

L-000004-01-0118



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TO: Nancy Cole, Supervisor
Docket Control Fax No. 602-364-0644

FROM: Lawrence V. Robertson, Jr. Fax No. 520-747-1550

MESSAGE: Please place a copy of the enclosed letter and Appendices "A" through "D" in Siting Committee Case Nos. 112, 113 and 118. Thank you for your assistance.

ATTACHED: SWPG II Response to Chairman Mundell's April 10, 2002 letter to Lawrence Robertson, Jr.

Arizona Corporation Commission
DOCKETED

Hard Copy Mailed: Yes No

Client/Matter Name: SWPG/Toltec

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April 18, 2002

William A. Mundell, Chairman
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Toltec Power Station, LLC
Docket Nos. L-00000Y-01-0112
and L-00000Y-01-0113
(Case Nos. 112 and 113)

Bowie Power Station, LLC
Docket No. L-00000Y-01-0118
(Case No. 118)

Dear Chairman Mundell:

This letter is written on behalf of Southwestern Power Group II, LLC ("SWPG") in response to your correspondence of April 10, 2002 to me in my capacity as counsel for Toltec Power Station, LLC ("Toltec") and Bowie Power Station, LLC ("Bowie") in the above-captioned proceedings before the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") and the Commission. In preparing the same, I have drawn upon information provided to me by SWPG and conversations with several of its employees and owners.

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William A. Mundell, Chairman
April 18, 2002
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DISCUSSION OF REQUESTED INFORMATION

Appendix "A" to this letter is a copy of a diagram which depicts the ownership structure of SWPG as of June 13, 2001. That diagram was prepared by an independent Certified Public Accountant who was assisting SWPG at that time in connection with the development of internal project cost allocation procedures and accounting programs. As you will note, 100% of the ownership interest in SWPG at that time was held by three entities, namely: Papago Power Dev. LLC (8.75%), MMR Power Group, LLC (81.25%) and Marco Power Group, LLC (10%). In turn, SWPG owned 100% of both the Toltec and Bowie projects. In December, 2001, MMR Power Group, LLC acquired the ownership interest of Marco Power Group, LLC; and SWPG has since been owned by Papago Power Dev., LLC (8.75%) and MMR Power Group, LLC (91.25%), respectively.

Appendix "B" to this letter is a copy of pages 6 and 7 from a Confidential Private Placement Memorandum which was prepared and distributed by BNP Paribas in June, 2001, in connection with preliminary financing activities relating to several merchant power plant projects SWPG was involved with at that point in time. As you will note, those pages describe SWPG's ownership and history, including the make-up of Papago Power Dev., LLC, Marco Power Group, LLC and MMR Power Group, LLC, respectively.

With further reference to the second paragraph of your letter, Appendix "C" to this letter contains a list of the names and business affiliations of the individuals used by Toltec and Bowie as witnesses in Case Nos. 112, 113 and 118. With the exception of Tom Wray, none of these individuals or their employers has/have an ownership interest in SWPG at present, nor did they at any time during the proceedings before the Siting Committee and the Commission. With regard to Mr. Wray, he specifically disclosed his ownership interest in SWPG during Case No. 118 [Tr. 75, L.13-Tr. 76, L.15]; and in both the Toltec and Bowie proceedings he testified as the policy witness for the Applicant with an obvious interest in a successful outcome¹ Copies of the cited transcript pages are enclosed as Appendix "D."

With continued reference to the second paragraph of your letter and Garlyn Bergdale, at one time WGP Consultants II had an ownership interest in SWPG that was sold to MMR Power Group, LLC in early January, 2001.² In that regard, the Commission's records will reflect that the Application(s) for a Certificate of Environmental Compatibility were filed on March 2, 2001 (Case No. 112), April 16, 2001 (Case No. 113) and July 27, 2001 (Case No. 118).

¹ Also, see Tr. 65, l. 16- Tr. 75, l. 12 in Case No. 118 where Mr. Wray described SWPG and several approaches to project financing it was considering.

² Mr. Bergdale was a member of WGP Consultants II, LLC.

William A. Mundell, Chairman
April 18, 2002
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With reference to the third paragraph of your letter, the owners of SWPG have searched the company's records in both its Phoenix and Louisiana offices, and have not found either an original or a copy of the referenced document among the corporate records. Also, they do not recall the occurrence of such a meeting at that point in time. During the search in the Phoenix office, they did find evidence of several documents having been taken from their customary placement in the company's records; and believe that evidence and the unsigned "concerned citizen" letter are related to a former employee of SWPG who was unhappy over a recent termination of employment. In any event, they do not have an original document or a copy against which to compare the purported copy of minutes from a February 21, 2001 meeting of the members of SWPG. Moreover, the ownership information contained in that document appears to be at variance with that reflected in both Appendices "A" and "B" to this letter, and the aforementioned sale of WGP Consultants II's ownership interest in January, 2001.

PERTINENT OBSERVATIONS

SWPG believes there are several observations which should also be made with regard to your request.

First, SWPG does not believe the phrase "conflict of interest" is applicable to a situation in which a witness has an actual or prospective ownership interest in a proposed project on whose behalf that witness is offering testimony. That phrase might be applicable to one who decides whether a particular permit is to be issued or a proposal approved. However, a witness is not the decision maker in such circumstances; and in Case Nos. 112, 113 and 118 that role was performed by the Siting Committee and the Commission. Moreover, if the testimony is given under oath, as was the situation for each of the Applicant's witnesses in both the Toltec and Bowie proceedings, there is a presumption of veracity. Finally, if financial compensation were to be erected as a barrier to offering testimony in support of a given project or proposal, any applicant would be precluded from offering the testimony of its owners, employees and/or retained consultants and experts.

Ultimately, the Siting Committee and the Commission, not a consultant or applicant, determine environmental compatibility based on the evidence presented. Intervenors and the Commission's staff are free to, and often do, present evidence to support their respective positions and attempt to counter the evidence of a project proponent and its witnesses. Moreover, the Siting Committee and the Commission have at times disagreed with and rejected the conclusions of an applicant's witnesses in cases in the past.

Second, SWPG is unaware of any provisions in A.R.S. §40-360 et seq. which authorize the Commission to require SWPG to submit the types of information you have requested of it in your letter. However, as demonstrated in the preceding section of this letter, it has provided that information within its control.

William A. Mundell, Chairman
April 18, 2002
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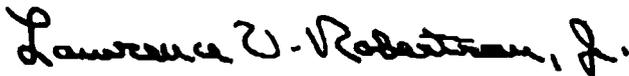
Third, SWPG has no authority to require that non-employee witnesses used by Toltec and Bowie disclose "all [of their] financial interests," as requested in your letter. Similarly, it has no authority to require that the employers and supervisors of those witnesses disclose "all [of their financial] interests." Such information is private as to those individuals and organizations, and beyond the control or possession of SWPG.

Fourth, and in view of the immediately preceding consideration, SWPG has interpreted the requests for information set forth in the second paragraph of your letter to relate to ownership interests in SWPG, Toltec and/or Bowie.

CONCLUSION

Needless to say, in view of the preceding discussion and the enclosed information, it is SWPG's opinion that nothing has occurred or exists which would "implicate the proceedings" before the Siting Committee and the Commission in Case Nos. 112, 113, or 118. In that regard, SWPG hopes the foregoing and the enclosed appendices are responsive to your April 10, 2002 letter.

Sincerely,

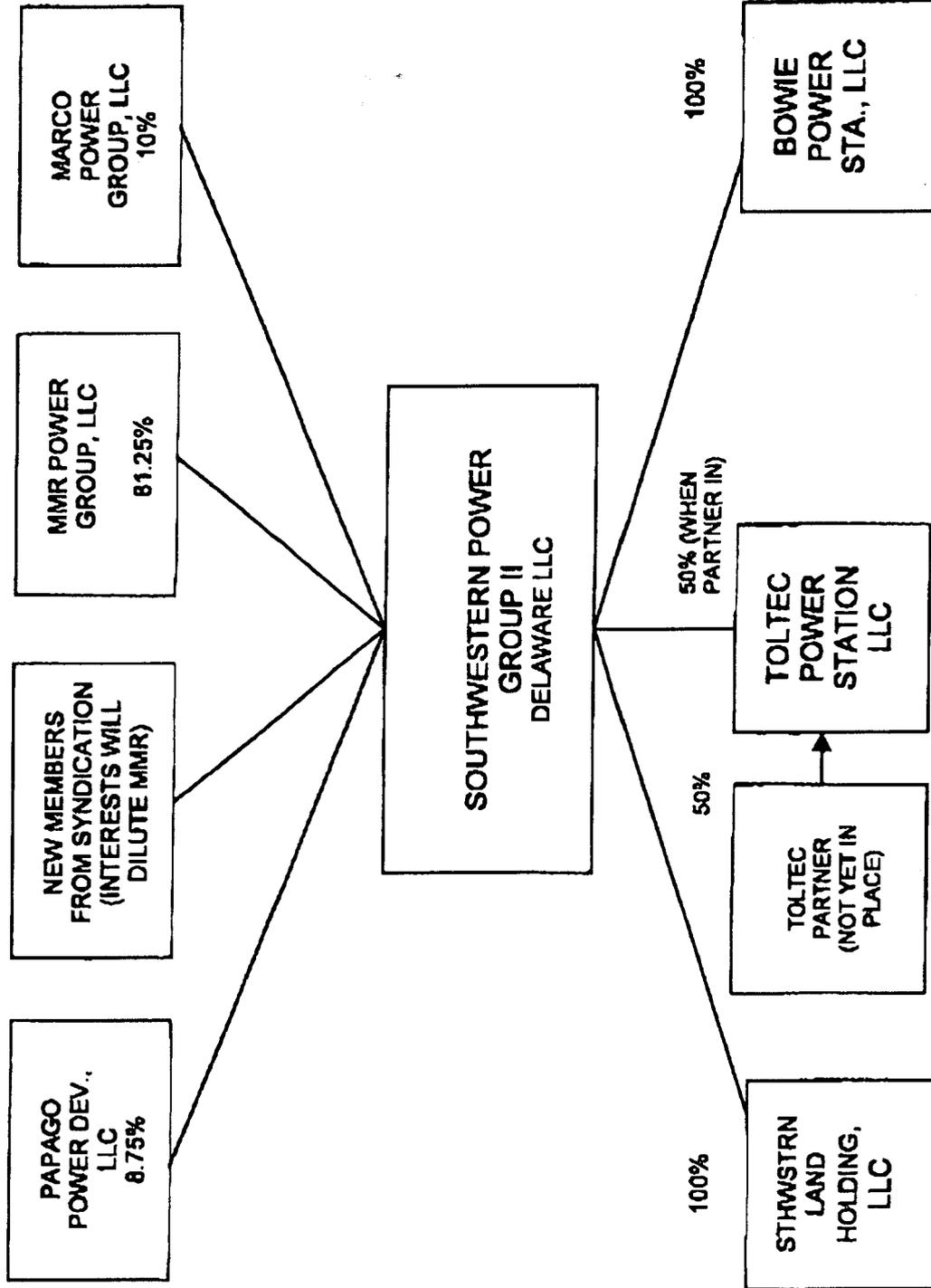


Lawrence V. Robertson, Jr.

LVR:cl

- cc: Commissioner Jim Irvin
- Commissioner Marc Spitzer
- Ernest Johnson
- Laurie Woodall
- Docket Control

EXHIBIT "A"



DATE: 6/13/01

EXHIBIT "B"

Private Placement Memorandum

SOUTHWESTERN

Power Group LLC

An Energy Company - Alliance Builder

\$200,000,000

Capital Commitments to Purchase Interests

June 2001



Confidential Copy 89

Name of Intended Recipient _____

SOUTHWESTERN

Power Group LLC

An Energy Company - Alliance Builder

SOUTHWESTERN POWER GROUP, LLC

\$200,000,000

CAPITAL COMMITMENTS TO PURCHASE INTERESTS IN SOUTHWESTERN POWER GROUP, LLC

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

This Confidential Private Placement Memorandum (the "Memorandum") is being furnished on a confidential basis solely for the purpose of considering the investment described herein. The information contained in this Memorandum has been obtained from SouthWestern Power Group, LLC (the "Company") and other sources identified herein. The estimates and projections contained herein have been prepared by the Company's management in good faith and on a basis believed to be reasonable; such estimates and projections involve significant elements of subjective judgment and analysis and no representation or warranty can be made as to their attainability. No representation or warranty, expressed or implied, is made as to the accuracy or completeness of such information, and nothing contained in this Memorandum is, or shall be relied upon as, a promise or representation as to the past or the future. BNP Paribas Corporation and BNP Paribas Securities Corporation ("BNPP") have not independently verified any of such information and does not assume any responsibility for its accuracy or completeness. This Memorandum is submitted in connection with the private placement of Interests as described herein (the "Interests"), and may not be reproduced or used, in whole or in part, for any other purpose.

June 2001



3. Company Ownership & History

The Company was formed in June, 2000 and is owned by Marco Power Group, LLC ("Marco"), Papago Power Development, LLC ("Papago"), and MMR Power Group, LLC ("MMR Power"). Marco and Papago are, respectively, investment vehicles of Maurice Richard, the Company's CEO, and Tom Wray, the Company's EVP. MMR Power is an investment vehicle for a group of investors affiliated with the MMR Group.

The MMR Group is an industrial contractor that provides instrumentation, electrical and technical services to the process and power industries. The firm was established in 1985, is based in Baton Rouge, Louisiana and has approximately 1,200 employees. The MMR Group includes MMR Constructors Inc., MMR International Services, Inc., MMR Offshore Services Inc., MMR Technical Services, Inc. and several foreign office affiliates.

- MMR Constructors Inc. supplies and installs electrical equipment and instrumentation and controls in North America, and has offices in Baton Rouge, Lafayette and New Orleans, Louisiana and Atlanta, Georgia.
- MMR International Services Inc. and related affiliates provide the same services as MMR Constructors outside the United States in a variety of countries in Asia, South America and the Middle East.
- MMR Offshore Services, Inc. and related affiliates provide technical services to the offshore oil and gas industry in the Gulf of Mexico and other international locations.
- MMR Technical Services Inc. is a contract staffing resource that leases technical personnel on a temporary or long term basis to the process and power industries.

The MMR Group had total revenues of approximately \$125 million in 2000. The MMR Group is privately owned and has 11 shareholders. MMR Group's lead bank is Banc One.

The Company's senior management team has a successful track record of working together on the development of power stations in its target region. MMR Power and Papago were members in SouthWestern Power Group ("SWPG I") which initiated the successful development of an approximately 2,080 MW natural-gas fired power project in Maricopa County, Arizona (the "Gila River Project"). The Gila River Project was sold to an affiliate of Panda Energy International, Inc. ("Panda") and is now owned jointly by Panda and an affiliate of TECO Energy, Inc., the parent company of Tampa Electric Company. The project is currently under construction and in the final stages of financing. Maurice Richard was retained to assist in the sale of the Gila River Project to Panda and became manager of SWPG I.

MMR Power holds a majority interest in the Company and has funded all of its approximately \$3.5 million of operating and development expenditures to date. As part of

the Offering, MMR Power will be repaid its funding of the Company and receive warrants, exercisable upon a Liquidity Event, equal to a 24.8% ownership of the Company on a fully diluted basis. (See *Attachment A - Summary of Proposed Terms* for more information on the Offering.) In addition MMR Power will receive agreed upon success payments from certain of the Company's projects contingent upon those projects obtaining financing and reaching commercial operations. (See *Section 9 - Financial Outlook* for more information on these payments.)

Based in Phoenix, Arizona, the Company is currently composed of 9 professionals with experience in different aspects of power project development, financing and ownership. The Company has 5 projects under active development, the most advanced of which is in the permitting stage and scheduled for financing and commencement of construction in the first quarter of 2002.

EXHIBIT "C"

List of Witnesses

Toltec Power Station (Case No. 112)

- Tom Wray (SWPG)
- Paul Mooney (Fennemore Craig, P.C.)
- David Barcus (BNP Paribas)
- Jennifer Tripp (R.W. Beck)
- Michael Siegel (EPG, Inc.)
- Randall Palmer (EPG, Inc.)
- Martin Karpiscak (University of Arizona)
- Scott Peters (EPG, Inc.)
- E. Linwood Smith (EPG, Inc.)
- Massoud Rezakhani (URS Corporation)
- Kenneth Euge (Geological Consultants, Inc.)
- Jason Spence (R.W. Beck)
- Glenn Darrington (EPG, Inc.)
- Ravi Murthy (URS Corporation)
- George Beckwith (George Beckwith, P.C.)
- Todd ringsmuth (URS Corporation)
- J. Randolph Becker (R.W. Beck)

Toltec Transmission Line (Case No. 113)

- Tom Wray (SWPG)
- Randall Palmer (EPG, Inc.)
- Glenn Darrington (EPG, Inc.)
- Jennifer Tripp (R.W. Beck)

Bowie Power Station (Case No. 118)

- Tom Wray (SWPG)
- Jeffrey Schroeter (Genova Power Company, L.P. - formerly Genovations)
- Kenneth Euge (Geological Consultants, Inc.)
- Michael Siegel (EPG, Inc.)
- Scott Peters (EPG, Inc.)
- Jennifer Tripp (R.W. Beck)
- Jason Spence (R.W. Beck)
- E. Linwood Smith (EPG, Inc.)

EXHIBIT "D"

BEA

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(1) And I appreciate the efforts of the applicant to take
 (2) care of this matter on the Committee's behalf.
 (3) **MR. ROBERTSON:** Ms. Woodall, would you like
 (4) to have our witnesses sworn at this time?
 (5) **CHMN. WOODALL:** Yes, please.
 (6) **MR. ROBERTSON:** I'd ask the members of the
 (7) panel seated at the table and, in addition, Mr. Euge
 (8) and Mr. Spence, who are seated in the audience, to
 (9) stand and be sworn.
 (10) (The following were duly sworn en masse by
 (11) the court reporter: Thomas Wray, Michael Siegel,
 (12) Jeffrey Schroeter, Scott Peters, Kenneth Euge, Jay
 (13) Spence.)
 (14) **CHMN. WOODALL:** And I believe Committee
 (15) Member Smith had a question.
 (16) **MEMBER WAYNE SMITH:** Mr. Robertson, maybe it
 (17) takes a lot to get things across to me, but this is
 (18) the third time we've had the privilege of you all
 (19) being before us. And I was wondering if you might
 (20) explain the nature of Southwest Power Partners. You
 (21) brought out that it's going to be under separate
 (22) ownership. And if it were Salt River Project, APS or
 (23) Tucson Electric, you can understand who's going to do
 (24) the building. But I'm not sure I understand whether
 (25) Southwest Power Partners are actually going to build,

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(1) Bowie Power Station.
 (2) It's very common for power development
 (3) companies, no matter who they are, to structure
 (4) individual power projects in limited liability
 (5) companies over which they control the operation. It
 (6) is further very common for these individual limited
 (7) liability companies to seek partners, what is normally
 (8) referred to in the industry as strategic partners, to
 (9) own a percentage of the L.L.C. as the power plant and
 (10) related facilities are constructed -- financed and
 (11) constructed. That's really the way we do our
 (12) business.
 (13) We are under negotiations at this time in the
 (14) Toltec matter regarding a strategic partner. Those
 (15) negotiations obviously will be affected directly on
 (16) the outcome of the certification process on Toltec and
 (17) whether or not the conditions imposed by this
 (18) Committee do not render the project commercially
 (19) infeasible. That's a very big step before a
 (20) partnership arrangement can be constructed and then
 (21) co-financed by the two partners.
 (22) Typically a strategic partner that we would
 (23) see would be one that would bring substantial
 (24) financing to the table, a substantial balance sheet to
 (25) the table, could probably have or very likely have

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(1) because you also used the term nominee. Is it
 (2) appropriate that you could explain this procedure?
 (3) **MR. ROBERTSON:** First of all, Mr. Smith, I
 (4) think it's most appropriate since it's a matter of
 (5) interest to you. I believe now that he's under oath,
 (6) I think it would be appropriate to let Mr. Wray
 (7) provide that description for you. He is the manager
 (8) of Southwestern Power Group and also has executive
 (9) responsibilities with regard to Bowie Power Station.
 (10) And if that's acceptable to you, I'll let him explain
 (11) it because he can provide firsthand insight into some
 (12) of the areas of interest. And I believe I used the
 (13) word assigns instead of nominee. That's the word that
 (14) appears in the application, and Mr. Wray's comments
 (15) will address that as well.
 (16) **MEMBER WAYNE SMITH:** Thank you very much.
 (17) **MR. WRAY:** Good morning, Madam Chairman,
 (18) members of the Committee. Mr. Smith, that's a good
 (19) question, and I'll try to be very direct.
 (20) Southwestern Power Group is a development
 (21) company, it's based in Phoenix, that develops power
 (22) plants and associated transmission facilities in the
 (23) Western U.S. primarily. We have two project
 (24) developments that the Committee is aware of in
 (25) Arizona, Toltec Power Station and this proceeding,

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(1) combustion turbines, steam turbine generators, heat
 (2) recovery steam generators, large power transformers,
 (3) long lead-time items in their ordered queue that would
 (4) be necessary to construct a facility.
 (5) So it's sort of a two-step part of the
 (6) construction site. Typically there's an engineer to
 (7) procure or construct or what's known as an EPC
 (8) contract that is let by the owner of the L.L.C. to
 (9) entities like Duke Fluor Daniels, Black & Veatch,
 (10) Brown & Root. There are a number of EPC contractors
 (11) that do that business. That's sort of the
 (12) installation side of the construction. Then there's
 (13) also the equipment that is installed by the EPC
 (14) contractor that is essentially ordered directly by the
 (15) owners of the facility.
 (16) And all that adds up to the rather large
 (17) numbers that you read about in the paper that we've
 (18) talked about in the Toltec proceeding as to what these
 (19) plants cost. It's our intention to partner in our
 (20) projects, be it here in Arizona or in other states.
 (21) We have a project that we're pursuing in
 (22) Nevada, and we're discussing a partnering arrangement
 (23) with a California entity on that project because they
 (24) have a particular interest in that market and where
 (25) that particular facility can inject power into

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(1) northern California.
 (2) The nature of limited liability companies,
 (3) which have become very common since Congress
 (4) authorized them -- law firms typically are structured
 (5) as limited liability companies these days, medical
 (6) firms. Dentists will structure as L.L.C.s to provide
 (7) an additional level of liability protection as they go
 (8) forth in their business. So I would hope the
 (9) Committee wouldn't see an L.L.C. as a sort of shroud
 (10) to hide behind. It is very common business practice
 (11) in this country commercially.
 (12) But Southwestern Power Group is simply a
 (13) holding company, if you will, that owns limited
 (14) liability companies, each of which has an ownership in
 (15) a power project in various locations. But our effort
 (16) in our staff and our company is primarily specialized
 (17) in all the front-end work that would take a project up
 (18) to financing. In the case of Bowie, to be
 (19) specific, that process successfully concluding,
 (20) successfully obtaining state permits.
 (21) In the case of Bowie, the PSD permit is
 (22) jurisdictioned by the Arizona Department of Environmental
 (23) Quality as is the Aquifer Protection Permit. Those
 (24) are major permits that are as important as the CEC
 (25) process.

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(1) But the CEC process being successfully
 (2) concluded triggers a lot of the commercial
 (3) arrangements that structure partnerships with
 (4) strategic partners. Strategic partners are people
 (5) like Duke, Merit, Sempra Energy Resources, other
 (6) applicants that you've seen before in other power
 (7) plant proceedings. And if you go back and look at
 (8) some of those applications, you'll probably find that
 (9) their applications were structured in limited
 (10) liability companies, as well.
 (11) So we are also in the process I might add of
 (12) raising a substantial amount of private equity on Wall
 (13) Street that was unfortunately interrupted by the
 (14) airline stint of 30 days ago today, but things are
 (15) sort of back on the tracks on that, and that's a
 (16) little over half a billion dollars for our share of
 (17) equity investments in these projects.
 (18) I hope that was somewhat responsive.
 (19) **MEMBER WAYNE SMITH:** Yes. I think generally,
 (20) as you know, we are used to having a Duke or -- the
 (21) actual applicant. And I think we've -- at least for
 (22) me, I've built a sense of trust in what you and your
 (23) staff have put together. And it's helpful to know who
 (24) the actual people are that's going to see it through.
 (25) And I've heard the term several times, and I

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(1) think when Mr. Robertson brought out separate
 (2) ownerships, it kind of rang my bell that it would be
 (3) nice to get it on the record -- it would be nice to
 (4) know who your partners would be eventually, but I
 (5) understand at this point in time it's probably not
 (6) feasible.
 (7) **MR. WRAY:** Madam Chairman, Mr. Smith, many of
 (8) these companies that we're negotiating with at this
 (9) time are publicly traded companies, and it would be
 (10) unwise for me to identify those individuals at this
 (11) time until such time as we've concluded our
 (12) arrangements as to partnership shares and financial
 (13) responsibilities inside that partnership. And from
 (14) their side, although we have letters of intent on how
 (15) we want to structure the arrangement should Bowie be
 (16) certificated and permitted or should Toltec be
 (17) certificated and fully permitted, those things just
 (18) simply won't move beyond a letter of intent stage to a
 (19) drawing development agreement that sets forth the
 (20) ownerships until the permitting risk is sufficiently
 (21) reduced that a lender as well would be satisfied that
 (22) the risk that still lays out there from the market or
 (23) from some other standpoint can be sufficiently
 (24) managed. So it's a stepping process.
 (25) In the case of a large company that you may

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(1) have dealt with, unless they're going to use their own
 (2) balance sheet to finance a project, they, too, cannot
 (3) go to a bank and arrange construction loan facility
 (4) until they have reduced the permitting risk to a level
 (5) that's manageable to the lender.
 (6) **MEMBER WAYNE SMITH:** I realize that, and I
 (7) think the main thing was that you've probably heard
 (8) the implication that half of these applications
 (9) probably won't go through. And I just think that
 (10) you've demonstrated a great deal of quality in what
 (11) you do and believability. I think in trying to
 (12) balance the power loads, if half of them aren't there,
 (13) then it makes it very difficult to understand the big
 (14) picture.
 (15) But anyway, thank you very much. You've
 (16) answered my question.
 (17) **MR. WRAY:** Thank you, Mr. Smith.
 (18) **MEMBER TOBIN:** Mr. Wray, did I understand you
 (19) to say that part of the activities of your group will
 (20) be to get through the permitting process, particularly
 (21) with the Arizona Department of Environmental Quality?
 (22) And I guess that's a nodding head.
 (23) **MR. WRAY:** I'm sorry. Yes. I think in the
 (24) case of Toltec -- I know we're in a different case
 (25) here, but in the case of Toltec, the Aquifer

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(1) Protection Permit is obviously an important permit to
 (2) that proceeding. Here in this case, your department
 (3) jurisdictions over both the air quality permit and the
 (4) aquifer permit. So those are two very important
 (5) permits in addition to the certificate.

(6) **MEMBER TOBIN:** And is there a difference
 (7) between the Southwestern Power Group and the
 (8) Southwestern Power Group II, L.L.C.?

(9) **MR. WRAY:** There is a difference, and I'll
 (10) make that distinction for you. Southwestern Power
 (11) Group was formed about three years ago to develop what
 (12) became to be known as the Gila River facility that was
 (13) certificated by this Committee. Some of you were on
 (14) the Committee at that time. North of Gila Bend,
 (15) Arizona.

(16) Southwestern Power Group sold the rights to
 (17) that project. We essentially had site control and
 (18) partial studies that have been done on the aquifer and
 (19) things of that nature. Sold the right to that project
 (20) to Panda Energy, that proceeded with the development,
 (21) including the certification process before this
 (22) Committee. And has since – as I mentioned earlier,
 (23) this is typical – partnered with a utility out of
 (24) Florida known as Tampa Electric Company. So that
 (25) project now is owned by Panda Energy and TECO, as

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(1) they're referred to in the industry. They've recently
 (2) concluded their financing, and that project is under
 (3) construction.

(4) So even the larger companies that you're
 (5) familiar with will very often partner with a local
 (6) developer or another company because some of these
 (7) plants, some of the larger ones, the loan facilities
 (8) are very large, and the equity calls can be as high as
 (9) 40 percent of the total project cost. That's the cash
 (10) that the borrower has to come up with in order to have
 (11) the debt facility placed with the bank. It just
 (12) depends on the condition of the capital markets at
 (13) that time and the creditworthiness of the entities
 (14) that are seeking to borrow.

(15) **MEMBER TOBIN:** So Southwestern Power Group
 (16) was formed three years ago to do that. And then you
 (17) were going to tell me who Southwestern Power Group II
 (18) was.

(19) **MR. WRAY:** What we did was we wound up
 (20) Southwestern Power Group because of that initial
 (21) transaction on the sale to Panda Energy and then
 (22) created Southwestern Power Group II with essentially
 (23) the same folks involved as members in that L.L.C. to
 (24) develop additional sites, additional projects not only
 (25) in Arizona but in other states.

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(1) **MEMBER TOBIN:** And when was that formed,
 (2) ballpark?

(3) **MR. WRAY:** Probably 18 to 20 months ago.

(4) **MEMBER TOBIN:** And so as I'm understanding
 (5) this, you're using this particular business
 (6) organization scheme – I mean, it's a very common
 (7) scheme, very useful, and you're bringing a group of
 (8) folks together to take a project to a particular
 (9) point, which is the front-end work, at which point
 (10) you'll partner with your strategic partners, and the
 (11) project will move on.

(12) **MR. WRAY:** That is correct.

(13) **MEMBER TOBIN:** As far as Southwestern Power
 (14) Group II, do you feel comfortable sharing the names of
 (15) sort of the primary players in that group? I know Tom
 (16) Wray must be one of them.

(17) **MR. WRAY:** There are essentially two owners
 (18) of the company. There is Papago Power Development,
 (19) L.L.C., which is my company, and then there is an
 (20) L.L.C. called MMR Power Group, a Louisiana L.L.C., and
 (21) those are the two owners the company.

(22) **MEMBER TOBIN:** You just keep L.L.C.ing your
 (23) way back on this deal.

(24) **MR. WRAY:** Ms. Woodall is probably in a good
 (25) position to give us all a lecture on limited liability

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(1) companies much better than I can.

(2) **MEMBER TOBIN:** If we kept peeling back the
 (3) onion, would we find real people with real names on
 (4) these groups?

(5) **MR. WRAY:** You can, unless they're
 (6) incorporated in Nevada or Delaware, in which case
 (7) you'd probably have a lot difficulty ever getting
 (8) through and gaining information.

(9) **MEMBER TOBIN:** And would you feel comfortable
 (10) telling me some of the names of the people in Papago
 (11) Power Development Company and MMR?

(12) **MR. WRAY:** I'll tell you, since I am the only
 (13) member in Papago, that I am the only member. I can't
 (14) speak for MMR Power Group and wouldn't purport to do
 (15) that.

(16) **MEMBER TOBIN:** I appreciate your candor.
 (17) Thank you very much. This helps explain a lot of how
 (18) this application is set up in the information we've
 (19) already been given.

(20) **CHMN. WOODALL:** And I now have a question as
 (21) a follow-up to some of the comments of my fellow
 (22) Committee members. If the certificate is granted and
 (23) there are conditions imposed and if, in the
 (24) unhopd-for event, there is a failure to comply with
 (25) some of these terms and conditions, would it be your

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- (1) expectation that if the Commission wished to enforce
- (2) some of these conditions that they would be able to
- (3) enforce them against both the original applicant and
- (4) the assignee?
- (5) **MR. WRAY:** Absolutely. That's how I
- (6) understand the statute, that the obligation of the
- (7) satisfaction of the conditions run with the
- (8) certificate.
- (9) **CHMN. WOODALL:** But to the extent that you
- (10) assign the certificate to someone else, would it be
- (11) your position that Southwest Power no longer had any
- (12) responsibility in terms of ensuring that those
- (13) conditions were complied with?
- (14) **MR. WRAY:** Unless Southwestern Power Group
- (15) itself were sold, then the buyer would assume those
- (16) responsibilities.
- (17) Typically the way these are structured, Madam
- (18) Chairman, just take Toltec, for example, the strategic
- (19) partner we're negotiating with right now, we're not
- (20) going to create a new L.L.C. They will buy half the
- (21) member shares of Toltec Power Station for whatever the
- (22) percentage is, and then they would assume the
- (23) responsibilities along with Southwestern Power Group.
- (24) Let's just use an example the new entity owned 50
- (25) percent of the member shares and Southwestern Power

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- (1) Interest in the certificate in someone else might not
- (2) in the Commission's view eliminate your obligations to
- (3) ensure that there were compliance with some of the
- (4) conditions.
- (5) **MR. WRAY:** They don't represent a statement
- (6) of our - you can rest assured that the contracts'
- (7) underlying partner arrangement would obligate the
- (8) partner to that same obligation.
- (9) **CHMN. WOODALL:** Just so you have a sense that
- (10) in the unlikely and un hoped-for event that there is no
- (11) compliance with the conditions, you can expect I would
- (12) think if the Commission gave directions to the Legal
- (13) Division, that there would be a joint assault.
- (14) **MR. WRAY:** I understand.
- (15) **CHMN. WOODALL:** Thank you, sir.
- (16) Mr. Smith.
- (17) **MEMBER WAYNE SMITH:** Mr. Wray, may I put it
- (18) in a simpler way, not being an attorney and all this
- (19) legal stuff. Does it imply that you're going to be on
- (20) the hook for this thing?
- (21) **MR. WRAY:** I think that's what the Chairman
- (22) is getting at, and I'm in complete agreement with her.
- (23) We're the applicant here.
- (24) **CHMN. WOODALL:** I just wanted to make sure
- (25) that he said that in a way so that he would be on the

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- (1) Group owns 50 percent.
- (2) **MEMBER TOBIN:** Mr. Wray, you talked about
- (3) Toltec. If there was any way we could talk about
- (4) Bowie, I would find that real helpful.
- (5) **MR. WRAY:** It's a similar example. If the
- (6) entity we're talking with right now, entity we're
- (7) talking with on Bowie, would probably want to come in
- (8) at a 50 percent ownership on the project. And the
- (9) Bowie Power Station would be the obligee.
- (10) **CHMN. WOODALL:** Obligee. It sounds like a
- (11) Beatles song, doesn't it.
- (12) **MR. WRAY:** But the responsibility to comply
- (13) with the condition would still rest with the Bowie
- (14) Power Station, L.L.C., and I would think the
- (15) enforceability would follow upstream in the ultimate
- (16) owners.
- (17) **CHMN. WOODALL:** As Mr. Smith indicated, we've
- (18) been dealing with your firm as the applicant, and
- (19) there have been commitments that have been made that
- (20) have been ultimately memorialized in conditions. And
- (21) I think it has been the position of the Corporation
- (22) Commission at times that when they get accommodations
- (23) from an applicant, they perceive those accommodations
- (24) to be in the nature of contract. And so the fact that
- (25) Southwest Power Group II may ultimately assign its

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- (1) hook.
- (2) **MEMBER WAYNE SMITH:** On the hook forever and
- (3) ever?
- (4) **MR. WRAY:** It's like one of those product
- (5) guarantees for life. It's for the life of the company
- (6) that sold you the product. So as long as I live.
- (7) **MEMBER WAYNE SMITH:** It's a lifetime
- (8) guarantee?
- (9) **MR. WRAY:** Yes.
- (10) **MEMBER WAYNE SMITH:** You've made such a nice
- (11) reputation that we don't want to let you go.
- (12) **CHMN. WOODALL:** I think Supervisor Smith had
- (13) a question.
- (14) **MEMBER SANDIE SMITH:** I think what you're
- (15) doing is much like zoning. You have a lot of
- (16) representatives, and our stipulations follow the
- (17) project itself. But also - and maybe this more goes
- (18) to our chairman, but we've mentioned many times that
- (19) we have an accumulation of plans and how we know
- (20) what's coming on and what will not make it.
- (21) When we put the five-year stipulation or
- (22) whatever we put down, three years, that they have to
- (23) be coming online, do they automatically go away or do
- (24) we have to bring them back or does the Corporation
- (25) Commission bring them back? I was just wanting to