Energy Commission, and upon request of the Project AFC Committee's presiding member, present, explain, and defend in public hearings held on the application, the results of the county's analyses, studies, or other review relevant to the application. The county may submit comments and recommendations on any aspect of the application, including among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area, and other aspects of the design, construction, or operation of the proposed site and related facility.

In your review of the AFC, if you have any other issues or concerns, or need additional time to respond, please let us know. Please contact Craig Hoffman, Siting Project Manager, by phone at (916) 654-4781 or by email at choffman@energy.state.ca.us should you have any questions or need additional time.

Sincerely,

Amanda Stennick, Supervisor
Community Resources Unit
Environmental Protection Office
Siting, Transmission, and Environmental
Protection Division

cc: Docket (09-AFC-5)
Proof of Service List



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

APPLICATION FOR CERTIFICATION
FOR THE **ABENGOA MOJAVE**
SOLAR POWER PLANT

Docket No. 09-AFC-5

PROOF OF SERVICE
(Established 10/21/09)

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DECLARATION OF SERVICE

I, Teraja` Golston, declare that on November 10, 2009, I served and filed copies of the attached (09-AFC-5) Abengoa Mojave – Request for County Analysis, dated November 10, 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/mariposa/index.html\]](http://www.energy.ca.gov/sitingcases/mariposa/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:

(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 or by depositing in the United States mail at Sacramento, CA, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

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

OR

depositing in the mail 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.

Original signed by: _____
Teraja` Golston