

OPEN MEETING ITEM



0000067989

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



ARIZONA CORPORATION COMMISSION

RECEIVED

41LS

2007 MAR -7 P 3: 33

ORIGINAL

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: MARCH 7, 2007
DOCKET NO: E-20465A-06-0457
TO ALL PARTIES:

Enclosed please find the recommendation of the Arizona Power Plant and Transmission Line Site Committee ("Siting Committee"), acting as an Administrative Law Judge for the Commission. The recommendation has been filed in the form of an Opinion and Order on:

SOUTHERN CALIFORNIA EDISON COMPANY
(AMENDMENTS TO DECISION NOS. 51170 AND 49226)

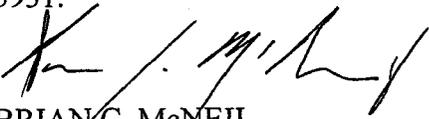
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Siting Committee by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 16, 2007

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

TO BE DETERMINED

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


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission

DOCKETED

MAR 07 2007

DOCKETED BY 

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF)
SOUTHERN CALIFORNIA EDISON COMPANY)
AND ITS ASSIGNEES IN CONFORMANCE)
WITH THE REQUIREMENTS OF A.R.S.)
§ 40-252 FOR AN AMENDMENT OF ACC)
DECISION NOS. 51170 AND 49226 OR, IN THE)
ALTERNATIVE, A DECLARATION OF NO)
SUBSTANTIAL CHANGE.)

Docket No. E-20465A-06-0457

DECISION NO. _____

**RECOMMENDED
OPINION AND ORDER**

DATE(S) OF HEARINGS: December 7, 2006; January 8, 2007, February 27, 2007

PLACE OF HEARING: Glendale Civic Center, 5750 West Glenn Drive
Glendale, AZ 85301

ADMINISTRATIVE LAW JUDGE: Arizona Power Plant & Transmission Line Siting
Committee, by Laurie A. Woodall, Chairman

APPEARANCES: Thomas Campbell, Albert Acken LEWIS AND
ROCA, on behalf of Southern California Edison
Company; Timothy Hogan, ARIZONA CENTER FOR
LAW IN THE PUBLIC INTEREST, on behalf of
Sierra Club, Grand Canyon Chapter; and

Christopher Kempley, Chief Counsel, and Keith
Layton, Legal Division, on behalf of the Utilities
Division of the Arizona Corporation Commission.

BY THE COMMISSION:

* * * * *

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

3 **DISCUSSION**

4 On May 1, 2006, Southern California Edison ("SCE") filed an application for a
5 Certificate of Environmental Compatibility ("CEC") in Docket No. L-00000A-06-0295-00130
6 (Case No. 130). In that application SCE proposed to use, as a component of the project, 13
7 double-circuit towers located in Copper Bottom Pass, which had been previously constructed for
8 the Palo Verde Devers 1 transmission line, certificated in Line Siting Cases Nos. 34 and 48.
9

10 On June 13, 2006 the Chairman of the Arizona Power Plant and Transmission Line Siting
11 Committee ("Line Siting Committee" or "Committee") sent an electronic communication to all
12 parties of record in Case No. 130, identifying a technical procedural issue involving the prior
13 decisions issued in Line Siting Case Nos. 34 and 48. Specifically, she asked, "Is there an
14 adequate regulatory authorization for the previous construction of the double-circuit towers? If
15 so, how was it authorized?"
16
17

18 A procedural conference was held discussing this issue and others related to the conduct
19 of the hearing for Case No. 130. On July 10, 2006, SCE filed an application, pursuant to A.R.S.
20 § 40-252 for an amendment of Decision No. 51170 issued in Case No. 48¹ to authorize the
21 construction of the 13 double-circuit structures in Copper Bottom Pass or, in the alternative, a
22 declaration of no substantial change to the authorization granted in that Decision. SCE
23
24

25 ¹ The application was subsequently amended to include a request to amend the Decision issued in Case No. 34. Decision No.
26 49226.

1 subsequently amended that application to include a 14th double-circuit structure which had been
2 constructed at the Palo Verde Nuclear Generating Station.

3 The Commission Utilities Division Staff ("Staff") and the Sierra Club, Grand Canyon
4 Chapter filed responses, and SCE filed a reply. On October 17, 2006 at an Open Meeting the
5 Commission asked the Line Siting Committee to serve as its hearing officer to make
6 recommendations whether the use of the double-circuit structures constituted a substantial
7 change, whether the CEC should be amended and whether other remedies were appropriate.
8

9 On October 26, 2006, the Line Siting Committee, through its presiding officer, the
10 Chairman, issued a procedural order scheduling hearings. Notice of the hearings was provided
11 on November 1, 2006 pursuant to that order. Hearings were held before the Line Siting
12 Committee on December 7, 2006, January 8, 2007, and February 27, 2007. Staff, SCE, and
13 Sierra Club Grand Canyon Chapter were parties to the hearing. Donald Begalke, an individual,
14 applied for intervention status and was denied based upon procedural and substantive
15 deficiencies. Staff requested reconsideration of this ruling. After argument by the parties Mr.
16 Begalke's application was again denied. Mr. Begalke withdrew his application for intervention,
17 and was permitted to make public comment on the application.
18
19
20

21 On January 3, 2007, Staff and SCE filed briefs on the appropriate legal standard for
22 "substantial change." At the January 8, 2007 hearing, the Committee preliminarily found that
23 the construction of the double-circuit structures was a "substantial change" to the Decision Nos.
24 51170 (Case No. 48) and 49226 (Case No. 34), and that a fine was not appropriate. The Line
25
26

1 Siting Committee did not make any preliminary findings regarding the removal of the circuits
2 from the structures, nor whether SCE should be prohibited from using the structures for the Palo
3 Verde Devers 2 project, which is the subject matter of the application filed in Case No. 130.
4 The Line Siting Committee took official notice of the entirety of the record in Case No. 130.
5 The parties agreed that the Chairman of the Line Siting Committee would prepare a draft form
6 of preliminarily determined proposed findings of fact, and conclusions of law and recommended
7 order. Accordingly, the parties filed proposed findings of fact and conclusions of law and
8 recommended orders for review and use by the Chairman in preparing the draft form of order for
9 consideration by members of the Line Siting Committee at the hearings on February 27, 28,
10 2007.
11
12

13 On February 27 2007, the Line Siting Committee voted 9 to 1 to adopt its Recommended
14 Opinion and Order.
15

16 FINDINGS OF FACT

17 1. In April 1977, Edison issued an Environmental Report for the proposed Palo
18 Verde Devers 1 ("DPV1) 500kv transmission line project certificated in Case Nos.34 and 48.
19 Edison attached the report as Exhibit B-1 to its application in Case No. 34. In Section 9.1.7. of
20 the report SCE included the following statement: "If the situation arises during the approval
21 stages of this project, that construction of more than one line on the proposed corridor is
22 eminent, (sic) then SCE as an alternative would propose a multiple-circuit structure such as
23 shown on Figure 9-2 through areas of limited space, such as that encountered through the
24 Copper Bottom Pass area."
25
26

1 2. On June 30, 1977, in a matter unrelated to the PV Devers 1 case the Commission
2 entered Decision No. 48059 granting Tucson Gas & Electric's ("TG&E's") March 1, 1977
3 request to ratify the tower type from previously approved single-circuit towers to double-circuit
4 towers to seventeen miles of the route. In the findings of fact, the Commission found
5 "maximized right-of-way utilization and orderly transmission system development will be
6 facilitated by permitting TG&E to utilize double-circuit 345 kV towers within the corridor
7 segment...."

8
9 3. On August 9, 1977, SCE filed an application for a CEC for the DPV1 500Kv
10 transmission line in Line Siting Case No. 34. SCE filed an Amended Application in Case No.
11 34 on January 10, 1978. Double-circuit towers were described in Exhibit B to both
12 applications.
13

14 4. On August 3, 1978, the Commission entered Decision No. 49226 approving the
15 CEC issued by the Committee to SCE authorizing construction of a 500 kV transmission line
16 DPV1 between the Palo Verde Nuclear Generating Station and Devers Substation near Palm
17 Springs, California.
18

19 5. In August 1978, the Bureau of Land Management ("BLM") issued the Draft
20 Federal Environmental Impact Statement on the DPV1 project. In February 1979, the BLM
21 issued the Final Federal Environmental Impact Statement on the DPV1 project.
22

23 6. The Bureau of Land Management issued the Right-of-Way ("ROW") grant to
24 PVD1 on February 1, 1980. This ROW deviated from the route previously authorized by
25
26

1 Decision No. 49226 in two different segments: S-5 and S-23. The ROW grant included a
2 provision with the following requirements: "Through Copper Bottom Pass and the Pass
3 between Burnt Mountain and the Bighorn Mountains the Grantee will be required to either, (1)
4 construct double-circuit towers upon granting of the right-of-way, or (2) agree to replace the
5 single-circuit towers with double-circuit towers on the same alignment if a second major
6 transmission line is needed."
7

8 7. On March 3, 1980, SCE filed an application (Line Siting Case No. 48) for
9 Commission approval to change the route of DPV1 to include the two variant segments granted
10 in the BLM right-of-way. Double-circuit towers were described in Exhibit B to the Case No.
11 48 application. SCE was aware the BLM ROW included a provision on double-circuit towers;
12 however, the provision was never discussed on the record at the hearing on May 9, 1980.
13

14 8. On July 23, 1980, the Commission issued Decision No. 51170 in Case No. 48,
15 amending SCE's CEC and approving the DPV1 route with the two variant segments granted in
16 the BLM right-of-way. One of those segments, referred to as Segment 5, included the western
17 portion of the Copper Bottom Pass. Decision No. 51170 did not specifically authorize double-
18 circuit towers nor did it specifically mention tower type.
19

20 9. By November 5, 1980, the BLM and SCE were in discussion over the use of
21 double-circuit towers in Copper Bottom Pass.
22
23
24
25
26

1 10. On July 22, 1981, the BLM amended its right-of-way grant to approve the
2 construction of 13 double-circuit towers as part of DPV1 in the western portion of the Copper
3 Bottom Pass, tower nos. B837 through B849.

4 11. Construction of the double-circuit towers were completed in late 1981.

5 12. SCE built 382 towers in Arizona as part of DPV1, 368 of those towers were
6 single-circuit towers and 14 were double-circuit towers. In addition to the 13 towers in Copper
7 Bottom Pass, SCE constructed a double-circuit tower in the Palo Verde Nuclear Generating
8 Station Switchyard where the DPV1 line enters the switchyard.
9

10 13. On May 1, 2006, SCE filed a CEC application with the Commission for approval
11 to construct DPV2 (Line Siting Case No. 130.) In that application, SCE proposed to use the
12 double-circuit-towers in Copper Bottom Pass as a component of the DPV2 project. The record
13 for Case No. 130 contains substantial testimony and exhibits relating to the environmental
14 impact and reliability of the double-circuit towers in Copper Bottom Pass. Staff opposes the
15 use of the double-circuit towers in Copper Bottom Pass for DPV2.
16
17

18 14. Chairman Woodall reviewed the application and Decision No. 51170. Chairman
19 Woodall held a procedural conference with the parties in Case No. 130. She raised the issue of
20 whether there was an adequate regulatory authorization for the prior construction of the double
21 circuit towers.
22

23 15. On July 10, 2006, SCE filed an application, pursuant to A.R.S. § 40-252, for an
24 amendment of Decision No. 51170 to authorize construction of the 13 double-circuit towers in
25
26

1 Copper Bottom Pass or, in the alternative, a declaration of no substantial change to the
2 authorization granted in Decision No. 51170. SCE subsequently amended that application to
3 include the 14th double-circuit tower at the Palo Verde Nuclear Generating Station Switchyard,
4 and to request an amendment to Decision No. 49226, to the extent necessary.
5

6 16. In its application, SCE included legal argument on the question of substantial
7 change. SCE also requested expedited treatment of its application, and requested the
8 Commission to decide the matter in an Open Meeting.

9 17. On August 9, 2006, the Staff filed a response to SCE's application agreeing with
10 SCE that A.R.S. § 40-252 was the appropriate procedure and requesting an evidentiary hearing.
11 The Sierra Club - Grand Canyon Chapter, also filed a response.
12

13 18. On August 18, 2006, SCE filed a reply in support of its request.

14 19. On October 17, 2006, at the regularly scheduled open meeting, the Commission
15 asked the Committee to serve as the hearing officer over this matter, to determine whether the
16 use of the double-circuit towers constituted a substantial change, whether the CEC should be
17 amended and whether any other remedies were appropriate.
18

19 20. On October 26, 2006, the Committee, through its Chairman, issued a procedural
20 order scheduling hearing. Notice of hearing was provided on November 1, 2006, pursuant to
21 that procedural order.
22

23 21. On November 9, 2006, SCE amended its Application to include a fourteenth
24 double-circuit tower located at the Palo Verde Switchyard.
25
26

1 22. On November 16, 2006, pro per Mr. Donald Begalke filed an application to
2 intervene. SCE questioned whether his application was in compliance with the Commission's
3 rules of procedure. Chairman Woodall denied his application. After motion for
4 reconsideration by Staff and consultation with counsel of the parties and Mr. Begalke,
5 Chairman Woodall again denied Mr. Begalke's application on December 7, 2006. Mr. Begalke
6 withdrew his request for intervention and was permitted to provide public comment.
7 Mr. Begalke provided public comment prior to the start of the evidentiary hearing on
8 December 7, 2006, pursuant to Arizona Administrative Code ("A.A.C.") R14-3-105(c).
9

10 23. On January 3, 2007, both SCE and the Staff filed briefs on the appropriate legal
11 standard for substantial change.
12

13 24. Hearings were held before the Committee on December 7, 2006, January 8, 2007
14 and February 27, 28 2007. During those hearings and in its pre-filed testimony, Staff requested
15 that SCE be fined \$4.8 million for use of the double-circuit towers in DPV1. Staff also
16 requested that SCE not be allowed to use the double-circuit towers in the Copper Bottom Pass
17 for DPV2 and that SCE be ordered to remove the unused set of conductors currently installed
18 on those towers.
19

20 25. In Commission Decision No. 58793 (1994), known as the Whispering Ranch case,
21 the Commission held, "When necessary to enforce compliance [with a CEC and a confirming
22 Commission decision], the Commission's powers under A.R.S. § 40-252 may be invoked."
23 The Commission further held "There is longstanding precedent for the exercise by the
24
25
26

1 Commission of its powers under A. R. S. § 40-252 in proceedings under the Siting Act.” The
2 Commission then cited two requests to amend the CEC issued in Line Siting Case No. 12 by
3 TG&E. The Commission then described those matters stating that TG&E “applied for a second
4 modification of [its] CEC to permit a seventeen-mile segment to be constructed with double-
5 circuit 345 kV towers. After hearing pursuant to A.R.S. § 40-252, this application was granted
6 in Decision No. 48059.”
7

8 26. SCE submitted six 10-year plan filings as evidence that the Commission was on
9 notice that there were 13 double-circuit towers in Copper Bottom Pass. In *Whispering Ranch*,
10 the Commission found:
11

12 SRP offered these Ten-Year Plan filings apparently to show that the
13 Commission had notice of the planned change in the configuration of
14 the Mead Phoenix line. However, the filings after the decision to
15 change the configuration do not call attention to the fact that the plans
16 had changed, and each of these reports misleadingly recited that the
17 AC (convertible to DC) line had been approved by the Committee in
18 1985. Thus, as actual notice of the proposed change, these filings fall
19 far short of being informative. In addition, the filing of a Ten-Year
20 Plan does not relieve SRP of filing requisite applications for
21 permission to construct facilities. The Commission rejects the
22 implied argument that the filing of a Ten-Year Plan somehow shifts
23 the burden to the Commission to seek out a utility and require it to
24 file an application for an amended CEC or for an amendment to the
25 CEC if the applicant’s plans change after the initial granting of the
26 CEC.

27 29. Statements concerning modifications to facilities previously authorized (in CECs
28 issued by the Committee) made in a Ten-Year Plan do not constitute notification to the
29 Commission that an applicant such as SCE is requesting authorization for such modifications.
30

1 30. At no time since the decision was made to construct double-circuit towers did SCE
2 seek authorization from either the Committee or the Commission to build the towers until the
3 issue was raised by Chairman Woodall in Case No. 130.

4 31. On January 8, 2007, the Committee made preliminary determinations for a
5 recommended opinion and order and by majority vote found: (1) double-circuit towers are a
6 substantial change to the CEC issued in Case No. 34 and amended in Case No. 48; (2) the CEC
7 should be amended to allow construction of double-circuit towers in Copper Bottom Pass for
8 PVD1; and (3) no fine should be imposed on SCE.

9 32. The Committee found that affected persons under the Whispering Ranch test
10 include persons affected by (1) the environmental factors in A.R.S. § 40-360.06; (2) the
11 balancing test in A.R.S. § 40-360.07, (3) the jurisdiction of the Committee and the Commission,
12 and (4) the public interest. In *Whispering Ranch*, the Commission noted that:

13 The decision of SRP to convert this line from DC to AC without
14 applying for an amended CEC undermines the very foundations of
15 the Siting Act. SRP's action in fact deprives the Committee and,
16 ultimately, the Commission of their statutory powers.

17 33. The Committee found that double-circuit towers are substantially different in
18 subject matter than single-circuit towers. A.R.S. § 40-360(10) defines "transmission line" to
19 include "a series of new structures erected above the ground and supporting one or more
20 conductors designed for the transmission of electric energy." A.R.S. § 40-360.03 requires
21 applications to be in a form prescribed by the Commission and to include information with
22 respect to proposed facilities. A.A.C. R14-3-219(4)(b)(iii) requires a description of the
23
24
25
26

1 “maximum height of supporting structures and minimum height of conductor[s] above ground.”

2 The Commission’s discussion of “subject matter” in *Whispering Ranch* is informative on this
3 prong of the test.

4 The change from a 500kV DC line to a 500 kV AC line....results in a
5 number of differences between the line SRP is building and the line
6 the Committee and the Commission in 1985 authorized it to build.
7 *The towers themselves are changed somewhat in design and in*
8 *dimensions... The converters (which change direct current to*
9 *alternating current) are not needed at this time, thereby saving*
10 *considerable present expense.*

11 34. In Exhibit B-1 of the application in Case No. 34, SCE identified differences in
12 effects of double-circuit towers from the effects of single-circuit towers. The Committee did
13 not find the effects significant.

14 35. The Committee found that SCE did not violate Decision Nos. 49226 and 51170
15 willfully or with any evil intent. The Committee did not find that the facts of the case
16 supported a monetary fine.

17 CONCLUSIONS OF LAW

18 1. The Commission has jurisdiction over the subject matter of this application under
19 A.R.S. § 40-360.01, *et seq.*

20 2. The Commission has authority to alter or amend Decision Nos. 49226 and 51170
21 under A.R.S. § 40-252.

22 3. The Commission, in Decision No. 58793 (*Whispering Ranch* case) has articulated
23 the standard that it applies as follows: The standard for determining whether a decision granting
24
25
26

1 a CEC must be amended is whether the proposed change is a 'substantial' change. The primary
2 Commission case on the question of substantial change is the Whispering Ranch case. The
3 TG&E case resulting in Decision No. 48059 (Case 12) cited in the Whispering Ranch Decision
4 may also be considered on the question of substantial change. The question of what constitutes
5 a substantial change must be made on the facts of each particular case using the criteria set forth
6 in the Administrative Procedures Act (A.R.S. § 40-1025), which criteria were adopted by the
7 Commission in the Whispering Ranch decision.
8

9 4. The double-circuit towers in Copper Bottom Pass are a substantial change from the
10 CEC issued in Decision No. 49226, and amended in Decision No. 51170.
11

12 5. SCE violated Decision Nos. 49226 and 51170 because the decisions did not
13 authorize construction of double-circuit towers. SCE also violated A.R.S. § 40-360.07(A)
14 because it did not get approval to construct double-circuit towers prior to construction.
15

16 6. It is in the public interest to amend the DPV1 CEC, pursuant to A.R.S. § 40-252,
17 to authorize the existing 14 double-circuit towers.

18 7. Under the facts and circumstances of this case, it is not in the public interest nor
19 appropriate to fine SCE for construction of the double-circuit towers as part of DPV1.
20

21 ORDER

22 IT IS THEREFORE ORDERED, SCE's Application to Amend is approved and that
23 Decision No. 51170 (and to the extent necessary, Decision No. 49226) is amended to authorize
24 the 14 double-circuit towers that were constructed as part of DPV1.
25
26

IT IS FURTHER ORDERED that this Decision shall take effect immediately.

BY 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 the Commission to be affixed at
the Capitol, in the City of Phoenix, this _____
day of _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

SOUTHERN CALIFORNIA EDISON COMPANY

2 DOCKET NO.:

E-20465A-06-0457

3 Thomas H. Campbell, Esq.
4 Lewis & Roca
5 40 North Central Avenue
6 Phoenix, Arizona 85004-4429

7 Timothy M. Hogan, Esq.
8 Arizona Center for Law
9 In the Public Interest
10 202 E. McDowell Rd., Ste. 153
11 Phoenix, Arizona 85004-4533

12 Christopher C. Kempley, Chief Counsel
13 Keith A. Layton
14 Arizona Corporation Commission
15 Legal Division
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18
19
20
21
22
23
24
25
26
310610