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ORIGINAL

BEFORE THE ARIZONA POWER PLANT
TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION)
 OF ARIZONA PUBLIC SERVICE COMPANY,) Arizona Corporation Commission
 IN CONFORMANCE WITH THE REQUIREMENTS)
 OF ARIZONA REVISED STATUTES §§ 40-360,) Docket No. L-00000 D-08-0330-00138
et seq., FOR A CERTIFICATE OF ENVIRONMENTAL)
 COMPATIBILITY AUTHORIZING THE TS-5 TO TS-9) Case No. 138
 500/230kV TRANSMISSION LINE PROJECT, WHICH)
 ORIGINATES AT THE FUTURE TS-5 SUBSTATION,)
 LOCATED IN THE WEST HALF OF SECTION 29,)
 TOWNSHIP 4 NORTH, RANGE 4 WEST AND)
 TERMINATES AT THE FUTURE TS-9 SUBSTATION,)
 LOCATED IN SECTION 33, TOWNSHIP 6 NORTH,)
 RANGE 1 EAST, IN MARICOPA COUNTY, ARIZONA)

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 ARIZONA CORPORATION COMMISSION
 DOCKET COMMITTEE

Procedural Order Responding to Arizona Corporation Staff's Request to Supplement Record

On October 24, 2008, counsel for the Arizona Corporation Staff requested that the Chairman of the Arizona Power Plant and Transmission Line Siting Committee "file in the docket copies of all e-mails in his possession that were transmitted among parties and the Chairman of the Committee and/or Committee members, even if such communications may not be construed as substantive in nature. Staff notes that the Arizona Corporation Commission Executive Director has earlier requested that the Chairman docket these matters, and it is Staff's understanding that the Chairman has agreed." At the hearing in this matter on October 27, 2008, this matter was discussed.

After a review of e-mails that have been saved it appears that the Chairman agreed to file in the docket the e-mails below that related to form conditions that might or might not be helpful to counsel in drafting the proposed Certificates of Environmental Compatibility that counsel were directed to prepare later before closing argument. A draft of a pleading referring to the agreement and containing the e-mails dated October 6, 2008, was found printed, but not filed. It does not appear from the e-mails or the pleading of October 6, 2008, any agreement was reached for the Chairman to capture or file all e-mails either amongst counsel or the Committee. However as stated at the October 27, 2008, hearing, the Chairman continues to have no objection to any party who feels it important to capture and file any e-mail communication amongst counsel. Counsel for the Arizona Corporation Staff should be a participant in those e-mails. What follows is the body of the October 6, 2008, pleading in its entirety:

An exchange of e-mail has occurred amongst counsel for the parties the Chairman and Presiding Officer of the Arizona Power Plant and Transmission Line Siting Committee in the above captioned matter. All the communications relating to the Draft Conditions for the proposed Certificate of Environmental Compatibility from the e-mails are reproduced below.

Arizona Corporation Commission
DOCKETED

OCT 28 2008

DOCKETED BY

The following conditions were originally circulated for comment by the Chairman by e-mail on September 11, 2008:

The Certificate of Environmental Compatibility ("CEC") is granted conditioned upon the Applicant's compliance with the following:

1. The Applicant shall obtain all permits, licenses and approvals required by the United States of America or its agencies, the State of Arizona or its agencies, and any local government or local governmental agency that are legally required to construct and to operate the transmission line [power plant].
2. The Applicant shall comply with all applicable statutes, regulations and master plans of the United States of America or its agencies, the State of Arizona or its agencies, and any local government or local governmental agency in the construction and operation of the transmission line [power plant].
3. If any archaeological, paleontological or historical site or object that is at least fifty years old is discovered on state, county or municipal land during the construction or operation of the transmission line [power plant], the Applicant or its representative in charge shall promptly report the discovery to the Director of the Arizona State Museum, and in consultation with the Director, shall immediately take all reasonable steps to secure and maintain the preservation of the discovery. A.R.S. § 41-844.
4. If human remains and/or funerary objects are encountered on private land during the course of any ground-disturbing activities relating to the construction or operation of the transmission line [power plant], the Applicant shall cease work on the affected area of the Project and notify the Director of the Arizona State Museum. A.R.S. § 41-865.
5. The Applicant shall comply with the notice and salvage requirements of the Arizona Native Plant Law (A.R.S. §§ 3-901 et seq.) and shall, to the extent feasible, minimize the destruction of native plants during the construction and operation of the transmission line [power plant].
6. This CEC shall expire five years from the date of its final approval by the Arizona Corporation Commission ("ACC") unless prior to that time the expiration date of the CEC is extended by the ACC after a timely application has been filed by the Applicant or its successors in interest.
7. The Applicant shall document and make reasonable efforts to correct each complaint of interference with radio or television signals from the operation of the transmission lines [power plant] and related facilities identified in the CEC. The Applicant shall maintain written records for a period of five years of all complaints of radio or television interference attributed to the operation of the transmission line. The documentation shall include the date of the complained interference, the name and identifying information of the complaining party, the corrective action taken, and the results of the corrective action. If no corrective action was taken, the documentation shall explain why no action was taken.
8. The Applicant shall design and construct the transmission line [power plant] to minimize impact upon raptors.

9. The Applicant shall use non-specular conductor and dulled surfaces for the transmission line structures.
10. Within 120 days of the ACC decision approving this CEC, the Applicant shall post signs in public rights-of-way giving notice of the Project corridor to the extent authorized by law. The Applicant shall place signs in prominent locations at reasonable intervals so the public will be notified of the future location of the transmission line along the full length of the corridor until the transmission structures are constructed. Within 45 days of securing easements for rights-of-way through land that was not public for the Project, the Applicant shall erect and maintain signs providing public notice that the property is the site of a future transmission line. Signs shall be no smaller than twelve inches by twenty four inches. The signs shall advise:
 - a. A CEC has been granted authorizing the construction of a transmission line at this site;
 - b. The name of the Project;
 - c. The expected dates construction will begin and be completed;
 - d. A telephone number, postal address and e-mail address that may be contacted by a member of the public to obtain information about the Project; and
 - e. The name, postal address and website address of the Applicant.
11. During the construction and maintenance of the transmission line [power plant], to the extent practicable the Applicant shall use existing roads for construction and access, minimize impacts to wildlife, minimize vegetation disturbance outside of the Project right-of-way, and revegetate native areas following construction disturbance. Before construction commences, the Applicant shall file with the ACC Docket Control a construction mitigation and restoration plan that lists how the Applicant will use existing roads for construction and access, minimize impacts to wildlife, minimize vegetation disturbance outside of the Project right-of-way, and revegetate native areas following construction disturbance.
12. The Applicant shall participate in good faith in regional, state and local transmission study forums to coordinate transmission expansion plans related to the Project and to resolve transmission reliability and adequacy issues.
13. The Applicant shall provide copies of this CEC to the Maricopa County Planning and Development, the Arizona State Land Department, the State Historic Preservation Office, and the Arizona Game and Fish Department.
14. Within 120 days after the approval of this CEC by the Arizona Corporation Commission, the Applicant shall provide a copy of this CEC to all persons or business entities who are known to have plans to develop or build homes on property within one mile from the center line of the transmission line corridor [power plant location] authorized by this CEC, a map showing the location of the transmission line [power plant], and a pictorial representation of the transmission line [power plant] that will be constructed. The Applicant shall request the developers and homebuilders include this information in the developers' and homebuilder's disclosure statements to prospective buyers.

15. If the Project authorizes a transmission line to be constructed within 100 feet of any existing natural gas or hazardous liquid pipeline, the Applicant shall construct and maintain the line so that it will result in no material adverse impacts to the pipeline or to public safety. Before commencing construction of any portion of the Project located within 100 feet of any existing natural gas or hazardous liquid pipeline, the Applicant shall:
 - a. Perform the appropriate grounding and cathodic protection studies to show the Project's location will result in no material adverse impacts to the pipeline or to public safety when both the pipeline and the Project are in operation. The Applicant shall provide to the ACC Staff all reports of studies performed; and
 - b. Perform a technical study simulating an outage of the Project that may be caused by the collocation of the Project with in 100 feet of the existing natural gas or hazardous liquid pipeline. The Applicant shall provide to the ACC Staff all reports of studies performed.
16. The Applicant shall submit a self-certification letter describing progress made toward compliance with each condition of this CEC. Each letter shall be submitted to the Utilities Division Director of the ACC within ten days after December 1 of each year beginning with 20___. Copies of each letter along with the corresponding documentation shall be submitted to the Arizona Attorney General and the Department of Commerce Energy Office. The requirement for the self-certification shall expire on the date the Project is placed into operation.
17. The Applicant shall follow the latest standards set by the Western Electricity Coordinating Council/North American Electric Reliability Corporation Planning as approved by the Federal Energy Regulatory Commission, and the National Electrical Safety Code in the construction and maintenance of the transmission line [power plant].

On September 29, 2008, Bert Acken, counsel for the Applicant responded:
Chairman Foreman

Thank you for the opportunity to comment on your draft CEC conditions. The concept you have presented, to have clear and appropriate CEC conditions, is a good one. Over the years, as various conditions have been modified and new conditions added, many conditions have become somewhat duplicative, unclear in meaning, or simply outdated. While the Applicant makes a good faith effort before filing a draft CEC to tailor standard conditions to the specific project at issue, identify and eliminate outdated conditions, and add new conditions as warranted, it is an ongoing effort.

Following are our specific comments to some of the draft conditions you have proposed:

1. In recent cases, term limits imposed in CECs have varied from five years (see, e.g., Case 129) to nearly 20 years (see, e.g., Cases 126, 132, and 137), depending on the specifics of each case. The Applicant agrees with this ongoing practice of evaluating term length on a case by case basis. As a result of numerous case-specific factors, limiting the term to five years in this case will likely impose additional burdens on the Applicant, Commission Staff, the Commission and perhaps others.

Additionally, the Applicant and other utilities have heard repeatedly

from the Commission, local jurisdictions, and other stakeholders that they want utilities to engage in long-term transmission planning. As we have heard in this case, the affected jurisdictions do not include future electric facilities (and their proposed locations) as part of their general plans. Limiting the CEC to a five-year term would likely discourage utilities from planning utility corridors well in the advance of future development and would result in identifying facilities on a "just in time" basis which could result in limited routing options with greater impacts.

Finally, the term "timely" is unclear because neither statutes nor rules impose a specific deadline for submittal of an application requesting a CEC extension.

2. A number of the proposed conditions impose obligations during the operation of the Project. This approach departs from the statutory regime, which applies to the construction of facilities, not ongoing operations. See, e.g., 40-360.03 and 40-360.07.A. A CEC is issued with conditions that assure the Commission and public that the construction of the project is done in a manner that limits impacts to the environment. If the CEC imposes operational requirements in addition to construction requirements, then it could be argued that the Applicant must seek an extension at the end of the term of the CEC to authorize continued operations, even if construction is complete.

The imposition of operating requirements, in conjunction with a short CEC term, could result in an obligation to file extension requests every five years during the Project's lifetime. This would impose significant burdens on the Applicant, the Commission, the Commission Staff, and any other interested party.

3. Draft Condition 2 differs somewhat from the statutory language found in 40-360.06.D.

4. Some standard conditions, such as Applicant's Draft Conditions 4, 6 and 11, reflect conditions crafted by current Commissioners.

5. Draft Condition 8 is no longer necessary. As a result of this condition in earlier CECs, APS' high voltage transmission structure and line designs have incorporated the necessary measures to minimize impacts to raptors.

6. Draft Condition 10 eliminates the "to the extent practicable" for the placement of signs. This is an important limitation given access difficulties and potentially applicable approval processes on state and federal land. Additionally, the original sign condition dealt only with the actual acquisition of the ROW. In Case 120 Commissioner Mundell requested a condition be added to inform potential homeowners of a future transmission line. In this case, even on much of the private property, the land is undeveloped, not accessible and lacks public rights of way.

7. Draft Condition 11 could be interpreted to mandate the revegetation of disturbed areas and the use of existing access roads. However, in many portions of the route, there are no existing access roads. Even in corridors with existing roads, those roads may not provide access, depending on the final placement of the line. Additionally, APS must work with existing landowners and it may not make practical or economic sense to revegetate disturbed areas, depending on the landowners' plans for those areas in the future. In addition, the Applicant's proposal to file a construction mitigation and restoration plan with the ACC before construction begins will provide the ACC the opportunity to review and approve that plan.

8. Draft Condition 15 revises a carefully crafted agreement between Commission Staff and several utilities. While perhaps intended only to clarify, it does change the meaning and scope of the condition. For

example, the concerns that this condition was originally drafted to address are limited to situations where pipelines parallel transmission lines and the lines are within 100 feet of each other. Please note, the Applicant does not believe that the current project will be constructed within 100 feet of an existing gas or petroleum line but is agreeing to include it at the request of Staff.

Thank you again for providing your draft conditions for review and comment.

Bert Acken

On October 3, 2008, Chairman Foreman replied:

Bert,

Thank you for your response to the proposed conditions. Your comments were constructive and very helpful. I have been asked to include the draft conditions in the docket so all members of the Commission will be able to view them. I think that is a good idea. I will also file your response and my reply. All future comments should be filed with docket control in this file.

Let me reply to some of the concerns you raise by paragraph:

1. The conflict between allowing the companies a longer time frame on the one hand and the changing proof regarding the factors in the statute remains. A longer time frame will allow longer range planning that I believe should be encouraged. However, granting a CEC for a longer time frame means that when the project is actually built, the statutory factors may have changed from the time the CEC was granted. I do not know how to solve this problem without using the renewal process. The renewal process will allow the Commission to decide if a change in circumstance has occurred that requires new findings or balancing. The renewal process has been used in the past on multiple occasions, but no rules exist for its use. Certainly an application to renew should be "timely". The Commission will have to decide what is "timely" until the process is better defined by rule or statutory change. Five years is rough approximation of the event horizon for the most credible expert predictions about the factors now listed in the statute.

2. Your response raises an interesting general point. What is the power of the Commission to regulate on going operation of a project? I think they do have the power and I think using the conditions as a way to sculpt that regulation is reasonable. If they have other ways of regulating and would rather use those other ways, I do not have a problem deleting some of the conditions. If they do not or if they want to use the conditions, I see no reason to change that practice in this case. Long term review and reform is not something we can accomplish in this application.

In addition, some of the Committee's findings and conclusions may be based upon the assumption the project will be constructed or operated according to a condition. It is not unreasonable to incorporate some of those understandings into the CEC.

3. Draft Condition #2 is more inclusive than A.R.S. § 40-360.06D and it was intended to be. The applicant should follow all laws and regulations. If local ordinances etc. are too restrictive, the notice and potential override provisions of § 40-360.06D should be implemented before not after the CEC is granted.

4. I understood some of the provisions were crafted by individual commissioners and that tells me they view the imposition of "conditions" as something they support. The reason to review the conditions is to determine whether each individual makes sense for that CEC (see your comments #5 and #8, below) and to see if we can draft the language in a way that is clear and covers exactly what we want covered.

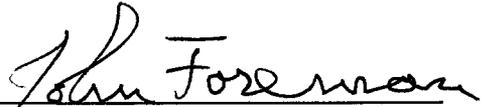
5. If Draft Condition #8 is no longer necessary, let us have some testimony on that subject--I missed it if we did. It should not be used if it is unnecessary.

6. You raise a couple of good points here. The Applicant obviously cannot post a sign unless they have a legal right to enter. I agree the language should reflect that limitation.

7. I think your points here are also well taken. The burden of "revegetation" for damage to the land and plants not caused by the Applicant should not be automatically placed upon the Applicant. It may be the construction mitigation plan process will give the Commission the authority to deal with this problem.

8. If the route ultimately selected will not cross or approach within 100' of a gas pipe line, Draft Condition 15 should not be used. I would like to hear from the Commission Staff about whether they believe the language changes are a problem. I look forward to hearing from other parties. I would like all future responses to be filed with docket control in this file.

DATED: October 31, 2008



John Foreman, Chairman
Arizona Power Plant and
Transmission Line Siting
Committee

Assistant Attorney General
john.foreman@azag.gov

Pursuant to A.A.C. R14-3-204,
The Original and 25 copies were
filed October 31, 2008 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Copy of the above mailed
October 31, 2008 to:

Charles Hains
Janice Alward, Chief Counsel
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
Counsel for Legal Division Staff

Brian C. McNeil
Executive Director
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Linda Hogan
Assistant to the Executive Director
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Thomas H. Campbell, Esq.
Albert Acken, Esq.
Lewis & Roca, LLP

Two Renaissance Square
40 North Central Avenue
Phoenix, AZ 85004
Counsel for Applicant APS

Michael D. Bailey
Sintra Hoffman
Office of the City Attorney
12425 West Bell Road, Suite D100
Surprise, AZ 85374-9002
Counsel for City of Surprise

Stephen J. Burg
Office of the City Attorney
8401 West Monroe Street, Room 280
Peoria, AZ 85345
Counsel for City of Peoria

Garry D. Hays
The Law Offices of Garry D. Hays, PC
1702 East Highland Avenue, Suite 400
Phoenix, AZ 85016
Counsel for Arizona State Land Department

Joseph A. Drazek
Roger K. Ferland
Quarles & Brady, LLP
Two North Central Avenue
Phoenix, AZ 85004-2391
Counsel for Vistancia, LLC

Frederick E. Davidson
Chad R. Kaffer
The Davidson Law Firm
8701 East Vista Bonita Drive, Suite 220
P.O. Box 27500
Scottsdale, AZ 85255
Counsel for Quintero Community Assoc. & Quintero Golf & Country Club

Dustin C. Jones
Jon M. Paladini
Tiffany & Bosco, PA
2525 E. Camelback Road – 3rd Floor
Phoenix, AZ 85016
Counsel for Anderson Land and Development, Inc.

Scott McCoy
Earl, Curley & LaGarde, P.C.
3101 N. Central Avenue, Suite 1000
Phoenix, AZ 85012
Counsel for Elliott Homes, Inc.

Andrew E. Moore
Earl, Curley & LaGarde, P.C.
3101 N. Central Avenue, Suite 1000
Phoenix, AZ 85012
Counsel for Woodside Homes of Arizona

Jay Moyes
Steve Wene
Moyes, Sellers & Sims
1850 N. Central Avenue – Suite 1100
Phoenix, AZ 85004
Counsel for Vistancia Village – Homeowners

James T. Braselton
Gary L. Birnbaum
Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue
Phoenix, AZ 85012
Counsel for Surprise Grand Vista JV No. 1, LLC and Sunhaven

Mark A. Nadeau
Shane D. Gosdis
Susan T. Watson
DLA PIPER US LLP
2415 East Camelback Road, Suite 700
Phoenix, AZ 85016
Counsel for 10,000 West, L.L.C.

Court S. Rich
Ryan Hurley
Rose Law Group, PC
6613 N. Scottsdale Road, Suite 200
Scottsdale, AZ 85250
Counsel for Warrick 160, LLC and Lake Pleasant 5000, LLC

Lawrence V. Robertson, Jr.
P.O. Box 1448
Tubac, AZ 85646-0001 USA
Counsel for Diamond Ventures, Inc.

Scott S. Wakefield
Ridenour, Hienton, Helhoffer & Lewis
201 N. Central Avenue, Suite 3300
Phoenix, AZ 85004
Counsel for DLGC, II LLC, and Lake Pleasant Group, LLP
Christopher Welker
10429 South 51st Street, Suite 285
Phoenix, AZ 85044
Counsel for LP 107, LLC

Marta T. Hetzer
Arizona Reporting Service, Inc.
2200 North Central Avenue
Phoenix, Arizona 85004-1481

By: Jara Williams