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Arizona Corporation Commission  
DOCKETED  
OCT 26 2000

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October 26, 2000

Ms. Nancy Cole  
Docket Control Center  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL  
2000 OCT 26 P 4:31  
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**Re: Mesquite Power, L.L.C.  
(Docket No. 1-000005-00-010)**

Dear Ms. Cole:

Enclosed for filing are an original and ten (10) copies of the Request for Review and Issuance of Supplemental Findings of Fact and Conclusions of Law.

Also enclosed is an extra copy for "filed" stamping, and a return, postage-paid envelope.

Thank you for your assistance.

Sincerely,

[Signature of Lawrence V. Robertson, Jr.]

Lawrence V. Robertson, Jr.

cc: Paul A. Bullis, Chairman  
Arizona Power Plant & Transmission  
Line Siting Committee

Janice M. Alward  
Teena Wolfe  
ACC - Legal Division

Timothy M. Hogan  
Arizona Center for Law  
in Public Interest

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Attorneys for: Mesquite Power L.L.C.  
Applicant

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ARIZONA CORPORATION COMMISSION  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
MESQUITE POWER LLC, OR THEIR )  
ASSIGNEE(S), IN CONFORMANCE WITH THE )  
REQUIREMENTS OF ARIZONA REVISED )  
STATUTES 40-360 ET SEQ., FOR A )  
CERTIFICATE OF ENVIRONMENTAL )  
COMPATIBILITY AUTHORIZING )  
CONSTRUCTION OF NATURAL GAS-FIRED, )  
COMBINED CYCLE GENERATING FACILITY )  
("MESQUITE PROJECT") LOCATED SOUTH OF )  
ELLIOT ROAD, APPROXIMATELY ONE MILE )  
EAST OF WINTERSBURG ROAD AND )  
APPROXIMATELY 37 MILES WEST OF THE )  
PHOENIX METROPOLITAN AREA, NEAR )  
ARLINGTON IN MARICOPA COUNTY, )  
ARIZONA )  
\_\_\_\_\_ )

DOCKET NO. I-00000S-00-0101  
(CASE NO. 101)

**REQUEST FOR REVIEW AND  
ISSUANCE OF SUPPLEMENTAL  
FINDINGS OF FACTS AND  
CONCLUSIONS OF LAW**

Pursuant to A.R.S. 40-360.07(A) and (B), Mesquite Power, L.L.C. ("Mesquite") hereby requests that the Commission review, and supplement, the Decision and Certificate of Environmental Compatibility ("Certificate") issued and granted by the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") on October 10, 2000 in the above-captioned proceeding.

In support of its Request for Review, Mesquite represents the following:

I.

1  
2 In its evidentiary presentation before the Siting Committee on September 6, 2000, October  
3 4, 2000 and October 10, 2000, Mesquite offered evidence regarding the need of the State of Arizona  
4 for an adequate, economical and reliable supply of economic power in addition to those electric  
5 generation facilities which currently exist; and how the electric generating facilities proposed by  
6 Mesquite would contribute toward the satisfaction of that need. Specifically, Mesquite's witness  
7 Engelbrecht testified that (i) during the past seven years Arizona Public Service Company ("APS")  
8 and the Salt River Project ("SRP") have experienced electric load growth at an average annual rate  
9 of 5.5% (6.2 % during the past three years), and are expected to continue experiencing sustained  
10 growth on their respective systems for the foreseeable future; (ii) both entities reached all time high  
11 system peak demands during the summer of 2000; (iii) merchant power plants, such as the Mesquite  
12 project, are anticipated to provide a portion of APS's and SRP's increased generating requirements  
13 in the foreseeable future; and (iv) Arizona electric consumers will have a continuing need for access  
14 to additional low-cost power. In that regard, he also testified that additional sources of generation  
15 capacity are desirable from both a reliability and competitive market stimulation perspective. In  
16 addition, Mesquite witnesses Keller, Rowley and Engelbrecht each testified that the State of Arizona  
17 is the primary target market for power to be generated by the Mesquite project. Furthermore, Mr.  
18 Engelbrecht described those transmission system constraints between Arizona and California which  
19 will tend to keep power generated at the Mesquite site primarily within the State of Arizona.  
20 Illustrative in this regard of Mesquite's demonstration of a need for additional electric generating  
21 capacity and the contributing role of its proposed project are those transcript pages and exhibits from  
22 the hearing record attached hereto as Appendix "A", and incorporated by reference.  
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II.

A.R.S. 40-360.07(B) requires that, in addition to considering those decisional factors prescribed at A.R.S. 40-360.06 (which also govern the Siting Committee), the Commission

". . . shall balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state."

In the absence of such a finding by the Commission in several recent decisions involving proposed power plant facilities by other entities<sup>1</sup>, the Arizona Center for Law in the Public Interest ("Arizona Center") instituted litigation in Maricopa County Superior Court in an effort to invalidate those decisions. Mesquite was aware of the Arizona Center's legal position on the aforementioned issue at the time of the hearings before the Siting Committee on its application. Thus, it recommended the inclusion of language in a proposed form of decision to address and dispose of that issue, with the objective of obviating the prospect of similar litigation against the Commission by the Arizona Center with regard to the Mesquite project.

The language set forth at page 5, lines 5-9 of the form of Decision and Certificate issued and granted by the Siting Committee on October 10, 2000 in part incorporates the language and substance of that which Mesquite had proposed. However, neither the portion of the Decision format which relates to the Siting Committee, nor that which pertains to the Commission, contains findings of that specific nature which the Arizona Center contends are legally necessary.

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<sup>1</sup> Duke Energy Maricopa, L.L.C.; Panda Gila River, L.P.; and Harquahala Energy, L.L.C.

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**III.**

Mesquite is informed that late last week, three (3) of the merchant plant entities who are the real parties in interest in the aforementioned litigation have entered into settlement agreements with the Arizona Center. In conjunction with those settlement agreements, each has filed an application with the Commission requesting an amendment to the Commission's previous decision which granted that applicant a Certificate. Such amendment would include findings of the nature contemplated by A.R.S. 40-360.07(B), as well as those additional findings for which the Arizona Center contends. Presumably those applications requesting amendment will be before the Commission within the next few weeks.

**IV.**

Against the preceding background, Mesquite hereby requests that the Commission issue a Supplemental Findings of Fact and Conclusions of Law in connection with its consideration of and decision upon the October 10, 2000 Decision and Certificate issued and granted by the Siting Committee in the above-captioned proceeding. Such Supplemental Findings of Fact and Conclusions of Law would be designed to address the legal issues previously raised by the Arizona Center in other proceedings, as well as in this one<sup>2</sup>; and it is hoped that the Commission's issuance of the same would remove any incentive for the Arizona Center to institute litigation challenging the legality of the Commission's decision in this matter. Attached in this regard as Appendix "B" and incorporated herein is an example of such Supplemental Findings of Fact and Conclusions of Law which Mesquite submits for the Commission's consideration.

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<sup>2</sup> At the October 10, 2000 hearing before the Siting Committee, Counsel for the Arizona Center argued that the proposed form of Decision and Certificate then under consideration did not contain the specific factual findings which the Arizona Center contends are required by Titles 40 and 41 of the Arizona Revised Statutes.

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1 WHEREFORE, in view of the preceding discussion, Mesquite hereby requests that the  
2 Commission adopt and issue Supplemental Findings of Fact and Conclusions of Law, substantially  
3 similar to, if not identical, as those attached hereto as Appendix "B" in conjunction with its  
4 consideration of and action upon the October 10, 2000 Decision and Certificate of the Siting  
5 Committee.  
6

7 DATED: October 26, 2000.

8  
9 Respectfully Submitted,

10 MUNGER CHADWICK, P.L.C.

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12 

13 LAWRENCE V. ROBERTSON, JR.

14  
15 The Original and Ten (10) copies  
16 of the foregoing Request for Review  
17 and Issuance of Supplemental Findings  
18 of Fact and Conclusions of Law were filed  
19 this 26<sup>th</sup> day of October, 2000, with the  
20 Commissions Docket Control Center.

21 In addition, a copy of the same was mailed  
22 this 26<sup>th</sup> day of October, 2000, postage prepaid to:

23 Paul Bullis, Chairman  
24 Arizona Siting Committee  
25 c/o Office of the Attorney General  
26 1275 West Washington  
27 Phoenix, AZ 85007

28 Janice Alward  
ACC - Legal Division  
1200 West Washington  
Phoenix, Arizona 85007

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Timothy M. Hogan  
Arizona Center for Law In Public Interest  
202 E. McDowell Ste 153  
Phoenix, Arizona 85004-4533

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APPENDIX "A"

Part I - Hearing Transcript Pages

Part II - Exhibit Pages

**Part I - Hearing Transcript Pages**

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BEFORE THE POWER PLANT AND TRANSMISSION  
LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF )  
 MESQUITE POWER LLC, OR THEIR )  
 ASSIGNEE(S), IN CONFORMANCE WITH THE ) CASE NO. 101  
 REQUIREMENTS OF ARIZONA REVISED )  
 STATUTES 40-360.01 ET SEQ., FOR A ) DOCKET NO.  
 CERTIFICATE OF ENVIRONMENTAL ) L-00000S-00-0101  
 COMPATIBILITY AUTHORIZING )  
 CONSTRUCTION OF A NATURAL GAS-FIRED, )  
 COMBINED CYCLE GENERATING FACILITY )  
 LOCATED SOUTH OF ELLIOT ROAD, )  
 APPROXIMATELY ONE MILE EAST OF )  
 WINTERSBURG ROAD AND APPROXIMATELY )  
 37 MILES WEST OF THE PHOENIX )  
 METROPOLITAN AREA, NEAR ARLINGTON IN )  
 MARICOPA COUNTY, ARIZONA )  
 )

At: Phoenix, Arizona  
 Date: September 6, 2000  
 Filed: **SEP - 8 2000**

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 Volume I  
 (Pages 1 through 246)

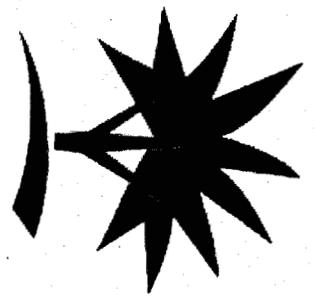
**ARIZONA REPORTING SERVICE, INC.**  
 Court Reporting  
 Suite Three  
 2627 North Third Street  
 Phoenix, Arizona 85004-1103

Prepared for: By: **CECELIA BROOKMAN, RPR**  
 CCR No. 50154  
**MR. LAWRENCE V. ROBERTSON, JR.**  
 Attorney at Law

**CERTIFIED COPY**  
**(When in red)**

**Part II - Exhibit Pages**

Ex. # A-4

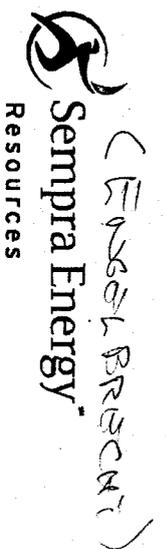


# Mesquite Power

**ACC Siting Committee Hearing  
September 6, 2000**

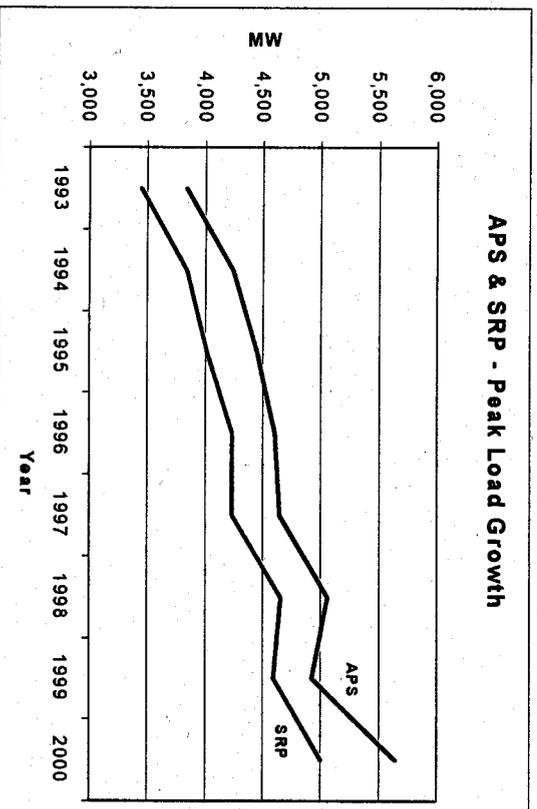


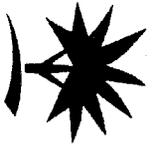
MesquitePower



## Market

- Arizona is Mesquite's primary target Market
- Phoenix Valley is one of the fastest growing U.S. regions
  - 6.2%/5.5% annual growth rate over last 3/7 years
  - Only Las Vegas matches growth rate in last 3-7 years
  - APS & SRP both hit all-time system peaks in summer 2000





MesquitePower

(Foresight)  
Sempra Energy  
Resources

## Market (continued)

- Arizona Customers have a Need to access additional low-cost power
  - Reliability Need
    - Minimum generation level required to reliably serve the load during all portions of the year, even on the hottest summer day
      - 15% minimum Reserve Margin
    - A recent example is California, where dwindling reserve margins in summer 2000 resulted in a number of California ISO Stage II alerts (a plea for reduced demand), and nearly caused a Stage III alert (i.e., probable rolling blackouts.)



**MesquitePower**



*(EMERALD RESERVE)*  
**Sempra Energy™**  
Resources

## **Market** *(continued)*

- Arizona Customers have a Need to access additional low-cost power (continued)
  - *Competitive Market Need*
    - *The level of competitive generation supplies necessary for adequate market competition*
    - *Necessary for Arizona consumers to realize the full benefits of new low cost, highly efficient, environmentally beneficial generation*
    - *Absent a fully competitive liquid market, Arizona consumers would likely experience higher prices*
      - Recent example is California in summer 2000

APPENDIX "B"

Proposed Supplemental

Findings of Fact and

Conclusions of Law

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Attorneys for: Mesquite Power L.L.C.

Applicant  
**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
MESQUITE POWER LLC, OR THEIR )  
ASSIGNEE(S), IN CONFORMANCE WITH THE )  
REQUIREMENTS OF ARIZONA REVISED )  
STATUTES 40-360 ET SEQ., FOR A )  
CERTIFICATE OF ENVIRONMENTAL )  
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("MESQUITE PROJECT") LOCATED SOUTH OF )  
ELLIOT ROAD, APPROXIMATELY ONE MILE )  
EAST OF WINTERSBURG ROAD AND )  
APPROXIMATELY 37 MILES WEST OF THE )  
PHOENIX METROPOLITAN AREA, NEAR )  
ARLINGTON IN MARICOPA COUNTY, )  
ARIZONA )  
\_\_\_\_\_ )

DOCKET NO. 1-00000S-00-0101  
(CASE NO. 101)

DECISION NO. \_\_\_\_\_

**SUPPLEMENTAL FINDINGS OF  
FACT AND CONCLUSIONS OF  
LAW**

By The Commission:

In conjunction with its review and consideration of (i) the October 10, 2000 Decision and Certificate of Environmental Compatibility ("Certificate") issued and granted by the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee"), and (ii) the underlying hearing record, the Commission makes the following findings of fact and conclusions of law, which are supplemental to but integrally a part of its contemporaneous decision approving and affirming the Siting Committee's October 10, 2000 Decision and Certificate in the above-captioned proceeding.

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- 1) The provisions of A.R.S. 40-360.06 have been complied with by both the Siting Committee and the Commission;
- 2) During the past seven years Arizona Public Service Company ("APS") and the Salt River Project ("SRP") have experienced electric load growth at an average annual rate of 5.5%, and at an average annual rate of 6.2% during the past three years, and each is expected to continue experiencing sustained growth on its system for the foreseeable future;
- 3) APS and SRP each experienced all-time high system peak demands during the summer of 2000;
- 4) It is anticipated that merchant power plants, such as the Mesquite project, will provide a portion of APS's and SRP's requirements for increased generation in the foreseeable future;
- 5) Arizona electric consumers will have a continuing need for access to additional low-cost power;
- 6) The State of Arizona represents the primary target market for power to be generated by the Mesquite project;
- 7) Additional sources of generation capacity, such as the Mesquite project, are desirable from both a reliability and a competitive market stimulation perspective;

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- 8) Existing electric transmission system constraints between Arizona and California will tend to keep power generated at the Mesquite site primarily within the State of Arizona; and
- 9) Pursuant to A.R.S. 40-360.07(B), the Commission has balanced, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state, and concluded that the October 10, 2000 Decision and Certificate issued and granted by the Siting Committee should be approved and affirmed.

Chairman

Commissioner

Commissioner

In Witness Hereof, I, Brian C. McNeil,  
Executive Secretary of the Arizona  
Corporation Commission, set my hand and  
cause the official seal of this Commission to  
be affixed, this \_\_\_\_ day of \_\_\_\_\_,  
2000.

By: \_\_\_\_\_  
Brian C. McNeil  
Executive Secretary

Dissent: \_\_\_\_\_