

PRESIDING MEMBER'S PROPOSED DECISION
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

APPLICATION FOR)
CERTIFICATION)
)
Abengoa Mojave)
Solar Project) Docket No.
) 09-AFC-5
_____)

CALIFORNIA ENERGY COMMISSION

1516 9TH STREET

HEARING ROOM B

SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 23, 2010

1:05 P.M.

TIFFANY C. KRAFT, CSR, RPR
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EHLERT BUSINESS GROUP (916) 851-5976

APPEARANCES

COMMITTEE MEMBERS PRESENT

Anthony Eggert, Commissioner, Presiding Member

James D. Boyd, Vice Chair, Associate Member

HEARING OFFICER

Kourtney Vaccaro

ADVISORS

Sarah Michael

Lorraine White

STAFF AND CONSULTANTS PRESENT

Christine Hammond, Counsel

Craig Hoffman, Project Manager

Jennifer Jennings, Public Advisor

Alvin Greenburg, (telephonic)

APPLICANT

Ellison, Schneider & Harris, LLP

Christopher Ellison

Shane E. Conway

Abengoa Solar

Matt Stucky

Scott Frier

APPEARANCES (continued)

LOCAL GOVERNMENT

County of San Bernardino
Bart Brizzee
Peter Brierty
(via telephone)

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1 PROCEEDINGS

2 COMMISSIONER EGGERT: Good afternoon. My name is
3 Anthony Eggert, and I am the Presiding Member of the
4 Abengoa Mojave Solar Energy Project, which is what we're
5 here to discuss today, specifically the Presiding Member's
6 Proposed Decision. This is really the final stretch.

7 Again, want to thank everybody for coming here
8 today.

9 I'm joined to my left, two over, by Commissioner
10 James Boyd, who's the associate member for this Committee.
11 To his left is his advisor, Sarah Michael. I will shortly
12 be joined by my advisor, Lorraine White. And we also have
13 our very capable Hearing Officer Kourtney Vaccaro.

14 And in the back is our Public Advisor, Jennifer
15 Jennings, if there are any members either here or on the
16 line that might want to make a public comment at the
17 conclusion of this hearing.

18 I'd like to take introductions from the parties.
19 First, the Commission staff.

20 MS. HAMMOND: Thank you, good afternoon.

21 Christine Hammond, staff counsel. And to my
22 right is Greg Hoffman, the project manager. Excuse me.
23 And on the phone is another staff member, Dr. Alvin
24 Greenberg.

25 COMMISSIONER EGGERT: Thank you.

1 The applicant?

2 Thank you. Ms. Shawn Conway from Ellison,
3 Schneider & Harris, counsel for the applicant. To my left
4 is Chris Ellison.

5 And in the audience, we have Matt Stucky and
6 Scott Frier of Abengoa Solar. Thank you.

7 COMMISSIONER EGGERT: Thank you. Okay. We're
8 going to go to the phone.

9 For the county of San Bernardino?

10 MR. BRIZZEE: Good afternoon. Mark Brizzee,
11 County Counsel from the County of San Bernardino.

12 COMMISSIONER EGGERT: Good afternoon, Mr.
13 Brizzee.

14 Do we have anyone from CURE on the line? No.

15 Anybody from Luz Solar partners? No. Okay.

16 Any other government agencies? Any State or
17 federal agency representatives joining us today?

18 MR. BRIZZEE: Commissioner, I was expecting Peter
19 Brierty from the County Fire Department to join us also by
20 phone.

21 COMMISSIONER EGGERT: Any other public officials
22 joining us for this? Nope. Okay.

23 We'll go ahead and get started here. I'm going
24 to turn it over to Ms. Vaccaro, who's going to run this
25 PMPD conference. Go ahead.

1 HEARING OFFICER VACCARO: Thank you.

2 Well, here we are. As everybody knows, the
3 Presiding Member's Proposed Decision issued August 6th.
4 We have a 30-day comment period, which ironically ends on
5 a holiday, which is September 6th. We are at the
6 mid-point right now in the comment period and are trying
7 to take advantage of this opportunity to get all the
8 preliminary comments that we can. People were invited of
9 course to submit them in writing. No requirement to do so
10 at this point certainly. But by the 6th, it's important
11 that we have all written comments. And today is an
12 opportunity to provide whatever written or oral comment
13 you might have.

14 I think if people have been paying attention to
15 the dockets, we've basically received only two sets of
16 comments to date; one from a member of the public
17 expressing support for the project. The other were some
18 very preliminary comments that we received from staff
19 which I docketed and I think everybody received those.
20 They were ensuring that the Committee make sure that we
21 use the Visual 2 and 4 Conditions of Certification that
22 the applicant and staff had agreed on in place of the
23 Visual 2 and 4 that are currently in the PMPD.

24 The other comment was to ensure that the
25 Biological Resources Figure 1 is replaced with the figure

1 that was in the errata for the biological resources.

2 And the final comment from staff at this point
3 was to add an air quality condition that we all managed to
4 overlook in the numbering process. But all of these
5 things were submitted in the record, things that the
6 public had notice of and the parties had notice of. And I
7 think to date that's all that we know.

8 So what we're going to learn today is whatever
9 other comments folks might have. And again no expectation
10 you brought anything in writing, but if you did, it would
11 be nice if you would hand it out. If not, we'll go ahead.

12 We're being recorded. We'll take good notes as
13 well. And we'll be sure that we take those comments under
14 submission.

15 So I think what we'll do is start with the
16 applicant. And I guess I'll do a two-pronged approach.
17 First is whatever comments you might have on what staff
18 has already submitted. And then if you would just go
19 forward with your own comments. And everyone of course
20 will have a turn to do the same. We'll just go ahead and
21 start with the applicant.

22 MS. CONWAY: Thank you. This is Shawn Conway for
23 the applicant.

24 First, we would like to thank the Committee for
25 their tremendous work on the Presiding Member's Proposed

1 Decision. We appreciate how quickly you were able to
2 complete this document, and we're also impressed with the
3 quality of the document. It accurately reflected the
4 hearing record, and overall it is excellent.

5 We have a few issues that concern typos and other
6 corrections that we put into written comments. And today
7 we have just three substantive issues to mention and first
8 concerns with staff has submitted.

9 So I'll start with we received the e-mail from
10 project manager Craig Hoffman and we agree with the edits
11 including language in Vis. 2 and Vis. 4. We would like to
12 add that the same issues exist with the language in Vis.
13 1. It is also from the supplemental staff assessment and
14 not the agreed-upon rebuttal conditions. So we would ask
15 that it would be the agreed-upon rebuttal conditions
16 instead.

17 Secondly, these are our additional issues. In
18 condition AQSC 5, a portion of the language in subdivision
19 C was omitted. That is important for clarity. And it
20 seems to be an inadvertent but substantive omission. So
21 the admitted language provided that regarding the
22 termination of use of a retrofit control device the
23 replacement for the equipment in subdivision B occurs
24 within ten days of the termination. If the equipment
25 would be needed to continue working at this site for more

1 than 15 days and if the following conditions exist -- and
2 those conditions are currently in the condition.

3 HEARING OFFICER VACCARO: Ms. Conway, the
4 language that was omitted, does that language appear in
5 the document that was submitted by staff that was part of
6 the docketed material that I attached and to the four
7 comments where it says these are all the agreed-upon
8 conditions as of June 28? Was the omission in that
9 document, or is the omission only in the PMPD?

10 MS. CONWAY: The omission is in the PMPD and the
11 omitted language was in staff's rebuttal -- sorry -- not
12 rebuttal. I have it here actually. It was in staff's air
13 quality errata.

14 HEARING OFFICER VACCARO: Okay. Thank you.

15 The final issue I wanted to mention in Worker
16 Safety 6. Overall, we agree with and are satisfied with
17 this condition, but in what instance the compliance
18 protocols need to be reconciled with the condition itself.
19 The compliance protocols provide the study shall be
20 conducted by an independent consultant selected by the
21 project owner and approved by the CPM, which we agree
22 with. But the condition describes the study as conducted
23 by an independent contractor selected and approved by the
24 CPM, which is inconsistent.

25 We also have a few minor comments we'll include

1 in our written comments. And that is all we wanted to
2 raise today.

3 Thank you again for your work and for writing an
4 excellent proposed decision in such a short time frame.

5 HEARING OFFICER VACCARO: Okay. Thank you.

6 Staff, we'll turn it over to you. And I think
7 same format, but now what we'll be doing is having you
8 making any comment or response to what applicant has said
9 in both instances, if there is anything you take issue
10 with with respect to the comments to staff's comments,
11 applicant's recommendations beyond that, and then what
12 staff's own comments are.

13 MS. HAMMOND: Thank you. We have no comments on
14 the PMPD. In good faith, we don't -- we haven't
15 identified an issue on which we were going to be
16 submitting substantive comments at this time. What
17 comments we will be submitting will be in the nature of
18 corrections, typos. We don't have a response to the
19 applicant's comments either today.

20 HEARING OFFICER VACCARO: Thank you, Ms. Hammond.

21 Mr. Brizze, on behalf of the county, basically
22 the same type of format. But now what you'll be doing is
23 comment on anything that you've heard from the applicant,
24 from staff, and then you're certainly welcome at this
25 point to raise whatever additional comments you might

1 have.

2 Have we been joined by Assistant Fire Chief Peter
3 Brierty? Doesn't sound --

4 MR. BRIERTY: Yes. Peter Brierty is on the
5 phone.

6 HEARING OFFICER VACCARO: Thank you.

7 With that, Mr. Brizze, if you'd like to proceed.

8 MR. BRIZEE: Thank you.

9 I am looking at a question regarding the
10 docketing of the staff's comments. I'm looking at the
11 website and I don't see that.

12 The last document I see on the website is the
13 PMPD dated August the 6th. Do I understand correctly
14 there was additional documents from the Commission since
15 then?

16 HEARING OFFICER VACCARO: What there has been and
17 it was certainly submitted to docket -- but an e-mail was
18 sent to the parties as well. So in fact what you might
19 have possession of via e-mail, but not something you can
20 access yet unfortunately through dockets, would be an
21 e-mail from Maggy Reed of the Hearing Office. And it was
22 submitted to all parties. And it contains an e-mail
23 string from the project manager Fred Hoffman to me
24 basically identifying those four points that I raised at
25 the beginning of this conference, which was to switch some

1 Conditions of Certification with the more recent approved
2 conditions -- or at least approved between the parties --
3 put in the correct biological resources figure, and
4 include a condition in the air quality Conditions of
5 Certification that had been inadvertently omitted when
6 submitted to the Hearing Office.

7 So I'm not certain what's actually available
8 online through dockets. But I do know that the e-mail
9 should have been sent to all parties. And if you did not
10 receive that, I apologize, because that would have
11 originated from the Hearing Office.

12 MR. BRIZEE: Thank you for that. I don't see it
13 offhand, but I'll make a more thorough search for that.

14 And can I communicate with Ms. Reed to get that?

15 HEARING OFFICER VACCARO: You can do that or I
16 can as soon as the conference is over -- I'll try to send
17 her an e-mail while we're sitting here and see if she
18 can't send it to you. Otherwise, we'll make sure that you
19 get it. And you have through September 6th to make any
20 comments on that document.

21 MR. BRIZEE: Thank you very much.

22 I believe that the county is going to -- actually
23 I don't believe. The county is going to submit written
24 comments. And at this juncture, the written comments will
25 be focused on Worker Safety 6. And the specific issue is

1 whether or not that is a proper mitigation item and
2 whether it's deferred mitigation that would be invalid
3 under CEQA.

4 Also because of my own personal schedule, I'm
5 planning on submitting those on Thursday of this week,
6 which hopefully will give the Committee time enough to
7 consider those. And also the applicant I'm sure will want
8 to respond depending on what our conclusion is on those.

9 We also wanted to alert the Committee to the
10 ongoing efforts when we had the hearing back in July where
11 we were present and were discussing these specific issues.
12 We had made a commitment at that time to discuss the
13 mitigation items of fire and safety with the applicant.
14 And we did, in fact, commence those and we wanted to keep
15 the Committee apprised that unfortunately those seem to
16 have gotten off track. And Chief Brierty is on the phone
17 specifically to talk about that. And he can address that.

18 MR. BRIERTY: We had a very good meeting with the
19 proponent and thought we were working in very successful
20 terms. And then we came upon the conference call that we
21 had, and that is where the proponent didn't even
22 participate in the process. We would like to continue the
23 discussions. We've made several phone calls and attempts
24 to do so.

25 I think the very, very critical thing we would

1 ask the Committee support on is that we at the local
2 county -- the amount of taxes a proponent pays is very
3 significant in terms of our ability to provide resources
4 to respond for fire and safety. Even at the last hearing
5 we had in Sacramento, I believe on July 15th, although we
6 heard from the proponent their taxes were not firmed up or
7 not fixed at this point, we would appreciate some support
8 in getting formulas or estimates or calculations or logic
9 that the proponent used in developing those local taxes
10 they would pay so we can use that to help the Board of
11 Supervisors make a policy decision and to help us to use
12 those taxes and how they can possibly offset the
13 mitigation of Worker Safety Number 6.

14 But our inability to get a response from the
15 proponent in terms of Worker Safety Number 6 leaves us in
16 a position where we couldn't even get information on that.
17 And we'd love to have -- enjoy the opportunity to have
18 their folks sit down with our tax folks to discuss that,
19 because it's a significant -- could be a significant
20 contribution to mitigating the financial needs for the
21 fire department to Worker Safety Number 6. And I don't
22 know the Commission can direct that to occur. But there
23 is a tremendous opportunity to resolve this rather than go
24 to a consultant, but if that's what we need to do, that's
25 what we need to do.

1 And we'd also like to voice our opinion that we
2 prefer that the Commission staff select the consultant
3 rather than the proponent. But the main issue we may get
4 the resolution on, because we had some clear understanding
5 of what they proposed as taxes, we could work with our tax
6 assessor to sort that out we could go a long way for
7 mitigating or providing financial resources to mitigate
8 six as we see it should be done.

9 HEARING OFFICER VACCARO: Thank you.
10 Chief.

11 MR. BRIERTY: And this is Peter Brierty,
12 Assistant Chief with San Bernardino County Fire.

13 HEARING OFFICER VACCARO: Thank you. Thank you.

14 I think one of the things you raised had to do
15 with the level of participation that you may or may not be
16 receiving in your view from the applicant that's certainly
17 not something that the Committee can speak to.

18 But it appeared that Mr. Ellison might want to
19 respond to that, so I'll give him an opportunity to do
20 that in just a moment.

21 But I did want to make clear that we will look at
22 the comment made by Ms. Conway with respect to ensuring
23 consistency between the Condition of Certification
24 language and the verification with respect to the
25 selection of the independent consultant. But the idea

1 there is that the applicant would put names forward and
2 the CPM would ultimately make the selection from the names
3 put forward by the applicant. And if that is somehow
4 unclear, we will make sure to clarify that.

5 MR. BRIERTY: That provides a tremendous amount
6 of clarification. I appreciate that very much.

7 HEARING OFFICER VACCARO: With that, Mr. Ellison
8 I saw you move the mike. Why don't you go ahead if you
9 could brief respond to Peter Brierty.

10 MR. ELLISON: I'd be happy to.

11 I'm not going to comment on the discussions,
12 because I frankly haven't been a part of that interaction
13 with the county, other than to say that I know that my
14 client is very interested in working this issue out with
15 the county. And I know that -- I do know that they've
16 been very busy, and I also know there was some sense of
17 wanting to make sure that they knew what the Condition of
18 Certification was that the backdrop for all of this would
19 be. So there may have been a slight difference in the
20 county's perception versus my client's perception of when
21 the right time to have those discussions is. But that's
22 to some degree speculation on my part.

23 I know the point is that we appreciate the
24 county's interest in talking about this, and I certainly
25 am going to be getting back to my client and we will be

1 re-engaging with the county on this issue.

2 I also endorse Mr. Brierty's point on the
3 importance of the tax issue. And we will provide that
4 information to the county as quickly as possible. We do
5 think this project differs from some other similar solar
6 projects in the county on the tax impact question for I
7 think two reasons.

8 One is it's not on federal land. It's on private
9 land. And it will pay property tax on that private land.

10 And secondly, because this site was selected to
11 have a minimal impact on species, and as a result, the
12 mitigation requirements that you see in the PMPD in terms
13 of setting aside other land to compensate for species
14 impacts are more for this project.

15 That also has a property tax impact. So we think
16 if you do a property tax comparison of this project versus
17 other projects that this project can be distinguished from
18 other projects on both of those grounds. And we agree
19 with Chief Brierty that's an important consideration for
20 the county and we will get you that information.

21 HEARING OFFICER VACCARO: Thank you, Mr. Ellison.

22 Chief Brierty, is there anything else?

23 MR. BRIERTY: Yes. On behalf of the county and
24 the efforts to resolve this, I really appreciate Mr.
25 Ellison's view on this. We look forward to working with

1 him.

2 He raised a very critical point in that the
3 taxation method and the exemption that would be applied to
4 other projects could be substantially different based upon
5 the technology used. So it's extremely important that we
6 be able to speak with him and his experts at close range
7 and being able to work this out. And we intend to do so.

8 HEARING OFFICER VACCARO: Okay. Thank you.

9 Mr. Brizzee, was there anything else that you
10 wanted to add on behalf of the county?

11 MR. BRIZZEE: I think those are all the issues.
12 And we certainly will look at the condition for any
13 inconsistencies and provide any written comments on that
14 also. But thank you.

15 HEARING OFFICER VACCARO: Thank you.

16 Again, just double-checking whether or not at
17 this point intervenor CURE or the Luz Partners intervenors
18 are on the line. Okay. It appears not.

19 So before we turn this over to public comment, is
20 there any other comment that the parties would like to
21 make with respect to the PMPD? I'm getting shaking heads.
22 So I take that as a no.

23 So with that, I think we'll move to public
24 comment. Ms. Jennings, are you aware of any comment or
25 did you receive any that you're sort of the messenger for

1 today?

2 MS. JENNINGS: No.

3 HEARING OFFICER VACCARO: Are there any members
4 of the public on the telephone who would like to make a
5 comment?

6 Hearing none, I'll turn this back over then to
7 Commissioner Eggert.

8 COMMISSIONER EGGERT: Thank you, Ms. Vaccaro.

9 And I also want to invite maybe before I adjourn
10 if Commissioner Boyd has any comments or input or closing
11 thoughts.

12 COMMISSIONER BOYD: I have no thoughts. I was
13 hoping the record would not even reflect that I was here.

14 COMMISSIONER EGGERT: We know you're here.
15 That's in the record. If you do decide, let me know.

16 But I do want to thank everybody. I think the
17 shortness of this PMPD conference is I think an indication
18 of all of the hard work that went into preparing for it.

19 And so I just want to thank the staff,
20 particularly all of the hard work that they've done to put
21 forward the staff assessment and as well as the applicant
22 and all of their efforts to work with the staff and others
23 to be accommodating in terms of some of the conditions.

24 And it appears that we're still hung up on one in
25 particular, but I think we have a path forward -- we

1 believe we have a path forward. And it sounds like
2 there's been some productive discussions and we hope those
3 will continue. And those also have obvious implications
4 for other projects that the Commission is considering.

5 So I think with that, I'll just look back real
6 quick again over to my left. We will adjourn this
7 conference. And the next item in this is go ahead and
8 give sort of what are the next steps real quick.

9 HEARING OFFICER VACCARO: Next steps will be
10 we'll take under submission all of the comments made
11 today, all of the comments that are submitted up through
12 the 6th, possibly the 7th, since September 6th is a
13 holiday. And the objective is for this Presiding Member's
14 Proposed Decision and possible errata to be submitted to
15 the Commission for consideration and action on September
16 8th. So we're all moving very swiftly.

17 COMMISSIONER EGGERT: Thank you very much. We're
18 off the record.

19 (Thereupon the Commission adjourned at 1:29 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 26th day of September, 2010.

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