STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of: The Application for Certification for the Abengoa Mojave Solar Power Plant Licensing Case	Docket No. 09-AFC-5

RESPONSE TO COMMITTEE ORDER ON SUFFICIENCY OF EVIDENCE REGARDING THE TOPIC OF WORKER SAFETY AND FIRE PROTECTION

INTERVENOR COUNTY OF SAN BERNARDINO

July 28, 2010

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Following the July 15, 2010, hearing dedicated primarily to the topic of Worker Safety and Fire Protection, the Committee on July 23, 2010, issued its Order on Sufficiency of Evidence Regarding the Topic of Worker Safety and Fire Protection. Having made the findings that the Abengoa Mojave Solar Project ("AMS") will have a significant environmental impact on local fire protection services, that the impacts are direct and/or cumulative, and that AMS's payment of impact fees would be appropriate mitigation for any such impacts, the Committee has invited the parties to propose Condition of Certification language and legal argument regarding mitigation measures modeled on what have become known as the "Colusa Conditions" (Colusa Generating Station Commission Final Decision (06-AFC-09), Conditions of Certification WORKER SAFETY-6 and -7).

The County has reviewed and concurs with the revised conditions WORKER SAFETY-6 AND WORKER SAFETY-7 submitted this date by Staff, a copy of which is attached hereto as Exhibit "A."

Dated: July 28, 2010

Respectfully submitted,

RUTH E. STRINGER
County Counsel

By _____
BART W. BRIZZEE
Deputy County Counsel

Attorneys for the County of San Bernardino

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EXHIBIT A

Abengoa Mojave Solar
Staff's Justification for
Revised WORKER SAFETY-6
July 27, 2010

Alvin Greenberg, Ph.D.

Staff offers this justification in support of staff's proposed revised Condition of Certification **WORKER SAFETY-6 and 7**

Since the publication of the Supplemental Opening Testimony on Worker Safety and Fire Protection and the Evidentiary Hearing of July 15, 2010, staff has re-evaluated the applicant's request to add a "Colusa-like" option to address mitigation to the San Bernardino County Fire Department (SBCFDj) for both direct and cumulative impacts.

Staff agrees that the "Colusa" approach is a viable alternative and is therefore proposing a modified version as one of three options that the project owner can pursue to provide mitigation. These three options will ensure that some level of mitigation is provided and that the level of mitigation will be either (1) a negotiated amount based upon the combined professional judgments of the SBCFD, the project owner, and the staff; (2) an amount already determined to be adequate by the SBCFD and the staff; or (3) an amount determined by a third-party expert following a specific protocol and guidelines.

Staff believes that this approach provides for a limited number of options all of which will provide for adequate mitigation to reduce project-related impacts to a less-than-significant level. Staff believes that while the method of determining the level of mitigation may vary, the fact that adequate mitigation will be provided no matter what approach is used satisfies the requirement that impacts be mitigated.

Staff recommends that **WORKER SAFETY-6 and 7** be revised as follows:

WORKER SAFETY-6 The project owner shall either:

(1) Reach an agreement, either individually or in conjunction with a power generation industry association or group that negotiates on behalf of its members, with the San Bernardino County Fire Department (SBCFD) regarding funding of its project-related share of capital and operating costs to build and operate new 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) Shall fund its share of the SBCFD capital costs in the amount of $860,000 and provide an annual payment of $793,000 to the SBCFD for the support of new fire department staff, operations, and maintenance commencing with the start of

construction and continuing annually thereafter on the anniversary of the payment until the final date of power plant decommissioning.
or
(3) The Project Owner shall fund a Fire Needs Assessment and Risk Assessment conducted by an independent contractor who shall be selected and approved by the CEC Compliance Project Manager (CPM) and fulfill all mitigation identified in the independent fire needs assessment and a risk assessment. The Fire Needs Assessment would address emergency response and equipment/staffing/location needs while the Risk Assessment would be used to establish the risk (chances) of significant impacts occurring. In no event shall the Project Owner's cost responsibility under this option exceed that under option (2), above.

Should the applicant pursue option (3), above, the Fire Needs Assessment and Risk Assessment shall evaluate the following:

(a) Potential for impacts on the SBCFD and the project allocated costs of new and/or enhanced fire protection/emergency response services (which shall include services for inspections, permitting, fire response, hazardous materials spill/leak response, rescue, and emergency medical 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 and emergency services (i.e. "drawdown" of emergency response resources);

(c) The extent that the project's exemption from local taxes will impact local fire protection and emergency response services; and

(d) Recommendation of an amount of funding that should be provided to mitigate any identified significant impacts on local fire protection and emergency response services.

Compliance Protocols for the Fire Needs Assessment and Risk Assessment shall be as follows:

(a) The Fire Needs Assessment and Risk Assessment shall be conducted by an independent consultant(s) selected and approved by the CPM;

(b) The Fire Needs Assessment and Risk Assessment shall be fully funded by the project owner. The independent consultant(s) preparing the Fire Needs Assessment and Risk Assessment shall work directly for the Energy Commission.

(c) The project owner shall provide the protocols for conducting the independent fire needs assessment for review and comment by the SBCFD and review

and approval by the CPM prior to the independent consultant's commencement of the fire needs assessment;

(d) The CPM shall be copied in any correspondence including emails or letters and included in any conversations between the project owner and consultant; and

(e) The CPM shall verify that the Fire Needs Assessment and Risk Assessment are prepared consistent with the approved fire needs assessment protocols and a risk assessment protocols.

No construction of permanent above ground structures shall occur until full funding of mitigation occurs either (i) pursuant to an agreement reached between the project owner (or a power generation industry association or group that includes the project owner) and the SBCFD, or (ii) after payment of the fees described above for capital improvements and the first annual payment, or (iii) pursuant to the independent Fire Needs and Risk Assessments conducted by an independent consultant approved by the CPM.

Verification: At least thirty (30) days prior to the start of site mobilization, 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) Documentation that the amount of $860,000 has been paid to the SBCFD, documentation that the first annual payment of $793,000 has been made, and shall also provide evidence in each January Monthly Compliance Report during construction and the Annual Compliance Report during operation that subsequent annual payments have been made.

or

(3) A protocol, scope and schedule of work for the independent Fire Needs Assessment and Risk Assessment and the qualifications of proposed contractor(s) for review and approval by the CPM; a copy of the completed Fire Needs Assessment and Risk Assessment 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 San Bernardino County Fire Department for required fire protection services mitigation pursuant to the agreement with the Fire Department or the CPM approved independent fire needs assessment.

WORKER SAFETY -7 The project owner shall:

Provide a $1,653,000 payment to San Bernardino County Fire Department prior to the start of construction. This funding shall off-set any initial funding required by **WORKER SAFETY-6** above until the funds are exhausted. This offset will be based on a full accounting by the San Bernardino County Fire Department 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 upon the accounting provided by the San Bernardino County Fire Department.

DECLARATION OF SERVICE

I, **Renee Meyer**, declare that on **July 28, 2010**, I served and filed copies of the attached, **RESPONSE TO COMMITTEE ORDER ON SUFFICIENTY OF EVIDENCE REGARDING THE TOPIC OF WORKER SAFETY AND FIRE PROTECTION – INTERVENOR COUNTY OF SAN BERNARDINO**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[www.energy.ca.gov/sitingcases/abengoa/index.html]**.

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

☒ sent electronically to all email addresses on the Proof of Service list;

☐ by personal delivery;

☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

☒ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR

☐ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-5
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Renee Meyer

2649953

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
FOR THE *ABENGOA MOJAVE SOLAR POWER PLANT*

Docket No. 09-AFC-5
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(Revised 7/21/2010)

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