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8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 KRISTIN K. MAYES, Chairman
10 GARY PIERCE
11 PAUL NEWMAN
12 SANDRA D. KENNEDY
13 BOB STUMP

14 IN THE MATTER OF THE APPLICATION
15 OF HUALAPAI VALLEY SOLAR LLC, IN
16 CONFORMANCE WITH THE
17 REQUIREMENTS OF ARIZONA REVISED
18 STATUTES §§ 40-360.03 AND 40-360.06,
19 FOR A CERTIFICATE OF
20 ENVIRONMENTAL COMPATIBILITY
21 AUTHORIZING CONSTRUCTION OF THE
22 HVS PROJECT, A 340 MW PARABOLIC
23 TROUGH CONCENTRATING SOLAR
24 THERMAL GENERATING FACILITY AND
25 AN ASSOCIATED GEN-TIE LINE
INTERCONNECTING THE GENERATING
FACILITY TO THE EXISTING MEAD-
PHOENIX 500kV TRANSMISSION LINE,
THE MEAD-LIBERTY 345kV
TRANSMISSION LINE OR THE
MOENKOPI-EL DORADO 500kV
TRANSMISSION LINE.

Docket No. L-00000NN-09-0541-
00151

Case No. 151

REQUEST FOR REVIEW

AZ CORP COMMISSION
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Arizona Corporation Commission

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1 Pursuant to A.R.S. § 40-360.07, proposed intervenor, Denise Bensusan, requests
2 that the Commission review the decision issued by the Power Plant and Transmission
3 Line Siting Committee (“Committee”) and deny the certificate granted by the Committee
4 or, alternatively, modify the certificate subject to the condition that the matter be
5 reopened so that the Commission can conduct further proceedings with the participation
6 of Ms. Bensusan as an intervenor. The Commission should grant Ms. Bensusan’s
7 Request for Review for the following reasons:

8 **I. INTRODUCTION**

9 The Certificate of Environmental Compatibility issued to Hualapai Valley Solar in
10 this proceeding is fatally defective. The Certificate is tainted by the failure of the Power
11 Plant and Transmission Line Siting Committee (“Committee”) to grant the intervention
12 of Denise Bensusan. Ms. Bensusan had filed a Motion to Intervene as an individual with
13 a direct and substantial interest in the outcome of the proceeding. Without enumerating
14 any grounds, the Committee refused to allow her to participate as a party, denied her the
15 right to cross examine witnesses and denied her the right to present witnesses of her own.
16 As a result, Ms. Bensusan has been unlawfully denied the right to intervene.

17 **II. BACKGROUND**

18 On November 23, 2009, Hualapai Valley Solar filed its application for a
19 Certificate of Environmental Compatibility. The application was scheduled to be heard
20 on January 12 and 13, 2010.

21 On December 22, 2009, Denise Bensusan filed a Motion to Intervene in the
22 proceeding. In that Motion to Intervene, she identified herself as a “concerned local
23 homeowner and one of the closest water users to the proposed project. My personal
24 water source and my neighbor’s will be directly affected.” She further indicated that she
25 had extensive experience in local water conservation efforts and was currently the

1 chairman of the Northwest Arizona Watershed Council and had been affiliated with that
2 group for nine years. Ms. Bensusan's Motion to Intervene then concisely enumerated a
3 list of serious issues and concerns associated with the application. They included:

- 4 1. The long term negative and permanent impact on the Hualapai aquifer
5 which is in overdraft/depletion.
- 6 2. The project's failure to utilize dry cooling.
- 7 3. Long range policies established by the State of Arizona regarding smart
8 growth practices that are not addressed in the application.
- 9 4. The impact of the project on wildlife within Red Lake and surrounding
10 areas.
- 11 5. Flood control and drainage issues.

12 The Chairman of the Committee scheduled a Pre-Hearing Conference on January
13 4, 2010 which Ms. Bensusan attended. He questioned Ms. Bensusan as to whether she
14 had intervened in an administrative hearing previously. She indicated she had assisted in
15 a previous proceeding. He further inquired whether she had prepared any legal
16 documents and filed them. He asked her if she had cross-examined any witnesses or
17 presented testimony in the previous proceeding. *See* Transcript, January 4, 2010 at 7-9.

18 The Chairman questioned another proposed intervenor, Susan Bayer, as to whether
19 she had any legal training. She indicated she had a certificate as a paralegal. *Id.* at 8-9.
20 The Chairman then asked her if she had actually prepared an administrative case and
21 presented one at an administrative hearing before. She said she had not. The rest of the
22 exchange went as follows:

23 Chairman Foreman: Okay. Have you - - so you haven't questioned
24 anybody or cross-examined anybody at a hearing?

25 Ms. Bayer: I have raised questions at Board of Supervisors hearings
and that but...

1 Chairman Foreman: Do you understand this is going to be a fairly
2 formal proceeding?

3 Ms. Bayer: Yes, sir, I do.

4 Chairman Foreman: In that you are going to need to recognize that you
5 are not going to be able to talk anytime you would like to, you need to
6 talk when you are recognized?

7 Ms. Bayer: Yes – sir.

8 Chairman Foreman: And that if you are allowed to be a party, then
9 there are a whole host of things that you're going to have to do that are
10 set forth in the procedural order that I have already issued?

11 Ms. Bayer: Yes.

12 *Id.* at 9.

13 The Chairman asked the same questions of Ms. Bensusan. The Chairman asked
14 her if she just wanted to present testimony or if there was something else that she wanted
15 to do at the hearing. Ms. Bensusan responded that she wanted to present testimony “and
16 as well as possibly cross-examine or bring forth data that needs to be verified.” *Id.* at 11.
17 The Chairman responded that if she wanted to do something more than present testimony
18 “you need to understand that I am going to hold you to the standards that I would hold an
19 attorney to...and so if you don't do what it is you are supposed to do, you are going to
20 have to - - there will be consequences, you know, not the - - the most significant one for
21 you will be that you probably won't get into the record what it is you want to get into the
22 record.” *Id.* at 12.

23 In a thinly veiled effort to further discourage Ms. Bensusan and Ms. Bayer, the
24 Chairman stated that:

25 I don't think that the rules with regard to conducting the type of hearing
that we are going to have are particularly friendly to people who are not
attorneys, but they are the rules that are there. And so what I have been

1 trying to do is find ways to help folks like you who are not law trained
2 who want to get something into the record a way to do that. *Id.*

3 Ms. Bensusan then confirmed with the Chairman that neither she nor Ms. Bayer had been
4 approved as intervenors yet. Ms. Bensusan reaffirmed that she is a stakeholder in the
5 proceeding and that as an intervenor she would have “access to information, I believe,
6 that is necessary for a citizen like myself to ask appropriate questions and bring
7 appropriate testimony forward...” *Id.* at 15. She continued:

8 I have read over everything. I am not saying I am an expert in any way.
9 I am certainly not an attorney. But I do believe that I can bring to the
10 table and function as an intervenor capably, first of all, and follow all
11 the directions that you will be giving us. And I think it is important that
12 people like me and all of us here, the citizens be given the opportunity
13 to participate in this manner. *Id.* at 15-16.

14 The Chairman’s response is telling. He informs Ms. Bensusan that she
15 must:

16 ...[U]nderstand that the Committee contains eleven members. They
17 have other jobs. They are going to be up in Kingman for three days.
18 There is a lot of testimony. There is a lot of territory to cover in that
19 hearing. And so that means I am going to be making the applicant
20 present their case in an efficient manner and limiting what it is they can
21 present to what it is that the law says is important in the decision. It is
22 the same standard I will apply to you.

23 The Chairman concluded by informing Ms. Bensusan and Ms. Bayer, once again,
24 that the decision on intervention would be up to the Committee and that the decision
25 would be made on the first day of the hearing scheduled to begin January 12, 2010. In
26 the meantime, the Chairman made it clear that he expected Ms. Bensusan and Ms. Bayer
27 to follow the requirements of the procedural order and exchange witness lists with the
28 Applicant and each other. *Id.* at 43.

1 In accordance with the Chairman's directive, Ms. Bensusan provided a summary
2 of evidence and witnesses to Applicant's counsel. A copy of that summary is attached
3 as Exhibit 1. In the summary, Ms. Bensusan identifies a number of witnesses to address
4 various aspects of the application including water issues, Mohave County's general plan,
5 impacts on wildlife and flood control/drainage issues.

6 The hearing on the application began as scheduled on January 12, 2010. Both
7 Ms. Bensusan and Ms. Bayer appeared at the hearing and the issue regarding their
8 intervention was taken up prior to the presentation of evidence. At the outset, the
9 Chairman indicated that he had reviewed the written documentation and that it appeared
10 to him that the two proposed intervenors "have pretty much the same position on items"
11 and wondered if they disagreed on anything with regard to the application. He stated "in
12 other words, is this really two separate parties wanting to intervene, or is it just one party
13 wanting two bites?" Transcript, Vol. I at 7. Then he asked each of the proposed
14 intervenors to state why they wanted to be a party to the proceeding and to what extent
15 each of their interests differed from the others. In response, Ms. Bensusan stated:

16 Well, this is our neighborhood. This is our backyard, several of us here.
17 Actually, a lot of us. And we have deep concerns over the wet cool
18 portion of the application because of personal wells. That is our water
19 use. And basically it's our neighborhood, and we're concerned about
20 several different things, you know, flooding issues, water.

21 *Id.* at 9.

22 The Chairman reiterated his understanding that Ms. Bensusan had never been a party to
23 an administrative proceeding or a court proceeding before and asked her if that was true.
24 Once again, Ms. Bensusan indicated that she had assisted an individual in a previous line
25 siting matter. *Id.*

Member Houtz then indicated that he wanted to know from each of the intervenors
how many witnesses they intended to produce and the subject matter of their testimony.

1 Second, he wanted each to indicate whether they had participated in the County process
2 for the zoning change for the proposed power plant. *Id.* at 10. Member Houtz stated that
3 he asked that question because he didn't "want to second guess the decisions of the
4 County Board of Supervisors and have a dissenting presentation. I think we have to take
5 elected officials at their face..." *Id.* at 11.

6 Member Wong then moved that Ms. Bayer be allowed to participate as a party.
7 The motion failed for lack of a second. He then moved to allow Ms. Bensusan to
8 participate as a party and that motion also failed for lack of a second. The Chairman then
9 informed Ms. Bensusan and Ms. Bayer that "you ladies are not going to be able to - -
10 you're not going to be allowed to participate as parties." *Id.* at 12. Ms. Bensusan replied
11 that "eliminating both of us from this process is just - - it's defeating the entire meaning
12 of this process." *Id.* at 13. The Chairman told Ms. Bensusan that she had not been
13 eliminated from the process but would instead be allowed the opportunity to testify. *Id.*
14 at 14. "What you are not going to have is the obligation to do a lot of the other things
15 that parties have an obligation to do. The Committee has had significant recent
16 experience with folks who have tried to do what you wanted to do in this case. Some of
17 them have done it reasonably well. Some of them have done it, frankly, not well at all,
18 and have ended up hurting themselves." *Id.*

19 Ms. Bensusan then summarized her position as follows:

20 We feel it's very important for us to ask - - be able to ask questions of
21 the testimony that's being given here today as citizens, and I think
22 we've done a very good job of making it as smooth as possible by
23 including us. Because we just feel the citizens really don't get to ask
24 those questions, cross examine some of the testimony, and that's been
25 the issue from the beginning. Hopes had been, of course, at this point,
as intervenors, we would be allowed to cross-examine and get some
questions answered thoroughly from the viewpoint of the citizen and a
neighbor of the project.

Id. at 16.

1 Although Ms. Bensusan was not permitted to intervene as a party, the Committee
2 allowed her to provide testimony. On the second and what turned out to be the last day
3 of the hearing, Ms. Bensusan was allowed to testify in the afternoon. During the course
4 of her testimony, the Chairman interrupted Ms. Bensusan to inquire how much additional
5 testimony she would be providing. He told her that she had five minutes to finish.
6 Transcript, Vol. II, at 451. When she finished, she was questioned by Committee
7 Members. Then the Chairman asked her if she had spoken about all of the items that she
8 wished to speak about. She responded that “the only thing - - could I just say something
9 or do you want - - ” The Chairman asked her to just answer his question and she
10 responded that “oh, yes. I’m fine.” *Id.* at 468-9. The Chairman then moved to rebuttal
11 which was quickly concluded. The Committee deliberated for a brief period of time and
12 unanimously voted to issue the Certificate of Environmental Compatibility.

13 **III. THE APPLICANT DID NOT OBJECT TO MS. BENSUSAN’S**
14 **INTERVENTION AND EVEN REQUESTED THAT THE COMMITTEE**
15 **RECONSIDER ITS DECISION TO DENY HER INTERVENOR STATUS**

16 The Applicant in this case, Hualapai Valley Solar LLC, never once objected to the
17 intervention of Ms. Bensusan. To its credit, the Applicant recognized that the denial of
18 intervention to Ms. Bensusan created “concerns.” *See* Application for Ratification and
19 Reconsideration of Intervention Request at 2, attached as Exhibit 2. A week after the
20 Committee issued the Certificate, the Applicant filed a request that the Committee
21 reconsider its decision regarding the intervenor status to Ms. Bensusan and Ms. Bayer.
22 According to the Applicant, “granting intervention would be consistent with Commission
23 practice to encourage intervention and would remove any concerns about the individual’s
24 participation.” *Id.*
25

1 On January 27, 2010, the Committee considered the Applicant's request. Despite
2 being asked to do so by the Applicant, the Committee unanimously voted to confirm its
3 earlier decision to deny Ms. Bensusan and Ms. Bayer intervention status.

4 **IV. MS. BENSUSAN HAD A RIGHT TO INTERVENE IN THIS CASE**

5 Intervention is explicitly permitted in proceedings conducted by the Committee.
6 A.R.S. § 40-360.05 provides that the parties to a certification proceeding shall include
7 "such other persons as the Committee or hearing officer may at any time deem
8 appropriate." Similarly, A.A.C. R14-3-204(D) provides that the presiding officer may,
9 upon his own motion and notice to all parties to the proceeding ten days prior to the date
10 set for hearing, designate, as he deems appropriate, additional persons as parties to the
11 proceeding.

12 The Committee takes the position that the statute and rule confer upon them the
13 unfettered and unreviewable discretion to determine who will be allowed to participate as
14 a party in Committee proceedings. Obviously, the Committee does not even believe that
15 it must provide reasons for denying intervention because it wholly failed to do so in this
16 case.

17 The issue is how to determine whether or not the Committee's denial of
18 intervention in any particular instance was "appropriate" as that term is used in A.R.S. §
19 40-360.05(A)(4). The Rules of Practice and Procedure before the Power Plant and
20 Transmission Line Siting Committee contain the answer. A.A.C. R14-3-216 provides
21 that in cases in which procedure is not set forth either by law or by the Committee's rules,
22 the Rules of Civil Procedure for the Superior Courts of Arizona shall govern. Rule 24 of
23 the Arizona Rules of Civil Procedure explicitly addresses intervention. Rule 24(a)
24 provides for intervention as a matter of right when the applicant claims an interest
25 relating to the property or transaction which is the subject of the action and the applicant

1 is so situated that the disposition of the action may as a practical matter impair or impede
2 the applicant's ability to protect that interest. That description fits Ms. Bensusan
3 perfectly. She certainly claims an interest relating to the proposed project and the
4 Committee's disposition of the application may impair or impede her ability to protect
5 that interest. Not only is Ms. Bensusan one of the closest property owners to the
6 proposed power plant, her well draws from the same aquifer. It is difficult to imagine a
7 more direct and substantial interest.

8 Nevertheless, even if it is determined that Ms. Bensusan was not entitled to
9 intervention as of right, then she was certainly entitled to permissively intervene pursuant
10 to Rule 24(b), Arizona Rules of Civil Procedure. The rule regarding permissive
11 intervention is remedial and should be liberally construed with the view of assisting
12 parties in obtaining justice and protecting their rights. Pursuant to that Rule, permissive
13 intervention is warranted when an applicant's claim or defense and the main action have
14 a question of law or fact in common. An additional factor to consider is whether the
15 intervention would unduly delay or prejudice the adjudication of the rights of the original
16 parties. It is difficult to see how prejudice to the Applicant was possible because it did
17 not object to Ms. Bensusan's intervention.

18 **V. THE COMMITTEE'S FAILURE TO ALLOW MS. BENSUSAN TO**
19 **INTERVENE WAS NOT "APPROPRIATE"**

20 Even if it was determined that the Rules of Civil Procedure regarding intervention
21 do not apply to this case, the issue is whether the Committee's action in denying
22 intervention was "appropriate." Without a decision from the Committee specifying the
23 reasons for which intervention of Ms. Bensusan was denied, the Commission is left with
24 nothing but the Committee's discussion of these issues. Any objective analysis of that
25 discussion leads to only one conclusion: Ms. Bensusan was denied intervention because
she is not legally trained and because the Committee was concerned that her intervention

1 as well as Ms. Bayer's would prolong the proceeding beyond their expectations. *See, for*
2 *example*, comments of Member Palmer, Transcript, January 27, 2010, at 28 ("...[T]he
3 proceedings would likely be protracted unnecessarily by unskilled non attorney pro per
4 intervenors."). In short, the intervention of Ms. Bensusan would have made for a slightly
5 messier and longer proceeding than the Committee anticipated and planned.

6 The Commission can decide for itself whether this is an appropriate basis for
7 denying intervention to a citizen who has a direct and substantial interest in the outcome
8 of a line siting matter. Up until now, the Commission and the Committee have had a rich
9 and long tradition of allowing broad participation in Commission and Committee
10 proceedings. The fact that someone may not be legally trained cannot be used as a factor
11 against them in determining whether they can participate as a party to a proceeding. Ms.
12 Bensusan has a constitutional right to represent herself. The only time counsel is
13 required is when entities other than individuals seek to participate. A.A.C. R14-3-208(F).

14 Similarly, the convenience of the Committee should have nothing to do with
15 whether citizens are allowed to participate as parties in Commission and Committee
16 proceedings. If the participation of citizen intervenors is inconvenient for Committee
17 members, then perhaps they should reconsider their service on the Committee.

18 **VI. RELIEF**

19 The simplest and most effective way to remedy the injustice to Ms. Bensusan is to
20 deny the Certificate. If the Certificate is denied, then the applicant would be required to
21 refile its application and Ms. Bensusan would be able to participate fully as a party
22 assuming the Committee grants her intervention.

23 Alternatively, the Commission could condition the Certificate upon reopening the
24 matter and taking additional evidence pursuant to A.R.S. § 40-252. This process would
25 allow for the Commission itself to supplement the proceedings conducted by the

1 Committee and allow Ms. Bensusan to cross-examine the Applicant's witnesses and
2 present witnesses and evidence of her own.

3 Both approaches have advantages and disadvantages. Denying the Certificate and
4 requiring the applicant to file a new application will provide the Commission with one
5 full and complete record. Although it will require some duplication, the Committee
6 hearing conducted in this case took only a little more than a day if the participation of the
7 proposed intervenors is excluded from consideration. Therefore, while duplication will
8 occur, it is minimal.

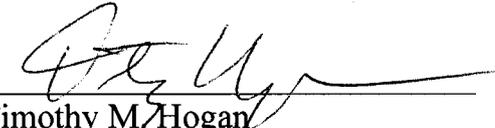
9 On the other hand, requiring that the applicant file a new application does not
10 guarantee that the Committee will treat Ms. Bensusan any better the second time around
11 than it did the first. It is true that the Commission should not be required to do the
12 Committee's job but the only way to ensure that Ms. Bensusan's rights are protected may
13 be for the Commission to conduct the necessary supplemental proceedings.

14 **VII. CONCLUSION**

15 Ms. Bensusan was unlawfully denied the opportunity to participate in this matter.
16 The Commission should either deny the Certificate or condition it upon reopening the
17 proceedings with the full participation of Ms. Bensusan.

18 DATED this 26th day of February, 2010.

19 ARIZONA CENTER FOR LAW IN
20 THE PUBLIC INTEREST

21 By 

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23 202 E. McDowell Rd., Suite 153
24 Phoenix, Arizona 85004
25 Attorneys for Denise Bensusan

1 ORIGINAL and 13 COPIES of
2 the foregoing filed this 26th day
of February, 2010, with:

3 Docketing Supervisor
4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington
Phoenix, AZ 85007

7 COPIES of the foregoing
8 mailed this 26th day of February,
2010 to:

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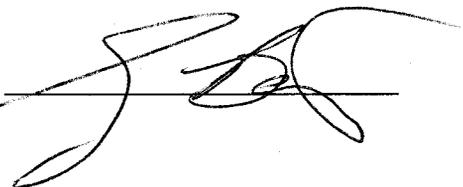


EXHIBIT A

1 Witness: Margot Truini
2 Hydrologist
3 Flagstaff Programs
4 Arizona Water Science Center
5 2255 N. Gemini Dr., Flagstaff, AZ 86001
6 mtruini@usgs.gov
7 phone: 928-556-7352; Fax: 928-556-7112
8 <http://az.water.usgs.gov>

9
10 **EXHIBIT B and or witnesses expected to relay information to**
11 **panel.**

12 ARIZONA DEPARTMENT OF WATER RESOURCES, GROUND WATER OCCURANCE
13 AND MOVEMENT

14 See Document at <http://pubs.usgs.gov/sir/2007/5182/>

15 WITNESSES: Arizona Department Of Water Resources: Witness:
16 Herb Guenther (or representative chosen to participate due to
17 scheduling) Depletion/overdraft of the Hualapai Valley Aquifer
18 and the effects of the same.

19 Witness: Jack Hommel (local water expert and previous chairman
20 of Northwest Arizona Watershed Council) Cone of depression
21 explanation, concerns over depletion, lack of recharge and TDS
22 etc..

23 Witness: Laura Grignano, Industrial Planner, Arizona
24 Department of Water Resources, (520) 770-3805,
25 lagrignano@azwater.gov

26 <http://www.azwater.gov/AzDWR/WaterManagement/solar/default.htm>

1 Robert Fenwick (local water expert and researcher) as a
2 neighboring water user Robert brings a unique and accurate
3 accounting of the impact of the water usage and its impact on
4 the area.

5
6 **EXHIBIT C (attached electronically) and or witnesses expected to**
7 **relay information to panel.**

8 Concentrating Solar Power Commercial Application Study: Reducing
9 Water Consumption of Concentrating Solar Power Electricity
10 Generation Report to Congress U.S. Department of Energy
11

12 **EXHIBIT D and or witnesses expected to relay information to**
13 **panel.** (Attached electronically) Mohave County General Plan

14 Mohave Counties General Plan vilifies Smart Growth Practices.
15 Policy 3.5 (page 38) states that "Mohave County will only
16 approve power plants using "dry cooling" technology when the
17 aquifer is threatened by depletion or sustenance."

18 Witness: Kevin Davidson, Mohave County Development Services
19 Planner. (How the General Plan was created and what its intent
20 and purpose are in accordance with the Smart Growth Practices of
21 the State of Arizona.
22

23 **EXHIBIT E and or witnesses expected to relay information to panel**

24 Impact on wildlife within Red Lake and surrounding areas.

25 WITNESS: Andy Whitefield BLM
26

1 Detail the potential impacts to the biological resources will be
2 analyzed and described. At least the way the BLM looks at this
3 is we describe the resources which may be impacted, i.e. the
4 vegetation communities, protected or sensitive plants/animals
5 that are likely to be impacted, etc., and the effects can be
6 taken into account in any decision that is made. To the extent
7 possible these are quantified, like how many acres would be
8 permanently and temporarily be disturbed, are there any raptor
9 nests that are in the area and could be affected, etc.

10
11 **Flood control and drainage pattern issues.**

12 Neighboring properties that have lived through the serious
13 flooding which the denuding of land surrounding their homes has
14 caused. Video shall be supplied to committee.

15 Witness's Johanna and Rick Meinert

16 Witness's Robert and Fern Fenwick

17 Witness's Dr. and Mrs. Jack Weidner

18
19 **ARMY CORP OF ENGINEERS**

20 Grading issues and the fact that there has not been an
21 application prior to approval by Mohave County.

1 **PRESENENCE SET BY BIG SANDY:**

2 Witness: James Estelle, 623-810-6300

3 **IMPACT ON WATER CONSUMPTION IN THE CITY OF KINGMAN**

4 Witness: Harley Petit Resident Against Irre4sponsible
5 Development

6 **Concerns over Mr. Dongs SEC's violations**

7 WITNESS MITCHELL DONG

8 Mr. Mitchell Dong "President" of Mohave Solar (and Chronos Asset
9 Management) has been sanctioned by the S.E.C. for "fraudulent
10 market timing violations". Legitimate concerns over whether he
11 is a fit and proper to participate in utilize management is of
12 concern: The SEC ordered Mr. Dong to pay \$ 2.2 million because
"The Order finds that Chronos (another Mitchell Dong Company he
is President of) and Dong engaged in fraudulent market timing
and late trading scheme".

13 <http://www.sec.gov/news/digest/2008/dig012508.htm>

14 IN THE MATTER OF CHRONOS ASSET MANAGEMENT, INC. AND MITCHELL L.
15 DONG

16 On January 25, the Commission issued an Order
17 Instituting
Administrative and Cease-and-Desist Proceedings, Making
Findings, and
18 Imposing Remedial Sanctions and a Cease-and-Desist Order
Pursuant to
19 Section 8A of the Securities Act of 1933, Section 21C
of the
20 Securities Exchange Act of 1934, Sections 203(e) and 203(f) of
the
21 Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of
the
22 Investment Company Act of 1940 (Order) against Chronos Asset
23 Management, Inc. (Chronos) and Mitchell L. Dong (Dong). The
Order
24 finds that Chronos and Dong engaged in a fraudulent market
25 timing and
Late trading scheme. From January 2001 to September 2003,
26 Chronos and
Dong used deceptive means to continue market timing in mutual
funds

1 that had previously attempted to detect and restrict, or
2 that
3 otherwise would not have permitted, Chronos's trading. In
4 addition,
5 from May 2003 to September 2003, Chronos traded mutual fund
6 shares
7 after 4:00 p.m. eastern time while receiving the same day's
8 price. By
9 virtue of their conduct, Chronos and Dong willfully
10 violated, and
11 aided and abetted and caused violations of, Section 17(a)
12 of the
13 Securities Act of 1933, Section 10(b) of the Securities
14 Exchange Act
15 of 1934 and Rule 10b-5 thereunder, and willfully aided and
16 abetted and
17 caused violations of Rule 22c-1(a) of the Investment Company
18 Act.

19 Based on the above, the Order censures Chronos; suspends
20 Dong from
21 associating with an investment adviser or investment company
22 for 12
23 months; orders Chronos and Dong to pay, on a joint and several
24 basis,
25 disgorgement in the amount of \$303,000 plus prejudgment
26 interest in
the amount of \$73,915.80, and a civil money penalty in the
amount of
\$1,800,000; and orders that Chronos and Dong cease and
desist from
committing or causing future violations of Section 17(a)
of the
Securities Act of 1933, Section 10(b) of the Securities
Exchange Act
of 1934 and Rule 10b-5 thereunder, and Rule 22c-1 of the
Investment
Company Act. Chronos and Dong consented to the issuance of the
Order
without admitting or denying any of the findings. (Rels. 33-
8883; 34-
57202; IA-2696; IC-28135; File No. 3-12934)

25 **Witnesses in reference to Proposition 207.** "Diminution in
26 Value, just compensation. Prop 207 was passed relating to the

1 Private Property rights Protection Act. This Solar Plant is
2 being proposed in an area that is zoned residential. Heavy
3 industrial zoning will negatively affect. Numerous citizens
4 will testify concerning the negative impact of the heavy
5 industrial zoning in their neighborhoods and their concern of
6 their property values plummeting. Proposition 207 will apply and
7 this community will be filing for compensation.

8
9 The information above was hastily supplied to the Docket Control
10 and service list from the Procedural Order dated 1-5-2010
11 electronically in order to comply. I will supply hard copies to
12 all concerned and expand upon, and add any evidence, witnesses
13 or documents that will expand upon all information given today.

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15
16 Denise Herring-Bensusan

17
18
19 By _____

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EXHIBIT B

1 ORIGINAL

2 BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION
3 LINE SITING COMMITTEE

4 IN THE MATTER OF THE APPLICATION
5 OF HUALAPAI VALLEY SOLAR LLC, IN
6 CONFORMANCE WITH THE
7 REQUIREMENTS OF ARIZONA REVISED
8 STATUTES §§ 40-360.03 AND 40-360.06,
9 FOR A CERTIFICATE OF
10 ENVIRONMENTAL COMPATIBILITY
11 AUTHORIZING CONSTRUCTION OF THE
12 HVS PROJECT, A 340 MW PARABOLIC
13 TROUGH CONCENTRATING SOLAR
14 THERMAL GENERATING FACILITY AND
15 AN ASSOCIATED GEN-TIE LINE
16 INTERCONNECTING THE GENERATING
17 FACILITY TO THE EXISTING MEAD-
18 PHOENIX 500kV TRANSMISSION LINE,
19 THE MEAD-LIBERTY 345kV
20 TRANSMISSION LINE OR THE
21 MOENKOPI-EL DORADO 500kV
22 TRANSMISSION LINE.

Docket No.: L-00000NN-09-0541-
00151

Case No. 151

APPLICATION FOR
RATIFICATION AND
RECONSIDERATION OF
INTERVENTION REQUEST

Arizona Corporation Commission
DOCKETED

JAN 21 2010

DOCKETED BY



23 Introduction

24 To ensure that the Certificate of Environmental Compatibility in this matter is free of any
25 procedural questions or concerns, Hualapai Valley Solar L.L.C. ("HVS") requests that the
26 Arizona Power Plant and Transmission Line Siting Committee ("Committee") reconvene to
address two issues. First, HVS requests that the Committee ratify the legal action made to grant
the Certificate of Environmental Compatibility. Second, HVS requests that the Committee
reconsider the question of whether to grant intervenor status to those individuals who requested it.

Discussion

I. Ratification would resolve any potential concerns relating to compliance with the
Arizona Open Meeting Law.

HVS respectfully requests that pursuant to A.R.S. § 38-431.05, the Committee ratify the
legal action taken by the Committee on January 13, 2010. HVS believes that such action is

1 appropriate to validate the Committee's vote in light of a potential concern regarding the Arizona
2 Open Meeting Law.

3 At an evidentiary hearing and open meeting held on January 12, 2010, the Chairman of the
4 Committee instructed individuals attending the meeting that "recording is inappropriate."
5 Transcript ("Tr.") at 5:12. The Chairman indicated that he was concerned about the possibility of
6 multiple transcripts of the proceeding, and therefore asked attendees "not to record these
7 [proceedings] unless you're willing to accept at the beginning that you're going to record them all
8 and provide transcripts to the Commission." *Id.* at 5-6. The Open Meeting Law allows "any
9 person in attendance" at an open meeting to record the meeting with a "tape recorder" or by any
10 other means, unless there is "active interference with the conduct of the meeting." A.R.S. § 38-
11 431.01(F).

12 To avoid any contention that the legal action taken by the Committee at the January 13
13 meeting is null and void pursuant to A.R.S. § 38-431.05, it may be appropriate for the Committee
14 to ratify that action.

15 Section 38-431.05(B) specifies the steps for ratification.

16 **II. Allowing intervention would address any potential concerns relating to public**
17 **participation.**

18 At the hearing, the Chairman asked whether there were motions from the Committee
19 members to allow two individuals to participate as parties in the hearing. Committee Member
20 Barry Wong so moved, but the motions died for lack of a second. Tr. at 12:4-18. As a result,
21 these two individuals presented testimony under oath as Committee witnesses, but did not cross
22 exam other witnesses. Tr. at 15:11-22.

23 Although HVS believes the Committee has the discretion not to grant intervention
24 pursuant to A.R.S. § 40-360(A)(4), HVS requests that the Committee reconsider intervention in
25 this case. Granting intervention would be consistent with Commission practice to encourage
26 intervention and would remove any concerns about the individuals' participation.

1 **Conclusion**

2 HVS requests that in order to avoid delay with this matter, this application be considered
3 in conjunction with the Committee's next meeting, which is scheduled for January 26 and 27,
4 2010. In the event the Committee decides to grant intervention, HVS will have as many of its
5 witnesses available as possible for cross examination at that time.

6 Respectfully submitted this 21st day of January, 2010.

7 LEWIS AND ROCA LLP

8 

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17 **ORIGINAL** and twenty-five (25) copies
18 of the foregoing filed this 21st day
19 of January, 2010, with:

20 The Arizona Corporation Commission
21 Utilities Division - Docket Control
22 1200 W. Washington Street
23 Phoenix, Arizona 85007

24 **COPY** of the foregoing served via electronic
25 mail this 20th day of January, 2010, to:

26 John Foreman, Chairman
Arizona Power Plant and Transmission Line Siting Committee
Office of the Attorney General
1275 W. Washington Street
Phoenix, Arizona 85007

Janice Alward, Chief Counsel
Arizona Corporation Commission
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