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Arizona Corporation Commission

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AZ CORP COMMISSION
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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)
COMPATIBILITY AUTHORIZING)
CONSTRUCTION OF NATURAL GAS-FIRED,)
COMBINED CYCLE GENERATING FACILITY)
LOCATED SOUTH OF ELLIOT ROAD,)
APPROXIMATELY 37 MILES WEST OF THE)
PHOENIX METROPOLITAN AREA, NEAR)
ARLINGTON IN MARICOPA COUNTY,)
ARIZONA)

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

**OPPOSITION TO REQUEST FOR
REVIEW OF SITING COMMITTEE
DECISION**

MUNGER CHADWICK, P.L.C.
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**I.
INTRODUCTION**

Pursuant to R14-3-106 of the Commission's Rules of Practice and Procedure, Mesquite Power, L.L.C. ("Mesquite") hereby files its Opposition to the October 30, 2000 Request for Review of Siting Committee Decision filed by the Arizona Center for Law in the Public Interest ("Center"). This Opposition is filed independent of the Motion to Dismiss Untimely Request for Review of Siting Committee Decision which is contemporaneously being filed by Mesquite; and Mesquite intends for this Opposition to be considered by the Commission only in the event it denies the aforesaid Motion to Dismiss.

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II.

GROUNDS FOR OPPOSITION

Mesquite's opposition to the Center's Request for Review of Siting Committee Decision is predicated upon several grounds.

First, the Center contends that the Certificate of Environmental Compatibility issued by the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") on October 10, 2000.

". . . fails to balance the need for the Mesquite plant with its environmental impacts. Indeed the need for this plant is not even quantified in the certificate." [Request for Review at P.1, l. 24 - p.2, l.2]

The Center misperceives the role of the Siting Committee under A.R.S. 40-360 et seq. A.R.S. 40-360.06 prescribes the decisional factors to be used by the Siting Committee in ruling upon an application for a Certificate. A determination or quantification of "need" is not among them. Moreover, the balancing between need and environmental effects to which the Center alludes is found in the language of A.R.S. 40-360.07(B), which applies only to the Commission and the decision it makes. That provision does not apply to the Siting Committee's determination. Finally, under both (i) that portion of the Siting "Committee's October 10, 2000 Decision intended for use by the Commission, and (ii) the suggested Supplemental Findings of Fact and Conclusions of Law attached to Mesquite's October 26, 2000 Request For Review, the balancing determination required by A.R.S. 40-360.07(B) has been provided for. Thus, when the Commission acts upon this matter, the "deficiency" which the Center prematurely contends exists will have been addressed.

1 Second, the Center complains that,

2 "... there is no guarantee that the plant will supply power to meet the
3 needs of Phoenix or Arizona generally. . . [and] nothing in the
4 certificate that requires the power produced by the plant to be used to
5 meet the needs of Phoenix or Arizona." [Request for Review at p.2,
1. 3-6] [Emphasis added]

6 Siting Committee or Commission imposition of the type of guarantee or requirement suggested by
7 the Center would violate both the Interstate Commerce Clause of the United States Constitution and
8 the well-established principle of "federal pre-emption." It is as simple as that. While a merchant
9 plant owner can contractually agree to direct a portion of the power it generates to serve the Arizona
10 market, neither the Siting committee nor the Commission possess the legal authority to require that
11 it do so. Moreover, as the record in the proceeding below attests, the Mesquite plant is primarily
12 intended for the Arizona market; and existing transmission system constraints between Arizona and
13 California will tend to keep power generated at the Mesquite Site primarily within the State of
14 Arizona.
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17 Third, the Center argues that the Commission should review all applications for power plant
18 Certificates in the "broader context of regional [i.e. the Southwest] power needs." [Request For
19 Review at p.2, 1.10-p.3, 1.2] However, the Center cites no provision within the statutory scheme set
20 forth at A.R.S. 40-360 et seq. which either contemplates or provides for such a regional perspective
21 or analysis. The Center's failure to do so is not surprising, because none exists! In short, the Center
22 is overreaching with regard to the Commission's authority and role under th Siting legislation.
23 Moreover, a merchant plant owner and operator is not a public service corporation under Arizona
24 law. Thus, the Center cannot look to other provisions of Title 40 for support for its "regional"
25 argument.
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Fourth, for the reasons discussed above, the regional power cost analysis that the Center advocates the Commission should undertake as a predicate to any future merchant power plant siting decision is also beyond both the scope of the Commission's role and jurisdiction with regard to such matters. [Request for Review at p.2, L.3-21].

It is apparent that the Center is critical of the review and decisional procedures and criteria provided for in A.R.S. 40-360 et seq. However, many of the "corrections" it suggests are beyond the legal authority of the Siting Committee and the Commission to adopt, implement or require under current Arizona law; and, in some instances, under federal law.

WHEREFORE, Mesquite hereby requests that the Commission's deny the various actions requested of it by the Center in its October 30, 2000 Request For Review of Siting Committee Decision.

DATED: November 7, 2000.

Respectfully Submitted,



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The Original and Twenty-five (25) copies
of the foregoing Motion to Dismiss Untimely
Request for Review were filed
this 7 day of November, 2000 with the
Commission's Docket Control Center.

In addition, a copy of the same was mailed
this 7 day of November 2000, postage prepaid to:

Paul Bullis, Chairman
Arizona Siting Committee
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Phoenix, AZ 85007

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