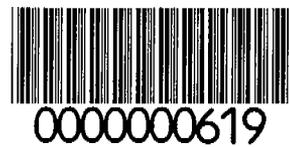


COVER SHEET

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL CENTER



ORIGINAL

CASE/COMPANY NAME:

Arizona Corporation Commission

DOCKET NO. 1-00000P-99-0098

Duke Energy Maricopa, LLC

DOCKETED

2000 JUL 11 P 4: 38

JUL 11 2000

AZ CORP COMMISSION
DOCUMENT CONTROL

D/B/A:

DOCKETED BY: JN

NATURE OF ACTION OR DESCRIPTION OF DOCUMENT Please mark the item that describes the nature of the case/filing:

01 NEW APPLICATIONS

- NEW CC&N
- RATES
- INTERIM RATES
- CANCELANON OF CC&N
- DELETION OF CC&N TERRITORY
- EXTENTION OF CC&N (TERRITORY)
- TARIFF - NEW (NEXT OPEN MEETING)
- REQUEST FOR ARBITRATION (Telecommunication Act)
- FULLY OR PARTIALLY ARBITRATED INTERCONNECTION AGREEMENT (Telecom. Act)
- VOLUNTARY INTERCONNECTION AGREEMENT (Telecom. Act)
- MAIN EXTENSION
- CONTRACT/AGREEMENTS
- COMPLAINT (Formal)
- RULE VARIANCE/WAIVER REQUEST
- SITING COMMITTEE CASE
- SMALL WATER COMPANY -SURCHARGE (Senate Bill 1252)
- NOTICE OF OPPORTUNITY
- SALE OF ASSETS & TRANSFER OF OWNERSHIP
- SALE OF ASSETS & CANCELLATION OF CC&N
- FUEL ADJUSTER/PGA
- MERGER
- FINANCING
- MISCELLANEOUS
Specify _____

02 REVISIONS/AMENDMENTS TO PENDING OR APPROVED MATTERS

APPLICATION COMPANY DOCKET NO. _____

TARIFF PROMOTIONAL DECISION NO. _____ DOCKET NO. _____ COMPLIANCE DECISION NO. _____ DOCKET NO. _____

MISCELLANEOUS FILINGS

- 04 AFFIDAVIT
- 12 EXCEPTION
- 18 REQUEST FOR INTERVENTION
- 48 REQUEST FOR HEARING
- 24 OPPOSITION
- 50 COMPLIANCE ITEM FOR APPROVAL
- 29 STIPULATION
- 38 NOTICE OF INTENT (Only notification of future action/no action necessary)
- 43 PETITION
- 46 NOTICE OF LIMITED APPEARANCE
- 39 OTHER

Specify Response to the Arizona Center for Law in the Public Interest's Request for Review of Siting Committee Decision

DATED: July 11, 2000

Thomas H. Campbell, LEWIS AND ROCA LLP
Print Name of Applicant/Company/contact person
Attorneys for Duke Energy Maricopa LLC

PLEASE SEE NOTICE ON REVERSE SIDE

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BEFORE THE ARIZONA CORPORATION COMMISSION

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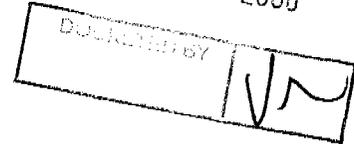
1
2
3 Carl J. Kunasek
Chairman

4 Jim Irvin
5 Commissioner

6 William A. Mundell
7 Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL
Arizona Corporation Commission
DOCKETED

JUL 11 2000



9 In the matter of the Application of Duke
10 Energy Maricopa, LLC in conformance with
11 the requirements of Arizona Revised Statutes
12 40-360.01 et seq., for a Certificate of
13 Environmental Compatibility authorizing the
14 construction of natural gas-fired, combined
15 cycle generating facilities, and associated
16 transmission line near Arlington in Maricopa
17 County, Arizona.

CASE NO. 98
DOCKET NO. L-00000P-99-0098

APPLICANT'S RESPONSE TO THE
ARIZONA CENTER FOR LAW IN
THE PUBLIC INTEREST'S
REQUEST FOR REVIEW OF SITING
COMMITTEE'S DECISION

15 The Arizona Center for Law in the Public Interest ("Center") has requested
16 the Arizona Corporation Commission's ("Commission") review of the Power Plant and
17 Transmission Line Siting Committee's ("Committee") decision to grant Duke Energy
18 Maricopa LLC ("Duke") a Certificate of Environmental Compatibility ("CEC") for
19 construction and operation of a natural gas-fired, combined-cycle electric generating plant
20 and associated transmission line ("Duke Project"). The Center contends that the record
21 does not contain sufficient evidence to demonstrate the need for the Duke Project and that
22 the process for issuing a CEC should be modified. These are the same arguments made by
23 the Center and rejected by the Commission in Panda's CEC proceeding (ACC Decision
24 No: 62730).

1 **I. Duke is Not Required to Demonstrate a Need for the Duke Project.**

2 The Center erroneously contends that the balancing test set forth in A.R.S.
3 § 40-360.07(B) requires Duke to demonstrate the need for the Duke Project. This simply
4 is not true. Neither the statutes nor Commission rules governing the CEC process require
5 an applicant to justify the need for its project. The factors to be considered by the
6 Committee when considering an application are listed in A.R.S. § 40-360.06. None of the
7 listed items pertain to the need for the plant, but rather to the environmental impact of the
8 project. These factors were addressed fully by the applicant during the Siting Committee
9 hearing.

10 Even if Duke is required to demonstrate the need for new generating
11 capacity, Duke has more than adequately made that demonstration. The record contains
12 substantial evidence concerning the need for the Duke Project. Duke witness Bradley
13 Porlier testified extensively concerning the generation deficiency and increasing demand
14 in the Southwest, including the Phoenix area. (Hearing Transcript, pp. 22, 23-26).
15 Specifically, Mr. Porlier testified that the Southwest (Arizona, New Mexico and Southern
16 Nevada) “needs as much as 11,000 megawatts of additional capacity” over the next eight
17 years.

18 Arizona Corporation Commission staff witness Mr. Jerry Smith also testified
19 as to the need for this power. (Hearing Transcript, pp. 153-159). Mr. Smith, using
20 information from the Western States Coordinating Counsel, testified that approximately
21 6,000 megawatts is needed in this region and that demand for power will grow in excess of
22 2 ½% annually.

23 Mr. Porlier’s and Mr. Smith’s testimony was not refuted or called into
24 question by any other party.

25 The Commission is well aware of the need for additional generation. For
26 instance, the Commission has been actively involved in ensuring adequate generation in

1 the Commission's Electric Industry Summer Peak 2000 Preparedness Workshop held May
2 17, 2000. During the workshop the Commissioners solicited testimony concerning the
3 projected generation demand and supply. In response, Commission Staff testified to the
4 need for the planned generation plants in order to meet the increasing demand.

5 The Center's claim that Duke must demonstrate the need for its project is
6 incompatible with the basic concept of deregulation. The Arizona Legislature has
7 declared that it is the public policy of the State that a competitive market shall exist in the
8 sale of electric generation service. A.R.S. § 40-202(B). The Commission has also
9 determined that competition in electric generation is in the public interest. In furtherance
10 of the stated policy the Commission has enacted rules and issued competitive CC&Ns. A
11 vital piece of competition is the construction of competitive electric generation facilities.
12 In a competitive market, the decision to build or not build electric generation capacity is
13 driven by the market and not by the government. It is the electric generation provider's
14 determination of need and the existence of a demand for additional capacity that
15 determines whether it will build a plant. The CEC statutes should not be interpreted in
16 such a manner as to interfere with the more recently enacted policy of the State
17 implementing competition.

18 **II. The Center May Not Expand the Scope of the CEC Process Through its**
19 **Request.**

20 The Center does not like the process for siting generation plants created by
21 the Legislature. The bulk of the Center's request is devoted to its concern that the power
22 generated from the Duke Project and other planned generation plants may be sold outside
23 of Arizona. Additionally, the Center advocates for a different process for issuing CECs.
24 In this regard the Center lists various factors it believes should be addressed in a CEC
25 application. Although the Center may wish to lobby the Legislature to amend the CEC
26

1 process, the Center's suggested legislative changes have no place in a proceeding for a
2 CEC.

3 In addition, the Center's position is contrary to the direction of the
4 Legislature. The Legislature has actually diminished oversight of electric generation.
5 Such action is consistent with the policy of the State to implement competition. Prior to a
6 1998 statutory change, persons contemplating construction of electric generation facilities
7 were required to file a ten year plan with the Commission detailing the proposed facilities.
8 (A.R.S. § 40-360.02 as added by Law 1971, Ch. 67 § 2). The Commission could compile
9 the various plans and engage in the planning of electric generation as set forth in the
10 statute. However, in 1998 the Legislature amended A.R.S. § 40-360.02 to limit its scope
11 to the construction of transmission lines, not power plants. The Center's claim that the
12 Commission should be increasing the scope of its review and planning is directly contrary
13 to the direction of the Legislature.

14 **III. The Center Did Not Participate In the CEC Process.**

15 It is inappropriate for the Center to raise its concerns for the first time at this
16 juncture. Although the Center filed its notice of intent to become a party, the Center did
17 not participate in the hearing or ask the Committee to address any of the Center's
18 concerns. By objecting after the process is essentially over, the Center prevents Duke
19 from having the opportunity to respond. The Center waived its right to have those
20 concerns addressed and should not be allowed to delay Duke's CEC at this late date.

21 **IV. Conclusion.**

22 As the record clearly shows, the Duke Project will have no significant
23 environmental impacts. Further, although not required, Duke has demonstrated the need
24 for the Duke Project. Therefore, the Commission should approve the CEC as granted by
25 the Committee.
26

1
2 RESPECTFULLY SUBMITTED this 11th day of July, 2000.

3 LEWIS AND ROCA LLP

4 

5 Thomas H. Campbell

6 Michael Denby

7 40 N. Central Avenue

8 Phoenix, Arizona 85004

9 Attorneys for Duke Energy Maricopa LLC

10 ORIGINAL and 25 copies of
11 the foregoing filed this 11th day
12 of July, 2000, with:

13 Docket Control
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 COPY of the foregoing hand-delivered
18 this 11th day of July, 2000, to:

19 Paul Bullis
20 Chairman, Designee for Arizona Attorney General Janet Napolitano
21 Office of the Attorney General
22 1275 West Washington Street
23 Phoenix, AZ 85007-2997

24 Teena I. Wolfe, Esq.
25 Legal Division
26 Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2927

Deborah R. Scott, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2997

Carl J. Kunasek
Chairman
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2997

LEWIS
AND
ROCA
LLP

LAWYERS

1 James M. Irvin
Commissioner
2 Arizona Corporation Commission
1200 West Washington Street
3 Phoenix, AZ 85007-2997

4 William Mundell
Commissioner
5 Arizona Corporation Commission
1200 West Washington Street
6 Phoenix, AZ 85007-2997

7 COPY of the foregoing mailed
this 11th day of July, 2000, to:

8 Timothy M. Hogan
9 Arizona Center for Law
in the Public Interest
10 202 E. McDowell Rd., Suite 153
Phoenix, AZ 85004

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