

ORIGINAL



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# RESPECTFULLY REQ EMERGENCY REVIEW

To the Honorable;

Chairman Kristin K. Mays;

Commissioner Sandra D. Kennedy

Commissioner Bob Stump

Commissioner Paul Newman

Commissioner Gary Pierce

RE: DOCKET NO. E01933A-09-0340

Arizona Corporation Commission

DOCKETED

NOV - 8 2010

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DOCKET CONTROL

Dear Commission:

DOCKETED BY

On April 1<sup>st</sup> of this year, I appeared before this commission to voice concerns about "The Marana Solar Project". I lacked information about the project with TEP and Fotowatio. They were going to surround my home as far as the eye could see with 96,000 PV solar panels. This Commission in its EXCLUSIVE POWER received assurances that TEP would work with me on this project to mitigate ANY effect on my property (see pg 17 line 10-15 transcript).

Commissioner Kennedy questioned Mr. Dion and Mr. Hutchens repeatedly about contact with me (pg 16-17). There has been nearly zero contact with TEP in complete disregard for TEP's commitment to do so (pg 16 Dion line 16-23) (pg 9 Dion line 6-14) (Com Newman pg 14 line 1-8) (Com Newman pg 15 line 2-6).

While I am not a party to this action, I believe that I am an affected party based on this project. While this may be an abnormal process, this project is abnormal. (see Dion pg 16 line 16-20) .

TEP made commitments to this Commission (Hutchens pg 17 line 10-19) about me SPECIFICALLY in order to receive approval for this project and did so in, what I believe, was NOT full disclosure. This Commission approved this project AFTER receiving TEP commitments which it has failed to follow through on.

I RESPECTFULLY petition this Commission in its EXCLUSIVE POWER to revisit this project under ARS 40-252. To discuss TEP'S failure to follow

through on its commitments to me and this Commission mentioned in the record.

**TIME IS OF THE ESSENCE:** Disregarding its commitments to this Commission (Hutchens pg 17 line 10-15) the project is going before a Pima county Hearing Officer on 11/10/10 for recommendation to the Board of Supervisors. **IRREPAIRABLE DAMAGE** would be done to my property creating the probability of protracted litigation in a prop 207 environment.

It is appropriate that this sitting Commission review this project while still intact.

There are at least two (2) issues that need to be addressed. TEP and its representatives made **ABSOLUTE COMMITMENTS TO MITIGATE ANY EFFECT ON ME OR MY PROPERTY**, (Hutchens pg. 17 line 10-15), **PRIOR** to receiving its approval.

Had the Commission known before voting approval that TEP had no intention of following through with its commitments, it is possible no vote or new directions would have been given.

Based upon the information at hand, I **RESPECTFULLY REQUEST** that the Arizona Corporation Commission use its **EXCLUSIVE AUTHORITY** to protect my personal rights and recall TEP and its representatives to answer for their actions in this matter, as stated under ARS 40-252.

**TO PRESERVE THE INTEGRITY OF THIS COMMISSION:** If TEP has misled this Commission, it must answer for those actions. If TEP has acted properly, then the air must be cleared and TEP receive its satisfaction. Under ARS 40-252 this commission may satisfy **ALL** parties by revisiting this project and preserve the Commission's integrity and its **EXCLUSIVE AUTHORITY** to regulate this utility as required by the Arizona Constitution.

Respectfully yours,



**Richard A. Westfall**  
**(520) 907-6969**  
**November 5, 2010**

**A copy of the foregoing has been mailed to:**

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40-252. Rescission or amendment of orders by commission;  
collateral attack on final orders or decisions prohibited

The commission may at any time, upon notice to the corporation affected, and after opportunity to be heard as upon a complaint, rescind, alter or amend any order or decision made by it. When the order making such rescission, alteration or amendment is served upon the corporation affected, it is effective as an original order or decision. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive

1 provide Mr. Westfall. So until those first things begin  
2 to happen as far as the movement towards the development  
3 of this project, until some of those things are taken care  
4 of, then the information that we do have as well is  
5 preliminary.

6 But I will work with him. I will work with -- I  
7 will continue to work with him. Mr. Tilghman has done  
8 some of that. We will continue to that. And as more of  
9 these pieces -- as the puzzle gets put together, we'll  
10 also have a better snapshot as well. They had to get this  
11 land, they had to get the leases, they had to move through  
12 the city. There were a number of things that had to be  
13 done in order for the project to really begin to take its  
14 full shape.

15 CHMN. MAYES: Okay. And we'll go to Commissioner  
16 Newman. He's on the board.

17 But Mr. Westfall, so your property is -- abuts  
18 the project directly, or can you describe that a little  
19 more?

20 MR. WESTFALL: If you will take -- does somebody  
21 have a blank piece of paper, and I can show you very  
22 quickly. I'll be happy to give this to whoever would  
23 like.

24 If this is a 305-acre piece of property, I own  
25 the southeast corner at the section corner, everything.

1           But what I would suggest to you is that because  
2 it's proprietary involving the contract that will be  
3 signed by TEP with another -- several other entities, most  
4 likely, that you almost have to work with them. But you  
5 have my good faith statement today saying that, you know,  
6 I will make sure -- I'm actually going to make sure that  
7 Mr. Dion works with you, because I understand what you're  
8 facing.

9           And it will also go through the Tucson  
10 authorities as well that will have setback requirements.  
11 And I know for something like this, on the County Board of  
12 Supervisors, we would have been looking at fencing, you  
13 know, appropriate fencing, nice fencing, you know, things  
14 like that to help. But that is something that is going to  
15 have to be passed to the mayor and council and the  
16 Planning and Zoning Commission of Tucson. So yes, it's  
17 going to be a long process.

18           But to say that these projects won't go ahead,  
19 they're speculative in some ways because there needs to be  
20 capitalization, everything needs to all fit together. But  
21 if TEP is saying yes to this project, they think it's a  
22 really good project, they've reviewed hundreds of  
23 projects, and this project came to the top of the fore,  
24 for whatever reason. So it will, in all likelihood,  
25 happen if this economy provides enough capital for this

1 project.

2           So you have my office now to talk to about --  
3 make sure that everyone's dotting their i's and their t's  
4 at the planning commission, and I will work with Mr. Dion  
5 to make sure that happens. I'm doing that just because I  
6 think I should.

7           MR. WESTFALL: Commissioner Newman, I appreciate  
8 it. I think you're the only one south of Maricopa.

9           COM. NEWMAN: Yes. I'm sort of the southern  
10 Arizona.

11           MR. WESTFALL: And being from Bisbee, you  
12 understand our lifestyle and how things are.

13           COM. NEWMAN: Yes.

14           MR. WESTFALL: And I live on a very unique piece  
15 of property. Again, TEP has not done anything that's  
16 wrong. I'm not here to complain about the way they've  
17 done things. As I said, I will commend Carmine Tilghman.  
18 He's done a good job. The issue is that we've got a town  
19 that wants to annex it because they want to be green.  
20 We've got a county that wants to keep it because they want  
21 to be green.

22           COM. NEWMAN: I was thinking about that.

23           MR. WESTFALL: We've got the City of Tucson that  
24 wants to participate because they get a little revenue  
25 from some property. And I'm really the only one that's

1 getting affected in all of this. And so I just wanted to  
2 make sure that there was a record here. There's seven  
3 800-pound gorillas and me, and I can't really hold my own  
4 against those seven.

5 CHMN. MAYES: Well, I think so far you have. And  
6 we are making a record. Your words are being transcribed.

7 Commissioner Kennedy has a question.

8 COM. KENNEDY: Madam Chairman, Mr. Dion, I'm not  
9 sure if I missed this or not. Can you kind of walk me  
10 through TEP's process for working with adjacent landowners  
11 on projects such as this?

12 MR. DION: Madam Chairman, Commissioner Kennedy,  
13 essentially it's very similar to the process that you will  
14 see and you do see in the CEC process. It's basically  
15 that same process.

16 I think the gentleman to my left has done an  
17 excellent job in showing how this one is a lot different  
18 than some of the normal CEC processes that we have.  
19 There's a good deal of government interest that has  
20 affected and will continue to affect this process.

21 But I do commit to -- we will continue to work  
22 with him, and that's in our best interest to do that, as  
23 well as his.

24 COM. KENNEDY: Okay. Madam Chairman, Mr. Dion,  
25 so I'm hearing you say that he missed his phone call or he

1 missed his letter in the mail saying that this project was  
2 going to commence?

3 MR. DION: No. Let me move that to Mr. Hutchens  
4 on that particular question.

5 MR. HUTCHENS: Chairman Mayes, Commissioner  
6 Kennedy, this project isn't really a project until we vote  
7 this approval, and that's really when the clock starts  
8 ticking and that's when we would really be getting  
9 involved with folks like Mr. Westfall.

10 So in this sort of design and concept phase, we  
11 haven't been doing a lot of outreach. So there's plenty  
12 of time. I know we want to break ground on this as quick  
13 as possible, but there's plenty of time for that  
14 discussion and make sure that we mitigate any effect that  
15 it might have on Mr. Westfall and his property.

16 So once we say yes on this contract, then  
17 Fotowatio and their folks are really going to start  
18 cranking to get this done, and that's sort of when the  
19 process really begins.

20 COM. KENNEDY: I understand that. I think you're  
21 missing just a small piece of the puzzle. There have been  
22 communications, or many communications, with lots of  
23 people but Mr. Westfall or landowners around that area.  
24 And I guess I'm just trying to figure out, you have been  
25 communicating with governmental entities but not with

1 landowners? I just want to make sure I'm hearing that.

2 MR. HUTCHENS: Chairman Mayes, Commissioner  
3 Kennedy, that's correct. We were trying to make sure that  
4 this was a viable site, which meant we had to get the City  
5 of Tucson who actually owns the land in the county, with  
6 the City of Marana looking, you know, for annex  
7 possibilities, et cetera. So we were working with those  
8 folks to see whether or not this was even a viable site.  
9 So we really have, to date, just got to the point of  
10 whether or not this project is viable.

11 Now as soon as we -- and contractually, it  
12 doesn't mean anything until we get the Commission  
13 approval. After that, boom, we're off to the races. We  
14 start contacting these people.

15 Now, let me caveat that with we're new to these  
16 huge solar developments, as you all know. This is a very  
17 big project. And we are getting some lessons learned, and  
18 one of those that's coming loud and clear is we've got to  
19 make sure that when we're looking at these properties,  
20 whether it's us or developers, we need to make sure that  
21 on the front end we're looking and seeing who we might  
22 affect in adjacent property owners. And we will take care  
23 of that going forward on additional projects which we hope  
24 to bring to you soon.

25 COM. KENNEDY: Okay. One more question. Is

1 there anything that precludes the county, the city, TEP,  
2 from doing a community outreach during the concept or  
3 design phase?

4 MR. HUTCHENS: Chairman Mayes, Commissioner  
5 Kennedy, no, there's not, and that's the lesson learned.

6 COM. KENNEDY: Okay. I just wanted to hear that.  
7 Thank you.

8 CHMN. MAYES: Thank you, Commissioner Kennedy.  
9 Thank you, Mr. Westfall. And if you could be in  
10 contact with us in the future, if you have any other  
11 issues, I would be very interested to see how your issues  
12 are resolved by the company.

13 MR. WESTFALL: Thank you very much. I appreciate  
14 your time.

15 CHMN. MAYES: Okay.

16 COM. NEWMAN: Thanks for coming up.

17 CHMN. MAYES: All right. I don't see any other  
18 public comment.

19 I do have just a real quick question of Mr. Dion.  
20 So you said that you support the item. And do I take it,  
21 then, that that means that you will move forward with the  
22 execution of the contracts that are at issue in the order?

23 MR. DION: Madam Chairman, we are ready, willing,  
24 and able, yes.

25 CHMN. MAYES: Is that a yes?