

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Ramm Power Group LLC

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Project No. 14869

**COMMENTS OF THE ASARCO MULTI-STATE ENVIRONMENTAL  
CUSTODIAL TRUST TO PRE-APPLICATION DOCUMENT AND  
NOTICE OF INTENT TO FILE APPLICATION**

**I. INTRODUCTION**

Pursuant to 18 C.F.R. § 5.3(d), Le Petomane XXV, Inc., not individually, but solely in its representative capacity as Trustee (“Trustee”) of the ASARCO Multi-State Environmental Custodial Trust (the “Trust”), submits these comments to the Pre-Application Document and Notice of Intent filed on January 15, 2020 in the above-captioned docket (the “PAD/NOI”) by Ramm Power Group LLC (“Ramm”).

The Trust is the owner of approximately 2,000 acres in Pinal County, Arizona (the “Sacaton Site”) upon which Ramm proposes to build a pumped storage hydro-electric project using the existing open pit for the lower reservoir and constructing the upper reservoir on a waste rock dump (“Proposed Project”). The Trust took title to the Sacaton Site in December 2009 with the primary purpose to oversee the remediation of the contamination caused by historic mining activities at the Sacaton Site. As the Trust has previously indicated to Ramm, the Trust believes Ramm’s Proposed Project would cause significant environmental harm and, as further described below, requests that the Commission decline to open a licensing proceeding for the Proposed Project.

If the Commission should nonetheless decide to open a license proceeding, it should use the default integrated license process (“ILP”) and reject Ramm’s request to use the traditional license process (“TLP”).

The PAD/NOI implies that Ramm has conducted extensive analysis of the Sacaton Site and the feasibility of its Proposed Project. In fact, Ramm has never set foot on the Sacaton Site and has prepared the PAD/NOI in a vacuum without any consultation or coordination with the Trust, the owner of the Sacaton Site. Further, the analysis Ramm included in its filing and the document Ramm attached to its filing was created by the Trust for entirely different purposes. Ramm asserts that the Trust has fully remediated the Sacaton Site and it is now ready for their pumped storage project. It is true that the Sacaton Site has been remediated to the satisfaction of the Arizona Department of Environmental Quality (“ADEQ”), based on the current use of the Sacaton Site, but Ramm’s Proposed Project would disrupt the remediation, cause significant damage to the groundwater status quo and likely cause extensive environmental and groundwater degradation.

Pumped storage is generally an excellent, environmentally friendly renewable electric generation technology. But as for the Sacaton Site, a pumped storage project, as proposed, would create significant environmental degradation and risk exacerbating currently remediated and stabilized contamination throughout the environment.

## **II. BACKGROUND ON THE TRUST AND THE SACATON SITE**

### **A. Background on the Trust**

The Trust was created in December 2009 as part of the United States Bankruptcy Court's confirmation of ASARCO LLC's Chapter 11 bankruptcy. Upon confirmation, the Trust took title to 18 ASARCO sites, including the Sacaton Site. The main objective of the Trust is to remediate the Sacaton Site and, if possible, to sell the Sacaton Site. Consistent with the Trust Agreement, the Trust performs all activities at the Sacaton Site consistent with work plans approved by ADEQ, defined by the Trust Agreement as the lead agency for the Sacaton Site. The State of Arizona, through the ADEQ and the United States, through the U.S. Environmental Protection Agency, are the beneficiaries of the Trust as it relates to the Sacaton Site.

### **B. Sacaton Site: Mining Era**

The Sacaton Mine was originally operated by American Smelting and Refining Company (ASARCO) beginning in 1972. ASARCO identified two primary ore bodies, the West Ore Body and the East Ore Body. The West Ore Body was successfully mined by open pit methods to extract the sulfide porphyry copper. ASARCO planned to mine the East Ore Body using underground mining methods; however, the mine closed in 1984 due to the declining price of copper.

Mining of the open pit began in 1972, but the on-site processing of ore did not commence until 1974. The pit is roughly circular and measures approximately 3,000 feet in diameter at the native ground surface and is 1,040 feet deep. During operations the mine consisted of the open pit, crushing facilities, coarse ore stockpiles, a flotation mill, maintenance and administration buildings, a 390-acre tailings storage facility (TSF), a return water impoundment, an approximately 80-acre Alluvium Soil Storage Area, and a 760-acre waste rock dump (WRD). Ore was mined and processed at a rate of approximately 11,000 tons per day and copper was the principal product; however, like many polymetallic deposits, minor amounts of gold, silver, lead, zinc, and molybdenum were also recovered. Concentrates were sent by rail to the ASARCO smelter in El Paso, Texas. During the operating period of the open pit mine, ASARCO sank two shafts southeast of the open pit to access deeper ore reserves. Development of the underground mine was subsequently suspended but the headframe, and main production and ventilation shafts remained at the Sacaton Site. In 1984, ASARCO ceased open-pit mining operations upon depletion of the West Ore Body reserves and the declining price of copper. At the same time, development of an underground mine on the eastern boundary of the Sacaton Site was also shut down due to economic conditions in the copper industry.

### **C. Sacaton Site: Trust Era**

Since the Trust took title to the Sacaton Site in 2009, the Trust has conducted activities primarily to support Sacaton Site permitting and to gather the necessary data to support

the preparation of the Site Improvement Plan (SIP). The primary objectives of the SIP are to mitigate potential human/ecological health hazards, mitigate offsite transport of tailings/waste rock sediments and wind-blown dust and stabilize the tailings storage facility (TSF), waste rock dump (WRD) and the mill/process area and underground mine workings area (UMWA). SIP implementation activities began with demolition in 2018 and the earthwork activities began in April 2019 and continued to December 2019, with revegetation efforts extending into 2020.

As described in the SIP, the primary concerns/risks associated with the Mill/Mechanical Area were impacted soils (inhalation, ingestions, and ecological risk), offsite transport of sediments via stormwater runoff (inhalation, ingestion, and ecological risk), and remaining building structures (human health risk). The earthwork-related SIP activities implemented onsite to mitigate the remaining risks primarily consisted of removal of residual ore and impacted soil material from the primary, intermediate, and fine ore stockpiles and placement of the material a minimum of 2-feet below grade in the designated fill area over the Concentrator Building and Tailings Thickener Area, covering impacted soils with a minimum of 2 feet of clean cover material and backfilling, grading and adding a 2-foot gravel cover to regraded slopes.

The primary concerns or risks associated with the WRD, include exposed waste rock due to slope erosion (inhalation, ingestion, and ecological risk), offsite transport of sediments via stormwater runoff (inhalation, ingestion, and ecological risk), and potential exposure to fine sediments and acid drainage in local ponded areas without surface cover (ecological risk). To address these concerns and risks, the Trust performed the following activities related to the WRD:

- (1) regrading and covering exposed waste rock areas, not previously reclaimed, in the northern portions of the WRD; and
- (2) excavating the Ore Pile at the northern end of the WRD and placing in the WRD Bowl Area.

In addition to the remediation operation and maintenance obligations Elim has assumed as part of the Prospective Purchaser Agreement with ADEQ, Elim has also agreed to perform the following remediation activities after its takes title to the Sacaton Site:

- (1) completing the cover placement on the upper surface of the WRD and maintaining the grading which directs drainage to the center of the stockpile;
- (2) stabilizing/grading to mitigate side-slope erosion where erosion has resulted in the exposure of waste rock; and
- (3) excavating and removing waste-rock piles in areas of the reclaimed benches where evidence of leaching or mineral-salt precipitation has been observed.

In 2017, Tetra Tech, on behalf of the Trust, performed an evaluation of groundwater conditions surrounding the open pit mine and pit lake. Initial sample results indicated that the water in the pit lake had a very low pH and high metals content. The primary focus of the investigation was to determine if the pit lake is acting as a terminal groundwater sink and if

groundwater in the pit was impacting local groundwater quality. Tasks performed included a review of historical information and data, a site inspection to locate existing monitoring wells and historical geologic core hole and collection of water-levels and water samples from existing wells, core holes, shafts and the mine pit lake. Through this investigation it was determined that the mine pit lake water level is at an approximate depth of 930 feet bgs and the estimated potentiometric surface for the Basement Complex/Plutonic-igneous rocks system is at a depth of approximately 270 feet and the Lower Conglomerate Unit (LCU) is at a depth of 400 feet bgs. Therefore, the pit lake is approximately 660 feet below the Basement Complex/Plutonic-igneous rock systems and the mine pit lake is over 530 feet below the LCU potentiometric surface at the Sacaton Site. Because of this hydraulic head difference, there is a high hydraulic gradient into the open pit resulting in groundwater flow into the pit lake, but not out of the pit lake. The addition of the isotopic analysis of the pit lake provides another source of evidence to conclude that the pit lake is subject to significant evaporation and limited recharge, thus preventing water flowing from the pit lake into the surrounding groundwater system.

Essentially, in its current state, the pit lake operates as a terminal sink. Due to the significant evaporation and limited recharge, the highly impacted groundwater present in the pit does not flow from the pit lake into the surrounding groundwater system.

#### **D. Sacaton Site: Current Status and Elim Sale**

The Trust entered into a Purchase Agreement for the sale of the Sacaton Site to Elim Mining (USA) Inc. (“Elim”) for the acquisition of the Sacaton Site in July 2019. The Purchase Agreement became effective in September 2019, after approval of the sale was received from the Trust’s beneficiaries, ADEQ and the U.S. EPA.

The only remaining closing contingency is ADEQ’s approval of the Trust’s implementation of the SIP. The Construction Completion Report for the SIP was submitted to ADEQ on January 27, 2020 and the addendum with the remaining tasks is anticipated to be submitted on February 14, 2020. The Trust and Elim are working towards a March 2, 2020 closing with an outside date of March 31, 2020 to complete the transaction.

### **III. RAMM’S LACK OF INVOLVEMENT WITH THE SITE AND PROBLEMS CREATED BY THE PROPOSED PROJECT**

#### **A. Ramm Contacts With Trust**

Ramm first contacted the Trust in September 2018, six months after filing its application for a preliminary permit and two months after receiving the preliminary permit. At that time, the Trust was preparing the SIP work plan for ADEQ approval and was meeting with Elim regarding acquisition of the Sacaton Site; both were disclosed to Ramm. In April 2019, Ramm presented the Trust with an offer the purchase the Sacaton Site. Given the Trust’s significant concerns regarding the environmental impact of Ramm’s proposed use of the Sacaton Site, and the Trust’s evaluation of Elim’s mining plans for the Sacaton Site, after consultation with ADEQ, the Trust declined entering into further discussions on the Ramm purchase offer.

## **B. Failure to Obtain Access; No Access Planned**

Ramm has never been given access to the Sacaton Site. Based on the Trust's concerns regarding the Proposed Project, Ramm will not be granted access. The Trust further understands, based on the Trust's understanding of Elim's position regarding Ramm's Proposed Project, that after ownership of the Sacaton Site transfers to Elim, Ramm will not be allowed to access the Sacaton Site.

## **C. Surprise at Filing**

The Trust discussed its concerns with the Proposed Project with Adam Rousselle, the individual identified in Section 5.6(d)(2) as the contact for the person authorized to act as agent for Ramm. The Trust explained the environmental concerns related to the Proposed Project and Mr. Rousselle indicated he was not aware of any environmental concerns at the Sacaton Site. Mr. Rousselle agreed that the project as proposed did not make sense and they would never move forward with the project as proposed. Mr. Rousselle indicated they wouldn't move forward with anything related to the Proposed Project without speaking with the Trust first.

Thus the Trust was completely taken by surprise when it received a copy of the press release on January 22, 2020 indicating Ramm's submittal of the PAD/NOI, describing a Proposed Project that posed all the previously identified environmental concerns.

## **D. Misleading as to Ramm Actions and "Studies"**

In contrast to Elim, who has visited the Sacaton Site often and conducted extensive testing there for its planned mining activity, Ramm has prepared PAD/NOI for this Commission which consists largely of the SIP *prepared by the Trust and the Trust's consultants*.

Ramm's entire description of existing environment and resource impacts is based on work performed by the Trust, to remediate the environmental impacts caused by historic mining operations. The SIP, attached to Ramm's PAD/NOI, does not contemplate Ramm's Proposed Project and in no way does the SIP assess or evaluate the impacts of Ramm's Proposed Project.

## **E. Likely Impact of Moving the Contaminated Water**

Ramm's Proposed Project includes the use of the existing approximately 1,200 feet deep open pit for the lower reservoir. Based on a technical hydrogeologic analysis performed by the Trust's consultant Tetra Tech in 2017, it was determined the pit lake operates as a terminal groundwater sink because groundwater flux rates into the open pit are low and the evaporation rate is high in this desert environment. The pit lake level is approximately 530 to 660 feet below projected static water levels for the LCU and the Plutonic-igneous rocks, respectively. The pit lake level appears to be stable after 35 years since mining ceased at the Sacaton Site in 1984. Hence, this significant difference in hydraulic head between the pit lake level and static groundwater elevations results in a terminal sink with groundwater being captured by the pit.

Ramm's proposed project indicates that the mine pit will need to be deepened by approximately 220 feet (elevation 200 amsl). The primary technical issue with deepening the pit is the proposed depth of approximately 1,264 feet and the potential to penetrate the basement fault.

The basement fault was encountered at a depth of 1,235 feet in the main shaft. Prior to encountering the basement fault, no groundwater pumping was required to keep the shaft dry. After ASARCO penetrated the basement fault in the main shaft, they had to pump approximately 800 gpm to keep it dry to complete the shaft. A significant concern with deepening the pit is that encountering deeper more conductive deposits and/or water-producing faults could result in more rapid infilling of the pit such that it is no longer balanced by evaporation.

If Ramm's Proposed Project was constructed as proposed, it would likely result in the pit lake rising to an elevation which is approximately 750 ft higher than its current elevation. The pit lake water is currently contained by this groundwater sink; however, a rise in water levels in the pit could change this condition resulting in constituent impacts migrating out from the pit lake into shallow groundwater. Water samples analyzed from the pit lake show elevated concentrations of numerous metals including copper and arsenic due to its direct exposure to rock formations with copper sulphates and other metal oxides. Also, the pit lake water is extremely acidic with a pH in the range of 3 to 5. A change in the hydrogeologic regime of the pit lake would result in low pH water laden with metals to migrate away from the pit and impact groundwater that it not currently affected due to the terminal sink condition.

Furthermore, Ramm's Proposed Project includes the need for a significant volume of supplemental water to operate because the current volume of water in the pit lake is insufficient. Additional water (either pumped from on-site or from an off-site source) would be required to meet the projected water volume demand. This additional volume of water pumped into the pit lake would serve to further accelerate and exacerbate the issues described above regarding a change in the hydrogeologic regime of the pit lake from a sink to a flow through system.

#### **F. Likely Impact of Upper Reservoir on WRD**

In addition to the use of the open pit for the lower reservoir, Ramm's Proposed Project includes a newly constructed upper reservoir in the WRD. Also, a 100-megawatt solar-panel plant is proposed to be built adjacent the upper reservoir; also located on top of the existing WRD.

The WRD contains legacy ASARCO mining material consisting of ore material and waste rock from the pit. Based on former and recent drilling programs at the Sacaton Site, there is no confining layer that would prevent the migration of leachate from the near surface to the underlying groundwater table. The infiltration from an unlined pond on the WRD will cause leaching of trace metal constituents from ore material/waste rock to the underlying groundwater table.

Inevitably, an unlined pond will leak, and depending on the size and location of the leak it may be difficult to detect it, resulting in potential long-term impacts to groundwater. Without direct subsurface monitoring or detailed water balance calculations on the pond, it would be very difficult to know if or where significant amounts of infiltration were occurring beneath the pond. Depending on the scale and magnitude of leaching and the difficulty in detecting it, the potential long-term impacts to groundwater is likely.

#### IV. COMMISSION SHOULD DECLINE TO OPEN LICENSE PROCEEDING

##### A. Ramm Lack of Candor

The PAD/NOI raises significant concerns on the part of the Trust. For example, Commission rules require that pre-application document provide a description of the water resources of the proposed project and the surrounding area; it must address the *quantity and quality of all waters affected* by the project (emphasis added).<sup>1</sup> Ramm's response is to merely direct the Commission to review sections of the Trust's SIP that discuss the water source used during the remediation activities. Ramm remains silent or, worse, states there are not expected to be any environmental controversies, when it knows that it has failed to study or consider the significant negative impacts to groundwater quality that would be caused by the Proposed Project.

Ramm apparently has liberally relied on Rule 5.6(b)(2), stating a potential applicant does not need to conduct studies for inclusion in the pre-application document.<sup>2</sup> Nonetheless, Ramm's failure to acknowledge the existence of known-to-Ramm environmental conditions described above in Section III and detailed in the SIP, and the impact the Proposed Project would have on such conditions, gives the Trust significant cause for concern regarding Ramm's lack of candor toward the Commission.

##### B. Significant Environmental Issues with Ramm Proposal

As it considered the two proposals for re-use of the Sacaton Site proposed by Ramm and Elim, the Trust was concerned mostly with the impact each would have on the environment. The Trust has spent a decade analyzing the Sacaton Site in great detail and seeks to ensure that any new owner be a good steward of the Sacaton Site, not exacerbate any existing contamination, and continue to protect the environment.

In the Trust's judgment, this was not a close call. Despite the theoretical attractiveness of a renewable energy project, evaluation of the two proposals left no room for doubt. What Ramm is proposing will have a negative impact on the environment. What Elim is proposing respects the remediation activities performed by the Trust and will be performed with regulatory oversight to ensure on-going protection of the environment. Plus, Elim will perform the necessary operations and maintenance activities, as outlined in the Prospective Purchaser Agreement with ADEQ, to maintain the remediation performed by the Trust. In addition to operating in a manner that is protective of the environment, Elim will introduce considerable economic activity to the area. The ADEQ confirmed this judgment by providing approval of the Purchase Agreement with Elim.

The Trust requests that the Commission prevent the further waste of resources by multiple parties and Commission staff by declining to commence a license proceeding.

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<sup>1</sup> 18 C.F.R. § 5.6(d)(3)(iii)

<sup>2</sup> 18 C.F.R. § 5.6(b)(2)

## V. DENY REQUEST TO USE TLP

Ramm’s PAD/NOI requests use of the TLP. Should the Commission deny the Trust’s request to decline to open any license procedure, the Trust endorses use of the ILP. The Trust understands that the ADEQ is submitting comments which also express a preference for use of the ILP. As demonstrated above and in the comments of ADEQ, there are extensive and complicated issues regarding the Proposed Project and they are likely to create significant controversy.

The Commission grants requests to use the TLP if it believes there has been good cause shown, and otherwise the default ILP is used.<sup>3</sup> The Commission uses a minimum of five factors in reviewing such requests, and the “more likely it appears from the participants’ filings that the application will have relatively few issues, little controversy, can be expeditiously processed, and can be processed less expensively under the traditional process, the more likely the Commission is to approve the request.”<sup>4</sup> The Commission denies TLP requests in cases where the proposed project “ha[d] the potential to be controversial and involve complex environmental issues.”<sup>5</sup>

The Trust here addresses the five factors the Commission has identified<sup>6</sup> and will highlight as appropriate assertions made in Ramm’s PAD/NOI that significantly misrepresent the facts.

### A. Likelihood of Timely License Issuance

For the reasons detailed above and in ADEQ’s comments regarding the complexity and risks of Ramm’s proposed pumping of highly contaminated water at the Sacaton Site and the WRD for a pumped storage project, the Trust has concerns that the Proposed Project would ever

<sup>3</sup> *Hydroelectric Licensing Under the Federal Power Act*, 104 FERC ¶ 61,109 at P. 46-48 (July 23, 2003) (“Final Rule”).

<sup>4</sup> *Id.* at P. 48; *see, also Vermont Cavendish Hydroelectric Project Green Mountain Power Corp.*, Docket No. P-2489-048 (Dec. 20, 2019) (approving TLP request where “complexity of the resource issues is believed to be minor, the level of anticipated controversy is expected to be minimal, and there is a reasonable amount of available information associated with the project...”).

<sup>5</sup> *See, e.g., Connelly Lake Hydroelectric Project*, Docket No. P-14299-001 – AK (Aug. 31, 2012) (denying TLP request where U.S. Fish and Wildlife Service (“FWS”), National Marine Fisheries Service (“NMFS”), Alaska Department of Fish and Game (“ADFG”) and a number of other agencies, organizations and individuals filed comments opposing the TLP and indicating that the complexity of the resource issues and the level of controversy on the project would be high, and where FWS, NMFS and ADFG also indicated a potential for study disputes); *Two Girls Creek Hydroelectric Power*, Docket No. P-1414-000-OR (Sept. 16, 2011) (FERC denied TLP request where commenters indicated that the environmental issues associated with the proposed project, including the project’s effect on federally listed endangered species and their habitat, were more complex than represented by the applicant. FERC concluded that the potentially complex environmental issues “will require coordination over information needs and study design” and that “the ILP, with its study planning process would be valuable”); *West Virginia Cass Hydroelectric Project*, Docket No. P-14373 (May 11, 2012) (TLP request denied where West Virginia Division of Natural Resources identified a number of concerns regarding the proposed project and the information in the PAD, and where other commenters indicated that the PAD underestimated the complexity of the resource issues associated with the project).

<sup>6</sup> “These are: (1) likelihood of timely license issuance; (2) complexity of the resource issues; (3) level of anticipated controversy; (4) the amount of available information and potential for significant disputes over studies; and (5) the relative cost of the traditional process compared to the integrated process.” *Final Rule*, at P.48.



be deemed appropriate for the issuance of a FERC hydroelectric license. In addressing this factor in the PAD/NOI,<sup>7</sup> Ramm has made a number of assertions which must be contested. The PAD/NOI baldly asserts that there are no remaining environmental issues at the Sacaton Site, yet as shown above and in ADEQ's comments, there are significant ongoing environmental concerns for ongoing remedial activities and monitoring at the Sacaton Site.

Ramm asserts it will be an "environmentally friendly business with minimal environmental impact off site" and that its proposal would have "no added impact" beyond the current conditions. Yet Ramm has failed to acknowledge or address in any serious way the risks of the exacerbation of remaining contamination at the Sacaton Site which could be caused by its proposed project. Ramm also asserts that "there are no likely significant issues with the identified stakeholders." Yet clearly key stakeholders such as ADEQ, the Trust, and Elim have significant issues with the Proposed Project.

### **B. Complexity of the Resource Issues**

The comments above and the comments being filed by the ADEQ and Elim make it abundantly clear that there are a number of complex issues raised by the Proposed Project. The Trust will not restate them here. But in addressing these factors in the PAD/NOI, Ramm has made a number of assertions which must be contested. Ramm states that "the proposed project presents very few, if any, resource issues of any complexity." As can be seen in the above noted points, the Trust disagrees with this assessment. Ramm describes the project as relying "only on temporary withdrawals from surface waters or groundwater for the sole purpose of initial fill and periodic recharge." This description completely ignores the fact that the water itself is contaminated, that the "temporary" withdrawals would continue for the life and duration of the Proposed Project, and that this regular and persistent circulation of contaminated water from its current location would likely have significant impacts on the groundwater and could change the entire hydrologic regime at the Sacaton Site.

### **C. Level of Anticipated Controversy**

As a direct result of Ramm's lack of significant involvement with the Trust and the ADEQ or evaluation of the physical Sacaton Site prior to its decision to file the PAD/NOI, its proposal is now highly controversial. At this stage, none of the Trust's significant environmental concerns have been acknowledged or addressed, and the Trust has no reason to believe that this licensing process, particularly if the TLP is used, will be anything other than a long battle.

In addressing this factor in the PAD/NOI, Ramm has made a number of assertions which must be contested. It asserts that there are only two issues to be resolved, "purchase of the land from the environmental trust" and the "source of the original charge". But that is just scratching the surface of the complexities and issues involved at the Sacaton Site. Further, Ramm asserts that it hopes to resolve Elim's concerns "through negotiation" but the Trust is unaware of any serious attempts at negotiations between those parties.

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<sup>7</sup> Ramm did not include page numbers in the PAD/NOI filing, so pinpoint citations are not available.

#### **D. Available Information and Potential for Significant Disputes over Studies**

In addressing this factor in the PAD/NOI, Ramm asserts that it “does not expect significant dispute over studies” in large part because of the “existing information” found in “historical studies” from the 1970’s and the “environmental review . . . testing and remediation” that has been carried out by ADEQ and the Trust. Ramm even asserts that the “present standing of the property in the eyes of the ADEQ” should indicate that there will be no disputes over studies. These assertions reflect nothing more than wishful thinking and naivety. The previous work at the Sacaton Site is exactly why the Trust has such significant concerns over the Proposed Project, which itself has not been studied at all. What the Trust knows today is that the Proposed Project is likely incompatible with protection of the surrounding environment.

#### **E. Relative Cost of the TLP Compared to ILP**

Beginning a TLP process now for this issuance of a FERC license for the proposed pumped storage project at the Sacaton Site would be significantly premature. Ramm has failed to engage the Trust or ADEQ and not nearly enough pre-filing consultation has occurred. None of the concerns of stakeholders such as the Trust and ADEQ has been acknowledged or addressed. Given the limited involvement by Ramm with these stakeholders, the Trust is skeptical as to whether any other potential stakeholders have been identified or addressed. In such a situation, launching headlong into the TLP would likely lead to years of costly and inefficient litigation. The Commission’s default licensing process, the ILP, is designed to help avoid such inefficiency.

### **CONCLUSION**

For the reasons stated above, the Trust requests that the Commission deny Ramm’s request to open a hydroelectric license proceeding for the Proposed Project at the Sacaton Site. In the alternative, should the Commission go forward with the license proceeding, it should require that the integrated license process (ILP) be followed.

Respectfully submitted,

FOLEY & LARDNER LLP

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