

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER

MARC SPITZER  
COMMISSIONER



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ORIGINAL

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EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

2002 APR 10 P 11:55

April 10, 2002

Via facsimile at 520.747.1550 and first class mail

Lawrence V. Robertson, Jr., Esq.  
Munger Chadwick, P.L.C.  
333 N. Wilmont, Suite. 300  
Tucson, AZ 85711

Re: Toltec (Case # 112 and 113) and Bowie (Case # 118)

Dear Mr. Robertson:

I recently received the attached letter and the February 21, 2001 minutes of the Southwest Power Group II, LLC board of directors meeting from an anonymous sender. Both have been filed with Docket Control in the relevant dockets. I am surprised and concerned to learn of the possible conflict of interest of witnesses in these cases. In my view, it is imperative that any questions that implicate the proceedings before the Power Plant and Line Siting Committee and the Commission be resolved as soon as possible.

Accordingly, please disclose all financial interests of all of applicant witnesses in these cases and all interests of their employers and supervisors. Also, please include a specific disclosure of all interests of Mr. Bergdale. Additionally, indicate if such interests were disclosed in the record, and if they were disclosed, provide a citation to the record. Additionally, please disclose the complete ownership structure of Southwest Power Group II, LLC, including disclosure of all the ownership of (1) all entities that have an interest in Southwest Power Group II, LLC or (2) any entity that has an ownership interest in Southwest Power Group II, LLC or (3) any entity that has an interest in any other entity that has a direct or remote ownership interest in Southwest Power Group II, LLC.

Lastly, please verify the accuracy of the above-referenced Southwest Power Group II, LLC board minutes.

Please respond to this letter within ten days and file a copy of your response with Docket Control.

Sincerely,

William A. Mundell  
Chairman

Arizona Corporation Commission  
DOCKETED

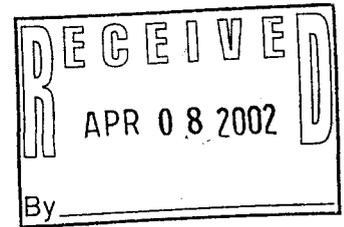
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cc: Commissioner Irvin  
Commissioner Spitzer  
Ernest Johnson, Director of the Utilities Division  
Laurie Woodall, Chairman-Designee of the Power Plant and Line Siting  
Committee  
Docket Control



March 29, 2002

Commissioner William A. Mundell  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007-2996

**RE: Toltec Power Station (Case Number 112 and 113)** L-000004-01-0112  
**Bowie Power Station (Case Number 118)** L-000008-01-0118

*Decision No. 64446*

*Decision No. 64625*

Dear Commissioner Mundell:

The purpose of this letter is to advise you that the environmental firm that prepared the Certificate of Environmental Compatibility application for Toltec and Bowie is owned by one of the owners of Toltec and Bowie. The environmental firm is EPG, Inc. (ACC company 0885136-2) whose President and CEO is Garlyn Bergdale. Garlyn Bergdale is also the general manager of WGP Consultants II, LLC (ACC LLC L-09500862), a company that stands to make a substantial amount of money upon the construction of Toltec and Bowie – as shown in the enclosed document. I feel that there is an inherent conflict of interest in the firm preparing the environmental assessment being an owner of the project and hope that you will investigate this matter further.

Sincerely,

Concerned citizen

Cc: Max Jarman, Arizona Republic

*TIMOTHY PAUL DIER*

**MINUTES OF A SPECIAL MEETING  
OF THE MEMBERS OF SOUTHWESTERN  
POWER GROUP, II, LLC**

A special meeting of the Members of Southwestern Power Group II, LLC, (SWPG II) was held at 4350 East Camelback Road, Suite B150, Phoenix, AZ 85018, on the 21st day of February, 2001. Present and in attendance were the following Members: MMR Power Group, LLC, through its General Manager, James B. Rutland; WGP Consultants II, LLC, through its General Manager, Garlyn Bergsdale; MARCO Power Group, LLC, through its General Manager, Maurice C. Richard; and Papago Power Group, LLC, through its General Manager, Tom Wray

WHEREAS, due to the greater dilution of ownership interests of the members below, it is hereby:

RESOLVED, that, upon a sale, disposal, encumbrance, mortgage, or lease of a substantial percentage of SWPG II's assets and/or any of its projects, MMR Power Group, LLC and WGP Consultants II, LLC are to receive the following:

- A. A Continued Financial Interest in Toltec on the Basis Shown Below:
  - A cash payment of \$5,000,000 at financial closing
  - A cash payment of \$5,000,000 at commercial operations
  
- B. A Continued Financial Interest in Bowie on the Bases Shown Below:
  - A cash payment of \$2,500,000 at financial closing
  - A cash payment of \$2,500,000 at commercial operations
  
- C. A Continued Financial Interest in Pyramid Lake on the Basis Shown Below:
  - A cash payment of \$2,500,000 at financial closing
  - A cash payment of \$2,500,000 at commercial operations

If any of the above projects do not reach financial closing, the next project to reach financial closing will owe MMR Power Group, LLC and WGP Consultants, II, LLC, \$5,000,000 at financial closing until MMR Power Group, LLC is paid \$20,000,000 in development fees.

MMR Power Group, LLC will receive 75.385% and WGP Consultants II, LLC will receive 24.615% of the combined total cash payments referred to above.

There being no further business, the meeting was adjourned.

**CERTIFICATE**

I, Tom Wray, do hereby certify that I am the Secretary and Keeper of the Records of Southwestern Power Group II, LLC, and that the foregoing is a true and correct representation of the events of the meeting described hereinabove on the 21<sup>st</sup> day of February, 2001.

IN WITNESS WHEREOF, I have affixed my name as Secretary on this 21st day of February, 2001.

SOUTHWESTERN POWER GROUP II, LLC

By: \_\_\_\_\_

*Tom Wray*  
TOM WRAY, Secretary