



0000106484

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

BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF THE APPLICATION)
OF SULPHUR SPRINGS VALLEY)
ELECTRIC COOPERATIVE, INC. FOR)
AN ORDER INSTITUTING A)
MORATORIUM ON NEW CONNECTIONS TO)
THE V-7 FEEDER LINE SERVING THE)
WHETSTONE, RAIN VALLEY, ELGIN,)
CANELO, SONOITA, AND PATAGONIA,)
ARIZONA AREAS.)

DOCKET NO.
E-01575A-09-0453

**PROCEDURAL
CONFERENCE**

At: Tucson, Arizona
Date: December 11, 2009
Filed: December 29, 2009

RECEIVED
2009 DEC 29 P 2:10
AZ CORP COMMISSION
DOCKET CONTROL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Arizona Corporation Commission
DOCKETED
DEC 29 2009

DOCKETED BY

ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite 502
2200 North Central Avenue
Phoenix, Arizona 85004-1481

By: MICHELE E. BALMER
Certified Reporter
Certificate No. 50489

Prepared for:

ACC

ORIGINAL

**FOR
INTERNAL
&
INTERAGENCY
USE
ONLY**

Pursuant to the contract with Arizona Reporting Service all transcripts are available electronically for internal agency use only.

Do not copy, forward or transmit outside the Arizona Corporation Commission.

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, 400 West Congress Street,
4 Tucson, Arizona, commencing at 10:00 a.m. on the 11th day
5 of December, 2009.

6

7 BEFORE: JANE L. RODDA, Administrative Law Judge

8

9 APPEARANCES:

10 For the Arizona Corporation Commission Staff:

11 Mr. Wesley Van Cleve
12 Staff Attorney, Legal Division
13 1200 West Washington Street
14 Phoenix, Arizona 85007
15 (Appeared telephonically)

16

17 For Sulphur Springs Valley Electric Cooperative:

18

19 SNELL & WILMER, LLP
20 By: Mr. Bradley S. Carroll
21 400 East Van Buren
22 Phoenix, Arizona 85004
23 (Appeared telephonically)

24

25 Intervenor Downing:

Ms. Susan J. Downing
HC1 Box 197
Elgin, Arizona 85611
(Appeared telephonically)

26

27

28

29

MICHELE E. BALMER
Certified Reporter
Certificate No. 50489
(Appeared telephonically)

1 ALJ RODDA: Let's go on the record. This is the
2 time set for the procedural conference in Docket No.
3 E-01575A-09-0453, which is the application of Sulphur
4 Springs Valley Electric Cooperative for a moratorium on
5 new connections to the V-7 feeder serving Elgin, Sonoita,
6 and the Patagonia areas.

7 Good morning, everyone, and welcome to the
8 Arizona Corporation Commission. My name is Jane Rodda,
9 and I'm the Administrative Law Judge assigned to this
10 matter. For the record, the first thing I need to do this
11 morning is take appearances. So I'll start with Sulphur
12 Springs.

13 MR. CARROLL: Good morning and thank you, Your
14 Honor. This is Bradley Carroll from the law firm of Snell
15 & Wilmer on behalf of Sulphur Springs Valley Electric
16 Cooperative.

17 ALJ RODDA: And on behalf of the intervenor?

18 MS. DOWNING: Good morning. This is Sue Downing.
19 I'm a co-op member from Elgin, Arizona.

20 ALJ RODDA: Great. And then on behalf of
21 Commission Staff?

22 MR. VAN CLEVE: Good morning, Your Honor. Wes
23 Van Cleve on behalf of Commission Staff. And I also have
24 Prem Bahl sitting in my office as well.

25 ALJ RODDA: Great. Well, thank you all for

1 appearing this morning. The reason we're here is I had --
2 after our last procedural conference, as you're all aware,
3 I had set the matter for hearing in January and then
4 received a request from the cooperative to continue that
5 date.

6 What you didn't know was that at the same time I
7 was also going to issue a procedural order in the other
8 docket, the rehearing docket, but held it after I got the
9 cooperative's request, because I was going to set the
10 other rehearing date for May after opportunity for
11 additional testimony and intervention. And so after
12 receiving the request from the cooperative that if they
13 were going to miss the hearing months, that perhaps
14 additional time for the hearing was needed.

15 I wondered how we can do this efficiently,
16 whether it makes sense to consolidate this request with
17 the rehearing matter. We have the feasibility study
18 coming out, I believe at the end of this month, and I
19 think there's supposed to be some public forums associated
20 with that. So perhaps we could talk a little bit about
21 what makes sense efficiently, and I guess that's what I
22 wanted to talk about today.

23 So, Mr. Carroll, since you have -- I'll just
24 start with you, because you filed the request to continue
25 the January hearing date and the moratorium request. Do

1 you have any thoughts about how this might relate to the
2 rehearing matter?

3 MR. CARROLL: Yes. This is Brad Carroll. Your
4 Honor, thank you. And again, I appreciate Your Honor and
5 Staff and Ms. Downing in terms of accommodating the
6 expedited telephonic procedural conference that I had
7 requested in the filing that I made last week.

8 As we indicated in the motion for the stay, since
9 Your Honor had ruled that a hearing was going to be
10 necessary, and given the realities of the situation in
11 terms of what it means to have a hearing and the timing
12 involved in that, as well as the time of the year that
13 we're at, we felt that it would be better to stay the
14 procedural schedule at least for 45 days at the time, or
15 to approximately January 20 or so, because it would give
16 us -- give Sulphur an opportunity to have much more
17 information available to it to decide what the appropriate
18 next steps would be.

19 As you alluded to, Your Honor, the feasibility
20 study is due to be filed on December 31. And depending on
21 what is in that feasibility study in terms of its findings
22 and/or its recommendations will help determine in terms of
23 whether or not a consolidation, for example, of this
24 proceeding with the rehearing proceeding would be more
25 appropriate or, again, we -- I didn't, obviously, have the

1 benefit of knowing you were going to issue a procedural
2 order with the time frames that you have contemplated, but
3 it would either give us a better opportunity to make a
4 determination as to whether consolidation would be a
5 proper way to go for judicial economy and for other
6 reasons, or whether or not a stand-alone moratorium
7 proceeding should inure on its own and, therefore, have
8 its own procedural schedule.

9 So our feeling was essentially, you know, a
10 45-day hold would give us, as well as Staff and
11 Ms. Downing, more information to base a final decision on
12 in terms of what is really the best way to proceed,
13 especially given the nexus between the two different
14 dockets.

15 ALJ RODDA: Okay. So at this point your
16 recommendation just is perhaps to have another procedural
17 conference following the issuance of that feasibility
18 study.

19 MR. CARROLL: Yes. As I indicated in the motion,
20 you know, I think that, again, one open question for us
21 really was how you were going to rule in the
22 reconsideration docket in terms of the scope of the
23 proceeding and the procedural schedule. And so that was
24 an open question for us and, you know, it still is
25 somewhat an open question for us.

1 And what we had determined is that certainly by
2 mid-January -- and I have picked January 20 since you had
3 already had that date on the calendar for the potential
4 hearing date in this matter, but that would give us
5 approximately two-and-a-half to three weeks to evaluate
6 the results of the independent feasibility study, evaluate
7 what the proposed procedural schedule and scope of the
8 remand proceeding was going to be, so that then we could
9 get together back, let's say, on January 20 with yourself
10 and the other parties and then decide, okay, what is the
11 best way to proceed? It may be consolidation, or perhaps
12 it might be not to consolidate for some reason, depending
13 on what the result is.

14 And this way, it allows us to continue to sort of
15 take this now one step at a time in lieu of your ruling
16 that a hearing is necessary in this matter and to do
17 things within the proper time frame.

18 ALJ RODDA: Okay. I appreciate that.

19 Ms. Downing, do you have any thoughts?

20 MS. DOWNING: Yeah. I have quite a few.

21 I'm just a little bit confused, because my
22 understanding about the feasibility study was that we were
23 also going into a phase where there was a lot of public
24 comment that was going to be allowed on the feasibility
25 study. And I'm a little confused based on what

1 Mr. Carroll said. It sounds like they're going to use the
2 evaluation of the feasibility study without allowing that
3 public comment to take place. I know the order was a
4 little bit -- it was confusing to me in the beginning.
5 Maybe you can help explain that.

6 ALJ RODDA: I don't -- I don't think that's what
7 he meant, and certainly that's not what is going to
8 happen, because the order was pretty clear that there
9 would be public comment.

10 MS. DOWNING: Well, he was talking about using it
11 when the feasibility study -- the results of the
12 feasibility study on December 31, when it came in. And I
13 was kind of under the assumption that it would be more of
14 a draft document for the community to look at and then to
15 allow the public comment to take place.

16 MR. CARROLL: Your Honor, this is Brad Carroll.
17 Again, just to be clear, again, I don't disagree with -- I
18 wouldn't call it a draft document by any stretch of the
19 imagination, but I do agree that there will be the public
20 forums that will be held and there will be community
21 comment on it, and then all of that is going to get
22 factored into ultimately what occurs within the
23 reconsideration proceeding.

24 What I am saying is that the results of the
25 feasibility study will have a direct bearing on what

1 Sulphur's position might be vis-à-vis this proceeding,
2 meaning the moratorium proceeding, and whether or not
3 based on the results that come out of that study whether
4 or not Sulphur believes that that consolidation is the
5 proper way to go, or whether or not maintaining a
6 stand-alone process would be the way to go, and that is
7 what I mean.

8 ALJ RODDA: Okay.

9 MS. DOWNING: May I comment?

10 ALJ RODDA: Ms. Downing?

11 MS. DOWNING: Yes.

12 ALJ RODDA: Please.

13 MS. DOWNING: I guess one of the problems that
14 I'm having is, first of all, they have not provided any
15 discovery that I requested on November 2. And so I feel
16 I'm really behind the eight ball as far as having any
17 information on this case. And then if the feasibility
18 study comes out at the end of the month, I'm not even sure
19 if I would be privy to that information.

20 So I'm feeling I'm going into this really in the
21 dark since they've not turned over any of the discovery,
22 and have concerns about whether or not I also would be
23 able to see the results of the feasibility study so that I
24 can evaluate that and use it in this case.

25 MR. CARROLL: Your Honor, again, by Commission

1 order, the feasibility study will be docketed with Docket
2 Control on December 31, and will be a publicly available
3 document, so Ms. Downing and anybody else will have a
4 chance to review it firsthand.

5 As far as the discovery requests are concerned,
6 again, until we have a determination as to really what is
7 going to be the -- in terms of the timing and the scope of
8 the moratorium proceeding, again, whether or not it's
9 going to be a stand-alone proceeding, whether or not it's
10 going to be combined into the reconsideration proceeding,
11 again, trying to take this one step at a time, you know,
12 at the appropriate time, when and if necessary and
13 required, at that point Sulphur will comply with any, you
14 know, procedural order governing the administration of
15 this proceeding, whether it's consolidated or not,
16 including how discovery will be handled.

17 ALJ RODDA: Well, so you filed some objections to
18 some discovery requests, right, Mr. Carroll?

19 MR. CARROLL: Correct.

20 ALJ RODDA: But were there some requests that you
21 didn't object to?

22 MR. CARROLL: That's correct.

23 ALJ RODDA: But you haven't provided that
24 information yet because you want -- there's some question
25 about scope of the moratorium?

1 MR. CARROLL: No, not scope of the moratorium.
2 The scope was the reference to scope related to the
3 reconsideration proceeding. As I indicated in the motion
4 to stay, I made specific reference to the fact that we --
5 that because of the time of year that we're going into and
6 the uncertainty as to how this case is going to proceed
7 and the timing of it, that Sulphur wanted to stay the
8 entire procedural context of the case, including
9 discovery, until we made a determination as to how we were
10 going to move forward, and that was included as part of
11 the motion to stay.

12 ALJ RODDA: Oh, okay. I understand.

13 All right. So Ms. Downing, it sounds like that
14 because you haven't received the discovery yet, and the
15 feasibility study hasn't come out yet, that January 20
16 would have been too early for you, too, to go to hearing.

17 MS. DOWNING: You know, it just depends when
18 they'll turn over that discovery, including the parts that
19 they haven't objected to.

20 I think, based on the information that
21 Mr. Carroll just provided, as a cooperative member who is
22 very sensitive to the costs that I'm paying for all of
23 these legal proceedings, I would be in favor of
24 consolidating both cases into the rehearing to save the
25 cooperative members money.

1 And since they've indicated -- I actually had an
2 opening statement that I was going to say, but since
3 they've already indicated and I think proven that it's not
4 an emergency and did not provide any data to support that,
5 I don't see any reason why we couldn't consolidate that
6 into one case as long as they provide the discovery I had
7 asked for.

8 ALJ RODDA: Okay. Did you have anything else
9 that you wanted to tell me today?

10 MS. DOWNING: No. You know, I think you have
11 heard that I would like to see it consolidated.

12 ALJ RODDA: Okay. Mr. Van Cleve, does Staff have
13 an opinion?

14 MR. VAN CLEVE: Of course, Your Honor.

15 ALJ RODDA: Good.

16 MR. VAN CLEVE: I mean, a couple of things. You
17 know, Staff has some concerns with the approach that the
18 company has taken here, because they filed an application
19 saying that it was an emergency. We need this moratorium
20 now. I think you did a very good job of setting this
21 thing for a hearing as soon as is realistically possible,
22 and now they have filed this motion for a stay for 45
23 days. And, you know, Ms. Downing's comment holds weight.
24 I mean, is it really an emergency if they're willing to
25 prolong this by even 45 days.

1 One of the things that Mr. Carroll mentioned was
2 there's this feasibility study that will be completed on
3 December -- or docketed on December 31. That was going to
4 happen anyway. I think it's something that could have
5 been used in this case even keeping the January 20 hearing
6 day. I mean, he certainly could have filed something if
7 it proves a point that he is wanting to prove, or it will
8 prove the fact that, you know, there really is an urgency
9 for having a moratorium because the line is
10 oversubscribed.

11 And, you know, in doing this, while it may have
12 passed this sort of 2009 winter peaking period, what it's
13 going to allow, at least, you know, assuming it's for 45
14 days or however long it takes to actually rule on it, is
15 more people are going to be able to subscribe in that area
16 and get service off of that line. And while it may not be
17 as big of a problem during the summer if it's not a summer
18 peaking utility, it's going to make matters all the more
19 worse next winter. And, you know, this line, or whatever
20 remedy there is, whether it is a 69kV line or whether it's
21 renewable energy or distributed energy, none of that is
22 going to be completed to a point where it would help by
23 the 2010 winter peaking period.

24 To the extent that you are considering a May
25 hearing date for the rehearing of the rate case and that

1 is still something you're contemplating if these are
2 consolidated, I think, obviously, the company's -- if the
3 company doesn't think it's an emergency to warrant the
4 moratorium, or a hearing on the moratorium at least sooner
5 than that, then I guess Staff wouldn't be opposed. But I
6 don't think consolidating the cases should hasten or
7 reduce the period of time for when there would be a
8 hearing on the rehearing of the rate case, if that makes
9 sense.

10 If you were considering May and the consolidation
11 would take place and both of them would be dealt with in
12 May, then so be it. I think it's going to make matters
13 worse when it comes to the following peaking period, but,
14 you know, the company is the one that's going to have to
15 face that issue if they have continued outages and the
16 problem is worse because they have more customers being
17 served off of that line.

18 So as far as consolidation, I guess to wrap up, I
19 think that we don't oppose it, if you're contemplating
20 consolidating it and using the time line that you were
21 contemplating for the rehearing of the rate case. If
22 consolidation now makes that rehearing take place sooner,
23 then I think that would be a problem for Staff.

24 ALJ RODDA: It can't take place sooner --

25 MR. VAN CLEVE: Yeah.

1 ALJ RODDA: -- than May just from a calendar
2 point of view.

3 MR. VAN CLEVE: Right.

4 ALJ RODDA: I see. So Staff is -- from what I
5 hear what you're saying, Mr. Van Cleve, is that you heard
6 what the company was saying is we need this now, and so
7 you think any hearing on the moratorium should occur
8 sooner rather than later is what I think I hear you
9 saying.

10 MR. VAN CLEVE: Yes, Your Honor. I think, again,
11 the January 20 date that you set was appropriate. If you
12 weren't inclined to sort of grant -- I think the term that
13 was used an interim moratorium until that hearing took
14 place and it was decided in total, then I think the 20th
15 was a good compromise on that.

16 It just troubles me that the company is taking
17 the approach now that, well, now that it's not going to be
18 this winter, well, the urgency is really not there.

19 MR. CARROLL: Your Honor, may I respond?

20 ALJ RODDA: Yes.

21 MR. CARROLL: Let me back up here, because the
22 implication of what Mr. Van Cleve is saying is that the
23 company has acted somewhat inconsistently, and I submit
24 that we have acted incredibly consistently. If anything,
25 the inconsistency, frankly, is on the part of Staff right

1 now.

2 We filed back on September 18, having alerted the
3 Commission as far back as April and then again in August,
4 about the fact that we were going to have to file for a
5 moratorium if they decided to prohibit the building of the
6 line. We filed on September 18, 10 days after the
7 issuance of the order, immediately for the moratorium
8 asking for it to be implemented as expeditiously as
9 possible. All right. And that has not changed.

10 As the Staff Report came out recommending that
11 the moratorium be granted, we immediately filed additional
12 information urging the Commission to approve the
13 moratorium before the end of the year and without a
14 hearing. And basically, that is very consistent with our
15 filings, that we felt that we had to have this in place as
16 quickly as possible and before the end of the year, and
17 that was because of the approaching winter peaking season.

18 Once Your Honor ruled that a hearing was going to
19 be necessary, which, frankly, we did not anticipate, I
20 mean, I think that the company demonstrated exigent
21 circumstances, supported by Staff, and that a moratorium
22 would have been put in place by the November/December time
23 frame in time for the winter peaking season, which was
24 driving our urgency. We certainly knew that the
25 feasibility study was going to be filed on December 31,

1 but it didn't really have a bearing on whether or not we
2 needed a moratorium for this winter peaking season.

3 Once you issued that procedural order and it was
4 clear that we were not going to meet the winter peaking
5 season, the urgency of having the moratorium in place by
6 December, by the end of this year, lessened, enough so
7 that if we were going to miss that deadline, that we now
8 could consider whether or not this could be -- the results
9 of the feasibility would have any impact on the long-term
10 need for the moratorium, as well as how this might be
11 consolidated with the reconsideration case, depending on
12 what the timing is.

13 So we have proceeded very consistently step by
14 step. We know that we are going to have another problem
15 for next winter, but based on what occurs and what the
16 finding of the feasibility study is, and what the ultimate
17 timings of the relief for the capacity problem in the area
18 that will derive from both the feasibility study and the
19 other proceeding, those could be factored into the
20 ultimate decision in terms of what to do.

21 What is curious is that Staff agrees that a
22 moratorium is necessary; agreed at the procedural
23 conference that a hearing was not necessary; is now
24 arguing that we've got to get the hearing quickly, but yet
25 did not issue a proposed order with its recommendation, or

1 at the invitation of the ALJ, in order to get the matter
2 to the Commission quickly. Again, as Sulphur, I would
3 assume that Staff is sort of looking at this sort of step
4 by step as well.

5 And so again, I mean, in conclusion, I submit
6 that we've acted very, very consistently and are looking
7 to do things now based on subsequent rulings of the
8 Commission, and now of Your Honor, in terms of what is the
9 best way to do things to minimize cost and impact to the
10 situation.

11 ALJ RODDA: Okay. Let me ask this question. The
12 last rate case order -- and I'm sorry I don't have that
13 number in front of me -- that required the feasibility
14 study, also talked about these public forums to discuss
15 the feasibility study.

16 MR. CARROLL: Yes.

17 ALJ RODDA: Does anyone know how those are going
18 to be set up? Mr. Van Cleve, has Staff thought about
19 that? Is Staff arranging public comment forums?

20 MR. VAN CLEVE: Your Honor, to be honest, I would
21 have to look at the order again myself. I do know there
22 was supposed to be four different forums. I think they
23 were to be held by the company somehow. They were going
24 to arrange for it. This is, again, going from my
25 recollection, so I'm not certain. But that all of that

1 was just to take place and come to a conclusion, I think,
2 by July of 2010, where they were supposed to file
3 something in the docket indicating, I guess, the outcome
4 of those forums and what other sort of recommendations are
5 put forth by the public at those forums, that sort of
6 thing. And Mr. Carroll may be able to shed some
7 additional light on that.

8 ALJ RODDA: Okay.

9 MR. CARROLL: Your Honor, I certainly can.
10 Pursuant to the order, Sulphur Springs was required to
11 file as a compliance item something relating to the public
12 forums, which I'm trying to pull it up right now. I think
13 we had to file it on -- I'm trying to pull it up right now
14 on e-Docket, because I don't have it in front of me.

15 But basically, Sulphur made a filing, I believe
16 60 days or so after the order was issued, indicating its
17 intention to set up the series of public forums, I believe
18 in the February/March time frame in different locations
19 around the service territory, and perhaps more
20 specifically within the affected areas.

21 At the time that Sulphur made the compliance
22 filings, it was unable at that point to pick the actual
23 days. A lot of it has to do with getting the actual, you
24 know, locations of where these meetings are going to be
25 held in order to accommodate. I have indicated that it

1 would supplement the filing at such time that it was ready
2 to do that.

3 What Sulphur's plan is right now is the
4 feasibility study is going to be docketed on December 31.
5 And then, more likely than not, sometime in early January
6 Sulphur will start scheduling the actual public forums as
7 required by the decision to be held in the February/March
8 time frame. And then it will docket a report pursuant to
9 the decision summarizing results of those public forums
10 and the comments and the like.

11 ALJ RODDA: Okay.

12 MS. DOWNING: Your Honor, may I make a comment?

13 ALJ RODDA: Yes, please.

14 MS. DOWNING: I was involved as far as meeting
15 with the consulting engineers to set up the RFP, so I have
16 a little bit of an understanding of this.

17 But my understanding was that it was going to be
18 independent consultants and not the company that were
19 going to set up the public meetings, and that also there
20 was six months of input. And Mr. Carroll is mentioning
21 two months, and he's also mentioned that the company is
22 going to be running these meetings, and that's a little
23 bit different than what I had understood.

24 MR. CARROLL: Again, Your Honor, I don't know
25 whether or not the company is going to be running the

1 meetings per se. I know that it falls on the company to
2 go scout around its own service territory and find schools
3 or the different locales and is going to be responsible
4 for at least reserving and setting up the locations for
5 the public forums. I believe under the decision, Sulphur
6 is then required to docket by -- I think it was by
7 July 31, a summary report. I think that was in
8 Commissioner Mayes' amendment.

9 Sulphur's intention at this point is certainly
10 not to wait that long to do that. Whatever the problem,
11 whatever the solution is going to be to the capacity
12 problem, whether it's building the 69kV line or some other
13 result that comes out of this thing, the sooner that
14 determination is made, the sooner Sulphur is going to be
15 in a position to get capacity relief to the area.

16 So anyway, that's my understanding as to how
17 Sulphur is planning on proceeding, and those public forums
18 should be set up in January to occur at the very least in
19 the February/March time frame.

20 ALJ RODDA: Okay.

21 MS. DOWNING: Your Honor, may I make some
22 comments?

23 ALJ RODDA: Yes.

24 MS. DOWNING: I know we've kind of gone off
25 talking about this. But, you know, everything Mr. Carroll

1 is saying, to me, the impression is that consolidation
2 would be in the best interests of the cooperative members
3 since we have a pretty stout legal bill on this whole
4 situation, especially since now we're depending on the
5 feasibility study and from independents as far as
6 listening to the community concern.

7 But the other thing, too, and I brought this up
8 at our previous meeting, was that the line was not
9 supposed to be installed until 2010, and so I had brought
10 that up previously. What was the plan? Were they going
11 to file for a moratorium anyway, even though, you know,
12 the line wasn't supposed to go in until 2010 to bridge
13 this supposed problem that they have?

14 I can't help but to totally agree with Staff as
15 far as the timing on the company's, you know, request on
16 the moratorium, how it was an emergency, and then all of a
17 sudden it wasn't an emergency, which was the point I tried
18 to make.

19 I also have many concerns since I have not gotten
20 any discovery. I think the raw data is what we're really
21 looking for, not only for Staff but also for myself.
22 Because the trend that we have seen in our community, as I
23 had mentioned previously, is less usage, especially
24 through this winter. We have empty houses. We have
25 foreclosures. We have recessions where people are really

1 conserving, plus we had the rate increase, which people
2 are conserving.

3 And then one of my biggest concerns is that I
4 have friends and neighbors that are waiting for renewable
5 energy hookups with Sulphur Springs. They have the
6 systems already installed, and they're waiting over four
7 weeks and Sulphur Springs is pushing them off on the
8 inspections, which, of course, impacts our moratorium
9 situation because this is what is helping us or will help
10 us as far as peak, putting in renewable energy systems.

11 So there's a whole bunch of things that are going
12 on out there, and so that's one reason why, first of all,
13 I need the discovery, and I'm going to ask if you can't
14 perhaps maybe set a date for the company to get those
15 answers to me so that we can proceed with this. And, of
16 course, it will be left up to you whether or not we
17 proceed with it with the 45 days, or whether or not we
18 consolidate. But either way, I do need an opportunity to
19 get the raw data that I requested. And if you could help
20 me get that, I would surely appreciate it.

21 I'm fine with going forth also with the hearing
22 in January, but the biggest thing is I do need the
23 discovery, and then I also need an opportunity to look at
24 what they provided to make sure that it's of substance so
25 that I can look at this issue, because I might have some

1 other data requests, depending on what they get back to me
2 on.

3 ALJ RODDA: Here is what I think we need to do.
4 I think that even as of today, the January -- because of
5 notice issues, that the January hearing date is not
6 feasible. Also, I hear what the company is saying, that
7 if they didn't get this in place by December, that you
8 might as well -- I mean, taking additional time is not
9 going to add that much detriment, or I don't know what
10 word I'm looking for.

11 But I think we're going to use the January 20
12 date as another procedural conference to see where we are,
13 whether we need to schedule the hearing sooner, which is
14 going to be hard because of the hearing schedule, or
15 whether it should be consolidated or not consolidated as
16 Mr. Carroll suggested.

17 I will issue a procedural order, and I think I'm
18 going to tell the company that you should respond to the
19 discovery requests that you're not objecting to.

20 MR. CARROLL: Your Honor, on that particular
21 issue, regardless of the fact that we have objected to
22 some of the data requests, what Sulphur really informs
23 me -- and, again, it will ultimately, of course, comply
24 with whatever discovery requirements are necessary -- the
25 discovery -- the requested information that we have not

1 objected to, because we've given Ms. Downing the benefit
2 of the doubt on relevance, some of it is still going to be
3 very, very time-consuming and burdensome for the company
4 to respond to. Again, we didn't object to it, I mean, and
5 they will do it.

6 Sulphur has a -- she's asking for a lot of
7 information. Sulphur has very limited staff and staff
8 that's wearing a couple of different hats and going into
9 the Christmas/New Year's time frame in terms of other end
10 of the year and beginning of the year requirements,
11 compliance and otherwise, that it has to do. And it is
12 not in a position that it could simply turn around that
13 level of requested information within 10 days.

14 We feel that once we know for sure how this
15 moratorium proceeding is going to be moving forward and,
16 obviously, the most critical time from Sulphur's
17 perspective in terms of end of year, beginning of year
18 requirements, it's going to be in a much better position
19 to turn its attention over towards responding to those
20 discovery requests.

21 And again, Sulphur wouldn't necessarily hold them
22 all until they got them done. As they were completed, you
23 know, we can certainly feed Ms. Downing the information as
24 it's completed. But we would request that at least at
25 this point that the discovery remain to be stayed.

1 Ms. Downing having that information between now and
2 January 20 is certainly not going to change anything in
3 terms of when this hearing is going to be and whether or
4 not it's going to be consolidated, and it really would
5 place a burden on Sulphur if it needs to do that at this
6 point.

7 MS. DOWNING: May I comment on that?

8 ALJ RODDA: Yeah.

9 MS. DOWNING: You know, you are talking about a
10 burden that is on a company where people are working
11 40-hour weeks and have an extensive staff, and I'm just
12 one citizen that is trying to find discovery. They are
13 well staffed as far as clerical and engineering. I think
14 they have five or six people in their engineering
15 department.

16 And in order for them to come to the conclusion
17 that a moratorium is needed, I would hope that they've
18 already been through the exercise of looking at that raw
19 data that I'm requesting. I cannot help but to think that
20 they're hiding something here, and that's why it's so
21 important that I do get that discovery. And I just can't
22 help to start to feel that this is a tactic to prevent a
23 co-op member from getting the information on my company.

24 MR. VAN CLEVE: Your Honor, this is Wes Van
25 Cleve, if I may add something. I don't know how far

1 afield to go into the other docket, but if you recall that
2 the company when it was requesting the rehearing on the
3 rate case, originally it was seeking to have a hearing on
4 that rate case, I think it was in January, and they were
5 wanting testimony to be filed in December, testimony filed
6 in January. And now that we're discussing a moratorium
7 and her request for some discovery, it takes too much
8 time. And I think that should be considered.

9 MR. CARROLL: Your Honor, again, if I may, again,
10 the implication of inconsistency --

11 ALJ RODDA: You know, I don't --

12 MS. DOWNING: -- Sulphur has moved on and
13 redeployed its resources from that request, as well as the
14 fact that we were talking about a fairly narrow scope of
15 hearing for January. We're talking about apples and
16 oranges here.

17 ALJ RODDA: And I don't -- I'm tired of talking
18 about inconsistency. I just want to talk about how we're
19 going to get these matters resolved, and I don't think
20 anyone has acted inconsistent.

21 I just want to -- I'm not sure I fully understand
22 what you're saying. I understand what you're saying that
23 it's the end of the year, it's the holidays, it's year-end
24 reporting, it's a critical time for the cooperative. But
25 I'm not sure I understand why you can't start providing

1 the discovery, some of it. I mean, working through it.
2 Ten days might not be realistic in this case, but I just
3 don't understand why you can't start.

4 MR. CARROLL: May I have Mr. Orosco, who is on
5 the phone, respond to that? He's the chief engineer.

6 ALJ RODDA: Okay.

7 MR. CARROLL: Ron, are you there?

8 MR. OROSCO: Yes. This is Ron Orosco, manager of
9 Sulphur Springs. And thank you very much for allowing me
10 to comment.

11 As we looked at our request for a stay, and as
12 stated in that request, the burdensome nature of the
13 request, even those requests that we agreed to supply, are
14 indeed just that. It would take us a lot of time to put
15 that together.

16 We have our system in winter configuration. We
17 have some construction crews shipped up to the Mogollon
18 Rim to help with an outage there. We just had an outage
19 on Sonoita that actually overloaded the transformer.

20 And so to be told four times, once by Ms. Downing
21 and three times in Staff testimony, that they don't see
22 that this is an emergency, it's just hard for me to
23 understand why we're not treating this as indeed such. We
24 could have lost that transformer with the overloads we had
25 just on Tuesday night.

1 So my staff is terribly burdened by this whole
2 process, with all due respect. But to be able to respond
3 to raw data -- she said she wants raw data. She's not
4 trusting that we have even typed in a handwritten outage
5 report from our linemen with copies filled out and
6 everything. She's questioning whether we're even doing
7 that right. And the question of impropriety is going to
8 the heart of Sulphur Springs' reputation.

9 MS. DOWNING: May I comment on that, Your Honor?

10 ALJ RODDA: All right.

11 MS. DOWNING: One of my data requests was the
12 copies of the outage reports from the linemen, and they
13 told me they didn't have any. And Mr. Orosco, I guess,
14 just answered my question, yes, they do.

15 The data request was made November 2. So I guess
16 my question is, how much progress have they made on the
17 portions that they said they would turn over to me?
18 Because I would hope that all of this data was already
19 available and reviewed in order to actually make the
20 conclusion that they would need a moratorium.

21 And I just -- I think being so patient from
22 November 2 is just way beyond -- I mean, we're going on a
23 month and a half, and I have not gotten anything. I even
24 had asked them if they could get back to me within those
25 10 business days to tell me whether or not the data was

1 available, and they never even contacted me. And so
2 that's why I am pleading for the information that I really
3 need to go forth with my case.

4 And the reason why I had asked for raw data is
5 because, for instance, the outage that he just mentioned,
6 there was public release of some ACC reports that just
7 were sent out after that outage indicating it was severe
8 wind that we had from the storm that came through, and my
9 understanding was it was a blown down pole. And so now
10 I'm hearing some other things that we had met peak, which
11 we hadn't met peak even last year.

12 So that's why my request is so important, and I
13 just really feel that they're hiding things from us.

14 ALJ RODDA: All right. Does anyone else have
15 anything else to say today?

16 MR. OROSCO: I guess at the risk of being out of
17 order here, this is Ron Orosco with Sulphur Springs again.

18 In the last discussions, 13 times Sulphur Springs
19 was accused of hiding data, stacking data, falsifying
20 data, and I just -- I don't understand how that can
21 continue to be allowed without some opportunity to rebut.

22 And secondly, the issue of the capacity, we've
23 tried to simplify this issue as much as possible by saying
24 the transformer has 7kVA. We haven't gotten into coal
25 load pickup. We haven't gotten into --

1 ALJ RODDA: Mr. Orosco, I don't want to hear the
2 substance. I just want to hear procedural issues today.
3 And I understand how you feel, but I can't get into it
4 today, nor do I want to. So we're talking discovery and
5 we're talking scheduling.

6 Any other procedural matters that people want to
7 talk about before I take it under advisement and issue a
8 procedural order?

9 Mr. Carroll, anything?

10 MR. CARROLL: No. Thank you, Your Honor.

11 ALJ RODDA: Mr. Van Cleve, is there anything you
12 want me to know?

13 MR. VAN CLEVE: Nothing further, Your Honor.

14 ALJ RODDA: Ms. Downing?

15 MS. DOWNING: No. Just thank you for your
16 patience.

17 ALJ RODDA: Okay. Well, I'll take the matter
18 under advisement and issue a procedural order as soon as I
19 can to give you all some direction.

20 MR. VAN CLEVE: Appreciate that, Your Honor.

21 MS. DOWNING: Thank you.

22 MR. CARROLL: Thank you.

23 ALJ RODDA: Thank you all for appearing so
24 quickly.

25 (Procedural Conference concluded at 10:50 a.m.)

1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

3

4 I, MICHELE E. BALMER, Certified Reporter
 5 No. 50489 for the State of Arizona, do hereby certify that
 6 the foregoing printed pages constitute a full, true and
 7 accurate transcript of the proceedings had in the
 8 foregoing matter, all done to the best of my skill and
 9 ability.

10

11 WITNESS my hand this 12th day of December, 2009.

12

13

14

Michele E. Balmer

15

 MICHELE E. BALMER
 Certified Reporter
 Certificate No. 50489

16

17

18

19

20

21

22

23

24

25