

ORIGINAL



0000107689

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

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

IN THE MATTER OF THE APPLICATION OF HUALAPAI VALLEY SOLAR LLC, IN CONFORMANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES §§ 40-360.03 AND 40-360.06, FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING CONSTRUCTION OF THE HVS PROJECT, A 340 MW PARABOLIC TROUGH CONCENTRATING SOLAR THERMAL GENERATING FACILITY AND AN ASSOCIATED GEN-TIE LINE INTERCONNECTING THE GENERATING FACILITY TO THE EXISTING MEAD-PHOENIX 500KV TRANSMISSION LINE, THE MEAD-LIBERTY 345KV TRANSMISSION LINE OR THE MOENKOPI-EL DORADO 500KV TRANSMISSION LINE.

Docket No. L-00000NN-09-0541-00151
Case No. 151

Arizona Corporation Commission
DOCKETED

JAN 22 2010

PROCEDURAL ORDER

DOCKETED BY *MW*

An Application for a Certificate of Environmental Compatibility was filed in the above captioned matter with Docket Control of the Arizona Corporation Commission ("Commission") on November 23, 2009. A copy of the Application was transmitted to John Foreman, designee of the Attorney General of Arizona, Terry Goddard, as Chairman ("Chairman") and Presiding Officer of the Arizona Power Plant and Transmission Line Siting Committee ("Committee"). A.R.S. §§ 40-360.01(B) (1) and 40-360.03. A hearing/meeting of the Committee was held on January 12 and 13, 2010. After the hearing, the Applicant has filed an Application for Ratification and Reconsideration of Intervention Request. The Application for Ratification and Reconsideration of Intervention Request first asks for ratification of the action of the Committee in granting the CEC on January 13, 2010, because the Chairman erroneously advised the public at the beginning of the hearing that "[r]ecording is inappropriate." (*Reporter's Transcript, page 5, line 12*). A.R.S. § 38-431.01(F) allows recordation of a public meeting of a public body unless it interferes with the meeting. This error was not called to the attention of the Chairman at the time it was made or at any other point in the meeting so it could be corrected.

The Chairman had previously ordered that expedited transcripts be prepared and filed with the Commission and provided to two local libraries within three days after the hearing. See Pre-Hearing Procedural Order of November 25, 2009. No allegation of

1 prejudice by any person is contained in the record. After consultation with a member of
2 the Open Meeting Law Enforcement Team of the Arizona Attorney General's Office, it
3 appears the inadvertent erroneous statement of the Chairman may be technical and not
4 require ratification. See *Karol v. Bd. Of Education Trustees*, 122 Ariz. 95, 593 P.2d 649
5 (1979); *Ahnert v. Sunnyside Unified School District #12*, 126 Ariz. 473, 616 p.2d 933
(App. 1980). However, the Applicant should not be placed in the position of having to
6 assume the risk that a reviewing court would agree, and the request for ratification
7 appears to be a reasonable option for the Committee to consider.

8 However, granting the second request made by the Applicant would make moot the
9 ratification request. If the Committee allowed the two individuals who asked to intervene
10 in the hearing to now intervene, as requested by the Applicant, it would reopen the
11 evidentiary portion of the hearing so the new interveners could cross-examine all the
12 witnesses who have already testified, and call the witnesses they wish to call. This would
13 presumably require at least one more day of evidentiary hearing and perhaps significantly
14 more. It is unclear whether the resumed evidentiary hearing should be held in Kingman.
15 The Committee is the decision maker for intervention requests and, therefore, is the
16 decision maker for any request to reconsider an earlier decision concerning intervention.

17 The record does raise two similar issues of waiver that the Committee must address
18 before or as it considers the merits of the reconsideration request. At the time the
19 Committee made its decision on the requests to intervene, the following exchange took
20 place between the Chairman and counsel for the Applicant:

21 [Chairman]:...Does the Applicant have a position to express with regard to
22 either of the motions to appear as parties or with regard to the Chair's offer
23 to allow these folks to testify as witnesses later?

24 MR. CAMPBELL: Your Honor, we don't have any objection to the
25 Committee calling Mr. Torres' client or Ms. Bensusan or Ms. Bayer so they
26 can lay out their position for you. (*Reporter's Transcript, page 13, ll. 3-10*)

27 The Application for Ratification and Reconsideration of Intervention Request does not
28 contain any citation to any other request by counsel for the Applicant to reconsider the
29 decision not to allow intervention during the hearing. So the Committee must decide
30 whether the Applicant waived the right to later ask for reconsideration, because it
31 affirmatively did not object at the time the decision was made so the Committee could
32 correct its decision. And, the Committee must decide the related issue: whether to allow
33 an Applicant to reopen the hearing when no newly discovered evidence, mistake or
34 unforeseen circumstance has occurred after the presentation of evidence is complete,
35 the Committee has concluded its deliberations and the Committee has voted on a final
36 CEC.

37 As authorized by A.R.S. §§ 40-360.01(C) and (D), 40-360.04 and A.A.C. R14-3-201(E),
the Chairman issues the following procedural order,

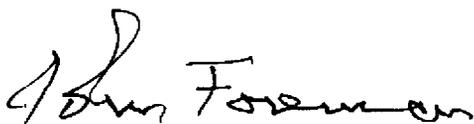
1 IT IS ORDERED the Applicant's Application for Ratification and Reconsideration of
2 Intervention Request shall be heard by the Committee on January 27, 2010, at 8:30 a.m.,
3 shortly before time presently scheduled for hearing in consolidated line siting applications
#153/#154 at the Hampton Inn located at 2000 North Litchfield Road, Goodyear, Arizona
85395; telephone number: (623) 536-1313.

4 IT IS ORDERED counsel for the Applicant in this matter shall contact counsel for the
5 Applicant in #153/#154 to make mutually agreeable arrangements for sharing the costs of
the venue.

6 IT IS ORDERED counsel for the Applicant in this matter shall have available the
7 necessary technological equipment and staff to alter the CEC filed on January 21, 2010,
8 to reflect the further actions of the Committee.

9 IT IS FURTHER ORDERED, the Chairman may amend or waive any portion of this
10 Procedural Order by subsequent Procedural Order, by ruling at a pre-hearing conference
or at a hearing.

11
12
13 DATED this 22nd day of January, 2010.

14
15
16 
17 John Foreman, Chairman
18 Arizona Power Plant and Transmission
19 Line Siting Committee
20 Assistant Attorney General
john.foreman@azag.gov

21
22
23 Pursuant to A.A.C. R14-3-204,
24 The Original and 25 copies were
filed this 22nd day of January, 2010 with:

25
26 Docket Control
27 Arizona Corporation Commission
1200 W. Washington St.

1 Phoenix, AZ 85007

2 Copy of the above was mailed
3 this 22nd day of January, 2010 to:

4
5 Janice Alward, Chief Counsel
6 Arizona Corporation Commission
7 1200 West Washington Street
8 Phoenix, AZ 85007
9 Counsel for Legal Division Staff

10
11 Thomas H. Campbell, Esq.
12 Lewis and Roca, LLP
13 Two Renaissance Square
14 40 North Central Avenue
15 Phoenix, AZ 85004
16 Counsel for Applicant, Hualapai Valley Solar

17
18 Susan A. Moore-Bayer
19 7656 West Abrigo Drive
20 Golden Valley, AZ 86413

21
22 Denise Bensusan
23 4811 East Calle Bill
24 Kingman, AZ 86409

25
26 Israel Torres
27 209 East Baseline Road, Suite E-102
Tempe, AZ 85283

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

Jana Williams