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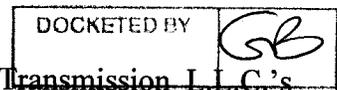
Arizona Corporation Commission

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NOV 22 2016

Re: Southline Transmission Project; Line Siting Application #173
Docket No. L-00000AAA-16-0370-00173

Dear Chairman Chenal,



On October 24, 2016, you sent a letter concerning Southline Transmission LLC's ("Southline" or "Applicant") application for the issuance of a Certificate of Environmental Compatibility ("CEC"). The letter posed questions to Commission Staff regarding its views of technical aspects of the application as well various interrelated legal issues. This letter is in response to the questions you posed in that letter.

Technical Analysis

The following comments on the technical matters presented by Southline, LLC's ("Southline") Application were provided by Staff Engineer Zachary Branum. Mr. Branum relied upon a response to a Data Request ("DR") issued by Staff. In response, the Applicant provided Staff with a copy of the Accepted Western Electricity Coordinating Council ("WECC") Phase 2 Path Rating Study which was completed by Utility System Efficiencies, Inc. ("USE") Consulting.

The WECC Phase 2 Path Rating Study evaluated the transmission system's performance, with the Southline Transmission Project ("Project")¹ included, for simulations of North American Electric Reliability Corporation ("NERC") Category A, B, and C contingencies², for a variety of different cases/conditions. Transmission system performance was measured against the NERC Reliability Standards and WECC System Performance Criteria. Specifically, the study included Power Flow Contingency Analysis, Voltage Stability Studies, and Transient Stability Studies with added contingencies for each.

In addition to the NERC and WECC performance measures, the Southline Phase 2 Rating study also recognized the local area reliability criteria used by utilities adjacent to the Project's footprint. These local criteria included specific voltage and reactive power flow requirements for both normal (all-lines-in-service) and emergency (one or more elements out-of-service) conditions. The study applied local area reliability criteria for Tucson Electric Power ("TEP"), Salt River Project ("SRP"), Public Service New Mexico ("PNM"), El Paso Electric ("EPE"), Arizona Public Service ("APS"), and Tri-State Generation & Transmission Association ("TSGT").

The Phase 2 Path Rating Study demonstrates that Southline's expected transmission design and performance meet both NERC and WECC reliability criteria. Overall, the results of the study established maximum directional ratings for the project while also identifying any potential transmission system impacts and reliability concerns. Based on the results of the WECC Phase 2

¹ Inclusive of both Southline owned facilities and Western Area Power Administration owned facilities.

² Additional detail regarding NERC Category A, B, and C contingencies can be found at http://www.nerc.com/files/TPL-001-0_1.pdf.

Path Rating Study, Staff concludes that the Project may offer improvements to the reliability of the grid and to the delivery of power in Arizona.

For the delivery of power in Arizona, the Study demonstrates that the Project would increase the import capability of the region, with an Accepted Path Rating of 1,000 MW east-to-west and 430 MW west-to-east in the Upgrade Section in Arizona.

The Project could potentially mitigate congestion concerns. Western Area Power Administration (“WAPA”) lines in the Upgrade Section of the Project currently are fully committed, with near zero Available Transmission Capacity (“ATC”). The Project contemplates the upgrade of the existing WAPA owned 115 kV line to two 230 kV lines. This upgrade replaces a single circuit line with two circuits at a higher voltage operating on a single structure. This provides an opportunity to increase the capacity of the line and deliver additional power, which could alleviate congestion due to the current lack of capacity on the line. Existing lines from New Mexico into Arizona are also committed to existing uses. In certain sections, highly utilized lines operate with low levels of redundancy to withstand unanticipated outages. Additional transmission capacity in the region could potentially offer additional redundancy and/or lower utilization which would allow flexibility for unanticipated and scheduled grid outages. With the Project in-service, an opportunity may also exist to access New Mexico Wind resources in addition to other resources in the State. Overall, reducing grid congestion also offers the opportunity to import power from regional market hubs such as Palo Verde as well. Regarding the Upgrade section, adding new conductors, insulators, and related substation equipment will increase general reliability and system capacity.

The Project also offers existing substations increased operational flexibility by including additional higher voltage 230 kV and 345 kV transmission interconnections at the same substation. This in turn provides the transmission operator additional transmission options in an emergency. Facility upgrades also appear reasonable, such as the Static Var Compensator to be located at the Apache substation and the bulk 345 kV transmission line shunt capacitors, which help maintain and control voltage.

The Project is adjacent to and electrically parallels TEP’s extra-high voltage (“EHV”) transmission system and interconnects at 230 kV to TEP’s system at the Vail, De Moss Petrie and Tortolita substations. Due to the fact that the Project is electrically parallel and adjacent to TEP’s system and interconnects with TEP’s system at three substations, it reinforces TEP’s system by providing alternate paths for power in the event that the TEP system suffers a transmission outage. This is a reliability benefit to the extent it permits TEP some increased operational reliability. Souhtline will improve TEP’s flexibility to take lines out of service to perform maintenance as well as provide an alternative means to transport power in the event of certain types of unplanned outages, i.e. to relieve overheated transmission lines. However, due to the physical proximity of the Project facilities to TEP’s transmission system, the Project offers limited physical redundancy to TEP’s transmission system.

Two types of steel structures could be used for the 345-kV transmission line which include self-supporting lattice and monopole tubular structures. In general, the benefit of using a monopole structure is the potential to reduce the apparent footprint of the tower but construction requires deeper foundations with greater mass than the lattice towers³. Lattice structures potentially offer a lower cost of construction and installation but cover a larger footprint. For this particular application, both 345-kV structure types are listed as having a 200-foot-wide ROW. For the 230-kV double-circuit transmission lines, the structures are proposed to be tubular steel structures.

³ http://solareis.anl.gov/documents/docs/APT_61117_EVS_TM_08_4.pdf

Staff inquired whether any Arizona load serving entity has expressed interest in acquiring capacity in the Project to meet their demand. Based on material provided by Southline and materials Staff has reviewed from Arizona utilities, Staff's understanding is that TEP submitted an Expression of Interest in the SU FERC open solicitation process and negotiations with TEP are underway.

Staff concludes that the proposed project has the potential to improve some aspects of the reliability and safety of the grid as well as improve the delivery of power in Arizona. There is also an opportunity to access renewable energy resources in New Mexico.

Legal Issue Analysis

Your letter also asks for Staff's thoughts concerning the following question that was posed to the Applicant and prospective intervenors:

Does section 505(a)(iv) of the Federal Land Policy and Management Act apply to any portion of what is described in the Application as the Upgrade Section and owned by Western Area Power Administration ("WAPA"), and if so what portion? Assuming section 505(a)(iv) applies, what are Arizona's substantive line siting standards or are such standards established through the Certificate of Environmental Compatibility ("CEC") process? What information would be necessary to enable the Committee to determine compliance with Arizona's substantive line siting standards? Should the Applicant present such information to the Line Siting Committee at the hearing to allow it, and by extension the Commission, to determine whether the Applicant has met Arizona's substantive standards? *State of Montana v. Johnson*, 738 F.2d 1074, 1079 (9th Cir. 1984); *Columbia Basin Land Protection Ass'n v. Schlesinger*, 643 F.2d 585, 805-06 (9th Cir. 1981).

Commission Staff has reviewed Applicant's Memorandum filed on November 9, 2016. Staff believes that whether section 505(a)(iv) applies to the WAPA administered portion of the Project will depend on various factors. It is Staff's understanding that the Applicant is not requesting approval for any of the Project facilities that will be constructed, owned and operated by WAPA, and that WAPA is not a party to the application. Further, the Applicant is relying upon the findings of the Environmental Impact Statement process to provide the evidentiary record on that segment of the Project.

1. Applicability of Section 505(a)(iv) of FLPMA

A. FLPMA on Federally Administered Land

The Federal Land Policy and Management Act ("FLPMA") requires any entity, public or private, to obtain a right-of-way before constructing electric transmission lines and related facilities on federal land. 43 U.S.C. § 1761(a) (2016); *State of Mont. v. Johnson*, 738 F.2d 1074, 1079 (9th Cir. 1984). The Act authorizes the Secretary of the Interior to grant right-of-way permits over federal lands for systems for generation, transmission, and distribution of electric energy. 43 U.S.C. § 1761(a)(4).

The FLPMA also mandates that each right-of-way permit on federal land include terms requiring compliance with state siting, construction, operation and maintenance standards if state standards are more stringent than federal standards. 43 U.S.C. § 1765(a)(iv). Requiring utility companies to comply with state substantive standards assists states in enforcing their own standards. *Columbia Basin Land Protection Assoc. v. Schlesinger*, 643 F.2d 585, 605 (9th Cir. 1981); *see also Johnson*, 738 F.2d at 1079 (noting that the language of section 505(a)(iv) "evinces the principal purpose of allowing states to impose more stringent measures for environmental protection on right-of-way grantees than the federal government requires").

By providing that federally approved rights-of-way must conform to state siting standards that are more stringent than equivalent federal standards, Congress has, to some extent, ceded control of public lands to the states. *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1055 (9th Cir. 1985) (noting that 43 U.S.C. §1765(a)(iv) represents a form of abdication of federal authority over public lands to local authorities). Thus, a transmission line owned and operated by a federal agency does not entirely escape the applicability of state siting requirements. *Id.*

According to the terms of 43 U.S.C. § 1765, an entity that issues a federal right of way to WAPA must require WAPA to abide by State substantive environmental requirements. From reading Applicant's Memorandum and based on representations made by persons representing the Applicant, Staff's understanding is that approximately 1.5 miles of federal right of way may potentially be necessary for the WAPA upgrade segments of the Project. Although Applicant suggests that the 1.5 miles of such right of way is minimal, Staff has not located an exception within the statute that indicates that some amount of right of way is sufficiently *de minimus* to avoid the need to comply with the requirements of FLPMA. That is to say, if a right of way must be acquired to cross applicable federal land, it is Staff's understanding that the statutory requirement to comply with State substantive environmental standards is invoked.

B. Non-Federally Administered Land

There appears to be a different outcome for those parts of the WAPA upgrade segment that are located on non-federal land, however. *Johnson* indicates that FLPMA does not require a federal land administrator to mandate compliance with state substantive requirements, as part of the issuance of a right of way across federal land, for non-federal land that is also being crossed by a transmission line. *Johnson* 738 F.2d at 1080-81. *See also U.S. v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943 (9th Cir. 2008) (noting that because WAPA is an agency of the federal government, its activities in connection with the construction and operation of transmission facilities are immune from local control absent a clear Congressional direction that WAPA's activities be made subject to local control.)

As the Court in *Johnson* observed, this leads to the counterintuitive outcome that under FLPMA, an entity like WAPA would be required to follow state substantive standards on federal land but not have to follow state substantive requirements on state land. *Johnson* 738 F.2d at 1080-81. However, the Court further noted that requirements directing an entity like WAPA to follow state substantive requirements may arise from some federal statutory provision other than FLPMA. *Id.* at FN 9.

2. How are Arizona's substantive environmental standards established?

A. Are FLPMA State Substantive Standards Established through the CEC Process?

Although the FLPMA requires compliance with state environmental standards across federal land, neither the Act nor its legislative history elucidates the meaning of "state standards." As a result, courts have interpreted this phrase to mean compliance with state substantive line siting standards, but not compliance with state procedural requirements. *Columbia Basin*, 643 F.2d at 604-05; *accord Citizens & Landowners against Miles City/New Underwood Powerline v. Sec'y, U.S. Dep't of Energy*, 683 F.2d 1171, 1179-80 (8th Cir. 1982).

However, the cases provide little guidance regarding how to reconcile the ability to introduce State substantive requirements while not subjecting an entity like WAPA in this instance to the State's procedural requirements. *Johnson* suggests that where FLPMA is applicable, the State standards need not necessarily have been "previously promulgated" or of widespread applicability and can be effectuated in an "ad hoc" and route-specific fashion much as how the

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Line Siting Committee's proceedings determine appropriate conditions specifically applicable to a Certificate of Environmental Compatibility. See *Johnson*, 738 F.2d at 1077-78.

According to *Columbia Basin*, WAPA likely cannot be made to be an applicant for a CEC. The Siting Committee's CEC evaluation process may nonetheless be the appropriate mechanism to determine the appropriate environmental requirements for WAPA's facilities on FLPMA applicable federal land. Staff agrees with the Applicant that the CEC process may produce route specific conditions that would qualify as substantive standards pursuant to *Johnson*.

B. What information would be necessary to enable the Committee to determine the substantive line siting standards that should be applicable to the FLPMA right-of-way portion of the WAPA upgrade?

The relevant information would be any evidence that is germane to the provisions of A.R.S. § 40-360.06. Staff understands that the Applicant intends to rely upon the EIS findings concerning those portions of the WAPA upgrade. The Applicant could also present its understanding of the route specific aspects of the WAPA controlled segment and thereby develop an evidentiary record. This would give the Siting Committee and the Commission evidence about any route specific Arizona substantive conditions that may appear appropriate for the WAPA segment and would ensure that those segments are addressed consistently with the conditions that will be applied to Applicant's portions of the Project.

Conclusion

In light of the foregoing analysis, Staff believes that the Commission and the Line Siting Committee may develop state substantive requirements to be applied to FLPMA applicable rights of way that WAPA must respect to construct its portions of the Project. It is unlikely that WAPA can be made to comply with Arizona substantive standards for non-FLPMA land under the circumstances of this case.

Respectfully,

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Charles H. Hains, Attorney
Arizona Corporation Commission
Legal Division

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On this 22nd day of November, 2016, the foregoing document was filed with Docket Control as an Utilities Division Filings Dealing With Line Siting Issues, and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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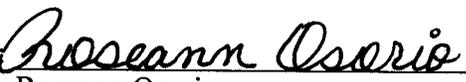
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