

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

May 29, 2012

DOCKET**09-AFC-5C**DATE MAY 29 2012RECD. MAY 29 2012Frederick Redell
Abengoa Solar Inc.
11500 West 13th Avenue
Lakewood, CO 80215**SUBJECT: COMPLIANCE WITH ABENGOA MOJAVE SOLAR PROJECT
WORKER SAFETY-6**

Dear Mr. Redell:

This letter is to inform you that the California Energy Commission (Energy Commission) is in receipt of information that the Abengoa Mojave Solar (Abengoa) project is currently out of compliance with Condition of Certification **WORKER SAFETY-6**.

BACKGROUND

On August 10, 2009, Abengoa submitted an Application for Certification for a solar thermal power plant located near Hinkley, California. During the Energy Commission licensing process and before the Energy Commission decision, Abengoa and San Bernardino County Fire Department (SBCFD) were unable to reach concurrence regarding mitigation of project-related impacts for fire protection and emergency services during the construction and operation of the project. As a result, **WORKER SAFETY-6** (Attachment 1) was included in Abengoa's September 2010 Final Decision, so an agreement would be reached post-certification and be in place prior to any potential fire and emergency services impacts on the fire department.

Abengoa initiated construction of the project on August 29, 2011. From the time of the decision until December 2011, Abengoa and SBCFD continued to be unable to reach an agreement.

At a site visit on December 16, 2011, the Compliance Project Manager discovered that Abengoa had started placing mirror foundations below ground. It was mentioned that the mirror fabrication building foundation was going to be started in February or March of 2012. Upon hearing that Abengoa was starting construction of structures, staff was concerned that the conditions in **WORKER SAFETY-6** had not been met. Because of the lack of agreement, staff contacted Abengoa in mid-December and it was agreed that a third party would be contracted to draft a mitigation agreement pursuant to the provisions of **WORKER SAFETY-6(2)**.

BAE Urban Economics (BAE) was selected to perform the Abengoa funded study on December 29, 2011. The scope of the study was to:

- evaluate the project's proportionate (incremental) contribution to potential cumulative impacts on the SBCFD;

- determine the extent of the project's contribution to local tax revenue; and
- recommend the amount of funding.

On March 15, 2012, a meeting took place between the Energy Commission, SBCFD, and Abengoa to discuss the first draft of the study, and the parties appeared to agree on the mitigation plan set forth. The study was finalized on March 27, 2012.

NON-COMPLIANCE WITH WORKER SAFETY-6

Per Public Resources Code (PRC), Section 25532, the Energy Commission shall assure that any facility certified under this division is operating in compliance with conditions adopted or established by the Energy Commission or specified in the written decision on the application. In addition, California Code of Regulations, Title 20, Section 1770 states that the Energy Commission shall provide adequate monitoring of all conditions and measures set forth in the final decision required to mitigate potential impacts and to assure that the facility is constructed and operated in compliance with all applicable laws.

Condition of Certification **WORKER SAFETY-6** requires that the project owner fund its project-related share of capital costs and reach an agreement with SBCFD to improve fire protection/emergency response infrastructure and provide appropriate equipment, as mitigation of project-related impacts.

Staff notes that Abengoa began construction of the above-ground structural steel portion of an 81,287 square-foot mirror array fabrication building on April 25, 2012. Nicholas Potrovitza (Abengoa Director of Engineering and Construction Supervision) indicated to Compliance Project Manager Dale Rundquist, on a site visit conducted on Thursday, May 3, 2012, that the building will remain on-site for the duration of the construction activities (May 15, 2015).

Energy Commission staff considers this structure to be a permanent above-ground structure because Condition of Certification **GEN-1** states, "*The project owner shall design, construct, and inspect the project in accordance with the 2007 California Building Standards Code (CBSC)...*" The 2007 version (as well as the 2010 version) of the California Building Code (CBC)¹ Part 2, Section 202 defines permanent as "*facilities which, are intended to be used for periods longer than those designated in this code under the definition of "Temporary."*"²

Funding of the Abengoa share of capital costs has not occurred as of May 29, 2012.³ Therefore, Abengoa is in violation of Condition of Certification **WORKER SAFETY-6**,

¹ Contained in Title 24, California Code of Regulations (24 CCR)

² "TEMPORARY shall mean buildings and facilities intended for use at one location for not more than one year and seats intended for use at one location for not more than 90 days." To be considered temporary, the existence of the building for a period of one year appears to be the maximum allowed.

³ Notwithstanding any interpretation of the contents of the BAE Independent Fire Needs Assessment (i.e., the e-mail from Fred Redell on May 10, 2012 concerning the timing of annual payments), the Assessment cannot provide grounds to override the requirements of Condition of Certification **WORKER SAFETY-6**. The mitigation payment dates on the spreadsheet in the BAE Assessment were provided for illustrative

because a permanent above-ground structure is being constructed prior to the funding of mitigation.

This letter is a formal request by staff for Abengoa to submit a copy of the final mitigation agreement between Abengoa and the SBCFD along with proof of mitigation payment(s) to the SBCFD. This information must be submitted to the Compliance Project Manager by June 8, 2012. If the information is not provided by that date, staff will consider issuing a stop work order for above-ground permanent structures to address the project's non-compliance.

If the violation is not addressed pursuant to the provisions contained in this letter, any continuing violations may result in formal Energy Commission actions, including the assessment of penalties in accordance with the provisions of PRC Section 25534. Staff may consider whether to recommend to the Energy Commission that penalties, in accordance with PRC Section 25534, be imposed for the failure to comply with the Condition of Certification **WORKER SAFETY-6**. Should staff file a complaint, you will be notified pursuant to the provisions of Section 1232, Title 20, California Code of Regulations (20 CCR) and have an opportunity to respond pursuant to the provisions of Sections 1233 and/or 1237, 20 CCR.

Please notify Dale Rundquist, Compliance Project Manager, at (916) 651-2072, or via e-mail at: drundqui@energy.ca.gov as soon as the agreement is finalized and the payment(s) are made. At that time, staff will authorize Abengoa to proceed in the construction of above ground permanent structures at the site.

Sincerely,



CHRISTOPHER J. MARXEN
Compliance Office Manager
Siting, Transmission, and
Environmental Protection Division

ATTACHMENT 1
Text of Worker Safety-6 from the Abengoa Final Decision

WORKER SAFETY-6 The project owner shall either:

(1) Reach an agreement with the San Bernardino County Fire Department (SBCFD) regarding funding of its project-related share of capital and operating costs to improve fire protection/emergency response infrastructure and provide appropriate equipment as mitigation of project-related impacts on fire protection/emergency response services within the jurisdiction; or

(2) If no agreement can be reached, the project owner shall fund a study (the "independent fire needs assessment and risk assessment") conducted by an independent contractor who shall be selected by the project owner and approved by the CEC Compliance Project Manager (CPM), in consultation with San Bernardino County Fire Department, and fulfill all mitigation identified in the independent fire needs assessment and a risk assessment. The study will evaluate the project's proportionate funding responsibility for the above-identified mitigation measures, with particular attention to emergency response and equipment/staffing/location needs.

Should the project owner pursue option (2), above, the study shall evaluate the following:

- (a) The project's proportionate (incremental) contribution to potential cumulative impacts on the SBCFD and the project allocated costs of enhanced fire protection/emergency response services including the fire response, hazardous materials spill/leak response, rescue, and emergency medical services necessary to mitigate such impacts;
- (b) The extent that the project's contribution to local tax revenue will reduce impacts on local fire protection and emergency response services; and

- (c) Recommend an amount of funding (and corresponding payment plan) that represents the project's proportional payment obligation for the above-identified mitigation measures.

Compliance Protocols shall be as follows:

- (a) The study shall be conducted by an independent consultant selected by the project owner and approved by the CPM. The project owner shall provide the CPM with the names of at least three consultants, whether entities or individuals, from which to make a selection, together with statements of qualifications;

- (b) The study shall be fully funded by the project owner.

- (c) The project owner shall provide the protocols for conducting the independent study for review and comment by the SBCFD and review and approval by the CPM prior to the independent consultant's commencement of the study;
- (d) The consultant shall not communicate directly with the project owner or SBCFD without express prior authorization from the CPM. When such approval is given, the CPM shall be copied on any correspondence between or among the project owner, SBCFD, and the consultant (including emails) and included in any conversations between or among the project owner, SBCFD and consultant; and
- (e) The CPM shall verify that the study is prepared consistent with the approved protocols, or

(3) If the project owner and SBCFD do not agree to the recommendations of the independent consultant's study, the Energy Commission or its designee shall, based on the results of the study and comments from the project owner and SBCFD, make the final determination regarding the funding to be provided to the SBCFD to accomplish the above-identified mitigation.

No construction of permanent above-ground structures shall occur until funding of mitigation occurs pursuant to either of the resolution options set forth above.

Verification: At least five (5) days before construction of permanent above-ground structures, the project owner shall provide to the CPM:

(1) A copy of the individual agreement with the SBCFD or, if the owner joins a power generation industry association, a copy of the group's bylaws and a copy of the group's agreement with the SBCFD; and evidence in each January Monthly Compliance Report that the project owner is in full compliance with the terms of such bylaws and/or agreement; or

(2) A protocol, scope and schedule of work for the independent study and the qualifications of proposed contractor(s) for review and approval by the CPM; a copy of the completed study showing the precise amount the project owner shall pay for mitigation; and documentation that the amount has been paid.

Annually thereafter, the owner shall provide the CPM with verification of funding to the SBCFD if annual payments were approved or recommended under either of the above-described funding resolution options.