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December 3, 2008

**Re: Application of Arizona Solar One LLC; Docket No. L-00000GG-08-0407-00139, Docket No. L-00000GG-08-0408-00140.**

Parties to the Dockets:

As you know, in recent weeks filings have been made in the above mentioned power plant and line siting dockets that raise several procedural and substantive concerns. Specifically, it has become apparent that a new practice of communicating via email has been emplaced. Furthermore, it would appear that substantive changes have been made to Certificates of Environmental Compatibility (CEC) conditions during the course of these email communications. Some of these conditions included in previous CEC's are the work of individual Commissioners, and others have been developed and honed over time by the line siting Committee and the Commission. Additionally, I am worried that the changes that have been made to these conditions were done in a forum – email – that existed outside the purview of the general public. It concerns me that these emails would not have been available to the Commission for consideration but for the fact that they were brought to light when they were filed in the docket.

It appears that many changes have been made to conditions in these three CEC's, but today I highlight three that emerged in my review of these proceedings.

The conditions in Cases 139, 140 and 141 addressing construction disturbances bear distinct differences to similar conditions in prior cases. Condition 14 in Case 141 – the Coolidge power plant project – provides that "Applicant…will use existing roads for construction and access, and to the extent applicable taking into account that the Project Site lies within a designated industrial use area, minimize impacts to wildlife and vegetation outside of the Project Site." Notably, the condition does not address the issue of re-vegetation which a largely similar condition in Case 137 (Phase I) provided for. In that Case, the re-vegetation provision, Condition 11, stated, "Where practicable, the Applicant shall use existing roads for construction and access and minimize impacts to wildlife. The Applicant shall also minimize vegetation disturbance outside of the Project right-of-way, particularly in drainage channels and along stream banks, and shall re-vegetate or restore areas of construction disturbance outside of the Project right-of-way after construction has been completed." In Case 139, Condition 11 lacks a re-vegetation requirement entirely.

Although Condition 10 in Case 140 incorporates a re-vegetation requirement, as it requires the applicant to "…file a construction mitigation and restoration plan…[that] will specify the Applicant's plans… to revegetate native areas…", it is significantly different from a similar

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requirement in Case 136. While Condition 10 in Case 136 made explicit that the Applicant was to follow certain practices, in Case 140 the condition merely requires the Applicant to file a plan specifying its plans to follow certain practices.

It concerns me that these changes were apparently made pursuant to email exchanges initiated by the Applicant, rather than as part of a public process. While these emails were eventually docketed, it is unclear whether the re-vegetation requirement received sufficient vetting by the Committee, in an open forum, including disclosure of the fact that the change came at the behest of the Applicant.

Additionally, the homebuilder notice requirement appears to have undergone a make-over in Cases 140 and 141. Specifically, Condition 17 in Case 141 requires the Applicant to provide notice to developers within one mile of the proposed line within 120 days after the approval of the CEC by the Commission. When I originally wrote this Condition, and when it was first approved by this Commission in Case 126, the Condition required ongoing disclosure by electric utilities of the planned power line to developers, along with a request that the homebuilders pass the information along to prospective homebuyers, in order to provide would be homebuyers the greatest possible notice that a power line was slated for construction in their area.[1] It would appear that the alteration made to this condition has weakened it.

In light of the many changes being made to the conditions in these cases, I would like the Parties to be prepared to address the basis for these changes at our Open Meeting this week and be prepared to discuss the process by which each of these, as well as other, conditions, were altered.

Finally, in a September 26 email exchange, Mr. Moyes indicated that he would like to see certain changes made to CEC condition language proposed by Commission Staff because the Applicant Coolidge Power Corporation and the power purchaser, Salt River Project, believed the Commission did not have the jurisdictional authority to assert those conditions. I would like the Parties to the case to tell the Commission whether any conditions were altered to accommodate the Applicant's apparent belief that the Commission lacks jurisdiction over these entities.

Thank you for your attention to these questions. Your answers will assist me in my future deliberations regarding these cases.

Sincerely,

Kris Mayes
Commissioner

Cc: Chairman Mike Gleason
Commissioner William A. Mundell
Commissioner Jeff Hatch-Miller

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[1] The language from Case 126 was carried over into Case 136, as well, in the form of Condition 13.

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