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2002 FEB 21 P 4:10

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Our File Number: 45643-00008

February 21, 2002

HAND DELIVERED

Janice Alward
Arizona Corporation Commission
Legal Division
1200 W. Washington Street
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

FEB 21 2002

DOCKETED BY	
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Re: Duke Energy Arlington Valley L.L.C. (AVEF II)
Docket No: L-00000P-01-0117

Dear Janice:

In reviewing Decision No. 64495, which amended Decision No. 64357, I noticed that only a portion of Spitzer Amendment No. 2 was deleted. Spitzer Amendment No. 2 contained two parts that were separated into Condition 20 and Condition 21 in Decision No. 64357. Condition 21 in Decision No. 64357 was not deleted in Decision No. 64495. Condition 21 required 1000 acre/feet/year recharge in conjunction with a dry cooled plant. At the February 12, 2002 Special Open Meeting, in response to a motion by Commissioner Spitzer, the Commission deleted Spitzer Amendment No. 2 and replaced it with a modified version of Spitzer Amendment No. 1. I have enclosed a transcript from the Special Open Meeting tape recording that contains the Commission's deliberations on this point.

The new Condition 20 in Decision No. 64495 requires the Applicant to recharge 3900 acre feet of water per year or an amount equal to its actual water usage, whichever is greater. Duke's understanding of the Commissioner's February 12, 2002 decision is that Condition 20 in Decision No. 64495 replaces and supersedes Condition 21 in Decision No. 64357. In other words, Duke is required to recharge 3900 acre feet (or actual use if more than 3900), but not the additional 1000 acre feet contained in Condition 21. Would you please confirm that Duke's understanding is correct and let me know whether any technical correction to Decision No. 64495 needs to be made?

Thank you.

Very truly yours,

LEWIS AND ROCA LLP



Thomas H. Campbell

THC/bjg
Attachments

cc: Docket Control, Utilities Division

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Irvin: Okay, we've already opened it, so we don't have to do this in formal. Okay, that's what I wanted to verify then.

Alward: But you would have to move on any amendments at the rehearing and state how you want to change them.

Irvin: Correct. So, that's what I'm going to ask my colleagues right now. Is it, are there any changes? Do we want to open up, and move to open up for any changes in the original decision number, a bunch of zero's, P. 01. 0117?

Spitzer: Mr. Chairman, thank you. Commissioner Irvin, from a procedural point of view, does the item need to be moved again, *ab initio*?

Irvin: If we have, if we're going to make changes we have to move to open it. That is correct.

Spitzer: Mr. Chairman, then I would move the Duke Energy Arlington Valley LLC, application, L, five zeros, P, 01, 0117. Mr. Chairman I would, let me articulate my rationale and then proceed with the precise motion. I remain concerned with the global impact on the aquifer. There are competing arguments both ways. But, frankly, my most significant concern with my Spitzer #2 that was made part of this certificate was the ... I'm sorry ...

Irvin: Spitzer #1 was adopted Mr. Chairman. You did not offer, I mean Commissioner, you did not offer Spitzer #2, according to my records.

Spitzer: No Spitzer #2 was the amendment adopted at the prior open meeting. The dry cooled.

Irvin: It was it Spitzer #2 that was adopted; Spitzer #1? I've got it backwards?

Spitzer: If Spitzer #1 was adopted, had been adopted we wouldn't be here, I suspect.

Campbell: It is Spitzer #1 that we are asking for ...

Spitzer: But Spitzer #2 was adopted.

Chairman: So, we're back.

Spitzer: Mr. Chairman, my concern with the dry cooling is, and I think it was highlighted by Mr. Peters' comments regarding the emissions impact. I'm concerned from a process and procedure point of view, that there was not enough of a record on the

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dry cooling technology. And given the close call in this case that is a great concern to me. So, Mr. Chairman, what I would propose to do would be to delete Spitzer #2 from the certificate and insert in its stead Spitzer #1 and I do have some amendment to Spitzer #1, if I may?

Chairman: No, I appreciate that cause I wanted to get Mr. Campbell's position on the additional 700 acre feet per year. We never did get to that issue either. And I don't know what your amendment's going to be.

Spitzer: Well, let me, let me for discussion purposes go forward with my amendment and then we can discuss it and see if we can reach some accommodation. Spitzer #1 provides, the second sentence, the applicant shall recharge 3,900 acre feet per year of water through the recharge project for the useful life of the AVEF II facility. I would propose an amendment to that amendment: after water, 3,900 acre feet per year of water, and there was some discussion about what was the actual usage of that plant, or it's actual use on an acre foot for acre foot basis, whichever is greater. That was one of the problems with Spitzer #1 was the precise amount of the water. So, by explanation, if this were to be passed, assume for sake of argument the actual usage is 3,400 feet. Under the terms of this amendment, 3,900 feet or its actual use, there would be extra 500 feet recharged. So the plant would be recharging 500 feet in excess of its actual use.

Chairman: So that's sort of a modification of my maximum 700 . . .

Spitzer: Exactly.

Chairman: Okay.

Spitzer: And I do think that there ought to be a nexus between the recharge and a, the most logical projection for water usage. I don't think, to do anything more than 3900 feet in my feeling might be arbitrary. So I think this is an accommodation, the 3900 feet is way on the high side of a projection, in all likelihood, the actual draw down will be less, but under the terms of that amendment they would be recharging the greater of 3900 feet or actual usage. And, if the actual usage would for some reason exceed 3900 feet, they would have to recharge that greater number. But, based on projections in the record, there would be some recharge by the applicant in addition, in excess of its actual use.

Irvin: Mr. Campbell, any comments for Mr. Spitzer?

Chairman: Well, I wanted to have you read your language one more time so I'm clear about it.

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Spitzer: Sure. Okay. After the word water, or its actual use on an acre foot for acre foot basis, whichever is greater.

Chairman: Mr. Campbell?

Campbell: I first of all agree with Commissioner Spitzer's evaluation of the record. We could accept that amendment and think that Commissioner Spitzer is probably correct, that probably will result in excess water being recharged over and above our actual use. But, we have no objection to his language.

Chairman: So, your position is you don't, I mean, let me ask it this way then. Cause I don't remember in the record, I'm sure it's in there. That the 3900 acre feet per year is running how many days per year, how many hours per year, let's, let's be clear here about that because you ...

Campbell: Yes. The 3900 acre feet I believe came, and Commissioner Spitzer correct me if I'm wrong, because our legal rights in this area are 7800 legal, 7800 acre feet, those are our total legal rights and I think 3900 originally came from halving the 78 because we were going to have two plants, and the 7800. The testimony in the record as Commissioner Spitzer points out, is that the water, the actual water usage for Phase II is likely to be 3000-3500, in that range.

Spitzer: The number, Mr. Chairman, the number 3400 struck me as ...

Campbell: I think, I think that's in the testimony.

Chairman: Yea, and I remember that. I was trying to remember what that was based on. How many hours a day, days a year it would be up and running. That's what I was trying to remember. And I don't remember that.

Campbell: Yea, I don't remember that off the top of my head, but that was, that's actually a fairly standard water usage number for this type of plant. This is a fairly standard plant built around the nation and I think Commissioner Spitzer's recollection is correct.

Spitzer: Mr. Chairman. I might point out in addition that energy is in a state of flux, the market is up and down, right now it's down, and under this amendment the application would be recharging a minimum of 3900 feet, so there may be some incentive to run the plant since they're paying for water, so to speak. But the minimum recharge would be 3900.

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- Chairman: And counsel for staff, that I understand what he's trying to get at, do you think they language the way it's proposed makes it clear what we're trying to accomplish.
- Alward: Yes, I do.
- Chairman: Okay.
- Irvin: That's the second thing we've agreed on today.
- Alward: We're on a roll.
- Chairman: Did you move your amendment?
- Spitzer: I will make that in a form of a motion.
- Chairman: Okay.
- Spitzer: Should I repeat the language just for . . .
- Chairman: No, I've got the language, but we moved this CEC for discussion and I didn't know if . . .
- Irvin: [inaudible] . . . the amendment as, you don't have to re-amend the amendment.
- Chairman: No.
- Irvin: Just move it as with your changes . . .
- Spitzer: So, I'll move that the Spitzer Amendment #1 with the language that I inserted be,
- Irvin: replace
- Spitzer: . . . replace Spitzer #2. Thank you Mr. Commissioner.
- Chairman: All those in favor, say aye.
- Jointly: Aye.
- Chairman: Ayes have it. I'll go ahead and move my amendment #1. Any further discussion from anyone on the Mundell proposal amendment #1? All those in favor, say aye.

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- Jointly: Aye.
- Chairman: Ayes have it. So ordered.
- Irvin: Mr. Spitzer, you have the floor.
- Spitzer: Mr. Chairman, I would move the case number 0117, Duke Energy Arlington Valley LLC application as it has been amended.
- Chairman: Thank you. Madame Secretary?
- Secretary: Commissioner Spitzer?
- Spitzer: Aye.
- Secretary: Commissioner Irvin?
- Irvin: I am happy to see this change. I thank Commissioner Spitzer, Commissioner Mundell, for making this change. I think it's definitely in the best interest of not only the Arlington Valley area but also the western part of Maricopa County and the West Salt River Valley. And I think it's in the best interest of the public as a whole. So I vote aye.
- Secretary: Chairman Mundell?
- Chairman: Thank you Madame Secretary. I want to thank my colleagues. I think that this is a good example of how we can balance under the statute having affordable, reliable electricity on the one hand and also protecting the environment. I think this was a fair and reasonable compromise on behalf of the applicant and I vote aye.
- Chairman: Let the vote of 3 ayes, no nays, the Duke Energy application as amended has passed. We will, want to thank also the County for coming and explaining the technical aspects of the air permitting process, so having said that, we will stand adjourned.
- Alward: Chairman, I just wanted your ...
- Chairman: We stand unadjourned.
- Alward: ... approval to draft an order on rehearing reflecting your decision today.

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- Chairman: Thank you counsel. will you so draft that order?
- Alward: Yes, for your signature.
- Spitzer: We so approve.
- Chairman: Can I adjourn now? Okay. we'll stand adjourned.