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Arizona Corporation Commission  
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OCT 19 2010

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IN THE MATTER OF THE APPLICATION OF HUALAPAI VALLEY SOLAR LLC, IN CONFORMANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES §§ 40-360.03 AND 40-360.06, FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING CONSTRUCTION OF THE HVS PROJECT, A 340 MW PARABOLIC TROUGH CONCENTRATING SOLAR THERMAL GENERATING FACILITY AND AN ASSOCIATED GEN-TIE LINE INTERCONNECTING THE GENERATING FACILITY TO THE EXISTING MEAD-PHOENIX 500k V TRANSMISSION LINE, THE MEAD-LIBERTY 345k V TRANSMISSION LINE OR THE MOENKOPI-EL DORADO 500k V TRANSMISSION LINE.

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

Case No. 151

**INTERVENORS ARIZONA BUILDING TRADES' AND LOCAL 469 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY'S RESPONSE TO HUALAPAI VALLEY SOLAR'S COMPLIANCE FILING AND ANNUAL SELF-CERTIFICATION**

Intervenors<sup>1</sup> Arizona Building Trades (ABT) and Local 469 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (jointly referred to as "Intervenor") respond to Hualapai Valley Solar's (HVS) Compliance Filing, dated October 15, 2010 (Filing) as follows:

<sup>1</sup> Motion to Intervene, filed October 14, 2010, is pending.

**A. Introduction**

HVS' Filing fails to offer an objective basis upon which to conclude HVS has taken steps necessary to assure eventual compliance with Condition 28 of the Order of February 12, 2010.<sup>2</sup> Indeed, just the opposite could occur. Construction, of course, will be performed by an EPC<sup>3</sup> who, absent specific limitations in its agreement with HVS will have complete and unfettered discretion over construction decisions including matters such as job training and hiring of workers to construct the project.

HVS has advised undersigned counsel that the "likely" EPC will be a foreign national corporation. However, even at this late date, there is no indication that HVS is able to secure a commitment from this foreign national corporation that it will comply with Condition 28. Instead, all indications suggest the foreign national corporation remains successful in demanding full autonomy as to the training and hiring of construction workers for the Project, as well as when it formally agrees to be named the EPC. Thus, as discussed below, absent the existence of a specific agreement between HVS and the Project's EPC or, alternatively, an agreement between the Intervenor and the Project's EPC, there is substantial risk that the laudable objectives of Condition 28 will be rendered illusory. The efficacy of Condition 28 hangs in the balance.

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<sup>2</sup> Within ninety (90) days of the Commission's decision granting this Certificate, the Applicant shall make good faith efforts to commence discussions with the Arizona Building Trades Council on a model construction agreement to encourage the utilization of qualified local or Arizona union or non-union construction workers for the construction of the Project.

<sup>3</sup> The acronym "EPC" stands for engineering, procurement and construction. Under an EPC contract, the developer enters into a contract with the EPC which for a negotiated fee agrees to design the installation, procure the necessary materials and construct the project, either through its own workers or by subcontracting part of the work.

**B. Purposes and Terms of the Order**

Condition 28 represents the exercise of sound, visionary economic and public policy. Construction of the proposed \$2.2B project represents an enormous array of opportunity for the citizens of Arizona and in particular Mohave County. Over 1,500 construction workers will be needed over the course of construction and performance of this work requires not merely brawn, but highly trained and skilled craftsmen.

Various construction trade disciplines will be needed to construct the Project with a heavy concentration of operating engineers, pipefitters, electricians and iron workers. Opportunity for Arizona citizens is not limited to the time spent in constructing the Project. Having gained job training and work experience, workers will become worthy candidates for future construction of solar power plants as well as performing necessary maintenance work on this Project. Thus, it is impossible to understate the economic opportunity associated with this Project for residents of not only Mohave County, but all of Arizona to land not only job skill training, but long-term, high paying jobs.<sup>4</sup>

We note that Mohave County Supervisor Gary Watson joins in this assessment. See, Exhibit 1, Letter dated May 17, 2010. With so much at stake, we submit that the Commission is entitled to assurance that HVS will comply with Condition 28.

**C. The Dilemma Posed by HVS Filing**

**a. MOU must include EPC.**

Under existing NLRB case law, construction labor agreements of the type contemplated here must include the EPC. See, *Glens Falls*, 350 N.L.R.B. 417 (2007).

Thus, assuming the HVS and its EPC are willing to achieve Condition 28's objectives, two viable options exist. First, HVS should demand agreement with Condition

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<sup>4</sup> The job will be subject to the prevailing wage requirements of the Davis-Bacon Act. 40 U.S.C. § 3142.

28 from any potential EPC in their contract negotiations now. If HVS intends to delegate its responsibility to a foreign national company for making labor related, subcontracting, and hiring decisions, then absent the foreign national company agreeing to be bound, questions arise as to enforceability. Plainly, such a loophole was not within the contemplation of the Commission.

Yet, all objective appearances suggest HVS is intending to create such a loophole. To date, HVS has given no indication, either in its Filing or discussions with the ABT, that it has made *any* demands upon any EPC candidate let alone secure any commitment from the foreign national corporation of compliance with Condition 28. Instead, HVS seems intent on playing a game of semantics by way of resting on the fact that HVS promises to “utilize its best efforts to ensure that the EPC will enter into good faith negotiations”. Filing, Exhibit 2, ¶ 1.

At this late date, such gamemanship is plainly inadequate. In fact, “best efforts”, in light of the plain meaning of Condition 28, means securing a definitive commitment that the likely EPC has agreed to assure the Commission of hiring Mohave County and Arizona workers. Any thing less constitutes a loophole that will render Condition 28 illusory.

The alternative approach is for HVS to assure compliance with Condition 28 by instructing the probable EPC to the bargaining table for a conditional agreement which is only binding if the project is built. To that point, ABT has several times proposed a conditional agreement. In short:

1. Should the project be approved,
2. Should the HVS secure an EPC,

3. Should the project be built,
4. Then, the agreement between the EPC and the ABT will assure the Conditions on the Certificate of Environmental Compatibility. (CEC)

Contingent agreements of this type, of course, are commonplace in the construction industry. In fact, they assure the Conditions will be met, yet allow flexibility should the project not come to fruition.

This latter method is preferable for two reasons. First, it joins at the table the two parties with labor relations and subcontracting experience and who will live under the terms of any agreement that is reached. Second, it provides the Commission with the assurance that Condition 28 will be met.

**b. The Filing Inaccurately Describes Material Facts.**

With little specifics, HVS' Filing asserts that it has taken steps necessary to achieve compliance with Condition 28. However, the Filing is replete with vague description of activity, but void of any concrete accomplishments. While construction is scheduled to commence perhaps as early as 60 days, the Filing fails to report:

- 1) Any plan to assure the hiring of residents of Mohave County and Arizona residents;
- 2) Any specifics to provide job training to residents of Mohave County.

As to job training, HVS proudly notes that it "co-sponsored a Renewable Energy Job Fair held at the Kingman High School." Filing, page 4. This is true, but materially incomplete. HVS' co-sponsor of this well attended event was the Arizona Building Trades which secured the attendance of training directors of eleven joint apprenticeship

training programs.<sup>5</sup> See, Exhibit 2, Photos from BTC sponsored Job Fair. These various training directors explained the available training and the attending opportunity. Simply put, the record does not allow the conclusion that any of the other entities listed by HVS possess the means and methods *absent the cooperation of the Arizona Building Trades* to provide the needed training.

Likewise, HVS asserts that it has “mailed Pre-Qualification Questionnaires to 112 Mohave County and Arizona contractors and suppliers . . .”. Filing, page 5. HVS, however also admits, that it is also notifying out-of-state contractors. Put another way, HVS does not and cannot indicate that it will be the entity selecting which contractors and suppliers ultimately work on the project. Instead, those critical decisions will be made by the EPC.

HVS’ effort to suggest the Arizona Building Trades have not been cooperative in securing compliance with Condition 28 is incomplete and disingenuous. See, Exhibit 3, Timeline. Early in the process, the ABT first proposed a Memorandum of Understanding (MOU) that would confirm the willingness for HVS begin the process to comply with Condition 28. Further, the ABT offered a comprehensive agreement that provided for the hiring preference for all residents of Mohave County and the ability of the EPC to secure non-union contractors for the Project. HVS’ only response to this document was that the foreign national corporation that is likely EPC was refusing to come to the table.

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<sup>5</sup> These apprenticeship training programs represent the best of private sector efforts to contribute to building of a strong economy. Every local union affiliate of the Arizona Building Trades teams with its contractor association to sponsor a joint apprenticeship program that offers comprehensive training. The Arizona Pipe Trades Joint Apprenticeship Committee is illustrative. During collective bargaining, the parties agreed to defer a portion of the overall hourly cost of manpower to the Committee to establish training not only for apprentices, but also to keep pace with technological changes journeymen upgrade training. The Committee operates from a state of the art training facility. Apprentices go through a 5-year training program that includes both on the job training and classroom training.

It appears that in anticipation of this hearing, HVS recently submitted a MOU which lacks any assurance that Condition 28 will be met. Again, HVS claims that without the cooperation of the likely EPC they simply cannot move forward on negotiations. It goes without saying that HVS has the authority and right to *require* any prospective EPC to commit to observing the terms of Condition 28. Rather than exercise that right, HVS offered in the recent MOU only the indistinct promise to “utilize its best efforts to ensure that the EPC will enter into good faith negotiations.” Filing, Exhibit 2, ¶ 1.

**c. Reasonable Expectations Given the Mature Status of the Project.**

Thus, the appropriate question is: What are the reasonable expectations at this late juncture? In other words, is HVS’ argument plausible that the foreign national corporation that will likely become the EPC is not prepared to meet with the Arizona Building Trades? We respectfully submit the failure of the likely EPC to engage in conditional bargaining suggests that it lacks sufficient interest to achieve the objectives of Condition 28.

While the particulars of each situation may vary, experience teaches that at this juncture of a constructive project as massive as the instant proposed Project, the developer has designated an EPC. In fact, the prospective EPC is actively involved in planning how the project will be executed. Developers are not experts in knowing how to secure, train and deploy the requisite number of construction workers necessary to build a project of this type. Indeed, it is impossible to imagine that the pre-construction planning and decision making necessary to allowing an industrial project like this to be economically viable could ever be achieved absent the active and persistent participation of an EPC.

Simply put, it would be folly to think the foreign national company that is the likely EPC has been idle. Indeed, counsel for HVS has confirmed that the foreign national company which likely will be the EPC actually participated in the selection of labor counsel for the Project. We trust that the EPC is fully engaged so that construction will start on schedule. Given the potential beneficial impact of Condition 28, the Arizona Building Trades are highly concerned that the likely EPC continues to refuse to meet. The relevant facts and circumstances do not allow the inference that the EPC is set to comply with Condition 28.

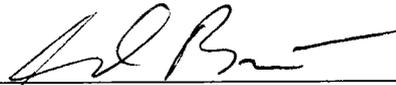
**D. Conclusion**

Due to the requisite timing and discussions for efficient and necessary planning for this scale of project, HVS cannot meet Condition 28. First, it has not secured necessary commitments directly from the likely EPC. Second, any MOU proposed by HVS to this point does not include the EPC as a signatory. Third, timely establishment of training programs for Mohave County residents is essential. Last, Condition 28 hangs in the balance of a foreign national company's either ignorance or arrogance to the Commission's conditions and the importance of Mohave County and Arizona workers given an opportunity to perform on this job—whether union or non union.

Respectfully submitted the 19<sup>th</sup> day of October 2010.

  
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Israel Torres  
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and

  
\_\_\_\_\_  
Gerald Barrett  
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Counsel for Intervenors

Two copies of the foregoing  
were hand-delivered this 19<sup>th</sup> day  
of October upon:

Thomas H. Campbell  
Lewis and Roca, LLP  
40 N. Central Avenue  
Phoenix, Arizona 85004-4429

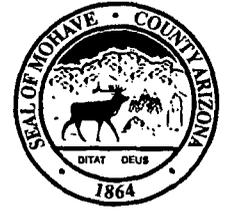
With a copy also be e-mailed  
to:

[TCampbell@lrlaw.com](mailto:TCampbell@lrlaw.com)

  
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# **EXHIBIT 1**

# MOHAVE COUNTY BOARD of SUPERVISORS



P.O. Box 7000

Website - [www.co.mohave.az.us](http://www.co.mohave.az.us)

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Tom Sockwell

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District 3

Buster D. Johnson

(928) 453-0724

May 17, 2010

Martin "Buzz" Murphy, President  
Arizona State Building and Construction Trades Council  
209 East Baseline Road Suite E-102  
Tempe, AZ 85283

Re: Letter in support of the Arizona Building and Construction Trades Council

Dear President Murphy:

It is my pleasure to write a letter in support of the Arizona Building and Construction Trades Council (BTC). There are several renewable energy projects proposed in my supervisorial district over the next 10 years and it is my hope that the BTC can play an integral role in the training of the local workforce and the construction of these jobs.

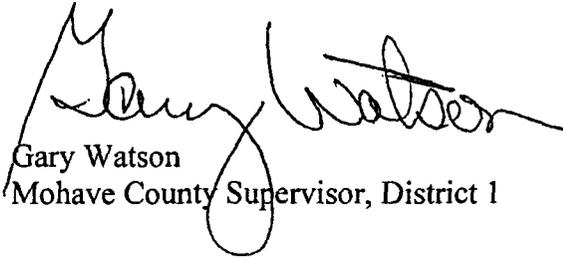
Mohave County has been blessed with an abundance of sunshine. It is my desire to use this free energy source to create long-term sustainable jobs for the working families of Mohave County. The jobs created through green technology should be well-paid "green collar" positions that will help revitalize our middle class labor pool, strengthen the community, and build an economy that will keep future generations living, working and raising their families in the area. I believe the BTC can help ensure that the Mohave County workforce receives the training necessary to turn these green jobs into long-term careers.

My belief stems from the fact that the BTC has already shown a commitment to Mohave County by partnering with the Mohave County Workforce Development Agency to co-host the "Renewable Energy Informational Job Fair." The fair drew more than 700 Mohave residents interested in finding jobs in the renewable-energy industry. The BTC is also working with the Mohave County Energy Careers Alliance Stakeholders to provide a pre-apprenticeship program. The goal of the program is to help prepare the local workforce for the influx of new jobs before they begin.

The BTC has made a commitment to me to train as much of the Mohave workforce as possible during the construction of these projects, giving members of my community the chance to learn highly skilled trades. It is my hope that the workforce of Mohave County can benefit as much as possible from the \$5.1 million of privately funded training provided each year by the BTC.

The well-trained local workforce developed by BTC, and the construction of these projects, will be a true asset to the county, helping entice future development and growth. I believe the best tool to ensure the creation of this skilled local workforce is by partnering with the Arizona Building and Construction Trades Council. It is my hope that the BTC plays an integral role in the construction of these proposed projects.

Sincerely,



Gary Watson  
Mohave County Supervisor, District 1

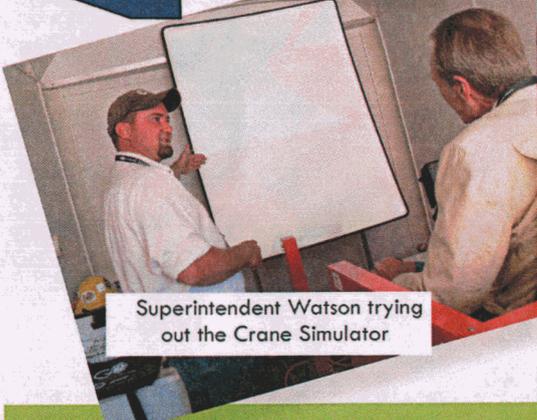
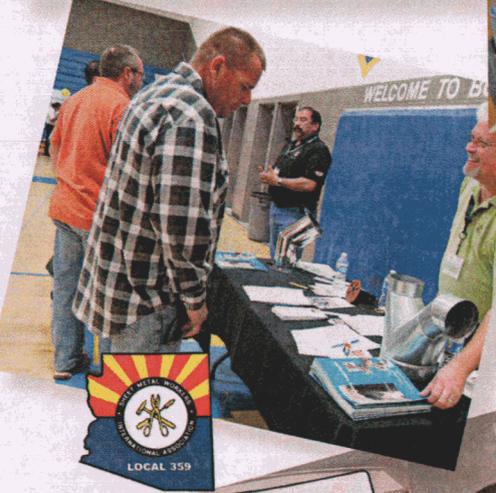
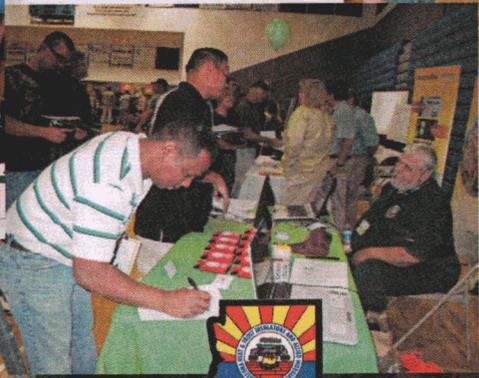
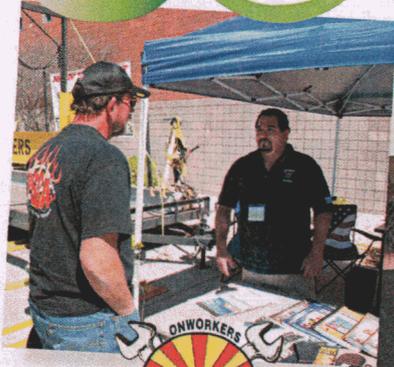
cc: Israel G. Torres

# **EXHIBIT 2**



for Green Jobs **RENEWABLE ENERGY INFORMATION FAIR**

The Mohave County Energy Careers Alliance  
Co-hosted by the Arizona State Building and Construction Trades Council  
MARCH 17, 2010



Superintendent Watson trying out the Crane Simulator



# **EXHIBIT 3**

# Arizona Building and Construction Trades (BTC) & Hualapai Valley Solar (HVS) Discussion Timeline

November 09	HVS files with the ACC for a CEC ~ 11/23/09	May 10	Meeting with Greg Bartlett re: Model Construction Agreement ~ 05/07/10
December 09	BTC letter sent to HVS re: introductory meeting ~ 12/09/10	June 10	Evidentiary Hearing (Case 151) ~ 06/15 - 17/10
January 10	Teleconference with Tom Campbell ~ 12/11/09	July 10	Teleconference with Greg Bartlett re: Model Construction Agreement ~ 07/06/10
February 10	LS Pre-Hearing conference - Chairman John Forman's office ~ 01/04/10	August 10	Meeting: Greg Bartlett and the BTC leadership re: project outline, timeline, and projected man power needs ~ 07/30/10
March 10	Line Siting Hearing (Case 151) - Kingman, AZ ~ 01/12-13/10	September 10	Meeting: BTC and CORBA ~ 08/06/10
April 10	Line Siting Hearing (Case 151) Ratification and reconsideration of intervention request - Good-year, AZ ~ 01/27/10	October 10	Signed BTC MOU sent to HVS per discussions with HVS ~ 08/08/10
	Line Siting Hearing (Case 151) Ratification of the Agenda ~ 02/11/10		HVS returns non-agreed upon new MOU ~ 08/20/10
	BTC files a letter with the ACC re: lack of progress between HVS and the BTC ~ 03/23/10		BTC provided HVS a Nevada outreach plan per request of Greg Bartlett ~ 09/02/10
	ACC open meeting - Conditional CEC granted ~ 4/01/10		Meeting with Howard Cole and BTC Re: Model Construction Agreement ~ 09/15/10
	BTC Model Construction Agreement sent to HVS re: to begin discussions ~ 4/26/10		Teleconference with Howard Cole re: Conditional agreement ~ 10/08/10