

ORIGINAL



0000105819

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COMMISSIONERS

KRISTIN K. MAYES - CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 DEC -4 P 3:51
AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED

DEC - 4 2009

DOCKETED BY	<i>MM</i>
-------------	-----------

IN THE MATTER OF THE APPLICATION OF
UNS ELECTRIC, INC. FOR A CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY
FOR THE VAIL TO VALENCIA 115 KV TO
138 KV TRANSMISSION LINE UPGRADE
PROJECT, ORIGINATING AT THE EXISTING
VAIL SUBSTATION IN SEC. 4, T.16S., R.15E.,
PIMA COUNTY, TO THE EXISTING
VALENCIA SUBSTATION IN SEC. 5, T. 24S.,
R.14E., IN THE CITY OF NOGALES, SANTA
CRUZ COUNTY, ARIZONA.

Docket No. L-00000F-09-0190-00144

Case No. 144

**RESPONSE TO MR. MAGRUDER'S
MOTION DEMANDING
RESUBMISSION OF POLE FINISH
PLAN**

UNS Electric, Inc. ("UNS Electric" or "Company"), through undersigned counsel, hereby responds to Mr. Magruder's motion dated November 24, 2009. The Company respectfully requests the Arizona Corporation Commission ("Commission") to dismiss Mr. Magruder's motion as it lacks merit.

The Commission issued Decision No. 71282 on October 7, 2009. That decision approved, with certain modifications, the Certificate of Environmental Compatibility ("CEC") issued by the Arizona Power Plant and Transmission Line Siting Committee ("Committee"). Among those conditions that were modified was the one condition that addresses the Pole Finish Plan ("PFP") – Condition No. 23. Specifically, Condition No. 23 states:

For the Project, Applicant shall, within 30 days of the effective date of this Order, submit a Pole Finish Plan ("PFP") for the proposed monopole finish for each part of the Project. The PFP shall indicate where a dull galvanized steel finish will be used (e.g. in open terrain of where views of the poles will be against a sky background) versus using self-weathering steel (e.g. where visual views of the poles are against a terrain background). Further, the Pole Finish Plan (PFP) shall indicate that a dulled galvanized steel finish will be used in Segment 1A, North Route (Preferred Alignment), between the Vail Substation and Wilmot Road (i.e. where the line extends to the west from the Vail Substation and runs parallel to TEP's Vail-Robert Bills (138 kV) and Vail-Irvington (138 kV) lines). The PFP will be submitted to Parties, landowners whose property is within 500 feet of either side of the center line and Commission Staff. The

1 Parties and landowners whose property is within 500 feet of either side of
2 the center line shall have 30 days to object to the PFP in writing to the
3 Commission.

4 In accordance with Condition 23, UNS Electric submitted the PFP on November 6, 2009.
5 To date, Mr. Magruder is the only person to file an objection to the PFP.

6 Mr. Magruder's arguments are erroneous and without merit for several reasons. First,
7 Conditions 16 and 20 do not apply the PFP. Mr. Magruder misrepresents the scope and intent of
8 those conditions. Condition No. 16 addresses providing notice of the Project to homebuilders,
9 neighborhood associations and developers of record:

10 Prior to the date construction commences on the Project, the Applicant
11 shall provide known homebuilders, neighborhood associations registered
12 with the local governing jurisdiction and developers of record, within one
13 mile of the center line of the Certificated Project Alignment the identity,
14 location, and a pictorial depiction of the type of power line being
15 constructed, accompanied by a written description, and encourage the
16 developers and homebuilders to include this information in the developers'
17 and homebuilders' homeowners disclosure statements. At the same time,
18 the Applicant shall also provide this information to the Santa Rita Foothill
19 Community Association, the Hilton Road Community Association, and
20 the Vail Preservation Society.

21 Nowhere in Condition No. 16 is the PFP mentioned. Further, Condition No. 20 addresses right-of-
22 way and pole placement and sets a timeframe for the Company to engage landowners on those
23 issues:

24 Within sixty (60) days of the Commission decision granting this
25 Certificate, the Applicant shall make good faith efforts to commence
26 discussions with private landowners, on whose property the Project
27 Alignment is located, to identify the specific location for the Project's
right-of-way and placement of poles. Applicant shall make reasonable
efforts to accommodate landowners' preferences regarding the placement
of poles located on or adjacent to the landowners' property.

Likewise, Condition No. 20 does not address or apply to the PFP. Mr. Magruder's argument that
the conditions are "interrelated" in the way that he describes is simply inaccurate.

Second, the Company fully complied with Condition 23. The Company filed the PFP
within 30 days of the effective date of the order. Further, the Company submitted the PFP to

1 Parties, landowners whose property is within 500 feet of either side of the center line and
2 Commission Staff.

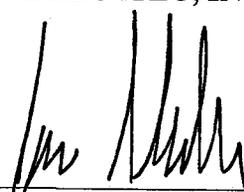
3 Third, Mr. Magruder has no basis to declare that certain criteria were not considered. The
4 PFP submitted includes a 138kV Pole Finish Plan Color Selection Process – clearly outlining the
5 considerations UNS Electric took into account in selecting structure finish. These considerations
6 fully comply with the requirements of Condition 23.

7 Finally, pursuant to Condition 23, landowners whose property is within 500 feet of either
8 side of the center line have until December 7, 2009 to provide input or object. To date no
9 landowner has objected to the Company's proposed plan or its process. In fact, Mr. Ron
10 Campana, a landowner along the Project Alignment, submitted a letter in this docket on
11 November 13, 2009 acknowledging receipt of the PFP and agreeing with its contents.

12 Because Mr. Magruder's motion is without merit, all of his recommendations should be
13 rejected. Therefore, UNS Electric respectfully requests that the Commission deny Mr.
14 Magruder's motion.

15 RESPECTFULLY SUBMITTED this 4th day of December 2009.

16 UNS ELECTRIC, INC.

17
18
19 By 

Philip J. Dion
UNS Electric, Inc.
1 South Church Avenue, Suite 100
Tucson, Arizona 85701

22 and

23 J. Matthew Derstine
24 Jason D. Gellman
25 ROSKA DEWULF & PATTEN, PLC
26 One Arizona Center
27 400 East Van Buren, Suite 800
Phoenix, Arizona 85004
(602) 256-6100

1 Original and 25 copies filed
2 this 4th day of December 2009, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 A copy of the foregoing was hand-delivered/
8 mailed this 4th day of December 2009 to:

9 Chairman John Foreman
10 Arizona Power Plant and Transmission Line Siting Committee
11 Arizona Attorney General Office
12 1275 West Washington Street
13 Phoenix, Arizona 85007

14 Janice M. Alward, Esq.
15 Chief Counsel, Legal Division
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Steve Olea
20 Director, Utilities Division
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 Elizabeth Buchroeder-Webb
25 17451 E. Hilton Ranch Rd.
26 Vail, Arizona 85641

27 Marshall Magruder
P. O. Box 1267
Tubac, Arizona 85646-1267

By 