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November 11, 2009

DOCKET	
09-AFC-5	
DATE	NOV 11 2009
RECD	NOV 11 2009

Commissioner Julia Levin, Presiding Member
Vice Chair James D. Boyd, Associate Member
Abengoa Mojave Solar Project (09-AFC-5)
California Energy commission
1516 Ninth Street
Sacramento, CA 95814

Re: Abengoa Mojave Solar Project (09-AFC-5): Notice Pursuant to 20 CCR 1716(f): Data Request Set 1 (nos. 1-93)

Dear Commissioners Levin and Boyd:

Abengoa Solar Inc. (the "Applicant") hereby files this notice as required by Section 1716(f) of the Commission's regulations regarding the need for additional time and the basis for objections to certain Data Requests promulgated by Staff on October 22, 2009.

Applicant may need additional time to respond to certain Data Requests. Several Data Requests, including Data Requests 69, 71, and 72, call for detailed plans that require the Applicant to coordinate with other agencies such as the California Department of Fish and Game and the U.S. Fish and Wildlife Service. In particular, Data Request 69 will depend on coordination between Applicant, Staff and other entities in order to determine, in response to Data Request 67, the appropriate wildlife deterrence method for the evaporation ponds. Several other Data Requests, including Data Requests 78, 79 and 80, request the County of San Bernardino's position on land use issues associated with the proposed Project and conditions that the County would impose were it the permitting agency. The Applicant has contacted the County regarding the requested information, but the timing of the County's response is uncertain at this time. The applicant notes that the Commission Staff has asked the County directly for its position on these issues and that such request seeks the County's response by December 7, which is later than the deadline for applicant's responses to these data requests. Based on the foregoing, the Applicant estimates that it may need an additional 30 days for the following requests: Data Requests 69, 71, 72, 78, 79, 80.

Applicant may need additional time to respond to certain other Data Requests in addition to the above. Several Data Requests, including 51, 52, 53, 56, and 57 call for facility design

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features that are not yet completed as well as coordination with other agencies such as the California Department of Fish and Game and the U.S. Army Corps of Engineers. Data Requests 49, 54, and 55 will require additional time to complete technical work in order to provide a complete and accurate response. Data Request 58B calls for a Biological Assessment or Habitat Conservation Plan. The Applicant is working to expeditiously complete a Biological Assessment for the proposed Project, but some additional time may be needed before the document is ready for agency review. Based on the foregoing, the Applicant estimates that it may need an additional 30 days for the following requests: Data Requests 49, 51, 52, 53, 54, 55, 56, 57, and 58B.

Applicant may need additional time to respond to certain other Data Requests as well. Data Requests 17 and 29 will require verification of input data and additional modeling and technical work that may require more time to complete. Additionally, Data Requests 30, 31, 32, 84 and 85 require additional vendor data that has already been requested, followed by analysis. Applicant will be able to complete analysis once the additional data is obtained. Based on the foregoing, the Applicant estimates that it may need an additional 30 days for the following requests: Data Requests 17, 29, 30, 31, 32, 84 and 85.

Applicant objects to Data Requests 81 and 90 for the reasons stated below. Without waiving any of these objections, Applicant reserves the right to provide responses, in whole or in part, to some or all of these Requests.

Applicant objects to Data Request 81 because it is based on the incorrect premise that a General Plan Amendment (GPA) is required for this Project. Section 82.24.010(c) of the San Bernardino County Development Code expressly exempts energy facilities regulated by State and Federal agencies from the County's Energy Facilities (EN) Overlay process. Although the Project would require a GPA if the EN Overlay applied, the County recognized that where energy projects fall under State regulatory authority, requiring a GPA would be duplicative. Furthermore, the Energy Commission's exclusive authority takes the place of *applicable* land use plans, policies, or regulations. If the County intended the EN Overlay to apply even when preempted by the Energy Commission, it could have left the limitation out of the Development Code. Therefore, if the Energy Commission requires the Applicant to apply for a GPA, it is effectively reading this limitation out of the County's Development Code. Applicant understands that the County will also provide conditions to address conformance with the General Plan or Zoning Ordinance. The Applicant expects that these conditions will ensure compliance with the County's land use policies and standards.

Applicant objects to Data Request 90 because it requests information that is not in Applicant's control or reasonably available to the Applicant, and thus calls for speculation. The Applicant filed a transmission Interconnection Request on August 22, 2006 with the California Independent System Operator (CAISO). The Applicant received the draft Interconnection Facilities Study (IFS) dated October 30, 2009. The system-wide upgrades detailed in the draft

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IFS are similar in nature to those detailed in the AFC. Details of this study will be provided to the CEC once finalized. These upgrades and the associated timing are fully in the control of Southern California Edison Company (SCE). It is expected that a Large Generator Interconnection Agreement (LGIA) will be entered into between SCE and the Applicant in the next few months. The Applicant has made numerous attempts to enter into a Letter Agreement with SCE to advance the timing of the upgrades and the most recent attempt was cancelled by the Applicant since an LGIA is imminent. SCE will identify the on-the-ground upgrades including the location of transmission lines and work to permit these facilities separately from the Project's AFC process. The Applicant will continue to work closely with SCE to expedite identifying the system-wide impacts as much as necessary to allow the CEC to analyze the impacts to the extent required by CEQA.

The Applicant appreciates Staff's time and good faith efforts in reviewing the Abengoa Mojave Solar Project. The Applicant looks forward to working with Staff to achieve a complete and satisfactory resolution of all issues in a timely manner.

Thank you for your time and consideration.

Sincerely,



Christopher T. Ellison
Shane E. Conway
Ellison, Schneider & Harris, L.L.P.

Attorneys for Abengoa Solar Inc.

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 November 11, 2009, I served the attached *Notice Pursuant to 20 CCR 1716(f): Data Request Set 1 (nos. 1-93)* 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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