



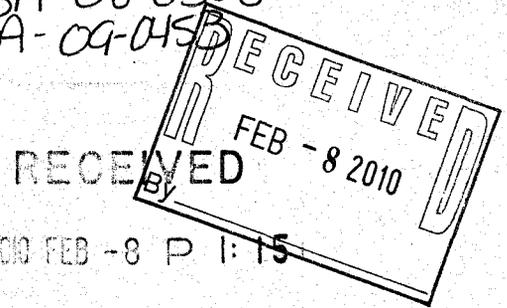
0000107236

E-01575A-08-0328
E-01575A-09-0453



**Sulphur Springs Valley
Electric Cooperative, Inc.**

P.O. Box 820
Willcox, AZ 85644
Telephone (520) 384-2221 FAX (520) 384-5223



ORIGINAL

2010 FEB - 8 P 1:15

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

February 8, 2010

Arizona Corporation Commission

DOCKETED

FEB - 8 2010

HAND DELIVERED

Commissioner Paul Newman
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007



**Re: Reconsideration of February 4, 2010, Letter Filed in Docket
Nos. E-01575A-08-03281 and E-01575A-09-0453 ("Dockets")**

Dear Commissioner Newman:

I have been instructed and authorized by the Sulphur Springs Valley Electric Cooperative, Inc.'s ("SSVEC" or "Cooperative") member-elected Board of Directors ("Board") to send you this letter on their behalf, in response to your February 4, 2010, pejorative letter to "Colleagues, Parties and Other Interested Persons" ("Letter") that you docketed on February 5, 2010. Despite the cordial overture that you made at the very beginning of your Letter for "SSVEC and all interested parties to 'lay down' arms and commit to a more productive dialogue," your Letter then immediately proceeds to remarkably do the exact opposite by inflaming what is already a highly volatile situation. To put it another way, you asked SSVEC if it would "bury the hatchet," but you then attempt to bury SSVEC (both literally and figuratively) with that very same hatchet through your questions and suggestion for a further work session that would circumvent the express orders of the Arizona Corporation Commission ("Commission") to expeditiously resolve this matter. SSVEC is concerned that given the timing, circumstances, and scope of the Letter, it may have been docketed in retaliation because the Cooperative exercised its legal rights and to further delay these proceedings in order to accommodate those few vocal and well-organized individuals that have so assiduously sought to stop the Sonoita Reliability Project ("Project") at the great expense of the overwhelming majority of SSVEC ratepayer-members.

Background and Approximate Cost to the Cooperative

As you know, SSVEC is not an investor-owned utility, but a member-owned small rural electric cooperative which is managed by the members' elected Board. As there are no shareholders to absorb additional and unexpected regulatory costs, it is the ratepayer-members that must directly foot the bill for such costs though the payment of higher rates. After 16 years, SSVEC initiated its rate case that took over 14 months and cost the Cooperative approximately \$400,000 (not including SSVEC staff time) through the conclusion of the rate case in August of 2009.

A Touchstone Energy® Cooperative



The Commission's adoption of your amendment, which prohibited SSVEC from proceeding with the Project and the construction of a new 69 kV line and substation, is an action that the Cooperative maintains exceeded the jurisdiction of the Commission. However, rather than seek immediate judicial relief challenging such action, SSVEC determined that it would work cooperatively with, and through, the Commission process, and exercise its rights under Arizona law and the Commission's own regulations, to seek reconsideration of the Commission's determination and to seek a moratorium on new hookups to prevent further degradation of its existing V-7 Feeder Line until such time that the Commission authorized SSVEC to continue with the Project.

As decisions of the Commission are not stayed during the reconsideration process, SSVEC proceeded to fully and timely comply with each and every aspect of Commission Decision No. 71274 ("Decision"). This included the commissioning of the Independent Feasibility Study ("Independent Study") and filing of the Independent Study with the Commission by December 31, 2009. Additionally, on October 30, 2009, in compliance with the Decision, SSVEC filed its report indicating its plan to conduct public forums in February and March 2010 consistent with the requirements of the Decision.¹ During this time, in connection with the Reconsideration and Moratorium Proceedings, SSVEC complied with all aspects of the Administrative Law Judge's ("ALJ") procedural orders, responded to discovery, attended procedural conferences, and filed necessary pleadings. Upon the filing of the Independent Study that independently confirmed the Cooperative's and Staff's conclusions for the immediate construction of the 69 kV line, SSVEC filed its *Petition to Amend Decision No. 71274 Pursuant to A.R.S. §40-252 and for Related Authorization* ("Petition"), as well as supplemental information in the form of an Independent Poll, requesting the Commission's authorization for immediate construction of the line and cited to exigent circumstances demonstrating that the requested relief is in the public interest.

Since the conclusion of SSVEC's rate case in August 2009, and the Commission's Decision prohibiting the construction of the 69 kV line, it has already cost SSVEC and its ratepayer-members approximately \$500,000 in additional expenses to conduct the Commission-mandated Independent Study and for legal fees.

At a Special Open Meeting of the Commission held on February 3, 2010, the Commission unanimously voted to:

¹ On January 29, 2010, the ALJ issued a Procedural Order requiring SSVEC to file by February 10, 2010, a report providing more detailed information on the public forums.

... grant Sulphur Springs Valley Electric Cooperative's Petition to Amend Decision No. 71274 pursuant to A.R.S. §40-252 and for related authorization for the purposes of further consideration of whether Decision No. 71274 should be amended and the request for related authorization should be approved; and also grant the Cooperative's request for expedited consideration of its Petition and direct the Hearing Division to conduct appropriate proceedings and prepare a recommended opinion and order for Commission consideration on an expedited basis. (Emphasis added.)

The very next day, the ALJ issued a Procedural Order scheduling a Procedural Conference for February 10, 2010 to expedite the proceeding consistent with the Commission's unanimous wishes. Curiously, however, on that very day, you issued your Letter.² The Letter has no less than 65³ questions, many of which will require considerable time, resources, and expense in order to properly respond. SSVEC estimates that to thoroughly and accurately respond to the Letter will cost the Cooperative and its ratepayer-members (the vast majority of which do not live in the Sonoita area) an additional \$25,000 to \$30,000 between outside consultants, legal fees, and staff time. Moreover, your Letter suggests that there be some kind of "work sessions in Sonoita before we continue these highly-charged discussions." This can only be interpreted as your attempt to further delay the process, thereby circumventing the Commission's February 3, 2010, Order for the expeditious consideration and resolution of this matter.

Many of the Letter's Questions Irrelevant, Improper, and/or Violate Due Process

There are many questions contained in the Letter that have no relevance to the Dockets, or are not based upon fact, but upon inaccurate and false assertions raised by Intervenor and/or others that have vehemently opposed construction of the 69 kV line. Here are just a few examples:

4. *There are a number of outstanding discovery requests by interveners. I respectfully request that SSVEC answer the outstanding questions as soon as possible. This is an untrue claim repeatedly raised by the Intervenor. SSVEC has timely responded to, or is in the process of timely responding to, every data request in compliance with the ALJ's procedural orders. With respect to some data requests, SSVEC has exercised its rights under the Commission's Rules and the procedural orders to make proper and*

² Although the Letter is dated February 4, 2010, it wasn't docketed until the morning of February 5, 2010.

³ The 65 questions are comprised of the 38 enumerated questions in the Letter, and the request in question 16 to respond to the 27 points brought up by Mr. Magruder.

timely objections to certain data requests and has since tried to work those issues through with the Intervenor to accommodate their requests. SSVEC should not be required to waive its rights to raise such objections as a result of the Letter.

7. *Please provide a list of every SSVEC member who has requested a solar rebate, along with the date the rebate was requested, and the amount requested.* This question has no relevance whatsoever to the issues raised in the Dockets and requests the Cooperative to make public specific customer information in contradiction to the Commissions own regulations and practice.
12. *Why does SSVEC believe that it is exempt from the ACC's jurisdiction?* SSVEC has made no claim in these Dockets or in any other docket that it is exempt from Commission jurisdiction.
15. *Please provide a copy of every letter sent to each net metered customer and/or each customer with solar panels installed along with the date the rebate was requested, and the amount requested.* This question has no relevance whatsoever to the issues raised in the Dockets.
- 16-21 *Questions from Marshall Magruder to Docket dated January 27, 2010, (including the additional 27 points raised).* Mr. Magruder is not an intervenor in the Dockets and is not an SSVEC member. Notwithstanding, he continues to file comments in the Dockets and make public comments. However, because he is not an intervenor, he has no right to issue discovery requests to SSVEC. Although SSVEC does not dispute that a Commissioner does have the ability to ask the same questions that Mr. Magruder might as an intervenor, SSVEC believes that under these unusual circumstances, requiring the Cooperative to respond to Mr. Magruder's questions in this manner denies the Cooperative of certain due process rights. For example, if Mr. Magruder was an intervenor and propounded these data requests: (i) the Cooperative would have the ability to raise proper objections. SSVEC is denied this ability since the questions are being asked through a Commissioner; (ii) SSVEC would be free to send Mr. Magruder data requests to further understand the basis of his comments and questions, to inquire as to his background, experience, and qualifications, in relation to the 27 points raised in his letter and other claims he has made in these Dockets; and (iii) the Cooperative would have the ability to cross-examine Mr. Magruder under oath at an evidentiary hearing. SSVEC believes that having the

Cooperative respond to Mr. Magruder's questions in this manner puts the Cooperative at an unfair disadvantage and denies SSVEC due process rights, as it is not able to cross examine him as to the basis for his statements, to the extent the Commission decides to consider Mr. Magruder's input as part of its deliberations on this matter.⁴

38. *Would SSVEC be amenable to an audit of its REST program to help answer some of the above questions?* SSVEC believes this question to be provocative and has no relevance whatsoever to the issues raised in the Dockets. SSVEC will be filing its annual report on its REST program within the next two months per Commission requirements. Additionally, the Commission already has the right to audit SSVEC's REST program at any time. If, however, you have concerns and the Commission wants to conduct an audit of the Cooperative's REST program, perhaps SSVEC should suspend its REST program until such audit is completed.

Sonoita Work Sessions

Pursuant to the requirements of the Decision, on October 30, 2009, SSVEC filed a report with the Commission outlining the proposed public forums that will be conducted regarding the Project. The report indicated that SSVEC intended to conduct the public forums in February and March in various communities within its service territory. By Procedural Order dated January 29, 2010, the ALJ ordered the Cooperative to file by February 10, 2010, another report providing more detail regarding public forums and requiring an independent moderator to conduct the public forums.⁵ Additionally, at the January 13, 2010, Open Meeting, the Commission passed your amendment to the SSVEC Net Metering Tariff decision ordering the Cooperative to have three (3) town hall meetings. Accordingly, there are a significant number of public meetings that are already required to be scheduled to address the issues in the Dockets.

SSVEC is concerned that despite the Commission's clear desire to expedite final consideration of these Dockets, your suggestion "to hold a work session in Sonoita before we continue these highly charged discussions," is an attempt to further delay these matters in contradiction to the February 3, 2010, Commission action. SSVEC will

⁴ SSVEC is aware that Mr. Magruder has been assisting at least one of the Intervenors in the Dockets, but for some reasons has not applied for intervention on his own.

⁵ IT IS FURTHER ORDERED that SSVEC shall file a report providing more detailed information on the public forums on the feasibility report by February 10, 2010, such report to include the times and locations of the forums and a description of SSVEC's efforts to advertise the public forums and to make the feasibility report available for review and copying by the public. ...SSVEC shall engage an independent moderator to conduct the public forums.... January 29, 2010, Procedural Order at page 11, lines 14-19.

already be conducting public forums to discuss the Independent Study and renewable generation options for the Sonoita area. Such public forums will not negate what the conclusions of the Independent Study, or the results of the Independent Poll of SSVEC members. Another "work session" will only serve to delay the process, which is not the intent of the Commission.

Attached E-Mail from Jack Blair to SSVEC Employees Dated 1/23/2010

By asking about this e-mail and attaching it to the Letter, you appear to be taking issue with this action. You should be aware that this action was specifically authorized by SSVEC's Board in response to the constant barrage of e-mails, letters, and public comments filed in the Dockets; a great many of which contained untrue and inaccurate assertions about the Cooperative, its personnel, and the Project. This has been going on for many months.⁶ During this time, many SSVEC employees and members were asking what they could do to help refute the spurious allegations and claims raised by a few members that were causing such devastating damage to the Cooperative's reputation, and further resulting in higher rates that all members would be required to pay as a result of the Commission's Decision. SSVEC has been committed to working through the Commission process and procedures to resolve these issues and not resort to the unethical and unfair tactics utilized by this vocal minority, so as not to further burden the Commission.

However, the situation reached a point where the Cooperative needed to protect itself and set the record straight. As I stated in my January 27, 2010, cover letter to the Dockets, which contained the Independent Poll that was filed as Supplemental Information in support of our Petition:

... at recent Open Meetings of the Commission, various Commissioners have told SSVEC representatives that they are concerned about the level of complaints they continue to receive and that the Cooperative does not appear to have a good relationship with its members.

⁶ It should be noted that the Cooperative started becoming concerned that many of the e-mails and letters sent to the Commission in support of the Cooperative were inexplicably mislabeled in the Dockets as "Customer Letters in Opposition" when in fact those letters should have been labeled "Customer Letters in Support." (Ironically, the letter of an SSVEC member-employee was labeled as a letter of opposition instead of support.) Therefore, a quick scan of the Dockets would give the impression that the vast majority of letters and e-mails sent to the Commission reflected opposition to the Cooperative and the proposed 69 kV line, which may have been a contributing factor in giving the Commission the wrong impression of SSVEC and community opposition to the Project. We have since contacted Docket Control and the Executive Director's Office, who has offered its assistance in working with us to correct these errors to ensure the accuracy of the Dockets.

This greatly concerned SSVEC's member-elected Board of Directors and management and prompted the Cooperative to initiate an independent survey of its membership to primarily address how the members feel about their Cooperative, as well as test the vehement claims of those that oppose the 69 kV line, that the approximately 2,500 members in the Sonoita/Patagonia area oppose the construction of the line.

It was these statements made by the Commissioners at the recent Open Meetings, as well as the numerous public attacks made regarding SSVEC's reputation, that also prompted management to authorize Mr. Blair's e-mail to employees in order for the Commission to have an opportunity to hear from both sides. Employees were not required to do this and were asked to use their personal e-mail as would any member. Moreover, you inquired as to why our employee e-mail indicated that friends and family did not have to live in Arizona. You should be aware that approximately 25 percent of those individuals that spoke at Commission public comments sessions opposing the project were not even SSVEC members. Our belief is that if our employees have friends and family who are familiar with the Cooperative and the way it treats its members, they, too, should be able to weigh in with their opinions. We believe that under the circumstances I have outlined, our actions regarding the sending of the e-mail to employees was necessary and justified.

Opposition Tactics

SSVEC has fully complied with the Commission's rate case Decision and has made all required filings in the public docket. It has also fully complied with every ALJ Procedural Order. Notwithstanding, those few members opposing SSVEC's plans for construction of the 69 kV line continue to make claims against the Cooperative alleging a lack of transparency, stonewalling, and not providing accurate information. All of this rhetoric is completely false. At the Open Meeting on August 17, 2009, you heard comment after comment asking for an Independent Study to verify SSVEC's analysis, conclusions, and plans. You heard statements to the effect that the majority of residents in the Sonoita area oppose the line. SSVEC provided the Commission the Independent Study that it requested. Unfortunately, for those that oppose the line, it corroborated everything previously said by the Cooperative. We also filed an Independent Poll demonstrating that the vast majority of members in the Sonoita area do want the line as they are unsatisfied with the unreliable service and the Commission-imposed delay of the resolution of this capacity problem.

At this juncture, the only option open to those opposed to the line is to attack the Independent Study and the Independent Poll, and delay as long as possible the Commission's final action authorizing the construction of the line. SSVEC has received information from several reliable sources on the condition of anonymity (because of their fear of reprisal), that following the Commission's February 3, 2010, vote ordering the expedited proceedings on the Petition, meetings were immediately held by those opposed to the 69 kV line. It is our understanding that some individuals opposed to the Project are planning to orchestrate a comprehensive and immediate campaign to do *whatever is necessary* to cause the Commission to delay its final determination. This includes flooding the Commission with more e-mails and letters, inundating the Cooperative with more data requests, having meetings with legislators, gathering petition signatures, and claiming that they do not have sufficient time and information to prepare the case. Moreover, there were claims made that your office would assist such individuals.

What is most disturbing to the Cooperative, and should also be to the Commission as well, is that we have been advised there were discussions regarding one spurious tactic that was advocated to "dig up dirt" on myself, Jack Blair, our consultants, and certain key SSVEC employees who have been involved in the Project. We sincerely hope this is not true, but we plan to ask the Intervenors in data requests (and should the opportunity arise under oath at the hearing) whether they are aware of these meetings, what was said during such meetings, and who said it regarding this tactic, and if there was any follow-through with regard to such tactics. If we learn this to be true, and as a result the Cooperative or any of its employees have been harmed, the Cooperative will consider taking whatever legal action it is entitled to take against these individuals in order to protect itself and its employees from such unscrupulous acts.

I raise all of this because, to the extent any of this is true, it is illustrative of the "circus" atmosphere that will be proliferated the longer this proceeding continues. We are concerned that your Letter adds validity and justification to these actions and tactics that these few individuals have utilized, and will continue to utilize in the future. This is why we continue to urge the Commission to resolve this matter as expeditiously as possible and to put a stop to all of this nonsense once and for all.

Conclusion

SSVEC is a cooperative managed by its member-elected Board. The Board has made careful and prudent decisions with respect to its determination as to what is in the best interest of the Cooperative and its members. The Commission-mandated delay of SSVEC's plans to construct the 69 kV line as already resulted in approximately \$500,000 of additional expenses that must be paid directly by all of SSVEC's ratepayer-members, as there are no shareholders to absorb such costs. Adequately responding to your Letter

Commission Paul Newman
February 8, 2010
Page 9 of 11

will cost the Cooperative and its members approximately \$25,000 to \$30,000 of additional costs. Moreover, this proceeding is still not over and to finish this process in the manner previously contemplated by the Commission will add considerably more expense before it is over. We estimate the total cost of these Dockets will be in excess of one million dollars.

The Cooperative has done everything that the Commission has asked at great expense, and on many levels, in order for the Commission to be in a position to make its public interest determination regarding the Project. The information has been duly docketed and will not change. These relatively few number of individuals opposing the Project (some of which for self-serving reasons and without regard to the rate impact to their fellow members resulting from their actions) will do anything and everything they can to further delay this process and disparage the Cooperative. Your Letter, in effect, lends support and credence to these actions; actions which the Commission should not condone as they result in an abuse of the Commission and its resources and provide an opportunity for those opposing the Project to continue to orchestrate what I have heard described as a "circus atmosphere." These actions increase rates, and result in the continuation of the unreliable electric service to the Sonoita area at the expense of approximately 2,500 members, most of which want the Project completed. This needs to stop and needs to stop expeditiously so all concerned can move on.

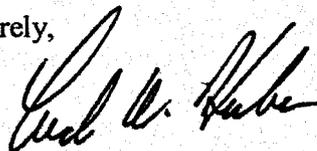
On the basis of the foregoing, SSVEC respectfully requests that you reconsider your Letter. SSVEC further requests that you withdraw your suggestion for additional "work sessions" in the Sonoita area in favor of the expeditious and "appropriate proceedings" as determined by the ALJ as expressly ordered by the Commission, as well as the public forums that SSVEC is already required to conduct in compliance with the Decision.

Additionally, based upon the timing, scope, and content of the Letter, as well as various public statements that you have made on the record and at various Open Meetings concerning the Cooperative and the issues in these Dockets, SSVEC is very concerned that you may have prejudged the issues in these matters.⁷ Although I do not make this request lightly, and with all due respect, in order to ensure the integrity of the Commission and this process, the Cooperative requests that under the circumstances, you seriously consider whether it would be appropriate for you to recuse yourself from any further participation in these Dockets.

⁷ Just one example of this is your Letter states "clearly some transparency is in order," suggesting that SSVEC has not been completely open with respect to everything it has filed with the Commission in connection with the Project demonstrating the vast amount of information that it has provided to the Commission and the Cooperative's members regarding the Project. This is a claim that has repeatedly been made by those opposing the Project which SSVEC has refuted on numerous occasions.

Commission Paul Newman
February 8, 2010
Page 10 of 11

Sincerely,



Creden W. Huber
Chief Executive Officer

SSVEC Board of Directors Listed Below

**Dan Barrera, President
Benson**

**Ronald Kline, Vice President
Sierra Vista**

**Pat English, Treasurer
McNeal**

**Charles Brown, Secretary
Pearce, Sunsites**

**Kathy Thatcher, Director
Willcox, Bowie, San Simon**

**Curtis Nolan, Director
Willcox**

**Andrew B. Mayberry, Director
St. David**

**Joseph Furno, Director
Elgin, Patagonia, Sonoita**

**Don Kyle, Director
Sierra Vista**

**Harold L. Hinkley, Director
Sierra Vista**

Commission Paul Newman
February 8, 2010
Page 11 of 11

Cecil O. Carlile, Director
Sierra Vista

David Luna, Director
Hereford

Gene Manning, Director
Sierra Vista

Cc: Kristin K. Mayes, Chairman
Gary Pierce, Commissioner
Sandra D. Kennedy, Commissioner
Bob Stump, Commissioner
Steve Olea, Director of Utilities
Janice Alward, Chief Counsel
Lyn Farmer, Chief Administrative Law Judge
Wesley C. Van Cleve, Attorney
Jane Rodda, Administrative Law Judge
Susan Scott, Intervenor
Susan J. Downing, Intervenor
James F. Rowley, III, Intervenor
Docket Control (14 copies)