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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC RESTRUCTURING ISSUES	DOCKET NO. E-00000A-02-0051

TUCSON ELECTRIC POWER COMPANY'S

RESPONSE TO

STAFF'S NOTICE OF INQUIRY

MAY 30, 2003

TUCSON ELECTRIC POWER COMPANY'S

RESPONSE TO STAFF'S NOTICE OF INQUIRY

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Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby responds to the Arizona Corporation Commission ("Commission") Utilities Division Staff's Notice of Inquiry, dated April 8, 2003 ("Staff Notice of Inquiry"),[1] as follows:

I. INTRODUCTION.

In recent years, steady load growth and Arizona's efforts to establish a viable competitive wholesale electric market have prompted independent power producers and incumbent utilities to construct an unprecedented number of new power plants in the State. At the same time, new transmission lines have been proposed to transport the additional power and ensure reliable electric service for the State's existing and future customers.

The power plant and line siting process in Arizona was established by the Arizona Legislature. Under Arizona law, before a utility can construct a new power plant or transmission line, it must receive a Commission order affirming and approving (or, in some cases, issuing) the CEC ("Commission CEC Order"). A.R.S. § 40-360.07. Consequently, during the past several years, there has been a substantial increase in the number of CEC applications that have been filed with the Commission. The varied and sometimes unique circumstances underlying each CEC-authorized construction project have presented the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") and the Commission with some issues that have not been addressed for many years and others that are matters of first impression.

It is against this backdrop that the Staff Notice of Inquiry seeks input on what changes to the existing siting process in Arizona would require the holder of a CEC to file an application for an amendment and/or modification under A.R.S. § 40-252 ("Staff Notice of Inquiry issue").

[1] This Response is being filed as part of the public record in the "Generic Restructuring Docket" in anticipation of the initiation of future rule making proceedings.

As detailed more fully herein, TEP supports the oversight of power plant and transmission line siting decisions. TEP further supports the existing statutory structure and the balancing test that weighs the environmental impact of power plant and transmission line construction projects against need and the public interest. Moreover, TEP believes that oversight of the siting process should remain with the State and not be a matter of Federal jurisdiction.

TEP believes that substantive additions, modifications or deletions to the established siting process in Arizona must be made by the Arizona Legislature. Only the Legislature can substantively change the current statutory scheme that creates and authorizes the Siting Committee, sets CEC standards and authorizes the Commission to review (or otherwise issue) CECs. See Coleman v. Industrial Commission, 14 Ariz. App. 573, 575, 485 P2d 296, 298 (1971) (changes in the public policy of statutes must be addressed by the Legislature).

TEP also believes that the Commission may issue orders or implement rules on procedural matters regarding the Siting Committee and CECs, as long as any such orders or rules are not contrary to the Siting Committee statutes. See A.R.S. § 40-360.01(D) (The Commission shall establish procedures for noticing and conducting hearings and for timely decisions on a CEC).

TEP further believes that in order to resolve the Staff Notice of Inquiry issue, the Commission may have to utilize a combination of legislative initiatives, administrative rulemaking proceedings and Commission orders. On the other hand, the Commission may conclude that the current process, under which a Commission CEC Order can be amended, modified or rescinded pursuant to A.R.S. § 40-252 is sufficient, in and of itself, to resolve the Staff Notice of Inquiry issue. In that case, no additional legislation or rulemaking would be necessary.

II. EXECUTIVE SUMMARY.

A procedure currently exists under which Commission CEC Orders can be reviewed. Specifically, A.R.S. § 40-252 provides that "the commission may at any time, upon notice to the corporation affected, and after opportunity to be heard as upon a complaint, rescind, alter or amend any order or decision made by it." The authority granted by A.R.S. § 40-252 appears to be sufficient to govern situations where a material change in a CEC-authorized construction project occurs, which warrants additional Commission review.

If the Commission determines that the siting process should be revised to contain express provisions for the amendment of CECs, then the Legislature will have to enact new statutes. Under the existing statutory framework, the Siting Committee and the Commission do not have the authority to amend a CEC that has been issued by the Siting Committee and affirmed and approved by Commission CEC Order. Under the circumstances identified above, however, the Commission may review a Commission CEC Order.

If the Commission determines that the siting process should be revised, TEP recommends implementation of the following procedures:

A. Establishment of the following two-part test to determine whether a change in a CEC-authorized construction project justifies additional Commission review: (1) Would the proposed change materially alter the authorized construction project? and (2) Would the proposed change have a material adverse impact on the Commission's determination pursuant to A.R.S. § 40-360.07?

B. Establishment of the following three-part procedure for review of changes in CEC-authorized construction projects: (1) preliminary determination by

the CEC holder, (2) an informal meet-and-confer process with a Commission-designated representative, if necessary; and (3) a proceeding under A.R.S. § 40-252 to review the Commission CEC Order.

C. Establishment of the following standard of review for A.R.S. § 40-252 proceedings concerning Commission CEC Orders: "The Commission shall balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of the State."

D. Establishment of safeguards to prevent irreparable harm or abuse, including but not limited to the following: (1) a presumption that changes to CEC-authorized construction projects do not require additional review to the Commission CEC Order; and (2) applicability of the anti-stay provisions of A.R.S. § 40-360.11, at the Commission level.

III. GENERAL COMMENTS.

A. Scrutiny of the Siting Process.

The power plant and transmission line siting process has come under increasing national scrutiny. The Federal Energy Regulatory Commission ("FERC") is seeking to consolidate power plant and transmission line siting authority at the federal level, which is causing sharp divisions between supporters of Federal versus State control of the siting process. TEP supports continued State control of the siting process. TEP believes that the necessary balancing of environmental impacts and the need for economical and reliable electric power is best understood, determined and administered by the people (and their representatives) who will be directly affected by siting

decisions. TEP also believes that State control results in a process that is logistically feasible, conducted in a timely manner and less expensive than if siting cases were to be handled by FERC.

Arizona has in place a siting process that is authorized by statute and further guided by administrative rules and regulations. The Arizona process has built-in checks and balances at the Siting Committee level, the Commission level and the judicial appellate level, which have sufficiently served the needs of the State.

TEP acknowledges that a possibility exists that the Commission will determine that some revisions may be beneficial to update the siting process. If the Commission makes such a determination, then TEP cautions that the Commission should not do anything that would undermine the State's jurisdiction or otherwise send a signal that the Commission is abdicating all or a part of its regulatory oversight of the siting process to the federal government. TEP also reiterates that some revisions to the siting process may not be implemented by the Commission, but will require Legislative amendment of the applicable statutes. Accordingly, TEP urges that the Staff Notice of Inquiry proceed along paths that are clearly defined as to authority, jurisdiction and scope of the siting process. Indeed, any revision that Commission Staff may recommend to the existing siting process should clearly identify the proper forum for implementing the recommendation and should ensure that all aspects of procedural and substantive due process are met.

B. Flexibility to Construct the Projects.

Power plant and transmission line construction projects are generally complex, expensive and tightly scheduled undertakings. The various aspects of these construction projects -- including the engineering, environmental analyses, procurement of materials and work force, commitment of financing and receipt of authorizations and licenses -- are intertwined. CECs should not be unduly restrictive (or too heavily conditioned) when they are initially issued, but should provide sufficient

flexibility for utilities to adapt, in a timely and efficient manner, to real world changes in the cost, engineering, scope and/or timing of the construction projects. See A.R.S. § 40-360.04(E).

TEP believes that if there is going to be a change in the scope or procedures regarding the review of CEC-authorized construction projects, then certain protections must be put in place. First, there must be a threshold recognition (i.e., a legal presumption) that not all changes to a proposed construction project require an amendment to the corresponding Commission CEC Order. Second, the anti-stay provisions of A.R.S. § 40-360.11 must be enforced at the Commission level. Without these protections, opponents to CEC-authorized power plant or transmission line projects could use the "amendment" procedure as a ploy to delay, ad infinitum, the construction of such projects. It would be an impossible process to require a utility to halt construction and adjudicate the impact of each and every change made in a construction project.

TEP recognizes that some changes may render a construction project materially different from the project referenced in the Commission CEC Order, thereby justifying additional Commission review. Thus, TEP views the task of the Staff Notice of Inquiry to determine if, in fact, changes are necessary to the existing siting process and, if so, (1) to develop the appropriate standard for determining what constitutes a "material change" that would require additional Commission review, and (2) to implement procedures for the timely review of any such changes.

C. Jurisdictional Issues.

TEP believes that the following fundamental issues are imbedded in the Staff Notice of Inquiry: (1) the Siting Committee's jurisdiction; (2) the Commission's jurisdiction; (3) the legal scope of a CEC; and (4) the legal significance of the Commission CEC Order. It is important to establish a uniform understanding of these issues as the Commission analyzes the Staff Notice of Inquiry issue and potential resolutions thereto.

The Siting Committee's jurisdiction is derived by statute. Pursuant to A.R.S. § 40-360.01, the Commission establishes the Siting Committee. The Siting Committee, in turn, has jurisdiction to conduct hearings on CEC applications and to "approve or deny an application." The Siting Committee also may "impose reasonable conditions upon the issuance of a [CEC]." A.R.S. §§ 40-360.04;40-360.06. The statutes do not provide the Siting Committee with any further authority or jurisdiction in the siting process.

Once the Siting Committee renders its decision regarding a CEC application, the statutes provide that the Commission may either affirm and approve the CEC by order or review the Siting Committee's decision at the request of a party. The Commission also may issue a CEC to an applicant whose CEC Application was denied by the Siting Committee. A.R.S. § 40-360.07.

Arizona Revised Statutes also dictate the standards that the Siting Committee and the Commission must apply in the siting process. The standards applicable to each are significantly different. For example, the Siting Committee is charged with considering the impact of statutorily-specified factors "as a basis for its action with respect to the suitability of either plant or transmission line siting plans." A.R.S. § 40-360.06. On the other hand, the standard applicable to Commission action provides for more discretion: "[I]n arriving at its decision, the [C]ommission shall comply with the provisions of § 40-360.06 and shall balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of the state." A.R.S. § 40-360.07.

Again, the statutes do not authorize the Siting Committee to amend, modify or rescind a CEC once it has been issued. Nor do the statutes authorize the Siting Committee to review the Commission CEC Order. Thus, the Siting Committee's jurisdiction is limited to deliberating applications for CECs and issuing or denying CECs. TEP believes that if the Commission

determines that the Siting Committee's jurisdiction should be changed, any such changes will have to be made by the Legislature.

It is equally significant that the statutes do not authorize the Commission to amend or modify a CEC once it has been affirmed and approved by a Commission CEC Order. In fact, the statutes do not expressly grant to any agency or tribunal the authority to amend a CEC that has been issued and affirmed and approved by the Commission. TEP believes that if the Commission determines that it should have the authority to amend a CEC after the CEC has been affirmed and approved, then this additional authority would have to be granted by statute.

This is not to say, however, that TEP believes that there is no current remedy available for the Commission to review the impact of changes in a CEC-authorized construction project. The statutes clearly provide that Commission decisions and orders (such as a Commission CEC Order) may be amended, modified or rescinded. A.R.S. § 40-252. And, in some situations, the Commission has employed the Siting Committee as a "hearing officer" to provide it with a Recommended Opinion and Order, thereby, involving the Siting Committee in the review process.

Under the current state of the law, TEP believes that if additional Commission review of the authority granted to construct a power plant or transmission line project is warranted, then the proper procedure for so doing would be through a review of the Commission CEC Order, pursuant to A.R.S. § 40-252.

D. Proposed Revisions.

TEP believes that there are many options that the Commission could choose to satisfy the Staff Notice of Inquiry issue. As indicated, those options range from (1) not making any changes to the existing A.R.S. § 40-252 review process, to (2) making changes to the statutes that govern the siting process. If the Commission decides to seek additional substantive and/or procedural

provisions, TEP proposes that the following provisions be considered and, where determined to be applicable, adopted and incorporated into the ultimate resolution:

1. A legal presumption that changes to CEC-authorized construction projects do not require additional review of the Commission CEC Order. This presumption could be overcome by substantial evidence that a proposed change would materially alter the construction project and have a material adverse impact on the Commission's determination under A.R.S. § 40-360.07.[2]

2. A provision that neither the Commission nor the Courts can stay a construction project while a Commission CEC Order is subject to review under A.R.S. § 40-252. See A.R.S. § 40-360.11.

3. An informal procedure whereby a CEC holder and a designated Commission representative can review whether a proposed change is material and warrants the initiation of an A.R.S. § 40-252 review procedure.

4. A standard for determining whether a proposed construction change requires additional Commission review. TEP proposes that the standard be: "Would the proposed change materially alter the construction project and have a material adverse impact on the Commission's determination pursuant to A.R.S. § 40-360.07?

[2]"Materially alter" and "material adverse impact" are defined in Section IV(2), below.

5. A standard for review of Commission CEC Orders in an A.R.S. § 40-252 proceeding. TEP proposes that the standard be: "The Commission shall balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of the State."

IV. TEP'S RESPONSE TO STAFF QUESTIONS.

1. Please describe your interpretation of Decision No. 58793 with regards to what changes from a CEC and/or the application and evidence presented for a CEC constitute a "substantial change" warranting an application for an amended CEC before the Commission?

TEP Response to Staff Question No. 1:

TEP interprets Staff Question No. 1 to presume that a "substantial change" in circumstances is the standard governing when an amendment to a CEC should be requested. However, the substantial change standard, as used in Decision No. 58793, is ambiguous and not relevant to a CEC situation. Accordingly, TEP believes that the standard set forth in Decision No. 58793 should be viewed, at best, as an analogous but distinguishable example that can be factored into the analysis of the Staff Notice of Inquiry issue.

As detailed herein, TEP believes that a two-part analysis employing a materiality standard is more appropriate than the "substantial change standard" set forth in Decision No. 58793, in determining whether additional review of the authority to construct a power plant or transmission line project should be undertaken.

Decision No. 58793 addressed allegations of misconduct that arose subsequent to the issuance of a CEC to Salt River Project Agricultural Improvement and Power District ("SRP") for the construction of the Mead-Phoenix 500 kV Intertie Project. The allegations of misconduct were essentially as follows: inadequate notice regarding the CEC proceedings had been provided, a SRP employee had misrepresented the CEC proceedings to an interested party, erroneous information had been intentionally provided to the Commission during the hearing, and the CEC was issued for the construction of a transmission line that was substantially different from the line that was going to be built (the "significantly different line issue").

With reference to the significantly different line issue, SRP had requested a CEC to construct a 500 kV direct current ("DC") transmission line. The Siting Committee granted the CEC, which was confirmed by the Commission in Decision No. 54792 (November 26, 1985). On or about September 7, 1990, it was announced that the transmission line would be built as an alternating current ("AC") line with the capability of being converted to a DC line. The Commission questioned: "[W]hether the change in the planned configuration of the line requires that SRP either apply to the Committee for an amended CEC, or to the Commission pursuant to A.R.S. § 40-252 for an amendment to Decision No. 54792, to permit the line to be built initially as an AC line, with the later option of converting it to DC." Decision No. 58793 at 22.

The Commission adopted a "substantial change" standard, taken from the context of modifications to environmental impact statements, as the criterion to be used in determining if and when CECs should be amended. Id. at 24. The Commission further concluded that "the tests suggested in A.R.S. § 41-1025 are appropriately utilized in applying this criterion." Id. at 25.

A.R.S. § 41-1025 addresses the circumstances under which a proposed administrative rule is deemed "substantially different" from the originally proposed rule, thereby requiring that the proposed administrative rule be re-noticed before it can be adopted. A.R.S. § 41-1025 provides:

> A. An agency may not submit a rule to the council that is substantially different from the proposed rule contained in the notice of proposed rule making or a supplemental notice filed with the secretary of state pursuant to § 41-1022.[3] However, an agency may terminate a rule making proceeding and commence a new rule making proceeding for the purpose of making a substantially different rule.
>
> B. In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:
>
> > 1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
> >
> > 2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
> >
> > 3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.

(hereinafter, collectively, the "Section 41-1025 tests").

Unfortunately, Decision No. 58793 fails to reconcile the term "substantial change" as utilized by the Commission, with the term "substantially different" as set forth in A.R.S. § 41-1025. Thus, it is uncertain if those terms are identical, similar or distinguishable from each other. It is essential that the Commission use clearly and uniformly defined terms in order to provide parties with adequate

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[3] A.R.S. § 41-1025 uses the term "substantially different" rather than the term "substantially changed" that was utilized by the Commission in Decision No. 58793.

notice of the standard that is being established regarding the review of CECs and/or Commission CEC orders. See State v. Western, 168 Ariz. 169, 171, 812 P.2d 987, 989 (1991).

Although Decision No. 58793 refers to the Section 41-1025 tests, it did not adapt and modify the language thereof to apply to CECs. As presently drafted, the Section 41-1025 tests refer to "rules" and "published rules." In order for the substance of the Section 41-1025 tests to have relevance to CECs, the Commission will have to revise them to apply to CECs, construction projects and changed circumstances.

Decision No. 58793 did not detail the Commission's application of the Section 41-1025 tests in its analysis and determination of the significantly different line issue. Instead, Decision No. 58793 discussed the merits of the debate regarding electromagnetic fields generated by DC lines, SRP's understanding of the role of the Siting Committee and the scope of the Siting Committee's jurisdiction and authority. Thus, even though Decision No. 58793 concluded that the change from an AC line to a DC line was a substantial change and required the issuance of an amendment to the CEC, there is minimal guidance as to how the Section 41-1025 tests could be adapted and applied to other CEC-related cases.

2. Do you believe that the substantial change standard adopted by the Commission in Decision No. 58793 at 22-24 is the appropriate standard to require an application for an amendment to a CEC? If not, what standard should govern whether a change or changes warrant an application for an amended CEC?

TEP Response to Staff Question No 2:

TEP believes that the "substantial change" standard as it was introduced in Decision No. 58793 is vague and ambiguous, and that the Section 41-1025 tests have not been made relevant to

CEC proceedings.[4] In their current forms, the substantial change standard and the Section 41-1025 tests, individually and collectively, do not appear to be the best standards for determining when an amendment to a Commission CEC Order is necessary. Although TEP recognizes that to some degree any standard adopted to analyze the impact of changes will be subjective, the "substantial change" standard in Decision No. 58793 fails to adequately provide notice of the standard that it is setting. See State v. Western, supra.

TEP recommends the following two-part test be used to determine when a CEC holder should request an amendment to a Commission CEC Order:

> Would the proposed change (1) materially alter the construction project and (2) have a material adverse impact on the Commission's determination pursuant to A.R.S. § 40-360.07?

TEP recommends that the term (1) "materially alter" be defined as "a deviation that is sufficiently different from that which was approved by the Commission so to change the nature and character of the project as built or operated," and (2) "material adverse impact" be defined as "an impact of such consequence as to reverse" the Commission's determination.

After applying the foregoing two-part test, if it is determined that an amendment should be sought, then the Commission's standard of review in the A.R.S. § 40-252 proceeding should be the following (as adapted from A.R.S. § 40-360.07):

> The Commission shall balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of the State.

The Arizona Legislature has acknowledged the public harm that can result from frivolous or

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[4] In Kuhnke v. Textron, Inc., 140 Ariz. 587, 590, 684 P.2d 159, 162 (Ct. App. 1984) the Arizona Court of Appeals stated: "As the court recognized in that case by its citation to the comments of the Restatement Second, the law of substantial change is not well developed."

nuisance lawsuits (or administrative proceedings) that have been brought by parties who oppose a construction project. Accordingly, A.R.S. § 40-360.11 was enacted to provide that a construction project will not be stayed pending litigation on the issues pertaining to the CEC. It is crucial that this protection be incorporated into any review process that is adopted for amendments to Commission CEC Orders. See also A.R.S. § 40-254 (F).

3. Please describe how the Commission should weigh the factors delineated under A.R.S. §§ 40-360.06 and 40-360.07 to determine whether a change is substantial and warrants an application for an amended CEC and therefore establishes the need for an evidentiary record?

TEP Response to Staff Question No 3:

TEP believes that there should be a three-step process to resolve the Staff Notice of Inquiry issue. The first step is a determination by the CEC holder. TEP recognizes that this could be viewed with skepticism, but in reality, it is the CEC holder who is bound by the terms of the Commission CEC Order and bears the burden of compliance with the CEC and all applicable laws and regulations.

The second step, if necessary, is an informal procedure whereby a CEC holder can meet and confer with an authorized Commission representative regarding the threshold question of whether a proposed change in a CEC-authorized construction project constitutes a material change and is likely to have a material adverse impact on the Commission's prior determination. TEP notes that pursuant to A.R.S. § 40-360.01, the Chairman of the Commission may appoint a designee to sit on the Siting Committee. It is TEP's observation that the Chairman's designees have fully participated on the Siting Committee and voted on CEC applications—even though the Commissioners review all CECs. In similar fashion, the Commission could designate a representative from the Utilities or

Hearing Divisions to meet and confer with CEC holders regarding proposed changes in CEC-authorized construction projects. Again, TEP believes that the ultimate decision to request an amendment to the Commission CEC Order should rest with the CEC holder. However, TEP also recognizes that the authorized Commission representative could recommend that Commission Staff initiate a review of a Commission CEC Order pursuant to A.R.S. § 40-252.

The third step would be the initiation of a review of the Commission CEC Order pursuant to A.R.S. Sec. 40-252.

TEP believes that the Commission should not be constrained in its ability to balance the broad public interest and the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of the State. Each case should be determined on its own merits, which might require that different factors be ascribed different "weights," rather than there being a set "weighting test" for each component of the A.R.S. § 40-360.07 analysis. To otherwise handcuff the Commission in its review process would be to undermine its ability to implement the A.R.S. § 40-360.07 balancing test.

4. Do you agree that whether a change warrants a modification and/or amendment to the CEC is an issue separate and apart from whether a change is substantial enough to warrant formal review by the Commission via an application for an amended CEC?

TEP Response to Staff Question No 4:

Yes, TEP believes that these are two separate issues. Accordingly, TEP has proposed (a) a two-step test for determining whether a proceeding for additional Commission review is necessary and, if so, a standard for such review; (b) a three-step procedure for such review; and (c) a legal presumption that changes to construction projects are not material and do not warrant the filing of

applications for amendments.

5. **Committee Chairman Woodall, in the Procedural Order ("PO") for the proceedings regarding HGC's Application for an Amended CEC, outlined four issues to govern the scope of the proceeding, which are paraphrased as follows:**

   a. **What substantial changes have been made that differ from the CEC application and differ from the information comprising the original hearing record (including the application, testimony and exhibits) submitted at the original proceeding before the Committee;**

   b. **What substantial changes have been made to the project that differ from the CEC;**

   c. **How do those changes affect the factors set forth in A.R.S. §§ 40-360.06 and 360.07(B); and**

   d. **Do the changes identified above require any amendments and/or modifications to the original CEC and/or original CEC application.**

   Do you generally agree with these parts serving to define the scope of any proceeding regarding an application for an amended CEC? If not, how would you define the scope of such a proceeding or what modifications to the above would you recommend?

TEP Response to Staff Question No 5:

TEP, in order to be consistent with the two-part test, three-part process and review process and standards that it is proposing would suggest restating Siting Committee Chairman Woodall's issues as follows:

a. Would the proposed change materially alter the construction project and have a material adverse impact on the Commission's determination pursuant to A.R.S. § 40-360.07?

b. If so, how would the change have a material adverse impact on the Commission's determination pursuant to A.R.S. § 40-360.07?

c. Does the change require an amendment or modification to the Commission CEC Order?

6. **How would you envision contacting the Commission to inquire as to whether a change would warrant an amended CEC? Would you prefer to file an application with the Commission to determine whether changes from the original CEC and/or original CEC application warrant an amended CEC? Would you prefer to have an informal consultation with Staff of the Commission?**

TEP Response to Staff Question No 6:

TEP believes that it is important that there be an informal evaluation process whereby the CEC holder and an authorized Commission representative can meet and confer regarding CEC-authorized construction project changes. TEP recommends that the Commission (a) designate personnel to serve as the contact person with whom CEC holders can meet-and-confer and (b) authorize such personnel to make determinations as to whether the construction changes warrant a review of the Commission CEC Order. TEP believes that in most cases, the CEC holder will initiate the meet and confer process. However, the Commission representative could initiate this process when it has credible evidence that a construction change is proposed or has occurred. TEP believes that many questions which CEC holders have concerning non-material changes to CEC-authorized construction projects could be resolved in meet-and-confer settings.

Again, TEP believes that ultimately, it is the CEC holder who is liable for the construction of the project and compliance with the CEC and, therefore, must bear the burden of determining if and when an A.R.S. § 40-252 proceeding should be initiated. If the CEC holder and Commission designee do meet and come to agreement that a change is not subject to further Commission review, there should be a ministerial process for closing the informal inquiry. If however, the CEC holder and Commission designee were unable to agree regarding the need for Commission review of the Commission CEC Order, then an A.R.S. § 40-252 proceeding could be initiated.

7. **To your knowledge, have there been other States that have faced similar situations in other proceedings certifying power plants or transmission lines? Have these States codified any substantial change standards in either state statutes and/or state regulations? If so, please attach those statutes and/or regulations to your answers.**

How do those states codify a specific procedure to determine whether a change from the CEC and/or a change from what was represented in the CEC application and/or evidence during the original CEC proceeding is a change warranting a formal evidentiary process?

TEP Response to Staff Question No 7:

TEP has conducted a limited review of siting procedures in other jurisdictions. In the jurisdictions that have been reviewed, TEP has observed a wide variety of procedures for both the initial determination of siting applications and any subsequent amendments thereto. TEP believes that any attempt to apply the procedures of these jurisdictions to Arizona must take into consideration the unique characteristics of Arizona's regulatory scheme: a constitutionally-created Commission, a statutorily-created Siting Committee, separate procedures for CEC review and approval, and a Commission CEC Order review and appeal process. These characteristics distinguish the Arizona experience from all others. "TEP's Preliminary Survey of Selected Jurisdictions" is provided herewith as "Attachment 1" and incorporated herein by this reference.

8. **The following question applies to those who have reviewed the briefs filed in the proceeding regarding HGC's application for an amended CEC. Do you agree and/or disagree with either Staff's and/or HGC's brief(s) in that case? Please explain why or why not for each brief?**

TEP Response to Staff Question No 8:

Staff's Brief:

TEP agrees with the overall approach that Staff discusses in its Brief. There should be an informal and formal process for reviewing changed circumstances. TEP also agrees that it would be

difficult to develop an all-inclusive "laundry list" or "bright line standards" to adequately govern when additional review of a Commission CEC Order is necessary.[5] And, TEP agrees that the Commission should retain the option of utilizing the Siting Committee to serve as a "hearing officer" when there is an A.R.S. § 40-252 review of a Commission CEC Order.

However, there are some matters discussed in the Staff Brief upon which TEP and Staff do not agree. For example, TEP believes that it could be cumbersome and unnecessary to docket all changes to a construction project. TEP does not agree that the "Whispering Ranch" case is persuasive and has proposed alternative procedures and standards. And, TEP does not believe that, under current Arizona law, the Siting Committee has the authority to modify a CEC. See Staff Brief at 2:12-16, 4:26-27.[6] TEP believes that the process, standards and test that are presented herein are more suitable than the proposals in the Staff Brief (or the HGC Brief) for meeting the respective needs of the CEC holder and the public in determining when changes in CEC-authorized construction projects should be reviewed by the Commission. At the same time, TEP understands that Staff's Notice of Inquiry is evolving and ongoing. TEP looks forward to working with Staff and other interested parties to reach a resolution of the Staff Notice of Inquiry that is comprehensive and in the public interest.

HGC's Brief:

HGC, like Staff, has adopted the "Whispering Ranch" standard. HGC has provided some further definition to the "substantial change" standard by analogizing changes in a CEC-authorized construction project with changes in a proposed action subject to an Environmental Impact

[5] Nevertheless, at this stage in the Staff Notice of Inquiry process, it would be helpful to explore if there are any areas of changes that can be identified and quantified as not requiring additional Commission review.

[6] However, TEP does agree with Staff's statement that "only the Commission can approve changes to the CEC." Staff Brief at 5:18-20.

Statement. TEP believes that HGC's analysis is better applied as a guideline for weighing the factors in A.R.S. § 40-360.07 rather than in determining the threshold question of when a change in a CEC-authorized construction project should be reviewed by the Commission. A.R.S. § 40-252 and the standard of review proposed by TEP do not require the multi-faceted analysis of "substantial change" offered by HGC. However, the HGC analysis would be helpful in applying the balancing test standard set forth in A.R.S. § 40-360.07

9. What should be the process to create an evidentiary record for applications amending a CEC? Should the Committee always be appointed by the Commission as the hearing officer under A.R.S. § 40-252? What guidelines would you recommend in determining the best procedure for an application for an amended CEC?

TEP Response to Staff Question No 9:

TEP does not believe that CECs can be amended under the current law. However, the evidentiary proceeding for reviewing a Commission CEC Order should be dictated by the due process standards set forth in A.R.S. § 40-252. TEP believes that it is important that the Commission provide notice, identifying those issues that will be reviewed (and by implication those that will not be reviewed) in the A.R.S. § 40-252 proceeding.

TEP recognizes that there may be situations in the future where the Commission, in its discretion, decides to seek the assistance of the Siting Committee by asking the Siting Committee to act as a "hearing officer." However, TEP believes that Commission discretion in this regard should be exercised on a case-by-case basis. There should not be any *requirement* that the Siting Committee act as the "hearing officer." Indeed, there may be circumstances in which the Commission (which has already ruled on the original CEC and will have to make the ultimate decision on the A.R.S. § 40-252 proceeding) will want to hear the case directly. Additionally, there

may be situations in which the Commission will want to call members of the Siting Committee as witnesses in an A.R.S. § 40-252 proceeding, for assistance, rather than having them act as a "hearing officer."

TEP believes that the review process would be best served by having the Commission maintain the status quo and retain the discretion of determining how it will handle the A.R.S. § 40-252 proceeding.

10. Other than having formal testimony, sworn witnesses and a court reporter, how could a record be developed justifying any findings made by the Commission in approving an amended CEC? How could evidence from other proceedings regarding changes made from what was represented in the CEC application best be utilized in any proceeding regarding an application for an amended CEC?

TEP Response to Staff Question No 10:

TEP believes that the normal rules, practice and procedure governing an A.R.S. § 40-252 proceeding should be used to develop a record for decision on review of a Commission CEC Order. See A.A.C. R14-3-101, et seq.

11. What steps should be taken by the Commission with regards to setting a formal policy regarding changes from a CEC or from what was represented in the original CEC application and proceedings (including testimony, exhibits and other evidence provided about a particular generation or transmission project)? Should any policy regarding changes warranting an application for an amended CEC be codified?

TEP Response to Staff Question No 11:

As TEP has stated, if additional Commission review of the Commission CEC Order is warranted, the proper procedure for so doing would be pursuant to A.R.S. § 40-252. This would not require any change in law or Commission rule. However, clarification of the standards to be utilized

in such proceedings may require either Commission action (by order or rulemaking) or the enactment of additional statutes to be included in A.R.S. § 40-360.01, et seq.

TEP believes that any new formal procedure to amend a CEC first will have to be authorized by statute. Consequently, TEP believes that a key issue to be determined by the Commission is to what extent it believes that changes are required in the existing CEC process and, if there are to be changes, who has jurisdiction to implement the changes.

TEP believes that it is prudent to utilize existing procedures as much as possible and avoid the temptation to create unnecessary guidelines, rules and procedures.

12. Should the Commission do anything with regard to the issue of substantial change or should the Commission handle each matter on a case-by-case basis?

TEP Response to Staff Question No 12:

TEP believes that the Commission could reasonably decide that there are no additional statutory or administrative changes that are required to review changes to CEC-authorized construction projects. The Commission also could make small or wholesale changes to the siting process, either by rulemaking or on a case-by-case basis. Consequently, TEP does not believe that the Commission is or will be ignoring the issue of changed circumstances with CEC-authorized construction projects. Again, TEP would caution against implementing anything that undermines the Siting Committee's current authority or the Commission's jurisdiction. TEP also would caution against overstepping jurisdiction by attempting to do that which is not authorized by current law.

V. CONCLUSION.

The Staff Notice of Inquiry has opened the door for the review of the siting process. TEP believes that the process, as it currently exists, is sufficient to handle review of changes in CEC-

authorized construction projects. TEP cautions that changes not be made in the siting process which are unnecessary or which would jeopardize the State's control of oversight for siting power plants and transmission lines. In the event that the Commission believes that additions or revisions to the siting statutes are in the public interest, TEP has proposed a test, some procedures and substantive standards to assist in the review process.

TEP has provided this Response with the understanding that the Staff Notice of Inquiry will be an ongoing process. TEP reserves its right to amend its analysis and recommendations herein as the positions of other parties, Staff and the Commission are made available and reviewed. TEP looks forward to working with all interested parties in reaching a solution to the Staff Notice of Inquiry issue that is fair, reasonable and in the public interest.

RESPECTFULLY SUBMITTED this 30th day of May 2003.

ROSHKA HEYMAN & DEWULF

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Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPY OF THE FOREGOING HAND-DELIVERED THIS 30TH DAY OF MAY 2003, TO:

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A

ATTACHMENT "A"

PRELIMINARY SURVEY OF SELECTED JURISDICTIONS[1]

California

In California, two different agencies issue equivalents of a CEC for the construction of transmission lines and generating facilities. The Systems Assessment and Facilities Siting Division of the California Energy Resources Conservation and Development Commission, also known as the California Energy Commission ("Energy Commission"), is the lead agency for the siting of power plants over 50 MW and their associated transmission (gen-ties) connection to the electric grid system. The California Public Utilities Commission ("CPUC"), on the other hand, has jurisdiction for the siting of new or modified transmission lines over 50 kV that are not associated with the construction of a power plant, but are needed for load growth, reliability, or the removal of energy transmission constraints. Power plants below 50 MW are within the jurisdiction of the county where they are sited.

Although the CPUC requires a utility to receive a certificate of public convenience and necessity for the construction of all lines, plants, or systems, the Energy Commission has the exclusive power to certify all sites and related facilities in California. CPUC Gen. Order No. 131-D; Cal. Pub. Res. Code § 25500 (2003). The term "facility" is defined as any electric transmission line or thermal power plant regulated by the division on energy conservation and development of the California Public Resource Code. Cal. Pub. Res. Code § 25110 (2003). Further, the California Public Resources

[1] The summaries presented herein are provided for informational purposes only and are not intended to be relied upon as legal opinions of the processes, rules, regulations or statutes of any jurisdiction.

Code provides that the Energy Commission is the lead agency for siting. Cal. Pub. Res. Code § 25519 (2003). If a utility is required to receive a certificate from both the CPUC and the Energy Commission, the application process at the CPUC is simplified and the applicant is exempted from the application of the California Environmental Quality Act by the CPUC. Cal. Pub. Util. Comm. Gen. Order No. 131-D (1995).

Normally, in deciding whether to grant a certificate of public convenience and necessity, the CPUC must take into consideration the following factors: (1) community values, (2) recreational and park areas, (3) historical and aesthetic values, and (4) influence on environment. Cal. Pub. Util. Code § 1002 (2003). When a utility is required to seek a certificate from both the Energy Commission and the CPUC, the granting of the certificate from the Energy Commission is conclusive of all matters addressed therein and it takes the place of the CPUC's consideration of the four factors listed above. Id. The concerns of the CPUC, however, are not ignored. Where a utility must receive both certificates, the Energy Commission is required to request comments and recommendations from the CPUC regarding the design, operation and location in relation to the economic, financial, rate, system reliability, and service implications of the proposed facilities. Cal. Pub. Res. Code §§ 25506.5, 25514.3, and 25519 (2003).

Currently, a California Assembly bill is pending that would create a Secretary of Energy and the California Department of Energy, which would replace the Energy Commission and the California Power Authority, and would abolish the California Electrical Oversight Board. 2003 Cal. Assembly Bill No. 808, California 2003-04 Reg. Session. The California Department of Energy would also take over the policy related activities of the CPUC. Id. The bill would also consolidate the various energy laws and

regulations into the Energy Code. Id. The bill is currently before the California Senate, having been unanimously passed by the Assembly.

California law provides that after a final decision by the Energy Commission becomes effective, an applicant that wishes to modify the project design, operation, or performance requirements of a facility must seek to amend by filing a petition with the Energy Commission. Cal. Code Regs. tit. 20, §1769 (2003). The petition for modification must completely describe the proposed modification and include new language for any conditions that would be effected. Id. Further, it must include a discussion of the necessity for the modification. Id. If the proposed modification is based on information that was known by the petitioner during the original certification proceeding, the petitioner must explain why the issue was not raised at that time. Id. If the modification is based on new information that changes or undermines assumptions, rationales, findings, or other bases of the final decision, the petitioner must explain why the change should be permitted. Id.

The petition for modification must also include an analysis of the impacts the modification may have on the environment and must include proposed measures to mitigate any significant adverse impacts. Id. A discussion of the impact the proposed modification would have on the facility's ability to comply with applicable laws, ordinances, regulations, and standards as well as how the modification would affect the public, nearby property owners, and the parties in the application proceedings must also be contained in the petition. Id. The petitioner must include a list of the property owners that could potentially be affected by the change. Id.

The Energy Commission Staff has 30 days within which to review the proposal and

determine the extent of the proposed modifications. Id. If the proposed modifications would: not change or delete a condition adopted by the Energy Commission in the final decision or make changes that would cause the project not to comply with any applicable laws, ordinances, regulations, or standards, and if the Staff determined that there was no possibility that the modifications would have a significant effect on the environment, then the approval of the Energy Commission is not required. Id. The Staff must then file a statement of its determination with the Energy Commission docket and mail a copy of the statement to each Commissioner and every person on the post-certification mailing list. Id. Within 14 days of service, any person may file an objection to the Staff's determination on the grounds that the modification does not meet the above criteria. Id.

If the Staff determines that modification would have a significant impact on the environment, that it would change a condition or result in non-compliance with the law, or if a person objects to the Staff's determination, the application for amendment must be formally processed and it must be approved by the full Energy Commission at a noticed business meeting or hearing. Id. At the hearing, the Energy Commission must issue an order approving, rejecting, or modifying the petition unless it decides to assign the matter for a further hearing before the full Energy Commission or an assigned committee or hearing officer. Id.

In order to approve the modification, the Energy Commission must find that the project will remain in compliance with all applicable laws, ordinances, regulations and standards. Id. The change must also be found to be beneficial to the public, applicant, or intervenors. Id. Additionally, the Energy Commission must conclude that there has been either a substantial change in circumstances since the Energy Commission certification

justifying the change or that the change is based on information that was not known and could not have been known with the exercise of reasonable diligence prior to the original certification. Id.

If one or more significant adverse environmental effects have been identified, however, the Energy Commission cannot approve the modification unless it finds that changes or alterations have been incorporated that mitigate or avoid impacts within its authority or any other agency's authority. Id. If this has not been done, then in order to approve the modification, the Energy Commission must determine that specific economic, social or other considerations make infeasible mitigation measures or project alternatives identified in the application proceeding and that the benefits outweigh the unavoidable significant environmental effects that may be caused by the construction and operation of the facility. Id.

As for certificates of public convenience and necessity issued by the CPUC, an applicant may petition the CPUC for the modification of its final decision pursuant to Rule 47 of CPUC's Rules of Practice and Procedure. A petition for modification asks the CPUC to change the text of an issued decision. Cal. Code Regs. Title 20, Sec. 47 (2003). Unless otherwise ordered by the CPUC, the filing of a petition for modification does not stay or excuse compliance with the decision the applicant seeks to modify. Id. The decision will remain in effect until the effective date of any decision modifying it. Id.

The petition must concisely provide a justification for the request and must contain specific wording for the modification of the decision in accordance with the relief requested. Id. The applicant must support all factual allegations it makes in the petition with specific citations to either the record from the original proceeding or citations to matters that may be officially noticed. Id. Further, any allegations of new or changed facts must be supported by

an appropriate declaration or affidavit. Id.

The petition to modify the CPUC order must be filed and served on all parties to the original proceeding from which the decision sought to be amended was issued. Id. The petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified; however if more than one year has elapsed, the petition must include an explanation for why the applicant could not have presented the petition within one year of the effective date of the decision. Id. If more than one year has passed since the effective date of the decision, the applicant may be directed by the administrative law judge to serve the petition on other or additional persons or entities. Id. Moreover, if the CPUC determines that the late submission was not justified, it may issue a summary denial of the petition. Id.

If the applicant was not a party to the original proceeding, the petition must state specifically how the applicant is affected by the decision and why it did not participate in the proceeding earlier. Id. A separate petition to intervene is not required. Id. The petitioner will become a party to the proceeding for the purpose of resolving the petition.

A response to a petition for modification must be filed and served within 30 days of the date that the petition was served, unless the administrative law judge sets a different date. Id. The responses must be served on the applicant and on all parties who were served with the petition. Id. Further, it must comply with the requirements set forth in applicable rules. Id. If the applicant receives the permission of the administrative law judge, it may reply to a response to the petition. Id. A reply must state in the opening paragraph that the administrative law judge has authorized its filing and must state the date and the manner in which the authorization was given. Id. Replies must be filed and

served within 10 days of the last day for filing responses, unless the administrative law judge sets a different date. Id. Further, a reply must comply with all applicable rules. Id.

In response to the petition for modification, the CPUC may modify the decision as requested, modify the affected portion of the decision in some other way consistent with the requested modification, set the matter for further hearings or briefing, summarily deny the petition on the ground that the CPUC was not persuaded to modify the decision, or take other appropriate action. Id.

Colorado

The Colorado Public Utilities Commission issues a certificate of public convenience and necessity for the construction or extension of public utility facilities. Colorado does not explicitly provide for the amendment, modification, or change to a certificate in its statutes, rules or regulations.

Connecticut

The Connecticut Siting Council ("Council") issues the equivalent of a CEC for the construction or modification of any facility that may have a substantially adverse effect on the environment. Conn. Gen. Stat. § 16-50k (2003). By statute, Connecticut permits the amendment of this certificate after it has been issued. Id.

Connecticut defines "modification" as "a significant change or alteration in the general physical characteristics of a facility." Conn. Gen. Stat § 16-50i (2003). The term "facility" is broadly defined to include, in relevant part: (1) electric transmission lines with a design capacity of 69 kV or higher; (2) fuel transmission facilities, except a gas transmission line that has a design capability of less than 200 pounds per square inch gauge pressure; (3) any

generating facility, using any type of fuel, including nuclear materials; and (4) any electric substation or switchyard designed to change or regulate the voltage of electricity at 69 kV or more or to connect two or more electric circuits at such voltage. Id.

A proceeding to amend a certificate should be initiated by the filing of an application for amendment with the Council by either the certificate holder or by a resolution of the Council. Conn. Gen. Stat. §16-50l (2003). Where the certificate holder files the amendment application, the application shall be in a form and contain information prescribed by the Council. Id. If the Council initiates the proceeding by passing a resolution, it must identify, if applicable, the design, location or route of the portion of the certificated electric transmission line or fuel transmission facility that is subject to modification on the basis of stated conditions or events which could not reasonably have been known or foreseen prior to the issuance of the certificate. Id.; see also Conn. Gen. Stat. § 16-50i (2003).

The Council cannot adopt a resolution to amend a certificate after the commencement of site preparation or construction of the certificated facility. Conn. Gen. Stat. § 16-50l (2003). If approval by the Council of a right-of-way development and management or other detailed construction plan is a condition of the certificate, the Council cannot adopt a resolution to modify after it approves that part of the plan which includes the portion of the facility proposed for modification. Id.

A certificate holder seeking to amend its certificate must give a copy and notice of its amendment application, including the date it estimates the application will be filed, to the chief executive officer of each municipality in which any portion of the proposed facility would be located, both as primarily proposed and in the alternative locations listed, and any adjoining municipality having a boundary not more than 2,500 feet from the facility. Id.

Notice and a copy of the amendment application must also be served on: (1) zoning commissions; (2) planning commissions; (3) planning and zoning commissions; (4) conservation commissions; (5) inland wetlands agencies; and (6) regional planning agencies for each such municipality. Id. Further, notice and a copy of the amendment application must be served on: (1) the attorney general; (2) each member of the legislature in whose assembly or senate district the proposed facility or any alternative location is to be located; (3) any federal agency, department or instrumentality that has jurisdiction, whether concurrent with the state or otherwise, over any matter that would be affected by the proposed facility; (4) the Department of Environmental Protection; (5) the Department of Public Health; (6) the Council on Environmental Quality; (7) the Department of Public Utility Control; (8) the Office of Policy and Management; (9) the Department of Economic and Community Development; (10) the Department of Transportation; and (11) any other state and municipal bodies designated by the Council. Id.; see also Conn. Gen. Stat. § 16-50j (2003).

Notice of the amendment application must also be given to the general public located in the municipalities entitled to receive notice. Id. Notice shall be given by the publication of a summary of the application that must include the date on or about which the application will be filed, in a form and in newspapers that will serve to substantially inform the public of the application and afford interested persons the opportunity to prepare and be heard at the hearing. Id. The notice must be published in no less than ten-point type. Id.

For an application to amend a certificate for an electric generating or storage facility using any fuel type or an electric substation or switchyard designed to change or regulate the voltage of electricity at 69 kV or higher or to connect two or more electric circuits at such voltage, notice must be sent by certified or registered mail, contemporaneously with the notice to the

public, to each person appearing of record as an owner of property which backs the proposed primary or alternative sites on which the facility would be located. Id.

Notice of an application for a certificate for an electric transmission line of a design capacity of 69 kV or higher must also be provided to each customer of an electric company or electric distribution company in the municipality where the proposed facility would be located. Id. The certificate holder must supply this notice by including a separate enclosure with a customer's monthly bill for one or more months no earlier than 60 days prior to filing the application with the Council, but not later than the date that the application is filed. Id. The following should be included in the notice: (1) a brief description of the project, including its location relative to the affected municipality and adjacent streets; (2) a brief technical description of the project including its proposed length, voltage, and type and range of heights of support structures or underground configuration; (3) an explanation of the reason for the project; (4) the address and a toll-free telephone number of the applicant from whom additional information about the project can be obtained; and (5) a statement in print no smaller than twenty-four-point type size stating "NOTICE OF PROPOSED CONSTRUCTION OF A HIGH VOLTAGE ELECTRIC TRANSMISSION LINE". Id.

Where the Council passes a resolution for the amendment of a certificate, it must give a copy and notice of each resolution for amendment in the same manner as set forth above for a proceeding brought by a certificate holder. Id. The Council shall also send the certificate holder a copy of all of the resolutions. Id. Neither the certificate holder nor the Council will be required to give a copy and notice to municipalities and the commissions and agencies of such municipalities other than those in which the modified portion of the facility would be located. Id.

For an application to amend a certificate, the Council must analyze whether the proposed change would result in a material increase in any environmental impact of the facility or would result in a substantial change in the location of all or a portion of the facility other than as provided in the alternatives set forth in the original application for the certificate. Conn. Gen. Stat. § 16-50m (2003). If the Council finds that the proposed change would result in a material increase in any environmental impact of the facility or would result in a substantial change in the location of all or a portion of the facility, the Council must hold a hearing on the application for amendment in the same manner as it would conduct a hearing for an original application. Id. The hearing must be fixed not less than 30 days and not more than 60 days after the Council received the application. Id. The Council may, however, in its discretion, return the application for amendment to the certificate holder without prejudice with a statement of the reasons why. Id.

If the Council does not conclude that the change would result in a material increase in any environmental impact of the facility or a substantial change of the facility location, the Council will not be required to conduct a hearing unless a request is timely received from a certificate holder or form a person entitled to be a party to the proceedings. Id. A timely request is a request received within 20 days of publication of notice. Id. The hearing shall be held not less than 30 days and not more than 60 days after receipt of the request. Id. The Council shall hold at least one session of a hearing at a location selected by it in the county in which the proposed facility or any part thereof is to be located. Id. The session must be scheduled after 6:30 p.m. for the convenience of the general public. Id. If the proposed facility is located in more than one county, the county in which the proposed facility is deemed located is the county in which the portion of the proposed change is located. Id. After this hearing session,

the Council may, in its discretion, hold additional hearing sessions at other locations in more than one county. Id.

For a resolution for amendment of a certificate brought by the Council, the Council may hold a hearing not less than 30 days nor more than 60 days after adoption of the resolution. Id. The Council shall hold at least one session of a hearing at a location selected by it in the county in which the proposed facility or any part thereof is to be located and it must be scheduled to begin after 6:30 p.m. for the convenience of the general public. Id. If the proposed facility would be located in more than one county, the Council must fix the location for at least one public hearing session in whichever county it deems the most appropriate. Id. After this hearing session, the Council may, in its discretion, hold additional hearing sessions at other locations in more than one county. Id.

The Connecticut Supreme Court, in a case regarding the amendment of a certificate issued for a transmission line, applied the procedures set forth in Conn. Gen. Stat. § 4-181a, which applies to contested cases, reconsideration of final decisions, and modification of final decisions. Town of Fairfield v. Connecticut Siting Council, 679 A.2d 354 (Conn. 1996). According to Conn. Gen. Stat. § 4-181a, modification of a final decision is permitted upon a showing of changed conditions at any time and at the request of any person or on an agency's own motion. The procedure for modification is to be the same as that used for a contested case. Conn. Gen. Stat. § 4-181a (2003).

In a contested case, all parties must be afforded an opportunity for a hearing after reasonable notice. Conn. Gen. Stat. § 4-177 (2003). Notice must be in writing and include a statement of the time, place and nature of the hearing, a statement of the legal authority and jurisdiction, a reference to particular sections of the statutes and regulations invoked, and a

short and plain statement of the matters asserted. Id. The parties subject to the original final decision and intervenors in the original contested case must be notified of the modification proceeding and must be given an opportunity to participate in the proceeding. Conn. Gen. Stat. § 4-181a (2003). Unless otherwise precluded by law, it is permissible to resolve a contested case by stipulation, agreed settlement, or consent order or by the default of a party. Conn. Gen. Stat. § 4-177 (2003).

Each party to a contested case and the agency conducting the proceeding must be afforded the opportunity to inspect and copy relevant and material documents. Conn. Gen. Stat. § 4-177c (2003). Further, each party and the agency is permitted to cross-examine other parties, intervenors, and witnesses at the hearing and to present evidence and arguments on all issues. Id. Any oral or documentary evidence may be received, however, the agency must provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Conn. Gen. Stat. § 4-178 (2003). In the presiding officer's discretion, a person not named as a party or intervenor may be given an opportunity to present oral or written statements. Id. The presiding officer may require that such statement be given under oath or affirmation. Id.

Montana

Montana recently revised its Major Facility Siting Act. 2003 Mont. Laws Ch. 217 (H.B. 443). Prior to the revision, the Montana Department of Environmental Quality ("Department") issued a CEC to potential builders of utility facilities. Now, however, the CEC has been renamed a "certificate of compliance." Mont. Code Ann. § 75-20-102 (as amended by 2003 Mont. Laws Ch. 217 (H.B. 443)). Both the CEC and the certificate of compliance ("certificate") are the reasonable equivalent of a CEC in Arizona. Under Montana's Major Facility Siting Act, the Department is permitted to amend a certificate after

it is issued. Mont. Code Ann. § 75-20-219 (2002).

To constitute proper notice, a copy of the application must be accompanied by a notice that specifies the date on or about which the application is to be filed. Id.; see also Mont. Code Ann. §§ 75-20-211 and 75-20-213 (as amended by 2003 Mont. Laws CH. 217 (H.B. 443)). The certificate holder must publish a summary of the application in newspapers that will substantially inform persons that reside in a county where any portion of the facility is proposed to be located of the application to amend the certificate. Id. Proof of such publication must be included with the application. Id.

Within 30 days after notice is given, the Department shall determine whether the proposed change would result in a material increase in any environmental impact of the facility or if it would cause a substantial change in the location of all or a portion of the facility as set forth in the original certificate. Mont. Code Ann. § 75-20-219 (2002). In order for the Board of Environmental Review ("Board") to determine whether an amendment to a certificate should be granted or modified, the Board must conclude that the amendment will not materially alter the findings required that were the basis for granting the original certificate. Mont. Admin. R. 17.20.1804 (2002). In forming its conclusion, the Board is limited to considering the effects that the proposed change or addition to the facility might produce. Id.

If the proposed change is found to materially increase the environmental impact of the facility or substantially change the location of all or part of the facility, the amendment must be granted, denied or modified with conditions the Board or Department considers appropriate. Mont. Code Ann. § 75-20-219 (2002). If, on the other hand, the amendment would not have a material impact or cause a substantial change, then the amendment must

automatically be granted either as it was applied for or on appropriate terms and conditions. Id. If a party disagrees with the Department or Board's conclusion, the party may request a hearing, however, he or she has the burden of showing by clear and convincing evidence that the conclusion was not reasonable. Id.

An application for an amendment to the certificate must be in the form and contain the information prescribed by the Department by rule or order. Mont. Code Ann. § 75-20-213 (as amended by 2003 Mont. Laws Ch. 217 (H.B. 443)). When an application complies with this requirement, the Department must commence an evaluation of the proposed facility and its effects, including consideration of the applicable criteria used in determining the original certificate. Mont. Code Ann. § 75-20-216 (as amended by 2003 Mont. Laws Ch. 217 (H.B. 443)).

The following criteria must be considered in the Department's evaluation of an application to amend a certificate for an electric transmission line and related facilities or a gas pipeline: (1) the basis of the need for the facility; (2) the nature of the probable environmental impact; (3) the extent to which the facility minimizes adverse environmental impacts, given the current state of available technology and the nature and economics of the various alternatives; (4) for an amendment to a certificate for an electric, gas, or liquid transmission line or aqueduct: (a) what part, if any, of the line or aqueduct will be located underground; (b) the consistency of the facility with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and (c) the interests of the utility system economy and reliability that will be served by the facility; (5) that the location of the proposed facility conforms to applicable state and local laws and regulations, except that the Department may refuse to apply any local law or regulation if it finds that, as applied to the

proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions; (6) that the facility will serve the public interest, convenience, and necessity; (7) that the Department or Board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by Mont. Admin. Code § 75- 20-216(3); and (8) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use was as economically practicable as the use of private lands. Mont. Admin. Code § 75-20-301 (as amended by 2003 Mont. Laws Ch. 217 (H.B. 443)). The Department has 30 days after the issuance of its evaluation report within which to issue its decision denying, granting, or modifying the application to amend the certificate. Id.

For an amendment to a certificate for the use of geothermal resources, the following criteria must be considered by the Department in its evaluation of the application: (1) that all reasonable, cost- effective mitigation of significant environmental impacts are incorporated in either the facility or an alternative; and (2) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in: (a) a violation of a law or standard that protects the environment; or (b) a violation of a law or standard that protects the public health and safety. Id. After the issuance of its evaluation report, the Department must within 30 days, issue its decision granting, denying or modifying the application for amendment to the certificate. Id.

If an amendment is *required* to a certificate that would affect, amend, alter or modify a decision, opinion, order, certification, or air or water quality permit issued by the Department or the Board, the amendment must be processed under the applicable statutes administered by

the Department or Board. Id. If, for example, a change is made to the Department or Board permit for construction, then a corresponding amendment is required to be made to the certificate. Mont. Admin. R. 17.20.1803 (2002). Where an amendment is required, the holder of the certificate must serve the Board with a certified copy of the amendment within 10 days of the issuance of an amendment by the Department or Board. Id. The Board must then issue a notice of proposed action to modify the certificate to fully and completely incorporate the amendment authorized by the Department or Board. Id. If a request for hearing is timely filed, then the Board must hold a hearing to show-cause why the proposed action should not be taken. Id. The hearing, however, is limited to issues that are within the Board's jurisdiction. Id. Any person that is affected by the proposed amendment may request a hearing. Id. A person requesting a show-cause hearing must file all testimony, evidence and exhibits in writing that it intends to present at the hearing within 15 days after filing a request for hearing with the Board. Id. If the person fails to comply with this rule, he or she will be deemed to have waived his or her request for hearing and of his or her rights to participate in any hearing held. Id. If no one requests a show-cause hearing and no hearing is otherwise required, the Board must approve the proposed action as set forth in the notice. Id.

Nevada

Nevada law requires that a public utility receive a permit to construct from the Nevada Public Utilities Commission, which is similar to a CEC, prior to the start of construction of utility facilities. Nev. Rev. Stat. 704.865 (2002). The definition of "utility facilities" includes the following: (1) electric generating plants and associated facilities, except for plants and associated facilities located entirely within the boundaries of a county with a population equal to or greater than 100,000; (2) electric transmission lines and transmission substations: (a)

designed to operate at 200 kV or more, (b) not required by local ordinance to be placed underground, and (c) constructed outside any incorporated city; (3) gas transmission lines, storage plants, compressor stations and associated facilities when constructed outside: (a) an incorporated city and (b) a county whose population is 100,000 or more. Nev. Rev. Stat. 704.860 (2002).

Nevada law also requires a public utility that owns, operates, controls or maintains any public utility to, prior to beginning or continuing operations or constructing any line, plant or system or any extension of a line, plant or system, receive a certificate of public convenience and necessity from the Nevada Public Service Commission. Nev. Rev. Stat. 704.330 (2002). This certificate, however, is dissimilar to a CEC in that it does not take into consideration environmental factors. These factors are addressed in the permit to construct, which is reviewed by the Nevada Department of Conservation and Natural Resources.

Nevada does not specifically provide for modification, amendment, or change to either a permit to construct or a certificate of public convenience and necessity in any of its statues, regulations, or rules.

New York

In New York, the equivalent of a CEC is issued by the New York State Public Service Commission ("Commission"). Under New York law, a CEC may be amended. N.Y. Pub. Serv. Law §§ 121 and 164 (2003). The application for an amendment must be in a form prescribed by the Commission and it must contain all of the information requested by the Commission. N.Y. Pub. Serv. Law §§ 122 and 164 (2003).

Exempt from the certification requirement in New York are transmission lines that are

125 kV or less and less than one mile in length or that are between 100 and 124 kV and are less than ten miles in length. N.Y. Comp. Codes R. & Regs. tit.16, § 85-2.1 (2002). Underground lines in cities that have a population of 125,000 or more and lines for hydroelectric facilities that are under the Federal Energy Regulatory Commission's jurisdiction are also exempt from having to receive a certificate of environmental compatibility and public need ("CEC"). Id. Additionally, major utility transmission facilities are exempt from the certification requirement where: (a) an application for a license, permit or consent was made on or before July 1, 1970 to any federal, state, or local commission, agency, board or regulatory body where the location of the facility was designated in the application; (b) construction has been approved by a municipality or public benefit corporation which has sold bonds or bond anticipation notes on or before July 1, 1970, the proceeds or part of the proceeds of which are to be used for construction; or (c) any federal agency or department has exclusive or concurrent jurisdiction and has exercised its jurisdiction to the exclusion of regulation of the facility by the state. N.Y. Pub. Serv. Law § 121 (2003).

If the certificate holder wants to amend its CEC for a major electric generating facility, it must petition the Board on Electric Generation Siting and the Environment ("Board"). N.Y. Comp. R. & Regs. tit. 16, § 1000.15 (2002). Any reference to the Commission as the decision maker with regard to the certification of major electric generating facilities correspondingly applies to the Board. N.Y. Comp. Codes R. & Regs. tit. 16, § 1000.1 (2002). The certificate holder is required to contemporaneously file seven copies of the petition and accompanying documents with the secretary of the Board and serve seven copies on the New York State Department of Environmental Conservation and two copies each on the other board member agencies. N.Y. Comp. R. & Regs. tit. 16, § 1000.15 (2002). Notice of the petition must be

given to and a copy thereof served on any person, municipality or agency entitled by law to be given notice, or to receive a copy, of the application for the original CEC. Id. A copy must also be served on any other party to the proceeding in which the original CEC was granted and all property owners that would be affected by the proposed amendment. Id.

To be valid, the notice must contain all of the following: (1) a brief description of the proposed amendment and the reasons for the amendment; (2) the name, address, telephone number and, where available, e-mail address and telecopier machine number of an employee or representative of the certificate holder who can provide further information, including a copy of the petition; and (3) a statement that those, in addition to parties to the original CEC proceeding, that wish to participate in the proceeding on the amendment must, within 10 days of the notice, notify the secretary of the Board in a written document sent to the appropriate address. Id.

The Commission requires that the application to amend the CEC for a major electric generating facility contain a description of the proposed amendment as well as the engineering design. Id. Further, to the extent appropriate, the certificate holder must submit the data and information that would otherwise be necessary to support an application for an original CEC with its application for amendment. Id. The certificate holder must also include an affidavit that shows that publication or service of the required notice or copies was accomplished. Id.

If the proposed change in the facility to be authorized would constitute a "revision," that is, if it would result in any material increase in any environmental impact of the facility or substantial change in the location of all or a portion of the facility other than as provided for in the alternatives in the original proceeding, a hearing must be held in accordance with applicable procedure. Id. If, however, the Board concludes that the proposed amendment is

not a revision, and is therefore a modification, a hearing does not appear to be required. The Board must establish a reasonable time period, which shall not exceed 30 days, within which interested parties may submit written comments on the proposed amendment. Id. The secretary of the Board must notify the persons on whom the petition was served and anyone who timely indicated their desire to participate in the proceeding. Id.

For the amendment of a CEC for the construction of an electric or fuel gas transmission line that is more than ten miles long, the Commission must consider whether the proposed change in the facility to be authorized would result in any material increase in any environmental impact of the facility or substantial change in the location of all or a portion of the facility other than as provided for in the alternatives in the original proceeding. Id. If a material increase in the environmental impact of the facility or a substantial change in the location of all or part of the facility would occur, a hearing must be held in the same manner as a hearing is held on an application for an original CEC. N.Y. Pub. Serv. Law § 123 (2003). Thus, the Commission must promptly set a date for a public hearing not less than 60 days and no more than 90 days after receiving the application for amendment for an electric transmission line and not less than 20 days and no more than 60 days after receipt of the request for a fuel gas transmission line. Id. Testimony may be either written or oral and the Commission may set rules to exclude testimony that is repetitive, redundant, or irrelevant. Id. Further, a record must be made of all testimony. Id.

The commission may waive, upon the motion of any party or of the Staff counsel, or upon its own motion, one or more of the requirements of its procedures relating to the information required to be included in a filing for a CEC for the construction of electric or fuel gas transmission lines or the time in which such information is to be provided. N.Y. Comp.

Codes R. & Regs. tit. 16, § 85-2.4 (2002).

The application for amendment must be accompanied by proof of service of a copy of the application on each municipality where any part of the facility will be located, both as primarily proposed and as proposed in the alternative locations. N.Y. Pub. Serv. Law § 122 (2003). The notice must be addressed to the chief executive officer of the municipality and must specify the date on or about which the application is to be filed. Id. A notice of service of a copy of the application must also be included for each resident of these municipalities. Id. Notice to the residents must be given by the publication of a summary of the application and the date on or about which it will be filed in such a form and in such newspapers that will serve to substantially inform the public of the application. Id.

The application must also contain proof of service of a copy of the application on (1) the Commissioner of Environmental Conservation; (2) the Commissioner of Commerce, the Secretary of State; (3) the Commissioner of Agriculture and Markets; (4) the Commissioner of Parks, Recreation and Historic Preservation; and (5) each member of the legislature through whose district the facility or any alternate proposed in the application would pass. Id. If any portion of the facility is located within the jurisdiction of the St. Lawrence-eastern Ontario Commission, then proof of service of a copy to the St. Lawrence-eastern Ontario Commission must also be included with the application. Id. If any part of the facility is located within the Adirondack Park, then the application must also contain proof of service of a copy on the Adirondack park agency. Id.

North Carolina

The North Carolina Utilities Commission ("Commission") issues a certificate of environmental compatibility and public convenience and necessity for the construction of a

transmission line in the state. N.C. Gen. Stat. §62-101 (2003). A certificate, however, is not necessary for the construction of any of a transmission line designed to carry less than 161 kV nor is it necessary for the replacement or expansion of an existing line with a similar line in substantially the same location, or the rebuilding, upgrading, modifying, modernizing, or reconstructing of an existing line for the purpose of increasing capacity or widening an existing right-of-way. Id. Where the Federal Energy Regulatory Commission has licensing jurisdiction over the transmission line, if the Commission determines that agency has conducted a proceeding substantially equivalent to the proceeding required by North Carolina law, then a party need not seek a certificate for the transmission line. Id. If prior to March 6, 1989, a public utility or other person has surveyed a proposed route and based on that route, has acquired rights-of-way which, together, involve 25 percent or more of the total length of the proposed route lines the issuance of a certificate for that line is also not necessary. Id. Further, if a proceeding has been conducted for an electric membership corporation owned transmission line that the Commission determines was a substantial equivalent of the proceeding required here, then a certificate is not necessary. Id. Also, North Carolina does not require that any line owned by a municipality to be constructed wholly within the corporate limits of that municipality receive a certificate. Id.

Under North Carolina law, a certificate may be amended with the approval of the Commission. Id. North Carolina Gen. Stat. § 102(e) provides that the application for an amendment must be in a form approved by the Commission and it must contain the information required by the Commission, however, it does not set forth the specific form or contents for such application. North Carolina Gen. Statute § 62-102(a) sets forth the information that must be included in an application for an original certificate. It provides that

an applicant must file an application containing the following information: (1) the reasons the transmission line is needed; (2) a description of the location proposed for the line; (3) a description of the proposed line; (4) an environmental report that sets forth the environmental impact of the proposed action, any mitigating measures that may minimize this impact, and alternatives to the proposed action; (5) a list of all necessary approvals it must receive prior to beginning construction of the line; and (6) any other information the commission requires. N.C. Gen. Stat. §62-102 (2003).

The notice requirement for a proposed amendment is the same as it was for the original application for a certificate. Id. An applicant for a certificate must, within 10 days of filing the application, serve a copy of it on each of the following: (1) the Staff; (2) the Attorney General; (3) the Department of Environmental Natural Resources; (4) the Department of Commerce; (5) the Department of Transportation; (6) the Department of Agriculture and Consumer Services; (7) the Department of Cultural Resources; (8) each county through which the transmission line is proposed to pass; (9) each municipality through whose jurisdiction the transmission line is proposed to pass; and (10) any other party the Commission orders the applicant to serve. Id.

Also within 10 days of filing, the applicant must give public notice to persons residing in each county and municipality in which the transmission line is to be located. Id. This is to be done by publication of a summary of the application in newspapers of general circulation so as to substantially inform those persons of the filing of the application. Id. The notice must be published a minimum of three additional times before the time for parties to intervene expires. Id. The summary is also required to be sent to the North Carolina Clearinghouse. Id. The summary of the application is subject to prior approval by the Commission and must

contain, at a minimum, the following: (1) a summary of the proposed action; (2) a description of the location of the proposed line written in a readable style; (3) the date on which the application was filed; and (4) the date by which an interested party must intervene. Id.

As for public utility plants or systems, North Carolina law requires that a public utility obtain a certificate of convenience and necessity from the Commission prior to commencing construction or operation of any public utility plant or system. N.C. Gen. Stat. §62-110 (2003). A certificate, however, is not required where the construction is in a territory contiguous to that already occupied and not receiving similar service from another public utility. Id. A certificate is also not required for construction done in the ordinary conduct of business. Id.

In a statute specific to the construction of electric generating facilities, North Carolina prohibits the commencement of construction of any steam, water, or other facility for the generation of electricity to be used either directly or indirectly for providing public utility service until a certificate of public convenience and necessity is obtained from the Commission, regardless of whether the facility would be for furnishing services already being rendered. N.C. Gen. Stat. §62-110.1 (2003). Electric generating facilities built by a person primarily for his or her own use and not for the primary purpose of producing electricity, heat, or steam to sell to or for the public for compensation are exempt from the certification requirements, however, he or she must still report the proposed construction to the Public Utilities Commission prior to beginning construction. Id.

North Carolina's certificate of public convenience and necessity for the construction of public utility plants, systems, or generating facilities is not the same as a CEC in Arizona. In North Carolina, the purpose for requiring a certificate of public convenience and necessity

is to avoid costly overbuilding. State ex rel. Utilities Commission v. High Rock Lake Ass'n, Inc., 245 S.E.2d 787, 790 (N.C. App. 1978). The Commission in North Carolina considers environmental concerns only if they affect cost and efficiency issues with respect to the construction of generating facilities; otherwise, it leaves environmental concerns for other regulatory agencies to address. Id. at 790.

Even if the two certificates were similar, North Carolina does not provide by statute, rule or regulation for the amendment, modification or alteration of its certificate of public convenience and necessity.

Ohio

In Ohio, the equivalent of a CEC is issued by the Ohio Power Siting Board ("Board"), which is responsible for approving plans for the construction of new energy facilities such as a new power plant, electric transmission line, or a gas transmission pipeline. Ohio law provides that a certificate of environmental compatibility and public need ("CEC") may be amended and that an application for amendment must be in such form and contain such information as prescribed by the Board. Ohio Rev. Code Ann. § 4906.06 (2003).

The Board requires that an application for an amendment be submitted in the same form as an application for an original CEC. Ohio Admin. Code § 4906-5-10 (2003). However, the Board permits this rule and other such rules to be waived by it or an administrative law judge where there is good cause. Ohio Admin. Code § 4906-1-03 (2003). For an application to amend a certificate for a transmission facility, an applicant is to refer to the appropriate appendix to Ohio Admin Code § 4906-1-01 for the informational requirements. Ohio Admin. Code § 4906-5-10 (2003).

Appendix A to Ohio Admin. Code § 4906-1-01, contains a list of potential changes regarding electric transmission lines and it indicates whether a particular change requires the filing of an application for a CEC, notification of the Board, or notice of construction. Ohio Admin. Code § 4906-1-01, at app. A (2003). The types of changes set forth in Appendix A that require amendment to the CEC or notification of the Board are changes that involve the considerable rerouting, extension or new construction of transmission lines, circuits, conductors, substations, or acquisition of new rights-of-way. Id. According to Appendix A, where notification must be given to the Board, the utility must comply with Ohio Admin. Code § 4906-15-08, which sets forth the requirements for a letter of notification. The rule provides that a letter of notification must contain the following information: (1) a statement of need; (2) a discussion of the technical features of the project; (3) a discussion of socioeconomic data; and (4) a discussion of environmental data. Ohio Admin. Code § 4906-15-08 (2003). For changes that require an application, Appendix A provides that the application is to comply with Ohio Admin Code §§ 4906-15-01 through 4906-15-07. Ohio Admin. Code § 4906-1-01, at app. A (2003). In brief, these rules require that an application for a CEC for a major electric, gas, or natural gas transmission facility include a project summary and facility overview[2]; a justification of need[3]; an analysis of site and route alternatives[4]; a discussion of specific technical data[5]; a discussion of specific financial data[6]; an analysis of socioeconomic and land use impacts[7]; and an analysis of ecological impacts[8].

The Board Staff must review an application to amend a CEC pursuant to Ohio Admin.

[2] Ohio Admin. Code § 4906-15-01 (2003).
[3] Ohio Admin. Code § 4906-15-02 (2003).
[4] Ohio Admin. Code § 4906-15-03 (2003).
[5] Ohio Admin. Code §4906-15-04 (2003).
[6] Ohio Admin Code § 4906-15-05 (2003).
[7] Ohio Admin. Code § 4906-15-06 (2003).
[8] Ohio Admin Code § 4906-15-07 (2003).

Code § 4906-1-14. Ohio Admin. Code § 4906-5-10 (2003). This rule requires the Staff to conduct an investigation and issue a written report not less than 15 days prior to the commencement of public hearings. Ohio Admin. Code § 4906-1-14 (2003). For a facility that is not related to either to a coal research and development project or a coal development project submitted to the Ohio Coal Development Office for review, the Staff must set forth in its report the nature of its investigation and its recommended findings to the Board and administrative law judge pursuant to paragraph (A) of Ohio Rev. Code Ann. § 4906.10, which requires the Board to find the following: (1) the reason the facility is needed; (2) the nature of the probable environmental impact; (3) that, given the current state of technology, the nature and economics of alternatives, and other considerations, the facility would represent the minimum adverse environmental impact; (4) in the case of an electric transmission line, that the facility would serve the interests of economy and reliability of the electric system and that the facility would be consistent with regional expansion plans for the electric power grid and interconnected utility systems; (5) that the facility would comply with particular statutes and the rules adopted thereunder; (6) that the public interest, convenience and necessity would be served by the facility; (7) its impact on the viability of agricultural land in an existing agricultural district as established by statute that is located within the site and alternative site; and (8) that the maximum feasible water conservation practices, as determined by the Board, are incorporated in the facility, considering available technology and the nature and economics of the alternatives. Ohio Admin. Code § 4906-5-10 (2003).

A hearing on the application for amendment is required if the Board or administrative law judge conclude that the proposed change would cause any significant adverse environmental impact of the facility or a substantial change in the location of all or a portion

of the facility other than those already set forth in alternatives listed in the application. Id. The hearing is to be held in the same manner is held on an original application for a CEC. Id. If, however, the Board or administrative law judge conclude that a hearing is not required, the applicant then must take all steps necessary to notify all parties of the proposed determination of the Board. Id.

By statute, an applicant is required to give notice of its application for amendment in the same manner as is required for an original application for a CEC. Ohio Rev. Code Ann. § 4906.06 (2003). Thus, an application for amendment must be accompanied by proof of service of a copy of the application on the chief executive officer of each municipal corporation and county, and the head of each public agency charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located. Id.; see also Ohio Admin. Code § 4906-5-10 (2003). Further, each applicant is required to, within 7 days of filing the application, give public notice to persons residing in these municipal corporations and counties, by publishing a summary of the application in newspapers of general circulation in the area. Ohio Rev. Code Ann. § 4906.06 (2003). The applicant must also place a copy of the certified application to amend the CEC in the main public library of each political subdivision where any portion of the facility would be located. Ohio Admin. Code § 4906-5-10. The applicant must file proof of service and publication with the office of the chairman of the Board. Ohio Rev. Code Ann. §4906.06 (2003); Ohio Admin. Code §4906-5-10 (2003).

Oregon

The Energy Facility Siting Council ("Council") is charged with issuing Oregon's version of a CEC. Under Oregon law, the Council may amend a site certificate. Or. Rev. Stat. §

469.405 (2001); Or. Admin. R. 345-021-0000 (2003). It further provides that not all amendments must be considered in a contested proceeding. Id. By rule, the Council may establish the type of amendment that must be considered in a contested case proceeding. Or. Rev. Stat. § 469.405 (2001).

Under Oregon law, it is for the most part, the certificate holder that determines whether it must seek amendment of its site certificate. The situations that require that the certificate be amended are set forth in the Oregon Administrative Rules. Amendment to the certificate is required where the proposed change to the site boundary or otherwise to the design, construction, operation or retirement of a facility in a manner different from that described in the certificate if the proposed change: (a) could result in a significant adverse impact not evaluated or addressed by the Council in the final order granting a certificate affecting resources protected by its standards for siting non-nuclear facilities and related or supporting facilities; (b) could result in a significant adverse impact not evaluated or addressed by the Council in the final order granting a certificate affecting geographic areas or human, animal or plant populations; (c) could impair the certificate holder's ability to comply with a certificate condition; or (d) could require a new condition or a change to a condition in the certificate. Or. Admin. R. 345-027-0050 (2003).

A certificate amendment is not required, however, if the proposed change would not violate any condition of the certificate and is a change to: (a) an electrical generation facility that would increase the electrical generating capacity and not the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent, or enlarge the facility site; (b) in the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted

daily throughput or enlarge the facility site; (c) in the number, size or location of pipelines for a geothermal energy facility that would not enlarge the facility site; (d) to a pipeline or transmission line that is a related or supporting facility that would extend or modify the pipeline or transmission line or expand the right-of-way, when the change is to serve customers other than the energy facility; or (e) to an aspect or feature of the facility, operating procedures, or management structures not specifically addressed in the certificate that would not violate the certificate or applicable statutes or rules. Id.

If the certificate holder concludes that an amendment to the certificate is not required based on the above criteria, the certificate holder must still complete an investigation sufficient to demonstrate that the proposed change would comply with the applicable standards for siting non-nuclear energy facilities, determining need for facilities, and siting non-nuclear related or supporting facilities prior to making any change to the facility. Id. The certificate holder must prepare a written evaluation describing the investigation and the evaluation must be made available for inspection by the Office of Energy at any time. Id. The certificate holder must maintain a written record of the basis for its decision, which is also subject to inspection. Id. Further, the Office of Energy has the right to inspect any changes made to the facility to determine whether or not the certificate needed to be amended. Id. In an annual report, the certificate holder is required to submit to the Office of Energy, all significant changes made to the design, construction, operation or retirement of the facility without an amendment of the site certificate must be described. Id.

For guidance, a certificate holder may ask the Office of Energy to determine whether a proposed change meets the necessary criteria and whether it requires a site certificate amendment. Id. The request must contain a written description of the proposed change, the

certificate holder's analysis of the proposed change and the written evaluation. Id. The Office of Energy is required to respond in writing as soon as possible. Id. The Office of Energy, may on its own accord, or must at the request of the certificate holder or a member of the Council, refer its determination to the Council for concurrence, modification or rejection. Id. If the Office of Energy determines that a proposed change does not require an amendment, the certificate holder need not describe the change in the annual report. Id. Although not required, the Council recommends that prior to submitting a request to amend a certificate, the certificate holder prepare a draft request and confer with the Office of Energy about the content and completeness of the request. Or. Admin. R. 345-027-0060 (2003).

A request to amend a certificate must include the following: (1) the name and mailing address of the certificate holder and the individual that is submitting the request; (2) a description of the facility including its location and other information relevant to the proposed change; (3) a detailed description of the proposed change and the certificate holder's analysis of whether the proposed change (a) could result in a significant adverse impact that the Council did not evaluate and address in the final order granting a certificate affecting any resource protected by applicable standards; (b) could result in a significant adverse impact that the Council did not evaluate and address in the final order granting a certificate affecting geographic areas or human, animal or plant populations; (c) could impair the certificate holder's ability to comply with a certificate condition; or (d) could require a new condition or a change to a condition in the certificate; (4) the specific language of the certificate and affected conditions that the amendment would change, add or delete; (5) a list of the standards for siting non-nuclear energy facilities, determining need for facilities, and for siting related or supporting facilities for non-nuclear facilities relevant to the proposed change; (6) an analysis

of whether the facility, if amended as proposed, would comply with applicable statutes, rules, and ordinances; and (7) if the amendment would change the site boundary or would extend the deadlines for beginning or completing construction of the facility, an updated list of the owners of property located within or adjacent to the site of the facility. Id.

A request for amendment must also include the information required for an original application for a certificate as of the date of the application for amendment. Id. However, the certificate holder may incorporate by reference relevant information that was previously submitted to the Office of Energy in the original certificate application or that is otherwise included in the Office of Energy's administrative record on the facility. Id.

The general standard of review of an application for amendment requires that the Council determine that the preponderance of evidence on the record supports the following conclusions: (1) the facility complies with the requirements of the Oregon Energy Facility Siting statutes, and the standards adopted by the Council for the siting, construction, operation and retirement of facilities, or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet; (2) except as provided in Oregon Admin. R. 345-022-0030 regarding land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. Or. Admin. R. 345-022-0000 (2003). If the Council concludes that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council will resolve the conflict consistent with the public interest, however, the council cannot waive any

applicable state statute in trying to resolve the conflict. Id.

If the facility does not comply with the standards adopted by the Council for the siting, construction, operation and retirement of facilities, the Council may still issue or amend a certificate if it determines that the overall public benefits of the facility at the proposed site outweigh the damage to the resource that is protected by the standard the facility does not meet. Id. The Council must find that the damage to the resource is acceptable or inconsequential in ultimate effect in order to issue or amend a certificate for a facility that does not meet a standard. Id. In making its decision, the Council must consider, including, but not limited to the following factors: (1) the uniqueness and significance of the affected resource; (2) the degree to which the resource is already affected by development; (3) whether there are any reasonable alternatives; and (4) the extent of the anticipated damage to the resource. Id. The phrase "overall public benefits" is defined as "the public benefits that the Council finds are likely to result from construction and operation of the proposed facility at the proposed site." Id. In making this finding, the Council must consider factors including, but not limited to, the following: (1) the proposed facility's contribution towards maintaining reliable energy delivery to an area in the state; (2) the proposed facility's expected effect on total resource cost, and average delivered price of energy to end users; (3) the proposed facility's overall environmental effects other than on the resource protected by the standard the facility does not meet and effects other than those considered under section (2) above; (4) the proposed facility's consistency with Oregon energy policy; and (5) recommendations from any special advisory group that was designated by the Council. Id.

The Council shall not, however, amend a certificate for a proposed facility that does not meet the standards of Oregon Admin. R. 345-022-0040 if the statutes or administrative rules

governing the management of the protected area prohibit location of the proposed facility in that area. Id. Oregon Admin. R. 345-022-0040 sets forth specific areas that are protected and provides that a certificate may not issue where a proposed facility would be located within a protected area. It further requires that the Council find that, after taking into account mitigation, design, construction and operation of the facility, a proposed facility located in an area outside of the protected areas will not likely result in significant adverse impact on the protected areas. Or. Admin. R. 345-022-0040 (2003).

The Office of Energy must consult with other agencies in making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise. Or. Admin. R. 345-022-0000 (2003).

Oregon law provides for an expedited request to amend a certificate. To qualify, a certificate holder must submit a request to the Office of Energy in writing along with the text of the amendment, including appendices and graphical information to the extent practical, in electronic format. Or. Admin. R. 345-027-0080 (2003). The request must contain the requested information set forth above, as required by Oregon Admin. R. 345-027-0060(1) and (2). Id. Further, the request must set forth the reasons why the certificate holder needs expedited review, an explanation of why the need for expedited review arose and why the certificate holder could not have reasonably foreseen it. Id. If the chair of the Council determines that delay would unduly harm the certificate holder and if the facility, with the proposed change, would not likely result in a significant adverse impact, then he or she may grant expedited review of the amendment. Id. If the Chair decides not to grant the request for expedited review, the reasons for denying the request must be set forth in its written decision.

Id. If the request is denied, the application for amendment is reviewed pursuant to the procedures set forth in Oregon Admin. R. 345-027-0070. Id.

If an expedited review of the request for amendment is granted, within 7 days after the chair grants the expedited review, the Office of Energy must send copies of the request for amendment to: (1) the Department of Environmental Quality; (2) the Water Resources Commission and the Water Resources Director through the Water Resources Department; (3) the Fish and Wildlife Commission through the Department of Fish and Wildlife; (4) the State Geologist; (5) the Department of Forestry; (6) the Public Utility Commission; (7) the Department of Agriculture; (8) the Department of Land Conservation and Development; (9) the Northwest Power Planning Council; (10) the Office of State Fire Marshal; (11) the Division of State Lands; (12) the State Historic Preservation Office; (13) any other agency identified by the Office of Energy; (14) any tribe identified by the State Commission on Indian Services as affected by the proposed facility; (15) the governing body of any incorporated city or county in Oregon within the study area for impacts to public services; (16) any special advisory group designated by the Council; and (17) the federal land management agency with jurisdiction if any part of the proposed site is on federal land. Or. Admin. R. 345-027-0080 and 345-020-0040 (2003). The Office of Energy shall ask the officers, agencies and tribes to comment on the request within not more than 21 days after the date of the notice. Or. Admin. R. 345-027-080 (2003). The Office of Energy must also send a notice of the amendment request to all persons on the Council's mailing list specifying a date, not more than 21 days after the date of the notice, when comments are due. Id.

Within 60 days after the expedited review is granted, the Office of Energy must issue a proposed order, recommending approval, modification or disapproval of the requested

amendment. Id. If the Office of Energy recommends approval, it shall include in the proposed order any new or modified conditions it recommends and must explain why the expedited action was warranted. Id.

After considering the proposed order, the Council may issue an order temporarily amending the site certificate. Id. For an amendment that enlarges the site, the Council in deciding whether to issue a temporary order, must consider, within the area added to the site by the amendment, whether the facility complies with all Council standards. Id.; Or. Admin. R. 345-027-0070 (2003). For an amendment that extends the deadlines for beginning or completing construction, the Council must consider whether it has previously granted a deadline extension, whether there has been any change of circumstances that affects a previous finding that was required for issuance of a site certificate or amended site certificate, and whether the facility complies with all Council standards. Or. Admin. R. 345-027-0070 (2003). The Council may choose not to apply a standard if the Council finds that (1) the certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility; (2) the inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder; (3) the standard, if applied, would result in an unreasonable financial burden on the certificate holder; and (4) the Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment. Id. For an amendment that applies subsequent law or rules, the Council must consider the effects that the proposed application of the law or rule could produce. Id. For any amendment not described above, the Council must consider the effects that the proposed change or addition to the site or facility could produce. Id. The Council must apply the applicable

substantive criteria regarding planning goals for land use adopted by the Land Conservation and Development Commission that are in effect on the date the certificate holder submitted the request for amendment. Or. Admin. R. 345-027-0080 (2003). The Council must also apply all other state statutes, administrative rules, and local government ordinances in effect on the date the Council issues its temporary order. Id.

Notice of the proposed order must be sent by the Office of Energy to the persons on its mailing list and any special list established for the amendment. Id. The notice must include information on the availability of the proposed order, the date of the Council meeting when the Council will consider the proposed order and issue a temporary order, a date by which comments on the proposed order are due, and the deadline for any person to request a contested case proceeding on the Council's temporary order. Id.

Within 15 days after the Council issues the temporary order, any person may, by written request submitted to the Office of Energy, ask that the Council hold a contested case proceeding on the temporary order. Id. The request must include a description of the issues to be contested, a statement of the facts believed to be at issue, and the person's mailing address. Id. The Council must then determine whether any issue identified in the request for a contested case proceeding is significant or otherwise justifies a contested case proceeding. Id. If the Council concludes that a significant issue is identified or there is another reason that otherwise justifies a contested case proceeding, the Council must conduct a contested case proceeding limited to the issues found to be significant or otherwise justifying the proceeding. Id. If, on the other hand, the Council finds that the request does not identify any issue that is significant or that otherwise justifies a contested case proceeding, the Council must deny the request, stating its reasons for denial in a written order. Id.

After determining that a contested case proceeding should not be had or where one is not requested within the 15 day period, the Council must modify its temporary order or adopt the temporary order as a final order. Id. The final order must either grant or deny the request for an amended site certificate. Id. If the Council grants an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant. Id.

If an application for an amendment is not expedited, then the Council must review the request within 15 days after having received the request. Or. Admin. R. 345-027-0070 (2003). The Office of Energy must first, however, determine whether the amendment requires extended review. Id. Extended review is necessary where: (1) the certificate holder requests extended review; (2) the Office of Energy concludes that the amendment request is not complete, does not contain the necessary information or does not contain information sufficient for the Office of Energy to prepare a proposed order; (3) the Office of Energy concludes that it needs to hire a consultant to assist it in reviewing the request; (4) the amendment (a) would require construction on land zoned residential or exclusive farm use, (b) would require construction in a zone where this type of use is not permitted, (c) would require construction on land that may qualify as Habitat Category 1 or 2 land, or (d) would result in incremental carbon dioxide emissions that the certificate holder elects to offset, in compliance with the applicable carbon dioxide emissions standard, by a means other than by payments; or (5) could require the Council to determine that the overall public benefits of the facility outweigh the damage to the resource that is protected by a standard the facility would not meet if the amendment is approved; or (6) the Office anticipates a high volume of public comment. Id.

The Office of Energy must send copies of the request for amendment to the same officers, agencies and tribes set forth above for the expedited review. Id.; Or. Admin. R. 345-020-0040 (2003). Further, the Office of Energy must ask the officers, agencies and tribes to comment on the request by a specified date. Or. Admin. R. 345-027-0070 (2003). Notice must also be sent to all persons on the Council's mailing list and on the list of property owners, if any, supplied by the certificate holder and it must specify a date by which comments on the request are due. Id.

The Office of Energy is required to send a notice to the certificate holder specifying a date for issuance of a proposed order. Id. The Office of Energy must specify a date that is no later than 60 days after the date of the notice unless it has concluded that the amendment is subject to extended review. Id. If the Office of Energy has determined that it must conduct an extended review, it must explain the basis of its determination and specify a date that is not more than 180 days after the date of the notice. Id. Within 10 days after the Office sends a notification that an amendment is subject to extended review, the certificate holder may request Council review the determination, which requires the Office of Energy to refer its determination to the Council for concurrence, modification or rejection. Id.

The Office of Energy may hold one or more meetings within the vicinity of the site of the facility during its review of a request for amendment of the site certificate. Id.

The Office of Energy must, unless otherwise provided, issue a proposed order no later than the date specified in the notice sent to the certificate holder. Id. The proposed order must recommend approval, modification or disapproval of the requested amendment. Id. If the Office of Energy determines that it needs additional time to prepare the proposed order, it may issue the proposed order at a later date, but the Office of Energy shall, no later than the date

the Office has specified in the notice, notify the certificate holder in writing of the circumstances that justify its delay. Id.

After issuing the proposed order, notice of the proposed order must be sent by the Office of Energy to the persons on the Council's mailing list, on any special list established for the amendment, and on the list of property owners, if any, supplied by the certificate holder. Id. By written request submitted to the Office of Energy within 30 days after the issuance of the proposed order, any person may ask the Council to hold a contested case proceeding on the proposed order. Id. The request must provide a description of the issues to be contested, a statement of the facts believed to be at issue, and the person's mailing address. Id. The Council must find that the request raises a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets an applicable standard in order to justify the holding of a contested case proceeding. Id. If the Council determines that even if the alleged facts are taken as true the outcome of the Council's determination would not change, but that conditions of performance might need revision, the Council may deny the request and may adopt appropriate conditions. Id. If the Council does not have jurisdiction over the issue raised in the request, the Council shall deny the request. Id.

If the Council concludes that the request identifies one or more issues that justify a contested case proceeding, then the Council must conduct a contested case proceeding limited to the issues that the Council found sufficient to justify the proceeding. Id. If the Council finds, however, that the request identifies one or more issues that an amendment of the proposed order would settle in a manner satisfactory to the Council, the Council may deny the request as to those issues and direct the Office of Energy to amend the proposed order and

send a notice of the amendment to the persons on the Council's mailing list, on any special list established for the amendment, and on the list of property owners, if any, supplied by the certificate holder. Id. Any person may then, by written request submitted to the Office of Energy within 30 days after the Office of Energy issues the notice of the amended proposed order, ask the Council to hold a contested case proceeding limited to issues raised by the amendment language. Id. The person making the request must provide a description of the issues to be contested, a statement of the facts believed to be at issue, and the person's mailing address. Id. As described above, the Council then must determine whether any issue identified justifies a contested case proceeding. Id. If the Council finds that the request does not identify any issue that justifies a contested case proceeding, it must deny the request and issue a written order explaining why the request was denied. Id.

After rejecting the request or if no one requests a contested case proceeding within the 30-day period, the Council must then adopt, modify or reject the proposed order based on the considerations previously described. Id. The Council must issue a written order either granting or denying the issuance of an amended certificate. Id. If the Council grants issuance of an amended certificate, the Council shall then issue an amended certificate, which is effective upon execution by the chair of the Council and by the applicant. Id.

An amendment to a certificate is not required for a pipeline that is proposed to be constructed to test or maintain an underground gas storage reservoir if it is less than 16 inches in diameter and less than five miles in length. Id. However, if the proposed pipeline will connect to a Energy Facility Siting Council certified surface facility related to an underground gas storage reservoir or to a council certified gas pipeline, whether the proposed pipeline is to be located inside or outside the site of a council certified facility, the approval of the Office of

Energy for the construction, operation and retirement of the proposed pipeline must be obtained prior to construction. Id. The Office of Energy must approve the proposed pipeline if the pipeline meets applicable Council substantive standards. Id.

With regard to monitoring conditions set forth in the site certificate, Or. Admin. R. 345-027-0028 provides that if a certificate holder becomes aware of a significant environmental change or impact attributable to the facility, he or she must, as soon as possible, submit a written report to the Office of Energy describing the impact on the facility and any affected site certificate conditions. It is not clear what procedure the Office of Energy would follow after having received the report described above.

Texas

Texas law calls for the issuance of a certificate of convenience and necessity ("CCN") by the Texas Public Utility Commission ("Commission") that is similar to a CEC. Unlike Arizona, however, where a CEC is issued for each transmission line or power plant, in Texas, a public utility only receives one CCN, which is issued when it first begins to provide service in Texas, and thereafter the CCN must be amended for the construction or extension of transmission lines and non-exempt generating facilities.

Because of deregulation in Texas, "unbundled" electric utilities are exempted from having to seek an amendment to its CCN for the construction of a generating facility whereas "bundled" electric utilities must seek a CCN amendment for the construction of a generating facility. 16 Tex. Admin. Code § 25.101 (2003); see also Tex. Util. Code Ann. §39.402. Both bundled and unbundled electric utilities, however, are required to seek a CCN amendment for the construction or extension of transmission lines. 16 Tex. Admin. Code § 25.101. An amendment is also required for a change in service area. Id.

Texas law provides for several other exemptions from the requirement that a electric utility seek a CCN or an amendment to a CCN. There is an exemption for a public utility seeking to use a devise to interconnect existing facilities or solely to transmit electric utility service from an existing facility to a customer of retail electric utility service where: (1) the extension would be into territory that is (a) contiguous to the territory the utility already serves, (b) not receiving similar service from another electric utility provider, and (c) not in are where another electric utility has a certificate; (2) the extension would be in or to territory that the utility is authorized to serve or currently serves under its certificate; or (3) the operation, extension, or service was in progress as of September 1, 1975. Tex. Util. Code Ann. § 37.052 (2001); see also 16 Tex. Admin. Code § 25.101 (2003). The construction of a new electric high voltage switching state or substation is also exempt. 16 Tex. Admin. Code § 25.101 (2003). Also not requiring an amendment to a CCN, is the repair or reconstruction of a transmission facility due to emergency. Id. Another situation where certification is not required is the construction or upgrading of distribution facilities within the electric utility's service area. Id.

Texas law also exempts routine activities associated with transmission facilities that are conducted by transmission service providers. Id. Included as "routine activities" are the following: (1) modification or extension of an existing transmission line solely to provide service to a substation or metering point provided that: (a) the extension to the substation or metering point does not exceed one mile and (b) the prior written consent of all landowners whose property is crossed by the transmission facilities has been received; (2) the rebuilding, replacement, or respacing of structures along an existing transmission line route; upgrading to a higher voltage not greater than 230 kV; bundling of conductors or reconductoring of an

existing transmission facility, provided that: (a) additional right-of-way is not required; or (b) if it is required, the prior written consent has been received from all landowners of property crossed by the electric facilities; (3) the installation of an additional circuit that is not previously certificated on an existing transmission line, provided that: (a) the additional circuit is not greater than 230 kV; and (b) the prior written consent of all landowners whose property is crossed by the transmission facilities has been received; (4) the relocation of all or part of an existing transmission facility due to a request for relocation, provided that: (a) it is to be done at the expense of the party requesting the relocation; and (b) it is solely on a right-of-way provided by the requesting party; (5) the relocation or alteration of all or part of an existing transmission facility in order to avoid or eliminate existing or impending encroachments, provided that the prior written consent of all landowners of property crossed by the electric facilities has been received; (6) the relocation, alteration, or reconstruction of a transmission facility because of any federal, state, county, or municipal governmental body or agency requirements, for purposes including, but not limited to, highway transportation, airport construction, public safety, air and water quality, provided that: (a) the prior written consent of all landowners of property crossed by the electric facilities was received; and (b) the relocation, alteration, or reconstruction is responsive to the governmental request. Id.

The procedure for amending a CCN is the same as that used for an original application for a CCN. A public utility seeking to amend its CCN must submit an application to the Commission. Tex. Util. Code Ann. §37.053 (2001). After the application is received, the Commission must give notice to interested parties, and if a hearing is requested, it must set a time and place for the hearing and give notice of the hearing. Tex. Util. Code. Ann. §37.054 (2001).

The Texas Court of Appeals in Public Utility Commission of Texas v. South Plains Elec. Co-op, Inc., 635 S.W.2d 954 (Tex. App. 1982) held that the appropriate standard for determining whether to amend a certificate of public convenience and necessity is set forth in Tex. Util. Code §37.056. Tex. Util. Code §37.056 provides that the Commission may approve an application only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The Commission is permitted to grant the certificate as requested, grant the certificate for a portion of the requested system, facility, or extension or for the partial exercise of the requested right or privilege; or to refuse to grant the certificate. Id. The Commission must grant each certificate on a nondiscriminatory basis after having considered the adequacy of existing service, the need for additional service, the effect of granting the certificate on the party requesting it and any electric utility serving the proximate area, and other factors, including community values, recreational and parking areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted. Id.

In a proceeding to amend an electric cooperative's certificate of convenience and necessity to permit construction of a transmission line, the Texas Court of Appeals concluded that the Commission's findings that the utility should present evidence regarding possible alternative routes and solutions, possible effects on health and environment, and possible noise and chemical pollution were proper, notwithstanding the claim that the findings constituted improper retroactive rules. Sam Houston Elec. Co-op, Inc. v. Public Utility Commission of Texas, 733 S.W.2d 905 (Tex. App. 1987). In Sam Houston, intervenors had raised claims indicating that the utility may not have chosen a route for the transmission line that most favorably impacting on factors required to be considered by the Public Utility Commission.

Id. The Court held that the intervenors' claims were the subject of the commission's findings and the utility had adequate notice that evidence on such issues would be presented at the hearing and that it would have to rebut such evidence. Id.

Washington

In Washington State, the Energy Facility Site Evaluation Council ("Council") issues an equivalent of a CEC, called a site certification agreement, for non-hydro energy projects. The Council issues the site certification agreement after considering all potential environmental and socioeconomic impacts. Under Washington State law, a request to amend a site certification agreement must be made in writing to the Council by the certificate holder. Wash. Admin. Code § 463-36-030 (2003). The Council may also initiate the proceedings leading to an amendment if it perceives that the certificate was abandoned or if it deems such action appropriate. Wash. Admin. Code § 463-36-090 (2003).

At the next meeting of the Council where practicable, the Council must consider the request for an amendment. Wash. Admin. Code § 463-36-030 (2003). The Council will refer the request to a committee for recommendation, determine a schedule for action, or act upon the request. Id. If the Council deems it necessary for a full understanding and review of the requested amendment, where appropriate, it will hire a consultant or take other action at the certificate holder's expense. Id.

Prior to rendering its decision, the Council must hold one or more public hearing sessions at times and places it selects. Id. Further, in its review of the requested amendment, the Council must consider whether the amendment is consistent with the intention of the original certificate, the applicable laws and rules, and the public health, safety and welfare. Wash. Admin. Code §463-36-040. In evaluating the public health, safety and welfare, the

Council must consider the requested amendments short and long-term impacts on the environment. Wash. Admin. Code § 463-36-050 (2003). The Council must consider reasonable alternative means by which the purpose of the amendment may be achieved. Id. It must also consider the availability of funding to implement the proposed amendment. Id.

After these considerations are made, the Council may accept the amendment as proposed, reject it as proposed, or reject it and state conditions under which it would be reconsidered. Wash. Admin. Code § 463-36-060 (2003). If the amendment would substantially alters the substance of any part of the certificate or it would have a significant detrimental effect upon the environment, then the amendment would not be effective, even if passed, until the governor signed its approval. Wash. Admin. Code § 463-36-080 (2003).