

ORIGINAL
OPEN MEETING AGENDA ITEM OPEN
SOUTHWESTERN
Power Group II, LLC
An Energy Company - Alliance Builder



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2007 FEB -8 P 4: 35

AZ CORP COMMISSION
DOCUMENT CONTROL

February 8, 2007

Mr. Ernest Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2927

Arizona Corporation Commission
DOCKETED

FEB -8 2007

Re: Docket No. L-00000BB-01-0118-00000
Bowie Power Station application to extend CEC's

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Dear Ernest,

We herewith submit comments on the proposed order contained in your letter of January 26, 2007 regarding our application to extend the expiration date of the certificates of environmental compatibility ("CEC's") granted in Decision No. 64625 and Decision No. 64626 in Case 118.

In this regard, we enclose a redlined copy of the proposed order. You will note from our suggested changes that we are seeking the latitude to submit a request pursuant to ARS 40-252 for a modification of the Bowie Power Station CEC's. We wish to pursue a modification to the existing CEC because:

1. A sizable portion of the original Bowie project will remain the same (or be reduced in size), particularly the combined cycle/power island portion of the project.
2. We believes that amending the existing CEC's provides an important benefit for the project from the perspective of potential outside investors and project counterparties.
3. In our informational meetings with individual Commissioners last year, several of the Commissioners suggested that we amend the existing CEC's rather than file a new application.
4. Larry Robertson has discussed the ARS 40-252 procedure we are proposing with Chris Kempley. Based upon those discussions, we understanding that this approach is legally permissible, and there is Commission precedent for doing so in connection with the modification of a previously granted CEC.

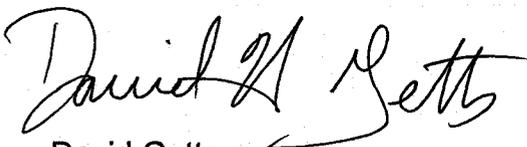
In our ARS 40-252 filing, we intend to highlight what is new and what remains the same (or is reduced in size). We intend to provide the same notices to the public and to follow the same public hearing procedures as we would under a new CEC approach – we are not trying to exclude any interested parties from the ARS 40-252 proceeding or avoid any substantive discussion and review of the proposed changes. The ARS 40-252 procedure should be more timely than filing and processing a new CEC application. We expect that the Siting Committee (sitting as an ALJ) and Commission review process would be exactly the same in regard to the new aspects of the Bowie IGCC project as it would be under a new CEC approach. We therefore expect that the quality of the review and decision making process would be exactly the same as would be the case under a new CEC approach.

Depending upon the outcome of the February 13, 2009 Open Meeting discussion and ultimate decision by the Commission, we anticipate submitting an ARS 40-252 filing or a new CEC application in the next few months. The delay in submitting a filing since submitting our extension request last summer is a result of (a) delays in agreeing upon an amended transmission corridor with the Arizona State Land Department ("ASLD") (for the line CEC) and, more recently, (b) our interest in considering an alternative coal gasification technology. We reached agreement with ASLD on an amended transmission corridor in December 2006 (necessitating only a few small changes to what the Commission has already approved). Having started looking at an alternative coal gasification technology in December 2006, we expect to make a decision in February (following which we may have to do additional engineering work if we decide to switch, before we can submit a new filing).

I will attend the Commission's Open Meeting on February 13, 2007 (along with our counsel, Larry Robertson) where I understand that the proposed order will be considered by the Commission.

Thank you for your assistance and support in this matter.

Sincerely,

A handwritten signature in cursive script that reads "David A. Getts". The signature is written in black ink and is positioned above the typed name and title.

David Getts
General Manager

BEFORE THE ARIZONA CORPORATION COMMISSION

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- JEFF HATCH-MILLER
Chairman
- WILLIAM A. MUNDELL
Commissioner
- MIKE GLEASON
Commissioner
- KRISTIN K. MAYES
Commissioner
- GARY PIERCE
Commissioner

IN THE MATTER OF THE APPLICATION OF
BOWIE POWER STATION, LLC, IN
CONFORMANCE WITH THE REQUIREMENTS OF
ARIZONA REVISED STATUTES 40-360.03 AND 40-
360.06, FOR TWO CERTIFICATES OF
ENVIRONMENTAL COMPATIBILITY
AUTHORIZING CONSTRUCTION OF A 1,000
MEGAWATT NATURAL GAS-FIRED, COMBINED-
CYCLE POWER PLANT, 345kV AND 345kV/230kV
SWITCHYARDS, 345kV DOUBLE-
CIRCUIT TRANSMISSION LINE AND 230kV
INTERCONNECTION AND RELATED FACILITIES
IN COCHISE AND GRAHAM COUNTIES,
ARIZONA. THE PROPOSED POWER STATION
SITE IS LOCATED IN SECTIONS 28 AND 29,
TOWNSHIP 12 SOUTH, RANGE 28 EAST, AND THE
PROPOSED TRANSMISSION LINE ROUTE IS
LOCATED IN TOWNSHIP 12 SOUTH, RANGE 28
EAST, AND THE PROPOSED TRANSMISSION
LINE ROUTE IS LOCATED IN TOWNSHIP 12
SOUTH, RANGE 28 EAST, AND THE PROPOSED
TRANSMISSION LINE ROUTE IS LOCATED IN
TOWNSHIP 12 SOUTH, RANGE 28 EAST,
TOWNSHIP 11 SOUTH, RANGE 28 EAST,
TOWNSHIP 11 SOUTH, RANGE 27 EAST, AND
TOWNSHIP 11 SOUTH, RANGE 26 EAST, GILA
AND SALT RIVER BASE AND MERIDIAN

DOCKET NO. L-00000BB-01-0118-00000
DECISION NO. _____
ORDER

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Open Meeting
February 13 and 14, 2007
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes and orders that:

FINDINGS OF FACT

Decision No. _____

1 1. On July 27, 2001, Bowie Power Station, LLC ("Bowie" or "Company") filed with
 2 the Arizona Corporation Commission ("Commission") an application for two Certificates of
 3 Environmental Compatibility ("CEC"). Decision No. 64625 authorized the construction of a 1,000
 4 megawatt ("MW") natural gas-fired, combined-cycle power plant. Decision No. 64626 authorized
 5 the construction of the 345 kV and 345 kV/230 kV switchyards, a 345 kV double-circuit
 6 transmission line and a 230 kV interconnection and related facilities in Cochise and Graham
 7 Counties, Arizona. The Commission granted the two CECs on March 7, 2002, subject to a set of
 8 conditions.

9 2. On August 18, 2006, the Company filed Requests For Extension of the CECs
 10 ("Extension") approved in Decision Nos. 64625 and 64626. The Extension is based on Condition
 11 No. 22 in Decision No. 64625 and Condition No. 10 in Decision No. 64626, which allow that the
 12 Applicant may request an extension of the CEC before the time limitation to complete
 13 construction.

14 3. This Extension requests that the expiration date for the construction of the power
 15 plant and transmission line be extended from March 7, 2007 until (i) December 31, 2008 or (ii)
 16 that date upon which the Commission issues a final non-appealable decision in a separate
 17 proceeding regarding whether the CECs granted under Decision Nos. 64625 and 64626 should be
 18 altered or amended pursuant to A.R.S. § 40-252, whichever is sooner. The Company anticipates
 19 this separate proceeding as a result of its plans to file a request pursuant to Arizona Revised Statute
 20 ("A.R.S.") § 40-252 to amend Decision No. 64625 at which time the Company would present
 21 updated environmental impact data for the 560 MW Integrated Gasification Combined Cycle
 22 ("IGCC") plant that the Company is now considering constructing in place of the currently
 23 certificated 1,000 MW natural gas-fired combined cycle power plant.

24 4. In its Extension filed on August 18, 2006, the Company had anticipated filing the
 25 request for the A.R.S. § 40-252 proceeding "within the next few weeks." However, under the
 26 Company's current schedule, it now plans to file such a request with the Commission sometime
 27 during the second quarter of 2007. The Company plans to file its request to amend the original
 28 CEC and allow for the construction of a power plant with a new technology, such as IGCC, with
 an output of 560 MW in lieu of the approved 1,000 MW natural gas-fired combined cycle plant at
 the same location.

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Decision No. _____

1 5. In the request for the Extension, the Company stated that it is considering
2 modifying the design and technology of the approved plant from a 1,000 MW natural gas-fired
3 combined cycle plant (Decision No. 64625) to a 560 MW IGCC plant, as a consequence of
4 previously contemplated market opportunities not having been realized, due in large measure to (i)
5 substantial increases in the price of natural gas supplies and transportation rates, and (ii) increasing
6 volatility in natural gas prices. However, the Company has not totally abandoned the 1,000 MW
7 gas-fired combined cycle plant.

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8 6. In subsequent discussions, Staff was informed that the Company is not planning to
9 request a new CEC for the IGCC plant, but instead will request amendment of the existing CEC
10 under A.R.S. § 40-252. The Company's approach would appear to be, at least in part, in response
11 to the potential perception and/or actions of the investment community should the CEC lapse or
12 the project be deemed to have been abandoned.

13 7. The request for the Extension pertaining to the transmission line approved in
14 Decision No. 64626 is being requested to coincide with that of the power plant, but with the
15 additional consideration that the route for the line may have to be slightly altered. This route
16 change is being contemplated in order to satisfy new requirement from the Arizona State Land
17 Department ("ASLD"). The ASLD has changed its policies such that it is now requiring
18 transmission lines to be sited along section lines. Bowie is currently working with the SLD on this
19 issue.

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20 8. Staff has reviewed the Extension and the Company's rationale for the Extension.
21 The Company's Self-Certification letter dated December 29, 2007, indicates that Bowie is in
22 compliance with all requirements of Decision Nos. 64625 and 64626 up to this point in time.

23 9. Staff believes that the Company's position in possibly changing the generation
24 technology from a gas-fired plant to a clean coal technology may have some merit and may be
25 reasonable given the market conditions and the volatility in gas prices experienced recently.
26 However, Staff is also cognizant of significant environmental impacts of IGCC technology. IGCC
27 allows for separation of carbon dioxide ("CO₂") from the gas stream, and believes those impacts
28 will need to be fully addressed in any proceeding considering possible substantive amendments to

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1 the Bowie Project CECs pursuant to A.R.S. § 40-252. In addition, all other environmental
2 considerations and impacts previously addressed in the earlier CEC proceedings should also be
3 reconsidered in connection with any IGCC proposal.

4 10. In addition, due to the fact that the Company has not made the decision to
5 completely abandon the construction of the plant approved in Decision No. 64625, Staff
6 recommends that the Company be granted an extension of time to construct the 1,000 MW gas-
7 fired combined cycle plant. Since the construction of this plant has not yet commenced and the
8 Company has not yet filed its request to amend the existing CEC for the IGCC plant, Staff
9 recommends that the expiration date for CEC granted by Decision No. 64625 be extended to
10 December 31, 2010. This will allow the Company sufficient time to either construct the 1,000
11 MW plant or process a request to amend the CEC to authorize a 560 MW IGCC plant.

12 11. If the Company does file a request to amend CEC for the IGCC plant and such
13 amended CEC is approved by the Commission, Staff further recommends that the CEC issued in
14 Decision No. 64625 become null and void upon issuance of the CEC for the new IGCC plant.

15 12. Another reason Staff is recommending approval of the CEC extension for the power
16 plant is the existence of a presumption of need, as was the case for the Gila Bend Power Partners
17 Project (Decision No. 69177) that was recently approved by the Commission.

18 13. According to the 2006 Western Electricity Coordinating Council Power Supply
19 Assessment, the Desert Southwest could be deficient in planned reserve margins as early as 2008.
20 It is postulated by some parties that over the next two to three years the Arizona utilities are likely
21 to fully grow into the currently idled capacity or low capacity factor energy production of new gas
22 fired generation constructed in Arizona since 2001. This is substantiated by the fact that Arizona
23 Public Service Company and Salt River Project both have Requests for Proposals pending for new
24 base load generation of 1,000 MW by the end of this decade.

25 14. There also appears to be a growing regional short term need for access to new
26 resources being developed in the Desert Southwest. This need has been underscored by the
27 discontinued operation of the Mohave Power Plant in southern Nevada. The construction of
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Deleted: It is not known to Staff how Bowie would deal with the global warming related pollutant CO₂. According to Gary Crane of SouthWestern Power Group II, LLC ("SPG"), "Sequestering carbon in the ground or ocean is relatively inefficient and not as permanent as hoped and could impact groundwater." There are other issues of pumping of groundwater for a coal plant, which could cause or aggravate a ground fissure - a crack in the earth that can be 100 feet deep - from overpumping. Therefore, Staff believes that the Company should file an application for a new and separate CEC for the IGCC plant.¶

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1 planned new power lines out of the Palo Verde Hub to California and Nevada will further enable
2 transmission access between Arizona power plants and the larger western wholesale market.

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3 15. The Bowie generation project is but one of 8 gas fired power plants with an
4 authorized CEC approved by the Commission that have not been constructed. Those 8 plants total
5 5,575 MW in capacity. While the market needs for these plants are soft and ill-defined at the
6 present time, there are signs that the industry is on the cusp of renewed interest in quick, short
7 term, generation fixes for which these plants are well suited. All of these considerations seem to
8 substantiate the presumption of possible need for the Bowie plant and other similar gas fired plants
9 within the next five years.

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10 16. As stated earlier, Decision No. 64626 approved the CEC for the transmission line
11 associated with the Bowie generating station. This power plant cannot connect to the grid without
12 the associated transmission line. Therefore, for the reasons stated above, Staff recommends that
13 the CEC granted by Decision No. 64626 also be extended such that it would expire on December
14 31, 2010.

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15 17. Since the CECs issued by Decision No. 64625 and 64626 were originally issued,
16 subsequent CECs for power plants and lines have contained additional conditions that are not part
17 of the CECs for the Bowie project. Therefore, Staff recommends that if the Commission grants the
18 time extensions for the Bowie project as recommended by Staff, that it also add the following
19 conditions:

20 For the Bowie power plant –

- 21 A. Applicant shall participate in Arizona subregional transmission planning forums
22 such as SWAT (Southwest Area Transmission) and SATS (Southeast Area
23 Transmission Study) on a regular basis and participate in each Biennial
24 Transmission Assessment performed by the Commission.
- 25 B. Applicant shall document in its annual self-certification letter all steps taken in the
26 previous year to seek a contract for capacity and energy production out of is plant.
27 This should include participation in any and all generation adequacy or planning
28 workshops or assessments sponsored by the Commission.
- C. In extending the expiration date of the Certificate, the Commission considers the
Certificate to be a package of inter-related requirements and conditions that must all
remain in force in order to merit Commission approval. If the Applicant, its

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1 successor(s) or assignee(s) pursue a legal challenge of any condition herein, the
 2 authority to construct facilities granted by this Commission Decision shall be
 3 revoked and the Certificate rendered null and void in its entirety without further
 order of the Commission.

4 For the Bowie transmission line –

- 5 A. Applicant shall annually file ten year plans with the Commission in accordance
 6 with A.R.S. § 40-360-2.A., participate in subregional transmission planning forums
 7 such as SWAT and SATS on a regular basis, and participate in each Biennial
 Transmission Assessment performed by the Commission.
- 8 B. In extending the expiration date of the Certificate, the Commission considers the
 9 Certificate to be a package of inter-related requirements and conditions that must all
 10 remain in force in order to merit Commission approval. If the Applicant, its
 11 successor(s) or assignee(s) pursue a legal challenge of any condition herein, the
 authority to construct facilities granted by this Commission Decision shall be
 revoked and the Certificate rendered null and void in its entirety without further
 order of the Commission.

12 1& Based on Staff's analysis of the request to extend the CEC for the Bowie power
 13 plant, Staff recommends that:

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- 14 A. the expiration date of the CEC approved in Decision Nos. 64625 be extended to
 15 December 31, 2010,
- 16 B. if the Company wishes to pursue the construction of a new IGCC power plant, that
 17 it be required to submit an application with the Arizona Power Plant and
 Transmission Line Siting Committee for a new CEC instead of a request, pursuant
 18 to A.R.S. § 40-252, for an amendment to Decision No. 64625,
- 19 C. the CEC granted by Decision No. 64625 become null and void upon the issuance of
 20 a CEC for a new IGCC power plant,
- 21 D. if the expiration date for the CEC for the Bowie power plant granted by Decision
 22 No. 64625 is extended, that the following conditions be added to those already
 contained in Decision No. 64625 –
 - 23 a. Applicant shall participate in Arizona subregional transmission planning
 24 forums such as SWAT and SATS on a regular basis and participate in each
 Biennial Transmission Assessment performed by the Commission,
 - 25 b. Applicant shall document in its annual self-certification letter all steps taken
 26 in the previous year to seek a contract for capacity and energy production
 out of is plant. This should include participation in any and all generation
 27 adequacy or planning workshops or assessments sponsored by the
 Commission,
 - 28 c. In extending the expiration date of the Certificate, the Commission
 considers the Certificate to be a package of inter-related requirements and

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conditions that must all remain in force in order to merit Commission approval. If the Applicant, its successor(s) or assignee(s) pursue a legal challenge of any condition herein, the authority to construct facilities granted by this Commission Decision shall be revoked and the Certificate rendered null and void in its entirety without further order of the Commission.

19. Based on Staff's analysis of the request to extend the CEC for the Bowie transmission line, Staff recommends that:

- A. the expiration date of the CEC approved in Decision Nos. 64626 be extended to December 31, 2010,
- B. if the expiration date for the CEC granted by Decision No. 64626 is extended, that the following conditions be added to those already contained in Decision No. 64626
 - a. Applicant shall annually file ten year plans with the Commission in accordance with A.R.S. § 40-360-2.A., participate in subregional transmission planning forums such as SWAT and SATS on a regular basis, and participate in each Biennial Transmission Assessment performed by the Commission.
 - b. In extending the expiration date of the Certificate, the Commission considers the Certificate to be a package of inter-related requirements and conditions that must all remain in force in order to merit Commission approval. If the Applicant, its successor(s) or assignee(s) pursue a legal challenge of any condition herein, the authority to construct facilities granted by this Commission Decision shall be revoked and the Certificate rendered null and void in its entirety without further order of the Commission.

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20. Staff's recommendations as contained in Findings of Fact Nos. 18 and 19 are reasonable and should be adopted.

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CONCLUSIONS OF LAW

- 1. The Commission has jurisdiction over the Bowie Power Station, LLC and the subject matter contained herein pursuant to Article XV of the Arizona Constitution and A.R.S. § 40-252 and § 40-360 et seq.
- 2. Notice of the proceeding has been given in the manner prescribed by law.
- 3. Amending Decision Nos. 64625 and 64626 as set forth herein is in the public interest in balancing the need for the projects with their impact on the environment and ecology of the state.

Decision No. _____

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ORDER

IT IS THEREFORE ORDERED that Decision No. 64625, approving a Certificate of Environmental Compatibility for Bowie Power Station, LLC to construct and operate a 1,000 megawatt natural gas-fired power generation plant is hereby amended as outlined in Finding of Fact No. 18.

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IT IS FURTHER ORDERED that Decision No. 64626, approving a Certificate of Environmental Compatibility for Bowie Power Station, LLC to construct and operate a 345 kV and 345 kV/230 kV switchyards, a 345 kV double-circuit transmission line and a 230 kV interconnection and related facilities is hereby amended as outlined in Finding of Fact No. 19.

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

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

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

BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

XXX:XXX:XXX\XXX

Decision No. _____

1 SERVICE LIST FOR: Bowie Power Station, LLC
2 DOCKET NO. L-00000BB-01-0118-00000

3 Ms. Laurie A. Woodall, Chairman
4 Arizona Power Plant and Transmission Line Siting Committee
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