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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)

**REPLY TO RESPONSE
TO MOTION TO DISMISS**

Pursuant to R14-3-106 of the Commission's Rules of Practice and Procedure, and Rule 4 of the Uniform Rules of Practice of the Arizona Superior Court, Mesquite Power, L.L.C. ("Mesquite") hereby files its reply to the November 16, 2000 Response to Motion to Dismiss filed by the Arizona Center for Law in the Public Interest ("Center") in the above-captioned proceeding.

INTRODUCTION

At the outset, Mesquite concurs with Arizona Center's observation that, if the Commission accepts the November 7, 2000 Stipulation entered into between Mesquite and Center, the issue regarding the timeliness of Center's filing of its Request for Review

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"... is moot because the Center's Request for Review and Mesquite's Motion to Dismiss are deemed to be withdrawn by the parties."
[Response, page 1, lines 17-19]

However, as a protective measure, in the event the Commission does not accept the Stipulation and adopt the language therein proposed to be added to the Supplemental Findings of Fact and Conclusions of Law which have been requested by Mesquite, Mesquite files this Reply to Response to Motion to Dismiss.

DISCUSSION

Center endeavors to respond to Mesquite's argument that the Commission lacks jurisdiction to consider Center's untimely Request for Review by contending Mesquite "fails to cite any authority whatsoever for that proposition." [Response, page 2, lines 15-16]. However, Center is in error.

In its Motion to Dismiss, Mesquite cites A.R.S. 40-360.07(A) which clearly provides that a party to a certification proceeding may file a request for review [of a Siting Committee decision] with the Commission, provided it does so

"... within fifteen days after the Committee has rendered its written decision. . . ." [Emphasis added]

The language of the statute could not be clearer. The operative period is fifteen days from when the Siting Committee issues its written decision, which in this instance was October 10, 2000. That period is not measured from when the Commission's Utilities Division mails a copy, or when a party receives it.¹

¹In this regard, it is to be noted that Center had a week following its receipt of the Siting Committee's decision within which to file its Request for Review, and that the grounds and arguments therein set forth were essentially the same it had raised in Requests for Review filed in other certification proceedings in recent months. Thus, it had ample time to act within the prescribed statutory period, and simply failed to do so.

1 The fact that there have been no Arizona judicial decisions to date discussing this provision
2 is more likely than not attributable to the fact that previous requests for review were timely filed, and
3 thus the question never arose. Stated differently, the absence of such decision does not mean that
4 Mesquite's jurisdictional argument is without merit, although that is what Center tries to suggest.
5

6 Conversely, having no authority to support its position, Center attempts to excuse its
7 untimely action by resorting to "logic." More precisely, it argues in effect that there is no need for
8 a fifteen day limitation on filing a request for review, since the Commission is not scheduled to
9 consider the Siting Committee's decision until November 28, 2000. [Response, page 2, lines 17-19]
10 This line of reasoning has no bearing upon what the language of A.R.S. 40-360.07(A) expressly
11 provides and requires. Moreover, it conveniently ignores the fact that pursuant to another portion
12 of A.R.S. 40-360.07(A), the Commission could not have considered the Siting Committee's decision
13 prior to November 10, 2000; and its previous Open Meeting this month was held on November 8
14 and 9, 2000!
15
16

17 **CONCLUSION**

18 It is Mesquite's preferred position that the Commission accept the November 7, 2000
19 Stipulation entered into between Center and Mesquite; and that it adopt and issue the Supplemental
20 Findings of Fact and Conclusions of Law proposed by Mesquite, as amended by the Stipulation.
21 However, in the event the Commission does not accept the Stipulation, Mesquite then requests that
22 the Commission grant Mesquite's Motion to Dismiss Center's Request for Review.
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DATED: November 21, 2000.

Respectfully submitted,

By: Lawrence V. Robertson, Jr.

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Original and 25 copies
of the foregoing to be filed on
November 22, 2000 with:

Docketing Supervisor
Docket Control Center
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

In addition, a copy of the same was mailed
this 21st day of November 2000, postage prepaid to:

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

Janice Alward
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