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May 16, 2002

Arizona Corporation Commission

DOCKETED

MAY 17 2002

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

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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 May 7, 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. Your letter was received in my office on May 9, 2002. In preparing this response, I have drawn upon information provided to me by SWPG and its owners.

In your May 7, 2002 correspondence, you state that I "seemed to have missed significant points of concern that led to my April 10, 2002 letter." To the extent that such a "miss" in fact occurred, it was inadvertent upon the part of both SWPG and me. Our intent was to be responsive to your information request. Accordingly, with your statement in mind, the following discussion section expressly indicates our understanding as to the specific nature of your requests, and any assumptions we may have occasion to make in connection with SWPG's response.

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DISCUSSION OF REQUESTED INFORMATION

Actual and Potential Financial Interests:

In the second paragraph of your May 7, 2002 correspondence, you indicate

"... I am particularly interested in when and how disclosure of any actual and potential financial interests in the outcome of the above proceedings (excluding fees for professional services) of applicants' expert witnesses and other representatives, including yourself, was disclosed to the other parties (Staff and Intervenors) and the Siting Committee."

However, you do not define the term "representative" as you use it. Given the context of your inquiry, and your reference to "other parties (Staff and Intervenors) and the Siting Committee," SWPG and I have assumed that you intend "representative" to mean one who spoke for or acted on behalf of the Applicants during the public hearings in Case Nos. 112, 113 and 118. In addition, you do not define the term "outcome" as you use it. For purposes of responding to your request, SWPG and I have further assumed that you do not intend to include within the scope of that term the possibility of future occasions for the rendition of professional services in the event a project is approved. Otherwise, every expert and attorney appearing on behalf of any applicant in any Certificate of Environmental Compatibility ("CEC") proceeding before the Siting Committee and the Commission conceivably has a potential financial interest in the "outcome" of that proceeding.

You have excluded Mr. Wray from the scope of your most recent inquiry; and, you have excluded fees for professional services from the term "financial interests." Against that background, I have been advised that none of Toltec's or Bowie's expert witnesses have "any actual and potential financial interests in the outcome" of the proceedings in Case Nos. 112, 113 and 118; nor did they have any such interests during the pendency of those proceedings before the Siting Committee and the Commission. Their compensation consisted solely of the payment of fees for professional services and reimbursement of expenses incurred. In making this statement, we are referring to matters within the knowledge of SWPG, Toltec and Bowie, and the nature of their retention arrangements with each of the expert witnesses who testified. They are not in a position to know how the "outcome" in any of the aforesaid proceedings might relate to the annual performance review a given expert witness might receive from his or her employer, inasmuch as such experts serve numerous clients over the course of a year and such reviews are internal to the employing organization.

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With regard to myself, I also do not have and have not had any actual or potential financial interest in the outcome of Case Nos. 112, 113 and 118, other than the previously noted hope that competent representation of my clients might lead to future opportunities to represent them or others with a need for similar legal services. My financial relationship has been solely one of hourly fees for professional services as rendered and reimbursement of expenses.

With the exception of Mr. Wray, all of the Applicants' witnesses in Case Nos. 112, 113 and 118 were retained outside experts; and I was the only attorney of record. Thus, there were not any "other representatives."

In summary, none of SWPG, Toltec or Bowie's "expert witnesses and other representatives" had an actual or potential financial interest "in the outcome" or result of the Siting Committee and the Commission's decisions on Toltec and Bowie's Applications for a CEC's.

Disclosure of Financial Interests:

At present, A.R.S. §§40-360, et seq., A.A.C. R14-3-201 et seq. and the Commission's general Rules of Practice and Procedure do not provide for the disclosure of information regarding financial interests in connection with either the content of an Application for a CEC's or a supporting evidentiary presentation. Accordingly, in preparing their Applications and evidentiary presentations, Toltec and Bowie did not include such information inasmuch as it was their understanding (as well as mine) that data of that nature was not a required part of their burden of proof. However, at no time did Toltec or Bowie refuse or resist disclosing information of this nature during their respective cases before the Siting Committee when asked to do so.

More specifically, during the morning of the first day of the Toltec hearings (Case No. 112), Chairman Woodall inquired of the members of the Siting Committee as to subjects on which they would be interested in receiving information from the Applicant. Committee Member A. Wayne Smith responded as follows:

MEMBER WAYNE SMITH: I would like, if possible, to know a little bit more about Southwestern Power Group Limited, L.L.C., as to who the members are and a little bit more about them, and likewise I believe its also indicated assignee, I would like to know who might be the assignee." [Tr. 69, l. 8-13]

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Later that same day, following the testimony of David Barcus of BNP Paribas as to how merchant power plants are financed, Member A. Wayne Smith made the following statement:

MEMBER WAYNE SMITH: "I think you kind of raised your eyebrow earlier when I asked about who the L.L.C. was, if I am not mistaken, and I think Mr. Barcus did a beautiful job of satisfying my further investigation of who that was, so I have a feeling that he wouldn't get to this point without feeling comfortable as to who these folks are who you represent. So anyway you don't have to answer my question later on.

MR. ROBERTSON: I appreciate that comment on your current thinking. If I raised my eyebrow it was both unconscious and inadvertent, because I didn't react that way to your comment at all.

MR. WAYNE SMITH: Must have been the fly that was flying around. I thought maybe you were questioning whether I had the right to ask.

MR. ROBERTSON: No, sir, not at all.

MEMBER WAYNE SMITH: But anyway, my lead to that question was relative. I wanted to go a little bit more into what Mr. Barcus did, and I think he did a fine job.

MR. ROBERTSON: Thank you very much. [Tr. 216, 1.17- Tr.217, 1.13]

Similarly, and as previously indicated in my April 18, 2002 letter and the hearing transcript pages attached to that letter, SWPG also endeavored to be responsive during the Bowie hearings (Case No. 118) to the expressed interest of Siting Committee Member Richard Tobin with regard to ownership structure and financial interests. With brevity in mind, that portion of my April 18, 2002 letter and that enclosure are incorporated herein by reference.

To the best of SWPG's and my recollection, no other inquiries were made during the rest of either the Toltec or Bowie proceedings by the Siting Committee, Staff or Intervenors regarding ownership or financial interests.

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Power Group Membership:

In the second paragraph of your May 7, 2002 letter, you indicate you are

". . . also interested in the names of the individual members in the various 'power groups' referred to in our correspondence."

With the exception of the names of the individual members of MMR Power Group, LLC, it is my understanding that my April 18, 2002 letter and attachments provide the identity of the individuals with ownership interests in the various power groups to which reference has been made. With regard to MMR Power Group, LLC, Attachment "A" to this letter contains a list of the individual members of that limited liability company. In that regard, I am further advised that each of these individuals is an employee and shareholder of MMR Group, Inc., which was described in some detail on page 6 of the BNP Paribas Confidential Private Placement Memorandum attached to my April 18, 2002 letter to you.

In summary, SWPG is wholly-owned by MMR Power Group, L.L.C. and Papago Power Development, L.L.C. In turn, MMR Power Group, L.L.C. is owned by the eleven individuals listed on Attachment "A," who also are the only owners of MMR Group, Inc. Papago Power Development, L.L.C. is wholly-owned by Tom Wray. Thus, and with reference to your April 10, 2002 letter, there is no "other entity that has a direct or remote ownership interest in Southwest Power Group II, L.L.C."

CONCLUSION

We hope you find the foregoing information and attachment to be responsive to your most recent letter.

Sincerely,



Lawrence V. Robertson, Jr.

LVR:cl

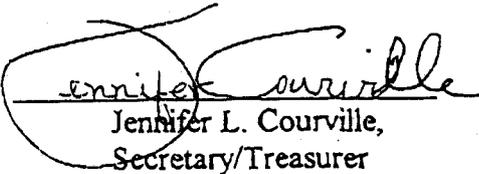
cc: Commissioner Jim Irvin
Commissioner Marc Spitzer
Ernest Johnson
Laurie Woodall
Docket Control

ATTACHMENT "A"

Owners of MMR Group, Inc. are:

James B. Rutland
Allen R. Boudreaux
Gene R. Clouatre
Joe E. Hawkins
Grady D. Saucier
Thomas O. Welborn
John Clouatre
Leeland Kilpatrick
Jennifer B. Courville
James Smith
Gary M. Williams

These individuals own 100% of the outstanding shares of MMR Group, Inc.

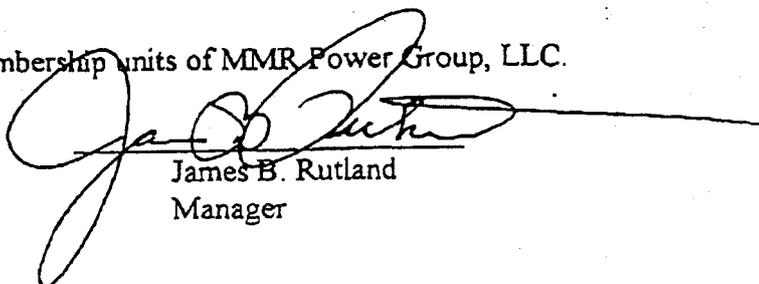


Jennifer L. Courville,
Secretary/Treasurer

Owners of MMR Power Group, LLC are:

James B. Rutland
Allen R. Boudreaux
Gene R. Clouatre
Joe E. Hawkins
Grady D. Saucier
Thomas O. Welborn
John Clouatre
Leeland Kilpatrick
Jennifer B. Courville
James Smith
Gary M. Williams

These individuals own 100% of the membership units of MMR Power Group, LLC.



James B. Rutland
Manager