

STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

<b>DOCKET</b>	
<b>09-AFC-5</b>	
DATE	JUL 28 2010
RECD.	JUL 28 2010

Application for Certification for the )  
ABENGOA MOJAVE SOLAR POWER PLANT ) Docket No. 09-AFC-5  
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**ABENGOA MOJAVE SOLAR PROJECT'S  
PROPOSED LANGUAGE FOR CONDITIONS OF CERTIFICATION  
WORKER SAFETY-6 AND WORKER SAFETY-7  
IN RESPONSE TO COMMITTEE'S JULY 23 ORDER**

ELLISON, SCHNEIDER & HARRIS L.L.P.  
Christopher T. Ellison  
Greggory L. Wheatland  
Shane E. Conway  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
(916) 447-2166 - Phone  
(916) 447-3512 - Facsimile

Attorneys for Abengoa Mojave Solar Project

On July 23, 2010, the Committee determined that the evidentiary record and legal authority support the Committee's imposition of mitigation that includes direction to the Applicant, Staff, and the fire department to reach agreement or in the absence of such agreement by a specified time, provide for an evaluation by an independent third party funded by the Applicant to determine the level of any required mitigation. Pursuant to the Committee's Order, the Applicant hereby files proposed Condition of Certification language modeled on the Colusa Conditions.

As the Applicant asserted at the Evidentiary Hearing on Worker Safety and Fire Protection on July 15, 2010, the Applicant believes that negotiations with the San Bernardino County Fire Department should not be biased by a Condition of Certification containing a set number for mitigation fee payment. Rather, the Committee should adopt a Condition that directs the Applicant and the fire department to reach agreement on the mitigation amount or, in the event an agreement cannot be reached, directs the Applicant to fund an independent study to determine the appropriate amount of funding. Any other condition containing other "options" which include specified mitigation amounts would not be following the spirit or the letter of the Colusa Conditions. Further, the payment to be made prior to the start of construction is intended to be similar to a deposit, given that it off-sets any initial funding required until the funds are exhausted. It should not be a large payment approaching or potentially exceeding the full mitigation amount.

Below is the Applicant's proposed language for Conditions of Certification WORKER SAFETY-6 and WORKER SAFETY-7, closely following the language in the Colusa Conditions.

**WORKER SAFETY-6** The project owner shall either:

- (1) Reach an agreement with the San Bernardino County Fire Department (SBCFD) regarding the funding of resources to mitigate potential project-related impacts on fire protection services;
- Or, if no agreement can be reached:
- (2) Fund an independent consultant's study to evaluate the following:
  - a. Potential for impacts on local fire protection and costs of new local fire protection services necessary to mitigate such impacts;
  - b. The risk of impact on the local population that could result from potential unmitigated impacts on local fire protection services;
  - c. The extent to which local tax revenue from the project will provide funding to reduce impacts on local fire protection services;
  - d. Recommend the amount of funding that should be provided to mitigate any identified significant impacts on local fire protection services.

Compliance protocols for the independent consultant's study:

- a. The project owner shall provide a protocol for conducting the independent consultant study for review and comment by the SBCFD and review and approval by the CEC CPM prior to conducting the study;
- b. The independent consultant study shall be funded by the project owner and conducted by a consultant approved by the CEC CPM;
- c. No construction of permanent above ground structures shall occur at the project site until funding of mitigation occurs either pursuant to an agreement reached between the project owner and the SBCFD or pursuant to the CPM-approved independent consultant's study;
- d. In the event the parties disagree with the independent consultant's recommendations, then the CEC CPM shall, based on the results of the CPM-approved independent consultant's study and comments from the project owner and the SBCFD, make the final determination regarding the mitigation measures that will be required and the amount of funding to be provided to the SBCFD to accomplish any required mitigation.

**Verification:** The project owner shall provide the CEC CPM with a copy of the agreement with the SBCFD or a study outline and scope of work for the proposed independent consultant's study and qualifications of the proposed independent consultant(s) for approval. The project owner shall provide the CEC CPM with a copy of the completed study prior to any construction of permanent above-ground structures at the project site. Annually thereafter, the project owner shall provide the CEC CPM with verification of funding to the SBCFD for required fire protection services mitigation pursuant to either the agreement or the CPM-approved independent consultant's study.

**WORKER SAFETY -7** The project owner shall provide a \$230,000 payment to the SBCFD prior to the start of construction. This funding shall offset any initial funding required by WORKER SAFETY-6 until the funds are exhausted. This offsetting will be based on a full accounting by the SBCFD regarding the use of these funds.

**Verification:** At least 30 days prior to the start of site mobilization the project owner shall provide documentation of the payment described above to the CEC CPM. THE CEC CPM shall adjust the payments initially required by WORKER SAFETY-6 based on the accounting provided by the SBCFD.

Dated: July 28, 2010

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  \_\_\_\_\_

Christopher T. Ellison  
Greggory L. Wheatland  
Shane E. Conway  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
Telephone: (916) 447-2166  
Facsimile: (916) 447-3512

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**PROOF OF SERVICE**

I, Karen A. Mitchell, declare that on July 28, 2010, I served the attached *ABENGOA MOJAVE SOLAR PROJECT'S PROPOSED LANGUAGE FOR CONDITIONS OF CERTIFICATION WORKER SAFETY-6 AND WORKER SAFETY-7 IN RESPONSE TO COMMITTEE'S JULY 23 ORDER* 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.



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Karen A. Mitchell

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

**APPLICANT**

Emiliano Garcia Sanz  
General Manager  
Abengoa Solar Inc.  
11500 West 13th Avenue  
Lakewood, CO 80215  
[emiliano.garcia@solar.abengoa.com](mailto:emiliano.garcia@solar.abengoa.com)

Scott D. Frier  
Chief Operating Officer  
Abengoa Solar Inc.  
13911 Park Ave., Ste. 206  
Victorville, CA 92392  
[scott.frier@solar.abengoa.com](mailto:scott.frier@solar.abengoa.com)

Tandy McMannes  
VP Business Development  
Abengoa Solar Inc.  
235 Pine Street, Suite 1800  
San Francisco, CA 94104  
[tandy.mcmannes@solar.abengoa.com](mailto:tandy.mcmannes@solar.abengoa.com)

**APPLICANT'S CONSULTANTS**

Frederick H. Redell, PE  
Engineering Manager  
Abengoa Solar Inc.  
11500 West 13th Avenue  
Lakewood, CO 80215  
[frederick.redell@abengoa.com](mailto:frederick.redell@abengoa.com)

**COUNSEL FOR APPLICANT**

Christopher T. Ellison  
Ellison, Schneider & Harris  
2600 Capitol Ave.  
Sacramento, CA 95816  
[cte@eslawfirm.com](mailto:cte@eslawfirm.com)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENORS**

County of San Bernardino  
Ruth E. Stringer, County Counsel  
Bart W. Brizzee, Deputy County Counsel  
385 N. Arrowhead Avenue, 4th Floor  
San Bernardino, CA 92415-0140  
[bbrizzee@cc.sbcounty.gov](mailto:bbrizzee@cc.sbcounty.gov)

California Unions for Reliable Energy  
Tanya A. Gulesserian  
Marc D. Joseph  
Elizabeth Klebaner  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
[eklebaner@adamsbroadwell.com](mailto:eklebaner@adamsbroadwell.com)

Luz Solar Partners Ltd., VIII  
Luz Solar Partners Ltd., IX  
Jennifer Schwartz  
700 Universe Blvd  
Juno Beach, FL 33408  
[jennifer.schwartz@nexteraenergy.com](mailto:jennifer.schwartz@nexteraenergy.com)

**ENERGY COMMISSION**

Anthony Eggert  
Commissioner and Presiding Member  
[aeggert@energy.state.ca.us](mailto:aeggert@energy.state.ca.us)

James D. Boyd  
Vice Chairman and Associate Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

Kourtney Vaccaro  
Hearing Officer  
[kvaccaro@energy.state.ca.us](mailto:kvaccaro@energy.state.ca.us)

Lorraine White  
Adviser to Commissioner Eggert  
[lwhite@energy.state.ca.us](mailto:lwhite@energy.state.ca.us)

Craig Hoffman  
Project Manager  
[choffman@energy.state.ca.us](mailto:choffman@energy.state.ca.us)

Christine Hammond  
Staff Counsel  
[chammond@energy.state.ca.us](mailto:chammond@energy.state.ca.us)

Jennifer Jennings  
Public Adviser's Office  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)