



0000060545

ORIGINAL

RECEIVED

Arizona Corporation Commission

DOCKETED

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION 4:36

NOV 01 2001

LINE SITING COMMITTEE

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY	
-------------	--

IN THE MATTER OF THE APPLICATION OF ALLEGHENY ENERGY SUPPLY COMPANY, LLC FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY FOR CONSTRUCTION OF A 1,080 MW (NOMINAL) GENERATING FACILITY IN SECTION 35, TOWNSHIP 3 NORTH, RANGE 11 WEST IN LA PAZ COUNTY, ARIZONA AND AN ASSOCIATED TRANSMISSION LINE AND SWITCHYARDS BETWEEN AND IN SECTION 35, TOWNSHIP 3 NORTH, RANGE 11 WEST AND SECTIONS 23-26, TOWNSHIP 3 NORTH, RANGE 11 WEST ALSO IN LA PAZ COUNTY, ARIZONA.

DOCKET NO. L-00000AA-01-0116

CASE NO. 116

**MEMORANDUM AND
PROPOSED CERTIFICATE OF
ENVIRONMENTAL
COMPATIBILITY**

GALLAGHER & KENNEDY, P.A.
2575 E. CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
(602) 530-8000

Pursuant to the Procedural Order in this matter, Allegheny Energy Supply Company, LLC ("Allegheny" or "Applicant") submits this memorandum in support of its Proposed Certificate of Environmental Compatibility ("Certificate"), which is attached hereto and incorporated herein as Exhibit A. Allegheny has reviewed prior decisions of the Committee and Commission in preparing the Certificate, including the CEC approved very recently for Duke Energy Arlington Valley, LLC.¹ In addition to offering several conditions unique to this Project, the Certificate attempts to incorporate relevant conditions from these prior Decisions. The Applicant, of course, is also prepared to discuss additional conditions which the Committee suggests after its review of the evidence and reserves the right to make modifications to the Certificate based on hearing and other developments.

I. THE CERTIFICATE

Condition 1 sets forth the required statutory compliance with various standards,

¹ Applicant understands the Certificate in the Duke matter has been approved but not yet filed with the Commission.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 regulations, ordinances and laws administered by other agencies or government levels. More
2 specifically, it also directs compliance with (a) zoning stipulations, landscaping and dust control
3 requirements; (b) the NOx, CO and VOC levels established in the Title V and PSD air quality,
4 BACT analysis/permitting process conducted by ADEQ; (c) water use/disposal requirements of
5 ADWR and ADEQ; and (d) regulations and permits governing transportation, storage and
6 handling of chemicals. In relation to Condition 1(c), Allegheny is proposing to comply with
7 Section 6-503 (which relates to large scale power plants in Active Management Areas) of
8 ADWR's Third Management Plan even though the Project is not located in an AMA.

9 Conditions 2, 4-7, 10-11, 14-15 and 22 are based on conditions contained in prior
10 CEC decisions and cover subjects ranging from Project interconnection requirements through
11 use of local and in-state contractors to Project signage requirements. Condition 3 requires
12 Allegheny to provide the Commission the system impact study which is currently underway and
13 the facilities study to be performed thereafter in relation to the Project. As Mr. Mundy has
14 testified, the Project's interconnection with the Devers Palo Verde line affords several regional,
15 state and local benefits. As Mr. Geraghty will testify at the resumed hearings, Allegheny expects
16 that the facilities study will lead to more than \$20 million in transmission improvements financed
17 by Allegheny, which will provide additional benefits to all transmission users of those facilities.

18 Conditions 8 and 9 pertain to ancillary service and Arizona sales commitments.
19 Mr. Mundy has testified concerning the ancillary service benefits associated with the Project.
20 Condition 8 commits seven percent (7%) of Project capacity to this purpose. Condition 9
21 concerns efforts to sell Project output in Arizona. As Mr. Geraghty has testified, Allegheny has
22 already sold over one million megawatt hours to Arizona utilities over the past two years and
23 expects those local sales to increase upon operation of the La Paz Project.

1 In Conditions 12 and 13, Allegheny also commits to necessary natural gas supply
2 steps and participation in the gas transportation and reliability analysis process contemplated in
3 the Duke CEC. This is an excellent concept and Applicant believes its considerable experience
4 and expertise in these subjects will contribute substantially to that effort.

5 Conditions 16-19 are suggested by Allegheny following its further consultations
6 with the Arizona Game and Fish Department at the Committee Chair's suggestion. Although, as
7 Mr. Simpson has testified, biological impacts of Project construction and operation are minimal
8 or non-existent, these conditions provide additional assurances as to that fact. These conditions
9 were noted with approval in the Game & Fish Department's letter of October 26, 2001 to the
10 Project's environmental consultants. Conditions 20-21 pertaining to landscaping and related
11 plant preservation are responsive to Committee questioning on this subject as well on September
12 4, 2001.

13 Similarly, Condition 23 is recommended based on several Committee members'
14 discussion with County Community Development Director Mary Dahl. Its objective is
15 development of compatible future land use classifications in the Project's vicinity as part of the
16 "Growing Smarter" master planning process which the County is conducting and will take to the
17 voters next year.

18 The October 22, 2001 letter of the State Historic Preservation Office recognizes
19 that it is likely the two identified cultural resource sites will be avoided entirely. Conditions 24-
20 26, however, are the conditions recommended by SHPO in that correspondence. Finally,
21 Condition 27 is based on prior CEC conditions concerning compliance with A.R.S. §41-685.

22 **II. CONDITIONS SUGGESTED BY STAFF AND THE UNIONS.**

23 In an attempt to narrow disputed issues and reach agreement on various matters,
24 Allegheny circulated its proposed conditions and/or met with Staff and the Unions prior to

1 making this filing. This portion of the Memorandum will describe Applicant's position on
2 conditions offered, but rejected.

3 **A. Staff's Position.**

4 In general, Allegheny and Staff are in agreement on most Certificate matters.
5 Unfortunately, Allegheny received Staff's precise conditions the afternoon this filing was due, so
6 a complete comparison was not possible. Further consultation with Staff will occur prior to
7 hearing.

8 Applicant believes, however, that the only substantive disagreement with Staff
9 concerns its position that a second transmission line should be built. Allegheny believes that the
10 approximately \$6 million cost that additional line would entail simply does not justify the
11 negligible improvement in overall reliability and availability.

12 **B. The Unions' Position.**

13 The Unions offered a series of conditions rejected by Allegheny on various
14 subjects identified and explained below:

- 15 • Require dry cooling. Allegheny, as requested by the Committee, will
16 provide testimony on this subject when the hearing resumes. It will
17 document the substantial construction and operational cost increases, plant
18 output negative impacts and large environmental/footprint impacts
19 associated with dry cooling. The Committee and Commission have never
20 required dry cooling and, to do so now, would place Applicant at a
21 significant competitive disadvantage. This Project is not located in an
22 AMA. Even if it were, the ADWR AMA Third Management Plan does
23 not require dry cooling. The Project is located near an irrigation non-
24 expansion area. The water rights associated with the Project are being
utilized consistent with statutes designed precisely for projects such as this
one. Finally, the evidence indicates that groundwater pumping for the
Project reduces substantially the lands' historic agricultural use of water
and will have little, if any, impact on nearby users.
- Employ a zero liquid discharge crystallizer in lieu of evaporation ponds
purportedly to avoid wildlife impacts. In summary fashion: no similar
condition has been approved previously; ZLD systems increase the costs
of building and operating plants; no adverse wildlife impacts are

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

anticipated; and, as previously discussed, Conditions 15-18 adequately address this subject.

- Air quality standards. The Unions demanded some 15 specific conditions that would improperly turn this Siting Committee process into a Title V/PSD air quality permit process in violation, inter alia, of the jurisdiction of ADEQ and A.R.S. § 40-360.06. Conditions 1(a) and (b) appropriately and adequately deal with these subjects consistent with past Siting Committee and Commission precedent.
- Ammonia transport and storage risks. Finally, the Unions suggested eight conditions on this subject which also are unnecessary, inapplicable to Allegheny's operations and interfere with jurisdiction reserved to others. Condition 1, generally, and 1(d), specifically, appropriately and adequately deal with this subject consistent with past Siting Committee and Commission precedent.

III. CONCLUSION

Allegheny requests that the Siting Committee issue the Certificate attached as

Exhibit A.

RESPECTFULLY SUBMITTED this 1st day of November, 2001.

GALLAGHER & KENNEDY, P.A.

By Michael M. Grant

Michael M. Grant
Todd C. Wiley
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Allegheny Energy Supply
Company, LLC

Original and 25 copies filed this 1st day of November, 2001, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

1 **Copies** of the foregoing e-mailed
this 1st day of November, 2001, to:

2
3 Laurie Woodall, Esq.
4 Line Siting Committee Chairman
5 Office of the Attorney General
6 1275 West Washington
7 Phoenix, Arizona 85007
8 lwoodall@ag.state.az.us

6
7 **Copies** of the foregoing mailed
this 1st day of November, 2001, to:

8 Christopher Kempley, Esq.
9 Jason Gellman, Esq.
10 Legal Division
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

11
12 Mark R. Wolfe
13 Adams Broadwell Joseph & Cardozo
14 Suite 900
15 651 Gateway Boulevard
16 South San Francisco, California 94080

14
15 James D. Viereg
16 Morrison & Hecker, L.L.P.
17 1800 North Central Avenue
18 Phoenix, Arizona 85004
19 Attorneys for AZURE

18 By: Linda Maguire
12921-0004/965904 v3

19
20
21
22
23
24

A

GALLAGHER & KENNEDY, P.A.
2575 E. CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
(602) 530-8000

1 **BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION**
2 **LINE SITING COMMITTEE**

3
4 IN THE MATTER OF THE APPLICATION OF
5 ALLEGHENY ENERGY SUPPLY COMPANY, LLC
6 FOR A CERTIFICATE OF ENVIRONMENTAL
7 COMPATIBILITY FOR CONSTRUCTION OF A
8 1,080 MW (NOMINAL) GENERATING FACILITY
9 IN SECTION 35, TOWNSHIP 3 NORTH, RANGE
10 11 WEST IN LA PAZ COUNTY, ARIZONA AND
11 AN ASSOCIATED TRANSMISSION LINE AND
12 SWITCHYARDS BETWEEN AND IN SECTION 35,
13 TOWNSHIP 3 NORTH, RANGE 11 WEST AND
14 SECTIONS 23-26, TOWNSHIP 3 NORTH, RANGE
15 11 WEST ALSO IN LA PAZ COUNTY, ARIZONA.

DOCKET NO. L-00000AA-01-0116
CASE NO. 116

16 ***CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY***

17 Pursuant to notice given as provided by law, the Arizona Power Plant and
18 Transmission Line Siting Committee (the "Committee") held public hearings in Parker and
19 Phoenix, Arizona, on September 4, 2001, November 13, 2001 and November 14, 2001, in
20 conformance with the requirements of Ariz. Rev. Stat. § 40-360, et. seq., for the purpose of
21 receiving public comment and evidence and deliberating on the application of Allegheny Energy
22 Supply Company, LLC, or its assignees ("Allegheny" or "Applicant"), for a Certificate of
23 Environmental Compatibility ("Certificate") authorizing construction of a 1080 MW (nominal)
24 generating facility and an associated transmission line and switchyards in La Paz County,
25 Arizona (the "Project"), all as more particularly described and set forth in the Application (the
26 "Application").

 The following members and designees of members of the Committee were
present on one or more of the hearing days:

1	Laurie Woodall	Chairman, Designee for Arizona
2	Ray Williamson	Attorney General, Janet Napolitano
3	Mark McWhirter	Arizona Corporation Commission
4	Jeff McGuire	Department of Commerce
	Wayne Smith	Appointed Member
	Michael Whalen	Appointed Member

5 Applicant was represented by Michael M. Grant and Todd C. Wiley of
6 Gallagher & Kennedy, P.A. Arizona Corporation Commission Utilities Division Staff ("Staff")
7 was represented by Christopher C. Kempley and Jason D. Gellman. Intervenor Arizona Unions
8 for Reliable Energy ("Unions") was represented by James D. Vieregg of Morrison & Hecker,
9 L.L.P. La Paz County, by its County Attorney R. Glenn Buckelew, filed a notice of limited
10 appearance in support of the grant of Allegheny's Application.

11 At the conclusion of the hearing, after consideration of the Application, the
12 evidence and the exhibits presented, the comments of the public, the legal requirements of Ariz.
13 Rev. Stat. §§ 40-360 to 40-360.13 and in accordance with A.A.C. R14-3-213, upon motion duly
14 made and seconded, the Committee voted to make the following findings and to grant Allegheny
15 the following Certificate of Environmental Compatibility (Case No. 116):

16 The Committee finds that the record contains substantial evidence regarding the
17 need for an adequate, economical and reliable supply of electric power and how the Project
18 would contribute towards satisfaction of such need without causing material adverse impact to
19 the environment.

20 Applicant and its assignees are granted a Certificate authorizing the construction
21 of a 1,080 MW (nominal) electric generating plant as more particularly described in Section
22 4(a)(i) of the Application and an associated 500 kv transmission line and switchyards as more
23 particularly described in Section 4(b)(i) of the Application and Exhibit G-7.

24 This Certificate is granted upon the following conditions:

1 1. Applicant and its assignees will comply with all existing applicable air and
2 water pollution control standards and regulations, and with all existing applicable ordinances,
3 master plans and regulations of the state of Arizona, the county of La Paz, the United States and
4 any other governmental entities having jurisdiction, including but not limited to the following:

- 5 a. all zoning stipulations and conditions, including but not limited to
6 any landscaping and dust control requirements and/or approvals;
- 7 b. all applicable air quality control standards, approvals, permit
8 conditions and requirements of the Arizona Department of
9 Environmental Quality ("ADEQ") and/or other State or Federal
10 agencies having jurisdiction, and the Applicant shall install and
11 operate selective catalytic reduction and catalytic oxidation
12 technology at the level determined by the ADEQ. The Applicant
13 shall operate the Project so as to meet a 2.5 ppm NOx emissions
14 level, within the parameters established in the Title V and PSD air
15 quality permits issued by ADEQ. Applicant shall install and
16 operate catalytic oxidation technology that will produce carbon
17 monoxide ("CO") and volatile organic compound ("VOC")
18 emissions rates determined as current best available control
19 technology ("BACT") by ADEQ;
- 20 c. all applicable water use and/or disposal requirements of the
21 Arizona Department of Water Resources ("ADWR"), Section 6-
22 503 of ADWR's Third Management Plan and the ADEQ
23 regulations;
- 24 d. all applicable regulations and permits governing transportation,
 storage and handling of chemicals.

2 2. The authorization to construct the Project will expire five (5) years from
3 the date the Certificate is approved by the Arizona Corporation Commission (the
4 "Commission"), unless construction is completed to the point that the plant is capable of
5 operating at its rated capacity by that time; provided, however, that prior to such expiration, the
6 Applicant may request that the Commission extend this time limitation.

7 3. Allegheny shall provide to the Commission the system impact study and
8 the facilities study performed by Southern California Edison regarding the Project.

1 4. Applicant shall provide to the Commission an interconnection agreement
2 with the transmission provider with whom Applicant is interconnecting, within 30 days of
3 execution of such agreement.

4 5. Applicant's plant interconnection must satisfy the WSCC single
5 contingency outage criteria (N-1) without reliance on remedial action such as, but not limited to,
6 reducing generator output, generator unit tripping or load shedding.

7 6. Allegheny will become and remain a member of the WSCC or its
8 successor and file an executed copy of its WSCC Reliability Management System ("RMS")
9 Generator Agreement with the Commission. Membership by an affiliate of Applicant satisfies
10 this condition only if Applicant is bound by the affiliate's WSCC membership.

11 7. Applicant will use commercially reasonable efforts to become a member
12 of the Southwest Reserve Sharing Group, or its successor, and if involved in the selling of
13 wholesale power to a commercially identifiable load, thereby making its units available for
14 reserve sharing purposes, subject to competitive pricing.

15 8. Subject to Federal Energy Regulatory Commission rules and tariffs and
16 WSCC RMS requirements, Applicant shall commit to offer as ancillary services 7% of its total
17 plant capacity to the local Control Area with which it is interconnected and to Arizona's regional
18 ancillary service market once a Regional Transmission Organization is operational and, until
19 such time that a Regional Transmission Organization is operational, to a regional reserve sharing
20 pool.

21 9. Applicant shall offer wholesale power for sale to Arizona customers via
22 open market, arms-length transactions.

23 10. In connection with the construction of the project, Applicant shall use
24

1 commercially reasonable efforts, where feasible, to give due consideration to use of qualified
2 local and in-state contractors.

3 11. Applicant shall participate in good faith in the Central Arizona
4 Transmission Study, and other state and regional transmission study forums, to identify and
5 encourage expedient implementation of transmission enhancements, including transmission cost
6 participation as appropriate, to reliably deliver power from the proposed plant throughout the
7 WSCC grid in a reliable manner, and as necessary to resolve any transmission deficiencies
8 between La Paz Power Plant and its intended market, including the Bulk EHV System,
9 underlying 115 kV to 230 kV System, and the transmission import constraints for the Phoenix
10 and Tucson service area; and

11 12. Applicant shall pursue all necessary steps to ensure a reliable supply of
12 natural gas for the generating facility.

13 13. Applicant shall participate in good faith in state and regional workshops
14 and other assessments of the interstate pipeline infrastructure.

15 14. Applicant shall operate the Project so that during normal operations the
16 Project will not exceed (i) U.S. Department of Housing and Urban Development (“HUD”) or
17 Federal Transit Administration (“FTA”) residential noise guidelines or (ii) Occupational Safety
18 and Health Administration (“OSHA”) Worker Safety Noise Standards.

19 15. Applicant will use low profile structures and stacks, non-reflective and/or
20 neutral colors on surface materials and low intensity directive/shielded lighting fixtures to the
21 extent feasible for the Project.

22 16. Allegheny will fence the generating facility and evaporation ponds to
23 minimize effects of plant operations on terrestrial wildlife and will keep the berms surrounding
24

1 the evaporation ponds clear of vegetation to limit pond attractiveness to birds.

2 17. Applicant will monitor the evaporation ponds, recording avian use of the
3 ponds and water quality on a weekly basis. If a large number of birds are using the ponds,
4 Allegheny will contact the U.S. Fish and Wildlife Service and the Arizona Game & Fish
5 Department to discuss potential mechanisms to reduce the number of birds utilizing the ponds.

6 18. Allegheny will continue cactus ferruginous pygmy owl surveys through
7 the Spring of 2002, based on established protocol. If survey results are positive, the U.S. Fish
8 and Wildlife Service and Arizona Department of Game and Fish will be contacted immediately
9 for further consultation.

10 19. Allegheny will retain a qualified biologist to monitor all ground
11 clearing/disturbing construction activities. The biological monitor will be responsible for
12 ensuring proper actions are taken if a special status species is encountered (e.g., relocation of a
13 Sonoran desert tortoise).

14 20. Applicant will salvage mesquite, ironwood, saguaro and palo verde trees
15 removed during project construction activities and use the vegetation for reclamation in or near
16 its original location and/or landscaping around the plant site.

17 21. Allegheny will retain a qualified landscape architect to develop a
18 landscape plan for the perimeter of the generating facility. The landscape plan will use native or
19 other low water use plant materials. The Applicant will continue to consult with La Paz County
20 regarding the landscape plan.

21 22. From the period beginning 30 days from the date a certificate is approved
22 by the Commission until the Project's construction is completed, Applicant shall erect and
23 maintain at the site a sign of not less than 4 feet by 8 feet dimensions, advising:
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- (a) that the site has been approved for construction of a 1080 megawatt generating facility;
- (b) the expected date of completion; and
- (c) a phone number for public information regarding the Project.

In the event that the Project requires an extension of the term of the Certificate prior to completion of the construction, Applicant shall use reasonable means to directly notify all landowners and residents within a one-mile radius of the Project of the time and place of the proceeding in which the Commission shall consider such request for extension. Applicant shall also provide notice of such request to La Paz County.

23. The Applicant will continue to consult with La Paz County in relation to its comprehensive planning process to develop appropriate zoning and use classifications for the area surrounding the Project.

24. If Sites AZ S:7:48 and 49 (ASM) cannot be avoided by ground disturbing activities, the Applicant will continue to consult with the State Historic Preservation Office to resolve any negative impacts which usually entails preparing and implementing a data recovery research design and work plan.

25. If a federal agency determines that all or part of the Project represents a federal undertaking subject to review under the National Historic Preservation Act, Allegheny will participate as a consulting party in the federal compliance process (i.e., 36 C.F.R. 800) to reach a finding of effect and to resolve adverse effects, if any.

26. Should cultural features and/or deposits be encountered during ground disturbing activities, Allegheny will comply with A.R.S. § 41-844, which requires that work cease in the immediate area of the discovery and that the Director of the Arizona State Museum be notified promptly.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

27. If human remains or funerary objects are encountered during the course of any ground disturbing activities related to the development of the subject property, Applicant shall cease work and notify the Director of the Arizona State Museum in accordance with Ariz. Rev. Stat. § 41-685.

GRANTED this _____ day of _____, 2001.

ARIZONA POWER PLANT AND
TRANSMISSION LINE SITING COMMITTEE

By _____
Laurie Woodall, Chairwoman

12921-0004/947199 v6