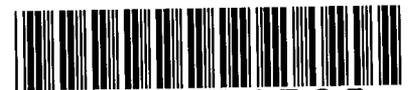


OPEN MEETING ITEM



0000041325

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

22

DATE: March 21, 2006
DOCKET NO: ACC-00000A-05-0613
TO ALL PARTIES:

Enclosed please find the recommendation of Chief Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Opinion and Order on:

UNAUTHORIZED COMMUNICATIONS (EX PARTE) RULES (RULEMAKING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

MARCH 30, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 4 AND 5, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For more information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF RULES TO ADDRESS
UNAUTHORIZED COMMUNICATIONS IN
MATTERS BEFORE THE ARIZONA POWER
PLANT AND LINE SITING COMMITTEE AND
LINE SITING COMMITTEE MATTERS BEFORE
THE COMMISSION.

DOCKET NO. ACC-00000A-05-0613

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: February 16, 2006
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Lyn Farmer
IN ATTENDANCE: Marc Spitzer, Commissioner
Mike Gleason, Commissioner
Kristin K. Mayes, Commissioner
APPEARANCES: Diane M. Targonvnik, Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On December 9, 2005, the Arizona Corporation Commission ("Commission") issued Decision No. 68323 in the above-captioned matter. Decision No. 68323 ordered that a Notice of Proposed Rulemaking to address changes to Commission Rule A.A.C. R14-3-113 ("Rule 113")¹ and to adopt proposed Rule A.A.C. R14-3-220 ("Rule 220") be forwarded to the Arizona Secretary of State for publication in the Arizona Administrative Register.

After the issuance of Decision No. 68323, by Procedural Order issued on December 9, 2005, a public comment hearing on the proposed rule amendment was scheduled for February 16, 2006. The Procedural Order stated that comments on the proposed rule amendment would be taken through the date of the public comment hearing, and established a schedule for the filing of formal written comments and responses prior to the public comment hearing.

¹ Rule 113 addresses unauthorized communications.

1 A Notice of Proposed Rulemaking regarding the proposed amendment to Rule 113 and to
2 adopt Rule 220 was filed with the Secretary of State on December 12, 2005, and was published in the
3 Arizona Administrative Register on January 6, 2006.

4 One written comment on the proposed change to Rule 113 and proposed Rule 220 was filed
5 by Tucson Electric Power Company on January 20, 2006. The comment stated that Tucson Electric
6 Power Company has reviewed the proposed rule, finds it appropriate and supports its adoption.

7 A public comment hearing was held as scheduled on February 16, 2006. The Commission's
8 Utilities Division Staff ("Staff") entered an appearance through counsel. No persons appeared at the
9 hearing to provide public comment.

10 The text of the proposed amended Rule 113 and proposed new Rule 220 is attached to and
11 incorporated in this Decision as Appendix A. The Summary of Comments and Response states that
12 the Commission received one comment in favor of the proposed amended Rule 113 and proposed
13 new Rule 220 following their publication. Appendix B was prepared in accordance with A.R.S. § 41-
14 1001(14)(b)(iii), and is to be included in the Preamble to be published with the Notice of Final
15 Rulemaking.

16 * * * * *

17 Having considered the entire record herein and being fully advised in the premises, the
18 Commission finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. On August 25, 2005, Staff filed a memorandum to open this rulemaking docket as
21 requested by the Commissioners.

22 2. On December 1, 2005, Staff docketed a Proposed Order recommending that the
23 Commission adopt proposed amended Rule 113 and proposed new Rule 220, and that the
24 Commission forward the proposed amended Rule 113 and proposed new Rule 220 to the Secretary of
25 State to accomplish publication of a Notice of Proposed Rulemaking in the Arizona Administrative
26 Register.

27 3. On December 9, 2005, the Commission issued Decision No. 68323, which ordered
28 publication in the Arizona Administrative Register of a Notice of Proposed Rulemaking and the

1 scheduling of a public comment hearing regarding adoption of the proposed amended Rule 113 and
2 proposed new Rule 220, which were attached as Exhibit A to the Decision.

3 4. On December 9, 2005, by Procedural Order, the Commission scheduled a public
4 comment hearing on the proposed amended Rule 113 and proposed new Rule 220, to take place on
5 February 16, 2006.

6 5. Pursuant to law, a Notice of Proposed Rulemaking was published on January 6, 2006,
7 in the Arizona Administrative Register.

8 6. One written comment on the proposed change to Rule 113 and proposed new Rule 220
9 was filed by Tucson Electric Power Company on January 20, 2006. The comment stated that Tucson
10 Electric Power Company has reviewed the proposed rule, finds it appropriate and supports its
11 adoption. No other written comments were filed regarding adoption of the proposed amended Rule
12 113 and proposed new Rule 220.

13 7. A public comment hearing was held as scheduled on February 16, 2006. Staff entered
14 an appearance through counsel. No persons appeared at the hearing to provide public comment.

15 8. Proposed amended Rule 113 and proposed new Rule 220 clarify the application of
16 unauthorized communications rules in proceedings before the Line Siting Committee and Line Siting
17 proceedings before the Commission.

18 9. A Summary of Comments and Response is attached hereto as Appendix B and
19 incorporated herein by reference. The Summary of Comments and Response states that the
20 Commission received one comment in favor of the proposed amended Rule 113 and proposed new
21 Rule 220 following their publication. Appendix B was prepared in accordance with A.R.S. § 41-
22 1001(14)(b)(iii), and is to be included in the Preamble to be published with the Notice of Final
23 Rulemaking.

24 10. The text of the proposed amended Rule 113 and proposed new Rule 220 is set forth in
25 Appendix A, attached hereto and incorporated herein by reference. A typographical correction has
26 been made to Rule 220.C.1, inserting the word "a" between "merits of" and "siting hearing," and also
27 inserting the word "a" between "to" and "member."

28 11. The Commission is exempt for the requirements of A.R.S. § 41-1055 relating to

1 economic, small business, and consumer impact statements. However, under A.R.S. § 41-1057(2),
2 the Commission is required to prepare a substantially similar statement. The Commission does not
3 anticipate any negative economic, small business, or consumer impact related to, or created by, the
4 rules. The Preamble to be published with the Notice of Final Rulemaking will therefore include the
5 statement that the Commission does not anticipate any negative economic, small business, or
6 consumer impact related to, or created by, the rules.

7 CONCLUSIONS OF LAW

8 1. Pursuant to Article XV of the Arizona Constitution and A.R.S. Title 40 of the Arizona
9 Revised Statutes, the Commission has jurisdiction to amend A.A.C. R14-3-113 and enact new A.A.C.
10 R14-3-220.

11 2. Notice of the hearing was given in the manner prescribed by law.

12 3. The proposed amended A.A.C. R14-3-113 and new A.A.C. R14-3-220 as set forth in
13 Appendix A contain no substantial changes from the proposed amended A.A.C. R14-3-113 and new
14 A.A.C. R14-3-220 published in the Notice of Proposed Rulemaking.

15 4. Amendment of A.A.C. R14-3-113 and enactment of A.A.C. R14-3-220 as set forth in
16 Appendix A is in the public interest.

17 5. The Summary of Comments and Response set forth in Appendix B should be adopted.

18 ORDER

19 IT IS THEREFORE ORDERED that the proposed amendments to A.A.C. R14-3-113 and
20 new A.A.C. R14-3-220 as set forth in Appendix A are hereby adopted.

21 IT IS FURTHER ORDERED that the Summary of Comments and Response as set forth in
22 Appendix B is hereby adopted.

23 IT IS FURTHER ORDERED that the Commission's Utilities Division Staff shall submit
24 adopted amended A.A.C. R14-3-113 and new A.A.C. R14-3-220 as set forth in Appendix A, and the
25 Summary of Comments and Response, as set forth in Appendix B, to the Office of the Attorney
26 General for endorsement.

27 IT IS FURTHER ORDERED that the Commission's Utilities Division Staff is authorized to
28 make non-substantive changes in the adopted amendment to A.A.C. R14-3-113 and the new A.A.C.

1 R14-3-220 in response to comments received from the Attorney General's office during the approval
2 process under A.R.S. § 41-1044 unless, after notification of those changes, the Commission requires
3 otherwise.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER _____

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____
11

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2006.

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18 _____
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

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SERVICE LIST FOR:

RULEMAKING TO ADDRESS UNAUTHORIZED COMMUNICATIONS IN MATTERS BEFORE THE ARIZONA POWER PLANT AND LINE SITING COMMITTEE AND LINE SITING COMMITTEE MATTERS BEFORE THE COMMISSION

DOCKET NO.:

ACC-00000A-05-0613

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5	IMServ North America, LLC 8601 Six Forks Road, Ste. 300 Raleigh, NC 27615	Southwest Transmission Cooperative, Inc PO Box 2195 1000 South Hwy 80 Benson, AZ 85602
8	KWH Metering, LLC 7409 Country Club Dr. Pinetop, AZ 85935	Sulphur Springs Valley Electric Cooperative, Inc. P.O. Box 820 Willcox, AZ 85644
10	Mohave Electric Cooperative, Inc. 7409 Country Club Dr. P.O. Box 1045 Bullhead City, AZ 86430	Trico Electric Cooperative, Inc. P.O. Box 930 Marana, AZ 85653
13	Morenci Water and Electric Company P. O. Box 68 Morenci, AZ 85540	Tucson Electric Power Company P.O. Box 711 MS OH-203 Tucson, AZ 85702
15	Navopache Electric Cooperative, Inc. P. O. Box 308 Lakeside, AZ 85929	Jay I. Moyes, Esq. Moyes Storey 3003 North Central Suite 1250 Phoenix, AZ 85012 Attorneys for Griffith Energy, LLC
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20	New West Energy Corporation P. O. Box 61868, PAB 200 Phoenix, AZ 85082	Thomas H. Campbell, Esq. Lewis and Roca, LLP 40 North Central Avenue Phoenix, AZ 85004-4429 Attorney for Duke Energy Arlington Valley LLC & Gila Bend Power Partners
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Appendix A

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATIONS**

CHAPTER 3. CORPORATION COMMISSION -- RULES OF PRACTICE AND PROCEDURE

**ARTICLE 1. RULES OF PRACTICE AND PROCEDURE BEFORE THE CORPORATION
COMMISSION**

Section

R14-3-113. Unauthorized communications

**ARTICLE 2. RULES OF PRACTICE AND PROCEDURE BEFORE POWER PLANT AND
TRANSMISSION LINE SITING COMMITTEE**

Section

R14-3-220. Unauthorized communications

**ARTICLE 1. RULES OF PRACTICE AND PROCEDURE BEFORE THE CORPORATION
COMMISSION**

R14-3-113. Unauthorized Communications

A. Purpose. It is the purpose of this rule to assist the members of the Arizona Corporation Commission, and its employees, in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Commission and hearings before the Arizona Power Plant and Transmission Line Siting Committee.

B. Application. The provisions of this rule apply from the time a contested matter is set for public hearing before the Commission and from the time a notice of siting hearing is published pursuant to A.A.C. R14-3-208(A).
The provisions of this rule do not apply to rulemaking proceedings.

C. Prohibitions.

1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding or siting hearing to a commissioner or commission employee involved in the decision-making process for that proceeding or siting hearing.
2. No commissioner or commission employee involved in the decision-making process of a contested proceeding or siting hearing shall request, entertain, or consider an unauthorized communication concerning the merits of the proceeding or siting hearing.
3. The provisions of this rule shall not prohibit:
 - a. Communications regarding procedural matters;
 - b. Communications regarding any other proceedings;

- c. Intra-agency or non-party communications regarding purely technical and legal matters;
- d. Comments from the general public;
- e. Communications among hearing officers, non-party staff and commissioners.

D. Remedy.

1. A commissioner, commission employee, who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the matter is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the case or proceeding.
2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
3. If a party to a contested proceeding or siting hearing makes an unauthorized communication, the party may be required to show cause why its claim or interest in the proceeding or siting hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

ARTICLE 2. RULES OF PRACTICE AND PROCEDURE BEFORE POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

R14-3-220. Unauthorized Communications

A. Purpose. It is the purpose of this rule to assist members of the Arizona Power Plant and Line Siting Committee in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Siting Committee.

B. Application. The provisions of this rule apply from the time a notice of siting hearing is published pursuant to A.A.C. R14-3-208(A).

C. Prohibitions.

1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a siting hearing to a member of the Siting Committee involved in the decision-making process for that siting hearing.

2. No member of the Siting Committee shall request, entertain, or consider an unauthorized communication concerning the merits of a siting hearing.
3. The provisions of this rule shall not prohibit:
 - a. Communications regarding procedural matters;
 - b. Communications regarding any other proceedings;
 - c. Intra-agency or non-party communications regarding purely technical and legal matters.

D. Remedy.

1. A member of the Siting Committee who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the hearing is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the siting hearing.
2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
3. If a party to a contested siting hearing makes an unauthorized communication, the party may be required to show cause why its claim or interest in the siting hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

Appendix B**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATIONS****CHAPTER 3. CORPORATION COMMISSION -- RULES OF PRACTICE AND PROCEDURE****ARTICLE 1. RULES OF PRACTICE AND PROCEDURE BEFORE THE CORPORATION COMMISSION****R14-3-113. Unauthorized Communications**

The Commission received one written comment on the proposed change to A.A.C. R14-3-113, which was filed by Tucson Electric Power Company on January 20, 2006. The comment stated that Tucson Electric Power Company has reviewed the proposed rule, finds it appropriate and supports its adoption. No other written comments were filed regarding adoption of the proposed change to A.A.C. R14-3-113. No persons appeared at the public comment hearing on the proposed change to A.A.C. R14-3-113, which was held as scheduled on February 16, 2006.

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATIONS**CHAPTER 3. CORPORATION COMMISSION -- RULES OF PRACTICE AND PROCEDURE****ARTICLE 2. RULES OF PRACTICE AND PROCEDURE BEFORE POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE****R14-3-220. Unauthorized communications**

The Commission received one written comment on the proposed A.A.C. R14-3-220 which was filed by Tucson Electric Power Company on January 20, 2006. The comment stated that Tucson

1 Electric Power Company has reviewed the proposed rule, finds it appropriate and supports its
2 adoption. No other written comments were filed regarding adoption of the proposed A.A.C. R14-3-
3 220. No persons appeared at the public comment hearing on the proposed A.A.C. R14-3-220, which
4 was held as scheduled on February 16, 2006.

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