

ORIGINAL

OPEN MEETING AGENDA ITEM



0000167207

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

2015 DEC -8 P 4: 05

AZ CORP COMMISSION DOCKET CONTROL

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

Case No. 171

NOTICE OF FILING REQUEST FOR REVIEW

Arizona Corporation Commission

DOCKETED

DEC 08 2015

DOCKETED BY

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.)

Pursuant to A.R.S. § 40-360.07, intervening party Peter T. Else requests that the Commission reject the Certificate of Environmental Compatibility issued by the Arizona Power Plant and Transmission Line Siting Committee ("Line Siting Committee" or "Committee") to the Applicant in this matter for the following reasons.

I. THE CERTIFICATE ISSUED BY THE LINE SITING COMMITTEE

On November 24, 2015, the Arizona Power Plant and Transmission Line Siting Committee filed its decision and Certificate of Environmental Compatibility approving a certificate to SunZia Transmission LLC for two 500 KV electric transmission lines. The transmission lines would purportedly extend 515 miles between the proposed SunZia East substation in Lincoln County, New Mexico and the Pinal Central Substation in Pinal County,

1 Arizona. The proposed route for the transmission lines passes through approximately 30 miles
2 of previously undisturbed land in the lower San Pedro watershed, a region of extraordinary
3 biological wealth and associated environmental mitigation value for the state of Arizona.
4

5 **II. THE COMMISSION SHOULD REJECT THE CERTIFICATE**

6 The proposed SunZia transmission lines are unnecessary for an adequate, economical and
7 reliable supply of electric power, and another pending transmission project in the same region
8 will actually perform better in this regard. Balancing the need for the SunZia lines against the
9 effect that construction of the line will have on the environment of Arizona requires that the
10 Commission reject the project. The new and future cumulative environmental impacts on the
11 lower San Pedro watershed will permanently damage both current off-site mitigation
12 designations held by Pima County and the ecological integrity of the watershed as a whole. This
13 watershed has become the last one available to compensate for environmental impacts in the
14 Santa Cruz, Salt, and middle Gila watersheds, which compose the majority of Arizona's growth
15 corridor. It would violate A.R.S. § 40-360.06-B to devalue the very watershed that is currently
16 being used to mitigate the impacts caused by development in other desert watersheds of Arizona.
17

18 **III. THE CERTIFICATE ISSUED BY THE LINE SITING COMMITTEE IS**
19 **DEFECTIVE DUE TO A BASIC PROCESS ERROR**

20 A.R.S. § 40.360.06 clearly states that the Committee may approve or deny an application,
21 while taking into consideration nine specific factors and also granting special consideration to
22 the protection of areas unique because of biological wealth. It is remarkable and speaks to the
23 backward nature of the Committee's process that the Findings of Fact associated with these nine
24

1 factors were considered after the Committee had painstakingly reviewed all other aspects of the
2 Applicant's draft Certificate and had deliberated on all proposed Conditions. The transcript of
3 the last day of the hearings also establishes that the Committee only dedicated a trivial amount of
4 time to considering the Findings of Fact memorialized in the Certificate. The Findings of Fact
5 are the very basis for balancing Project need with Project impacts, and would have also logically
6 informed deliberations on proposed Conditions to a possible Certificate. To treat these Findings
7 as an afterthought both in the process and in the Certificate itself reveals a basic flaw which
8 provided undue influence to the Applicant in leading the Committee toward a foregone
9 conclusion.

11 **IV. STANDARD FOR EVALUATION.**

12 The Commission in reviewing a Siting Committee decision must comply with the
13 provisions of A.R.S. § 40-360.06 and, in compliance with A.R.S. § 40-360.07, "shall balance,
14 in the broad public interest, the need for an adequate, economical and reliable supply of electric
15 power with the desire to minimize the effect thereof on the environment and ecology of this
16 state." In *Grand Canyon Trust v. Arizona Corporation Commission*, 210 Ariz. 30, 107 P.3d 356
17 (App. 2005), the court held that the quoted statute does not require that the need for power be
18 determined based solely on the power needs of in-state consumers.

19 Testimony during the Line Siting hearings established that the Applicant presented no
20 energy delivery cost studies indicating that the SunZia Project would provide economical
21 renewable energy to Arizona, California, and Nevada. Testimony further establishes that the
22 best available economic feasibility study related to the Project (Exhibit PTE-1) indicated that the
23 energy development scenario presented by the Applicant was among the least economically
24

1 competitive scenarios considered in that study. Testimony also established that the findings of
2 this study would be even less favorable for the SunZia Project now that three line segments must
3 be buried in New Mexico at considerable additional cost. Construction of the eastern line
4 segment in New Mexico is unlikely due to the historically prohibitive cost of line burial and the
5 low line-use efficiency by intermittent wind energy. In rushing toward a decision to approve a
6 Certificate without developing Conditions that would irrevocably require the Project to be
7 completed in full, the Committee relieved the Applicant of accountability for the
8 misrepresentation of the Project's purpose, a misrepresentation that has been promoted by the
9 Applicant, the environmental contractor, and the federal oversight agency. In order to prevent
10 further obfuscation of the Project's purpose to the public at large, it is incumbent upon the
11 Commission to objectively consider whether the Project would deliver economical renewable
12 energy from New Mexico and whether the Project would likely be completed as a whole.
13 Testimony related to these public trust issues will be discussed in this request for review.

14 However, the environmental impacts are the most relevant factors associated with
15 environmental compatibility, and those will be considered first in this Request.

16
17 **V. THE ENVIRONMENTAL IMPACTS ASSOCIATED WITH**
18 **CONSTRUCTION OF THE SUNZIA TRANSMISSION LINES.**

19 As established in testimony by D. Kahrs, T. Supplee, S. Wilbor, and C. McVie, the
20 Project would produce additive impacts when co-located with existing or future infrastructure,
21 and would produce new impacts when not co-located with existing infrastructure.

22 According to the testimony of the same biological experts, the additive impacts of this
23 Project would be particularly problematic in areas where native vegetation grows in excess of 12
24

1 feet in height, and along the flight paths of important avian species. Testimony by N. Meader
2 and P. Else also established that the SunZia Project would closely parallel and would have
3 overlap in function with the pending Southline Transmission Project. Additive impacts to
4 existing infrastructure and to future probable Southline infrastructure near the Willcox Playa
5 would be significant but unquantifiable in advance due to the lack of a site-specific study on
6 Sandhill Cranes. Additive impacts of the SunZia Project on ironwood trees and saguaro cacti in
7 Pinal County would affect the ecosystem dependent upon those species due to vegetation height
8 control and relocation of saguaros.

9 **Consideration of new impacts is paramount.** New impacts caused by routing the
10 SunZia Project through 30 miles of previously undisturbed land in the lower San Pedro
11 watershed require special consideration under A.R.S. § 40-360.06-B. Because of both initial and
12 future cumulative effects associated with establishing a new industrial-scale infrastructure
13 corridor through previously undisturbed lands, the SunZia Project would introduce a wide and
14 fragmenting swath of impacts that would significantly devalue mitigation investments that were
15 made in good faith at county, state, and federal levels of government to compensate for impacts
16 in Arizona's growth corridor. There would be no benefit and all cost to the important San Pedro
17 conservation corridor, the last remaining natural river ecosystem and supporting watershed in
18 southern Arizona. The state statute cited at the beginning of this paragraph requires special
19 consideration under such unique and biologically significant circumstances. This must be
20 balanced against an objective assessment of need for the SunZia Project

21
22 **VI. THE SUNZIA TRANSMISSION LINES ARE UNNECESSARY FOR AN**
23 **ADEQUATE, ECONOMICAL AND RELIABLE SUPPLY OF POWER**
24

1 With the pending Southline Project planned to provide over a dozen access points for
2 uploading and downloading new energy resources in New Mexico and Arizona and with modest
3 projections for electricity demand growth forecast in Exhibit PTE-20, Arizona already has an
4 environmentally compatible option for increasing its available energy supply in the region. As
5 accepted by all parties in testimony, the Southline Project would avoid causing new impacts
6 along 30 miles of previously undisturbed land in the San Pedro watershed by upgrading existing
7 electrical infrastructure along the Interstate 10 corridor, thus doing a far superior job of
8 restricting its impacts to the same growth corridor that stands to reap electrical supply and
9 reliability benefits.

10 With regard to potential benefits to California and Nevada, an objective assessment of the
11 Applicant's claim of renewable energy benefits to those two states is essential. The Applicant
12 provided no evidence to support that their Project would be able to provide economical
13 renewable energy to any of the three targeted market states, including Arizona. The only third-
14 party economic feasibility study submitted during the hearings (Exhibit PTE-01) indicated that
15 dedicating a long-distance Extra High Voltage (EHV) line to wind energy in the absence of a tax
16 on carbon emissions was among the least market competitive energy delivery scenarios
17 considered by that study. Furthermore, that particular study assumed much lower line
18 construction costs than those now associated with the requirement to bury three segments of the
19 SunZia Project near White Sands Missile Range in New Mexico. With this study indicating that
20 a long-distance EHV line dominated by wind energy would not be economically feasible, and
21 now with the Department of Defense requiring a significant increase in construction cost beyond
22 what that study took into consideration, it is ludicrous to conclude that the SunZia Project will
23 originate in Lincoln County, New Mexico as indicated on the cover page of every filing
24

1 submitted to the ACC docket control during this review process. No matter what the Applicant's
2 original intentions may have been, continuing to promote this Project as primarily a wind
3 transmission endeavor is a ruse that conceals the economic infeasibility of the eastern segment of
4 the Project.

5 If the Commission accepts this misrepresentation of Project purpose at face value, it will
6 have to justify committing Arizona's limited transmission capacity between Pinal Substation and
7 the other targeted market states to a Project that has very little chance of competing economically
8 with the abundant renewable resources in California, the only state with a demand large enough
9 to support the purported volume of wind energy claimed by the Applicant.

10 If the Commission ignores the best available feasibility study and subscribes to the over-
11 simplified assessment of ACC staff in testimony that SunZia's method of financing mitigates
12 risks associated with Project failure and that Arizona could actually benefit from failure because
13 of the opportunity to obtain the Project for "pennies on the dollar" in the event of bankruptcy,
14 then the Commission would become complicit in what will almost certainly be a planned failure,
15 which is the ultimate misuse of a public planning process.

16 If a major portion of the Project in New Mexico is not constructed, as is likely according
17 to the best available feasibility study and the prohibitive cost of burying three line segments in
18 New Mexico, the Project will obviously not primarily facilitate the development of wind energy,
19 as claimed by the Applicant in federal documents, in the Application to the ACC, and in
20 testimony during the recent hearings. If the Commission agrees with ACC staff that financial
21 failure on a merchant line is a remarkable opportunity rather than a risk, then who would stand to
22 benefit if the only portion of the Project constructed is the route segment between Bowie,
23 Arizona and the Pinal Central Substation? The main beneficiaries would most likely be the
24

1 owner of the planned and permitted Bowie Power Plant and the Salt River Project (SRP). SRP
2 has indicated in Exhibit ACC-5 that their main interest in the Project is not in obtaining
3 renewable energy from New Mexico, but in providing transmission capacity for existing
4 generation resources in eastern Arizona. This likelihood of only constructing one portion of the
5 SunZia Project would put the Commission in the position of assisting SRP and the owner of the
6 Bowie Plant in increasing the development and transmission of fossil-fueled energy in Arizona,
7 the exact opposite of the renewable energy benefits claimed in the Application for the past seven
8 years.

9 Adding further dimension to this ruse, the Salt River Project has mitigation holdings in
10 the lower San Pedro watershed, so designated to compensate for SRP impacts in the Salt River
11 watershed at Roosevelt Lake. By degrading the ecological integrity of the lower San Pedro
12 conservation/mitigation corridor, SRP would be undermining the value of current and future
13 mitigation designations in this important conservation corridor.

14 As pointed out by P. Else under cross examination by SunZia's attorney, SunZia's
15 principal manager, Mr. Tom Wray, has indicated to the Albuquerque Journal that he will likely
16 sell his interests in both the Bowie Power Plant and the SunZia Project. If the Commission
17 simply grants Mr. Wray his permit without exercising due diligence regarding Mr. Wray's past
18 association with over-promised projects in Arizona and New Mexico and regarding the
19 likelihood of not achieving the benefits specified in this Application, the Commission would
20 absolve Mr. Wray of accountability for grossly exaggerated benefit claims, allow him to recoup
21 at least some of his permit process investment, and essentially turn the Project over to other
22 interests. These "other interests" include a major and politically-connected Arizona utility that
23 would likely use the Bowie-to-Pinal Central portion of the Project for purposes that are unrelated
24

1 to SunZia's long-repeated wind energy benefit story, while degrading the very watershed that
2 provides off-site mitigation for SRP's and other entities' impacts in the growth corridor. If this
3 is an example of environmental compatibility, it would exceed even George Orwell's
4 expectations of government Newspeak. If the Commission allows this ruse to move forward,
5 then the state statutes regarding the balancing of need with environmental impacts will be
6 rendered meaningless.

7 Member Olea and Chairman Chenal listened to testimony with sufficient objectivity and
8 critical thinking skills to propose Conditions holding the Applicant accountable for repeated
9 claims that the project would be completed as a whole and would facilitate the development of
10 primarily wind resources in New Mexico. After these proposed Conditions were resisted by the
11 Applicant and rejected or stripped of effectiveness by other Committee members, the Committee
12 ultimately voted 8 to 0 to approve the Certificate.

13 Committee Member Olea stated that he was "unapologetic" for bucking the seemingly
14 lockstep tendency of Committee members to expedite approval of the permit rather than
15 considering the ramifications that misrepresentation of Project purpose would have on the
16 renewable energy claims the public has been hearing for the last six and a half years. He offered
17 several options for Conditions that would have required the Project to be completed as a whole,
18 which must be done in order to fulfill these renewable energy claims. These proposed
19 Conditions included one option that would have required SunZia to contract a significant portion
20 of the first line's capacity with any renewable energy generation firm(s) in New Mexico before
21 initiating construction of the first line. Claims made by the Applicant that this cannot be done
22 due to Federal Energy Regulatory Commission (FERC) regulations are misleading and do not
23 tell the whole story. In a unique agreement partly based upon SunZia's perceived status as
24

1 fostering renewable energy development, FERC granted the Applicant 50% anchor tenant
2 transmission rights in the FERC declaratory order referenced in Exhibit Sun-3. If the Applicant
3 were serious about the feasibility of its claims, committing only half of the first line's capacity to
4 renewable energy feeding the proposed SunZia East Substation in Lincoln County, New Mexico
5 through binding anchor tenant contracts before beginning construction of the first line would be a
6 logical and necessary Condition to ensure the legitimacy of the Project's long-stated claims.

7 Committee Member Olea also proposed a Condition requiring construction of the first
8 line to commence at the eastern terminus of the Project in Lincoln County, New Mexico. This
9 Condition would have ensured that the San Pedro conservation corridor would not be degraded
10 for a Project that ultimately only included construction of the short 160-mile Willow-to-Pinal
11 Central line segment in Arizona. The Applicant and several Committee members objected to
12 this Condition, because Mr. Wray had stated in testimony that construction must begin at the
13 Pinal Central substation, a starting point where the line can be energized for security and testing
14 purposes. Other intervening parties were not invited to participate in this deliberation, but it
15 must be pointed out now that construction could be initiated at the Tucson Electric Power (TEP)
16 interconnection at the Willow Substation and proceed eastward from there. This would allow
17 each phase of construction to be energized and would provide an excellent testing opportunity
18 for the first delivery of New Mexico wind energy to TEP. TEP stated in Exhibit ACC-6 that
19 they "saw an opportunity for the potential to meet some of its renewable needs through the
20 project". Pinal County based SRP, on the other hand, stated in Exhibit ACC-5 that they
21 currently have little interest in obtaining non-local renewable energy, and were more interested
22 in using the project for purposes that contradict the Applicant's claim in testimony that the entire
23 capacity of the first line could be used by wind resources originating in New Mexico. If the
24

1 Project is actually intended to be completed as a whole within a three year period as stated in
2 testimony, completing the Willow-to-Pinal Central segment last would eliminate the risk of
3 degrading the San Pedro conservation corridor for a Project that may never be completed due to
4 the failure of investor interest. If the ACC staff is indeed concerned about “mitigating the risk
5 of constructing a line that is not needed” as stated in Exhibit ACC-2 and in the Applicant’s
6 closing statement, then consideration should logically be given to mitigating environmental risk,
7 the main purpose of a Certificate of Environmental Compatibility.

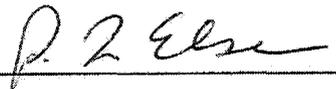
8
9 **VII. CONCLUSION**

10 Currently, there is no law at any level of government and no Condition to the Certificate
11 that would require SunZia to complete the Project as a whole. Lacking an objective assessment
12 of Project need and given the significant environmental impacts to a watershed that is supposed
13 to be protected as a mitigation corridor compensating for environmental impacts elsewhere in the
14 state, this Commission must protect the statutory meaning of environmental compatibility and
15 resist the cynical use of the state permit process to obscure the Project purpose, provide
16 compensation for firms that specialize in gaming the federal and state permit processes, and
17 grant undeserved favors to major utility interests such as SRP under false pretenses.

18 The Southline Project is progressing through the permit process without resorting to gross
19 misrepresentation of purpose and exploitation of the increasingly scarce biological resources of
20 the San Pedro watershed, Arizona’s default mitigation corridor. The Southline Project will
21 provide ready access for energy resources in the same likely development region as the SunZia
22 Project, but is designed far better than SunZia for environmental compatibility.

1 Arizona does not need the SunZia Project, and neither do the other two states specified by
2 the Applicant. Weighed against a feeble and misrepresented demonstration of need, the known
3 impacts are not justified under any reasonable definition of environmental compatibility. The
4 Certificate should be denied by the Commission.

5
6 Respectfully submitted on December 8, 2015,

7 

8 Peter T. Else
9

10 ORIGINAL and 25 COPIES of the foregoing hand-
11 delivered on this 8th day of December 2015 to:

12 Arizona Corporation Commission
13 Docket Control
14 1200 W. Washington Street
15 Phoenix, AZ 85007-2996

16 Copy sent to Chairman Thomas Chenal via email and
17 regular mail on December 8, 2015.

18 Copy sent via email to the following on December 8, 2015:

19 Janice Alward jalward@azcc.gov
20 Lisa.Romeo Lisa.Romeo@azag.gov
21 Samuel Lofland SLofland@rcalaw.com
22 Lawrence Robertson tubaclawyer@aol.com
23 Albert Acken aacken@rcalaw.com
24 Cedric Hay cedric.hay@pinalcountvaz.gov
Charles Hains chains@azcc.gov
LatCelmins lcelmins@mclawfirm.com
Norm "Mick" Meader nmeader@cox.net
Jay Shapiro jay@shapslawaz.com
Peter Gerstman peter.gerstman@robson.com
Christina McVie christina.mcvie@gmail.com
Marta T. Hetzer, Court Reporter mh@coashandcoash.com