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BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman
GARY PIERCE
Commissioner
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

Arizona Corporation Commission

DOCKETED

APR - 7 2009

DOCKETED BY 

IN THE MATTER OF THE APPLICATION)
OF AJO IMPROVEMENT COMPANY FOR)
APPROVAL OF AN EXTENSION OF ITS)
CERTIFICATE OF ENVIRONMENTAL)
COMPATIBILITY TO BUILD A)
TRANSMISSION LINE FROM GILA BEND)
TO AJO)

DOCKET NO. L-00000G-97-0089

DECISION NO. 70957

ORDER

Open Meeting
March 31 and April 1, 2009
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Ajo Improvement Company ("Ajo") is engaged in providing electricity service within portions of Arizona, pursuant to authority granted by the Arizona Corporation Commission.
2. In Decision No. 60841 (April 30, 1998), the Commission approved a Certificate of Environmental Compatibility ("CEC") for Ajo to construct a 47 mile, 230 kV transmission line from Gila Bend to Ajo ("Project"). In this Decision, the second condition provides that:

 "[T]he authorization to construct the project will expire ten (10) years from the date the Certificate is approved by the Arizona Corporation Commission unless the project is completed by that time; provided, however, that the Applicant (or its transferee, assignee or successor) shall have the right to apply to the Arizona Corporation Commission for an extension of this time limitation."
3. To date, Ajo has not constructed the transmission line.

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1 4. On April 16, 2008, Ajo filed for Commission approval of a 5-year extension of the
2 CEC, providing Ajo with an additional five years under the CEC to construct the project, through
3 April 29, 2013.

4 5. In Decision No. 70326 (April 29, 2008), the Commission issued an order, extending
5 the time for construction in Decision No. 60841 to July 31, 2008, and ordering Commission Staff
6 (“Staff”) to file a recommendation by June 30, 2008. This extension was granted to provide Staff
7 time to analyze Ajo’s application.

8 6. On June 9, 2008, in response to a Staff data request, Ajo indicated it wanted a
9 further nine month extension of the existing CEC to conduct a review of whether to open the
10 copper mine near Ajo.

11 7. In Decision No. 70442 (July 30, 2008), the Commission approved an extension of
12 Ajo’s existing CEC, through the end of April 2009, subject to several conditions regarding
13 provision of notice to various entities as well as filing of Ajo’s ten year plan pursuant to Arizona
14 Revised Statute requirements. During the intervening months, Ajo has filed its ten year
15 transmission plan with the Commission, along with documentation regarding its provision of
16 notice to various entities.

17 8. The primary purpose of the transmission line would be to serve the New Cornelia
18 Branch copper mine near Ajo that Freeport McMoRan Copper and Gold, Inc. (“Freeport” and
19 formerly Phelps Dodge) has been considering reactivating.

20 9. Ultimately, after the initial CEC was granted in 1998, Phelps Dodge chose to not
21 open the New Cornelia mine, resulting in the transmission line not being constructed during the 10
22 year term of the initial CEC. If the mine was opened now and the transmission line built, the
23 resulting economic upturn in Ajo would likely generate some incremental residential and
24 commercial consumption of electricity, which could also be served by the new transmission line.
25 Ajo has indicated that construction of this line would not impact rates paid by its non-mine utility
26 customers in Ajo.

27 10. Absent the opening of the mine, Ajo has indicated that there is no need for the
28 transmission line. Ajo Improvement Company is owned by Freeport.

1 11. The 230 kV transmission line would run 47 miles from the Arizona Public Service
2 Company ("APS") Gila Bend Substation on the west side of Gila Bend, Arizona, to a proposed
3 substation near the Freeport mine site on the southeast side of Ajo, Arizona. The route runs
4 roughly parallel to State Route 85 between Gila Bend and Ajo. Ajo has indicated that 89 percent
5 of the route is through existing utility corridors and that Ajo has maintained the necessary right of
6 way for the project. Most of the land the project would cross is under the Bureau of Land
7 Management's jurisdiction, with approximately 1 percent under state jurisdiction and 8 percent
8 privately owned. Three quarters of the route is on the Barry M. Goldwater Range.

9 12. The current estimated cost of the Project is \$32.9 million. Ajo's plan is to contract
10 with APS to construct the transmission line, but Ajo would operate and retain ownership of the
11 line.

12 13. At the time Freeport sought the 9-month extension of the existing CEC, Freeport
13 was beginning a six month analysis of whether to reactivate the New Cornelia Branch mine. In
14 recent discussions with Staff, Freeport has indicated that it does not anticipate reactivating the
15 mine at this time due to various factors, including current market conditions. However a 5-year
16 extension of the CEC is still desired by the Company in case the mine is reactivated in the future
17 when circumstances are more favorable.

18 14. The CEC granted in 1998 contained two conditions, one providing the ten year
19 period, and one requiring Ajo to meet applicable ordinances, master plans, regulations, etc. By
20 comparison, CECs granted by the Commission in recent years have contained significantly more
21 conditions, regarding a variety of matters, such as notice to landowners and others, transmission
22 planning and coordination efforts, environmental protections, etc. Staff was not an intervener in
23 the 1998 line siting proceeding that led to the CEC being granted to Ajo.

24 15. Staff has issued a number of data requests to Ajo to further understand the issues
25 surrounding Ajo's application for a CEC extension. Ajo's request for an extension of the existing
26 CEC does not contemplate any changes to the project from that which was approved by the
27 Commission in 1998.

28 ...

1 16. In Staff's memorandum discussing the 9-month extension of the CEC, Staff
2 indicated that if a 5-year extension of the CEC were recommended, that Staff would also
3 recommend applying conditions to the CEC that are similar to conditions placed on other recent
4 CECs.

5 17. Ajo has indicated to Staff that since the time of its notification of interested parties
6 and posting of signs along the route, pursuant to Decision No. 70442, that other than the State
7 Historic Preservation Office ("SHPO") communication discussed below, the only communications
8 have been from several customers who have inquired regarding the timing of the project as well as
9 a contractor interested in bidding on the project.

10 18. On January 12, 2009, the Chairman of the Arizona Power Plant and Transmission
11 Line Siting Committee filed a December 19, 2008 letter from SHPO in this docket. The letter
12 expresses an interest in seeing various historic preservation issues addressed in regard to the
13 proposed transmission line. Staff is recommending a specific condition which will ensure that
14 state and federal historic preservation issues are addressed.

15 19. A sizable portion of the proposed transmission line runs through the Barry M.
16 Goldwater Range, operated by the United States Air Force. During the process of considering the
17 initial 10-year CEC, the Air Force indicated it had no issues with the proposed transmission line.
18 In response to data requests from Staff, Ajo has indicated that it has not had further
19 communications with the Air Force regarding the transmission line and specifically the requested
20 5-year extension of the CEC. Staff believes that further consultation with the Air Force would be
21 beneficial to ensure that no issues have arisen since the original CEC was granted. Therefore Staff
22 is recommending a specific condition that would require Ajo to file in this docket, prior to
23 commencing construction on the proposed line, a letter from the Air Force indicating it still does
24 not have issues with the proposed transmission line.

25 20. Ajo's current CEC contemplates construction of the transmission line with wood
26 poles. On October 22, 2008, the Utilities Division received a letter from Ajo, indicating that APS'
27 current construction practices reflect the use of steel poles when constructing a line such as the 230
28 kV line from Gila Bend to Ajo, rather than the wood poles contemplated in Ajo's existing CEC.

1 Ajo's October 22nd letter further indicated that Ajo did not believe substitution of steel poles
2 constitutes a material change to the CEC and Ajo sought confirmation of this view from Staff.
3 Staff has had several discussions with Ajo on this issue and Ajo has indicated in a subsequent
4 response to a Staff data request that it is not seeking approval of a change from wood poles as part
5 of the proposed 5-year CEC extension under consideration at this time. Staff has indicated to Ajo
6 that switching to steel poles might involve a material change to the CEC, but that further
7 information would be needed, to better understand the issues involved at such time as Ajo were to
8 actually seek to switch to steel poles for this transmission line.

9 21. Staff believes that the plan to construct the transmission line to serve the New
10 Cornelia mine, if opened, is reasonable and in the public interest and that an extension of the CEC
11 should be granted.

12 22. Staff has recommended approval of an extension of the existing CEC for the Gila
13 Bend to Ajo 230 kV transmission line through April 30, 2014, subject to the following conditions.

- 14 a. The Applicant, or its assignee(s), shall obtain all required approvals and permits
15 necessary to construct the Project.
- 16 b. The Applicant, or its assignee(s), shall comply with all existing applicable ordinances,
17 master plans, and regulations of the Town of Gila Bend, County of Maricopa, County
18 of Pima, State of Arizona, the United States, and any other governmental entities
19 having jurisdiction.
- 20 c. This authorization to construct the Project will expire on April 30, 2014, unless the
21 Project is completed and capable of operation within the five-year time frame. If the
22 Project is not complete and capable of operation within the five-year time frame, the
23 Applicant or its assignee(s), may request that the Commission extend this time
24 limitation.
- 25 d. In the event the Project requires an extension of the term of this Certificate prior to
26 completion of construction, Applicant, or its assignee(s), shall use commercially
27 reasonable means to directly notify all landowners and residents within one mile of
28 the Project corridor for which the extension is sought. Such landowners and residents
shall be notified of the time and place of the proceeding in which the Commission
shall consider such request for extension.
- e. The Applicant, or its assignee(s), shall document and make every reasonable effort to
identify and correct, on a case-specific basis, all complaints of interference with radio
or television signals from operation of the transmission lines and related facilities
addressed in this Certificate. The Applicant, or its assignee(s), shall maintain written

1 records for a period of five years of all complaints of radio or television interference
2 attributable to operation, together with the corrective actions taken in response to each
3 complaint. All complaints shall be recorded to include notations on the corrective
4 action taken. Complaints not leading to specific action or for which there is no
5 resolution shall be noted and explained.

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7 f. To the extent applicable, Applicant, or its assignee(s), shall comply with the notice
8 and salvage requirements of the Arizona Native Plant Law (A.R.S. §§ 3-901, *et seq.*)
9 and will, to the extent feasible, minimize destruction of native plants during Project
10 construction.
- 11 g. Pursuant to A.R.S. § 41-844, if any archaeological, paleontological or historical site or
12 object that is at least 50 years old is discovered on state county or municipal land
13 during Project-related activities, the person in charge shall promptly report the
14 discovery to the Director of the Arizona State Museum, and in consultation with the
15 Director, shall immediately take all reasonable steps to secure and maintain the
16 preservation of the discovery. If human remains and/or funerary objects are
17 encountered on private land during the course of any ground-disturbing activities
18 relating to the development of the subject property, Applicant shall cease work on the
19 affected area of the Project and notify the Director of the Arizona State Museum
20 pursuant to A.R.S. § 41-865.
- 21 h. Applicant, or its assignee(s), shall design the transmission lines to incorporate
22 reasonable measures to minimize impacts to raptors.
- 23 i. Applicant, or its assignee(s), shall, to the extent possible, use non-specular conductor
24 and dulled surfaces for transmission line structures.
- 25 j. Before construction of this Project may commence, the Applicant, or its assignee(s),
26 must file a construction mitigation and restoration plan ("Plan") with Commission
27 Docket Control. Where practicable, the Plan will specify the Applicant's plans for
28 construction access and methods to minimize impacts to wildlife, to minimize
vegetation disturbance outside the Project right-of-way, and revegetate native areas
following construction disturbance.
- k. With respect to the Project, Applicant, or its assignee(s), shall participate in good faith
in state and regional transmission study forums such as Southwest Area Transmission
to coordinate transmission plans related to the Project.
- l. Within 120 days of the Commission decision granting this Certificate, Applicant, or
its assignee(s), will post signs in public rights-of-way giving notice of the Project
corridor to the extent authorized by law. The Applicant, or its assignee(s), shall place
signs in prominent locations at reasonable intervals such that the public is notified
along the full length of the transmission line until the transmission structures are
constructed. To the extent practicable, within 45 days of securing easement or right-
of-way for the Project or the Decision in this case, whichever is later, the Applicant, or
its assignee(s), shall erect and maintain signs providing public notice that the property

1 is the site of a future transmission line. Such signage shall be no smaller than a
2 normal roadway sign. The sign shall advise:

- 3 i That the site has been approved for construction of Project facilities;
- 4 ii The expected date of completion of the Project facilities;
- 5 iii A phone number for public information regarding the Project;
- 6 iv The name of the Project;
- 7 v The name of the Applicant, or its assignee(s); and
- 8 vi The website of the Applicant, or its assignee(s)

9 m. The Applicant, or its assignee(s), shall provide copies of this Certificate to the Town
10 of Gila Bend, the Maricopa County Planning and Development Department, Pima
11 County Development Services, the Arizona State Land Department, the State Historic
12 Preservation Office, and the Arizona Game and Fish Department.

13 n. Prior to the date construction commences on this Project, the Applicant shall provide
14 known homebuilders and developers within one mile of the center line of the
15 Certificated route the identity, location, and a pictorial depiction of the type of power
16 line being constructed, accompanied by a written description, and encourage the
17 developers and homebuilders to include this information in the developers' and
18 homebuilders' homeowners' disclosure statements.

19 o. Before commencing construction of the facilities located parallel to and within 100
20 feet of any existing natural gas or hazardous liquids pipeline, the Applicant, or its
21 assignee(s), shall:

22 i Perform the appropriate grounding and cathodic protection studies to show that
23 he Project's location parallel to and within 100 feet of such pipeline results in no
24 material adverse impacts to the pipeline or to public safety when both the
25 pipeline and the Project are in operation. If material adverse impacts are noted
26 in the studies, Applicant, or its assignee(s), shall take appropriate steps to ensure
27 that such material adverse impacts are mitigated. Applicant, or its assignee(s),
28 shall provide to Commission Staff reports of studies performed; and

ii Perform a technical study simulating an outage of the Project that may be caused
by the collocation of the Project parallel to and within 100 feet of the existing
natural gas or hazardous liquid pipeline. This study should either: i) show that
such outage does not result in customer outages, or ii) include operating plans to
minimize any resulting customer outages. Applicant, or its assignee(s), shall
provide a copy of this study to Commission Staff.

p. Applicant, or its assignee(s), will follow the latest Western Electricity Coordinating
Council/North American Electric Reliability Corporation planning standards as
approved by the Federal Energy Regulatory Commission, and National Electrical
Safety Code construction standards.

q. The Applicant, or its assignee(s), shall submit a self-certification letter annually,
identifying progress made with respect to each condition contained in the Certificate,

1 including which conditions have been met. Each letter shall be submitted to the
 2 Commission Docket Control on December 1, beginning in 2009. Attached to each
 3 certification letter shall be documentation explaining how compliance with each
 4 condition was achieved. Copies of each letter along with the corresponding
 5 documentation shall be submitted to the Arizona Attorney General and Department of
 6 Commerce Energy Office. The requirement for the self-certification shall expire on
 7 the date the Project is placed in operation or the Certificate expires.

- 8 r. The Applicant, or its assignee(s), prior to commencing construction of the Project,
 9 shall submit to Commission Docket Control, a letter from the United States Air Force,
 10 indicating that the Air Force has no objection to construction of the Project.
- 11 s. The Applicant, or its assignee(s), shall comply with all local, state, and national
 12 historic preservation requirements, including all necessary consultations with local,
 13 state, federal, and tribal authorities.
- 14 t. Except when entering switchyards and substations, the minimum spacing between the
 15 center lines of the existing 69 kV line and the Project shall be at least the height of the
 16 tallest tower involved in that particular span.

17 CONCLUSIONS OF LAW

18 1. Ajo is an Arizona public service corporation within the meaning of Article XV,
 19 Section 2, of the Arizona Constitution.

20 2. The Commission has jurisdiction over Ajo and over the subject matter of the
 21 application.

22 3. The Commission, having reviewed the application and Staff's Memorandum dated
 23 March 12, 2009, concludes that it is in the public interest to approve an extension of Ajo's CEC
 24 through April 30, 2014, subject to conditions contained in Finding of Fact No. 22.

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ORDER

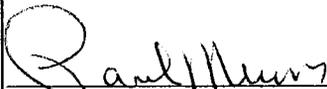
IT IS THEREFORE ORDERED that Ajo's existing CEC at issue in this proceeding is extended through April 30, 2014, subject to conditions contained in Finding of Fact No. 22.

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

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION


CHAIRMAN


COMMISSIONER

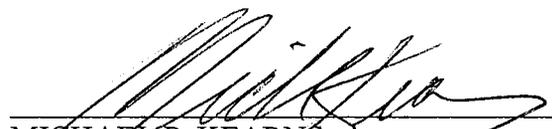

COMMISSIONER

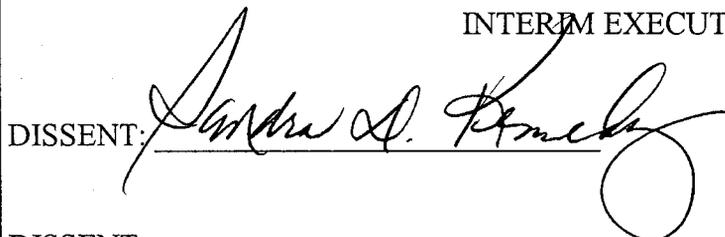


COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim 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 7th day of APRIL, 2009.


MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT: 

DISSENT: _____

EGJ:RGG:lhm\CHH

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