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BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

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IN THE MATTER OF THE APPLICATION OF SUNZIA TRANSMISSION LLC, IN CONFORMANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES 40-360, ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE SUNZIA SOUTHWEST TRANSMISSION PROJECT, WHICH INCLUDES THE CONSTRUCTION OF TWO NEW 500 KV TRANSMISSION LINES AND ASSOCIATED FACILITIES ORIGINATING AT A NEW SUBSTATION (SUNZIA EAST) IN LINCOLN COUNTY, NEW MEXICO, AND TERMINATING AT THE PINAL CENTRAL SUBSTATION IN PINAL COUNTY, ARIZONA. THE ARIZONA PORTION OF THE PROJECT IS LOCATED WITHIN GRAHAM, GREENLEE, COCHISE, PINAL, AND PIMA COUNTIES.

DOCKET NO. L-00000YY-15-0318-00171

Case No. 171

LEGAL MEMORANDUM REGARDING ITEM 31, PROCEDURAL ORDER

Pursuant to the Procedural Order issued by the Chairman on September 11, 2015, the Cascabel Working Group submits the following memorandum.

ORIGINAL

CASCABEL WORKING GROUP

By Norm "Mick" Meader

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Arizona Corporation Commission

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M E M O R A N D U M

To: Mr. Thomas Chenal, Chairman, Power Plant and Transmission Line Siting Committee, Arizona Corporation Commission

From: Norm "Mick" Meader, Cascabel Working Group

Re: Procedural Order Item 31 for SunZia Transmission, LLC Hearing
Docket No. L-00000YY-15-0318-00171

Date: September 14, 2015

QUESTION PRESENTED

A.A.C. R14-3-208(F) provides that individual parties may appear at the hearing on their own behalf, whereas all other persons who are parties shall appear only by a licensed attorney. May a domestic nonprofit corporation or association authorized by A.R.S. § 40-360.05(A)(3) to become a party appear, present oral testimony and cross-examine witnesses during the hearing without being represented by a licensed attorney?

SHORT ANSWER

The short answer to this question is "yes." Arizona Supreme Court Rule 31(d)(28) provides for certain exemptions to R14-3-208(F) for nonprofit corporations or associations, and the Corporation Commission affirms this in its instructions to potential intervenors.

STATEMENT OF FACTS

Arizona Supreme Court Rule 31(d)(28) states the following:

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a non-profit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if:

(A) the public service corporation, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,

1 (B) such representation is not the person's primary duty to the public service
2 corporation, interim operator, or non-profit organization, but is secondary or incidental to
3 such person's duties relating to the management or operation of the public service
4 corporation, interim operator, or non-profit organization, and

5 (C) the person is not receiving separate or additional compensation (other than
6 reimbursement for costs) for such representation.

7 Notwithstanding the foregoing provisions, the Commission or presiding officer may
8 require counsel in lieu of lay representation whenever it determines that lay
9 representation is interfering with the orderly progress of the proceeding, imposing undue
10 burdens on the other parties, or causing harm to the parties represented.

11 The text of Rule 31 is available online at the following website:

12 <https://govt.westlaw.com/azrules/Document/NAE025A20A48C11DE97CFC30D94C59A9E?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=%28sc.Default%29>.

13 The Arizona Corporation Commission Utilities Division also provides legal guidance
14 regarding this question based upon Rule 31 in a document entitled "Intervention in utility cases
15 at the Commission," available at [http://www.azcc.gov/divisions/hearings/documents/](http://www.azcc.gov/divisions/hearings/documents/intervention-final.pdf)
16 [intervention-final.pdf](http://www.azcc.gov/divisions/hearings/documents/intervention-final.pdf). Pages 5 and 6 of this document provide this guidance:

17 **Do I need an attorney?**

18 If you are an individual representing only yourself (i.e., not your company, another
19 individual, or any type of organization), you may represent yourself before the
20 Commission and are not required to hire an attorney to represent you.

21 An individual may not represent anyone other than himself or herself unless that
22 individual is authorized to practice law in Arizona. The Arizona Supreme Court restricts
23 the practice of law to licensed attorneys, with certain exceptions (see generally Arizona
24 Supreme Court Rule 31).

Because a company organized as a corporation or limited liability company (or using
another legal form) is not an individual, the company must be represented by a licensed
attorney, unless one of the permitted exceptions is met.

1 The Arizona Supreme Court has created an exception that allows a public service
2 corporation (utility), an interim operator appointed by the Commission, or a non-profit
organization to be represented by a corporate officer, employee, or member who is not a
licensed attorney if:

- 3 1. The utility, interim operator, or non-profit organization has specifically authorized the
officer, employee, or member to represent it;
- 4 2. The representation is not the person's primary duty to the public service corporation,
interim operator, or non-profit organization, but only secondary or incidental to other
5 duties relating to the management or operation of the public service corporation,
interim operator, or non-profit organization; and
- 6 3. The person is not receiving separate or additional compensation for the representation
(other than reimbursement for costs).

7 (See Arizona Supreme Court Rule 31(d)(28).)

8 **DISCUSSION**

9 The Arizona Supreme Court has specifically addressed the issue of whether an officer of
10 a nonprofit organization can represent the organization in proceedings before the Power Plant
11 and Transmission Line Siting Committee, and the Arizona Corporation Commission has
12 provided consistent legal guidance to potential intervenors based upon that precedent. We note
13 that A.A.C. R14-3-208(F) became effective in February 1970 and has not been revised since.
14 The Line Siting Committee itself was formerly established as an operative body by the Arizona
15 State Legislature following this in 1971 (Laws 1971, Ch. 67). Supreme Court Rule 31 clearly
16 postdates A.A.C. R14-3-208(F) and the establishment of the Committee and supersedes the text
17 of the Administrative Code. While the date of adoption of Supreme Court Rule 31 is not given,
18 we note that the rule was first amended on April 14, 1986 and last amended on December 16,
19 2014, with the rule having been made effective on a permanent basis on the latter date. The full
20 citation for Rule 31 is as follows:

21 Arizona Revised Statutes Annotated
22 Rules of the Supreme Court of Arizona
V. Regulation of the Practice of Law
23 A. Supreme Court Jurisdiction over the Practice of Law (Refs and Annos)
Rule 31. Regulation of the Practice of Law
24 (d) Exemptions

1 28. In matters before the Arizona Corporation Commission...

2 We note that the Chairman of the Line Siting Committee has already acknowledged and
3 set forth rules in the pre-filing meeting to accommodate the intervention by individuals in this
4 case who may represent themselves at the line siting hearing. By extension, this right, already
5 granted by the Chairman, would apply to non-profit organizations that lack an attorney to
6 represent them.

7 **CONCLUSION**

8 A domestic nonprofit corporation or association authorized by A.R.S. § 40-360.05(A)(3)
9 to become a party to a Corporation Committee hearing may appear, present oral testimony and
10 cross-examine witnesses during the hearing without being represented by a licensed attorney.
11 Any nonprofit organization has the right to appoint an officer of the organization to represent it
12 before the Power Plant and Transmission Line Siting Committee.

13 Respectfully submitted,

14 *Norm "Mick" Meader*

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21 **ORIGINAL** and 25 **COPIES** of
22 the foregoing mailed this 14th day
23 of September 2015 to:

24 Arizona Corporation Commission
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COPY of the foregoing mailed and
emailed this 14th day of September 2015

1 to each of the following ACC staff:

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34 **COPY** of the foregoing emailed this
35 14th day of September 2015 to all potential
36 parties known as of this date.