

DOCKET

09-AFC-5

DATE APR 06 2010

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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:)
)
Application for Certification for the)
Abengoa Mojave Solar Project)
)
Abengoa Solar Inc.)

Docket No. 09-AFC-5

**REQUESTS FOR ADDITIONAL TIME TO RESPOND
AND OBJECTIONS TO DATA REQUESTS
OF
CALIFORNIA UNIONS FOR RELIABLE ENERGY,
SET 1**

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STATE OF CALIFORNIA

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SET 1**

On March 17, 2010, California Unions for Reliable Energy (“CURE”) issued 109 data requests regarding biological resources in *Data Requests, Set 1* to Abengoa Solar Inc. (“the Applicant”). Except as noted below, the Applicant will respond to these requests on or before April 16, 2010. There are, however, specific questions to which the Applicant objects or requests additional time to respond.

The Applicant requests additional time to respond to CURE’s Data Requests 25, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 43, and 44. These Data Requests were submitted on March 17, 2010 and received on March 22, 2010. These Data Requests are directed to the Applicant’s consultant, Dr. Phil Leitner. Dr. Leitner left for a month in the field in the Mojave Desert on March 18 and was not aware these requests had been submitted. Therefore, Dr. Leitner does not currently have access to materials needed to respond to these Data Requests by the deadline and requests an extension until May 1, 2010 to respond.

Pursuant to Title 20, California Code of Regulations, Section 1716(f), Applicant hereby objects to CURE's Data Requests 7, 8, 9, 10, 11, 12, 13, 14, 22a, 24, 57, 85, 94 and 95.

Section 1716 of the Commission's regulations (Cal. Code Regs., tit. 20 § 1716) contains the basic framework for information exchanges between parties in licensing proceedings: “A party may request from an Applicant ... information which is reasonably available to the Applicant which is relevant to the application proceedings or reasonably necessary to make any decision on the ...application.” (Cal. Code of Regs., tit. 20 § 1716(b).) The Applicant may then answer or object to the request. If the Applicant objects, the requesting party may then forego the request, seek alternative means of obtaining the desired information, or petition for an Order directing the Applicant to provide the information. In considering the reasonableness of a data request, the Commission evaluates whether the information sought appears to be reasonably available to the Applicant and whether the requested information is relevant and reasonably necessary for the Commission to reach a decision on the Application.

The Applicant objects to those data requests that are vague or that request information that is publicly available and would be burdensome for the Applicant to produce. The Applicant also objects to those data requests that are not relevant to the proceeding or reasonably necessary to make any decision on the Application.

SPECIFIC OBJECTIONS

Data Request 7

Please indicate the amount of acreage that will be disturbed in the Superior Cronese DWMA as a result of the Project.

Objection:

As stated in the Application for Certification (“AFC”), the Project does not overlap with the DWMA. As explained in the AFC, a small area located in the DWMA south of the interconnection facilities may be used during Project connection to the existing Kramer-Cool Water 230 kV transmission line, within an existing right-of-way; no impacts to the DWMA would occur as a result of this work. *See* AFC at p. 5.3-7. Thus, any disturbance within the DWMA would occur past the interconnection point and will be evaluated in a later site-specific environmental analysis. While the Applicant will provide a survey of the transmission interconnection point, the Applicant objects to this request because the requested information, the amount of acreage that will be disturbed, is not reasonably available to the Applicant at this time. The Applicant also objects to the request because the information is also not relevant or reasonably necessary to a Commission decision on this Application.

Data Request 8

Please indicate the duration of the disturbance to the Superior-Cronese DWMA as a result of the Project.

Objection:

The Applicant objects to this request because the information requested, the duration of the disturbance, is not reasonably available to the Applicant and is not relevant or reasonably necessary for the Commission to make a decision on this Application. Please see objection to Data Request 7.

Data Request 9

Please indicate the acreage of the area that will be disturbed in the MGS Conservation Area.

Objection:

The Project does not overlap with the MGS Conservation Area. The AFC explained that as with the DWMA, the MGS Conservation Area is present at the point where the Project would connect to the Kramer-Cool Water 230 kV transmission line. *See* AFC at p. 5.3-8. The Applicant objects to this request because the information requested is not reasonably available to the Applicant at this time. The information is also not relevant or reasonably necessary for the Commission to make a decision on this Application. Please see objection to Data Request 7.

Data Request 10

Please indicate the duration of the disturbance to the MGS Conservation Area as a result of the Project.

Objection:

The Applicant objects to this request because the information requested, the duration of the disturbance, is not reasonably available to the Applicant and is not relevant or reasonably necessary for the Commission to make a decision on this Application. Please see objections to Data Request 7 and 9.

Data Request 11

Please state whether the Project's impacts to the MGS Conservation Area are expected to be temporary.

Objection:

The Applicant concluded no impacts to the MGS Conservation Area would occur as a result of the interconnection work. The Applicant objects to this request because the information requested is not relevant or reasonably necessary for the Commission to make a decision on the

Application. Regarding whether any disturbance is expected to be temporary, the AFC already provided this information, stating that the area would be *temporarily* used during Project interconnection. See AFC at p. 5.3-7.

Data Request 12

Please provide the revegetation plan for any areas that will be temporarily disturbed.

Objection:

The Applicant objects to this request because it is not relevant or reasonably necessary. The Applicant concluded that no impacts will occur to the DWMA or MGS Conservation Area at the point of interconnection. Appropriate mitigation measures need only be identified if significant impacts are identified.

Data Request 13

Please state whether the Applicant proposes mitigation for impacts to the Superior-Cronese DWMA. If so, please provide the Applicant's proposed mitigation.

Objection:

Please see objection to Data Request 12.

Data Request 14

Please state whether the Applicant proposes mitigation for impacts to the MGS Conservation Area. If so, please provide the Applicant's proposed mitigation.

Objection:

Please see objection to Data Request 12.

Data Request 22a

For each botanical survey performed (i.e., 2007, 2008, and 2009), please provide the following, as required by the CMPS and CDFG protocols:

a. *The total number of hours each surveyor spent surveying in the field on each date.*

Objection:

The dates of the survey, as well as the surveyors conducting the field efforts are available as part of the original AFC submittal (refer to the survey summary reports in the biology appendix to the AFC). Surveys averaged 11 hours per surveyor per survey day. The total hours can be calculated with the available information. The Applicant objects to the request because it would be burdensome for the Applicant to produce and the information needed to make the calculation has already been provided.

Data Request 24

Please provide the mean rainfall and temperature data obtained by the weather station(s) nearest the Project site for 2007, 2008, and 2009.

Objection:

This is publicly available information, obtainable by CURE, through the National Oceanic and Atmospheric Administration (“NOAA”). The Applicant objects to the request because it would be burdensome for the Applicant to produce and the information is equally available to CURE.

Data Request 57

Please provide copies of mitigation monitoring reports prepared by the applicant’s consultant that document the results of other burrowing owl translocation projects.

Objection:

The Applicant objects to this request as not relevant to this proceeding and not reasonably necessary to make a decision on the Application. The Applicant is working with California Department of Fish and Game (“CDFG”) and the Commission on preparing an adequate

relocation/translocation plan. As such, CDFG's own knowledge of the relative success of prior relocation and translocation efforts are being incorporated into the Applicant's plan.

Data Request 85

Please provide copies of the BLM nest record cards for the Harper Dry Lake area.

Objection:

This information is publicly available through the BLM, and is obtainable by CURE. The Applicant objects to this request as burdensome for the Applicant to produce and the information is equally available to CURE.

Data Request 94

Please provide a copy of "BLM 2007" which was cited in the AFC.

Objection:

This information is publicly available through the BLM, and is obtainable by CURE. The Applicant objects to this request as burdensome for the Applicant to produce and the information is equally available to CURE.

Data Request 95

Please specify the mitigation measures that will be implemented to mitigate the Project's impacts on Harper Dry Lake.

Objection:

The Applicant objects to this request because the information is not relevant or reasonably necessary. The Applicant has concluded that the Project does not result in significant adverse impacts to Harper Dry Lake and provided information regarding measures to avoid potential impacts. *See AFC p. 5.3-39; See also Applicant's Response to CEC Data Requests Set 1A, 49-57.* Appropriate mitigation measures need only be identified if significant impacts are

identified. *See* Committee Order Responding to CURE's Petition to Compel Production of Information in Docket No. 08-AFC-12, at Committee Response to Data Request 232.

In addition, the Applicant objects to this request as overbroad and vague. To what potential impacts does it refer? The Applicant has already provided information regarding the design of the drainage feature and proposed avoidance measures.

Dated: April 6, 2010

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  _____

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)
)
_____)

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on April 6, 2010, I served the attached *REQUESTS FOR ADDITIONAL TIME TO RESPOND AND OBJECTIONS TO DATA REQUESTS OF CALIFORNIA UNIONS FOR RELIABLE ENERGY, SET 1* 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

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09-AFC-5

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