

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - CHAIRMAN
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

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 500KV 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.

CASE NO. 171

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

DECISION NO. 75464

Arizona Corporation Commission

DOCKETED

FEB 22 2016

DOCKETED BY

Open Meeting
February 2 and 3, 2016
Phoenix, Arizona

BY THE COMMISSION:

Pursuant to A.R.S. § 40-360, *et seq*, after due consideration of all relevant matters, the Arizona Corporation Commission ("Commission") finds and concludes that the Certificate of Environmental Compatibility ("CEC") issued by the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") is hereby approved as granted by this Order.

The Commission, in reaching its decision, has balanced all relevant matters in the broad public interest, including the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state, and finds that granting the Project a CEC is in the public interest.

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The Commission further finds and concludes that in balancing the broad public interest in this matter:

- 1. The Project is in the public interest because it aids the state in meeting the need for an adequate, economical, and reliable supply of electric power.
- 2. In balancing the need for the Project with its effect on the environment and ecology of the state, the conditions placed on the CEC effectively minimize its impact on the environment and ecology of the state.
- 3. The conditions placed on the CEC resolve matters concerning the need for the Project and its impact on the environment and ecology of the state raised during the course of proceedings, and as such, serve as the findings on the matters raised.
- 4. In light of these conditions, the balancing in the broad public interest results in favor of granting the CEC.

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1 THE CEC ISSUED BY THE SITING COMMITTEE IS
2 INCORPORATED HEREIN AND IS APPROVED BY ORDER OF THE
3 ARIZONA CORPORATION COMMISSION

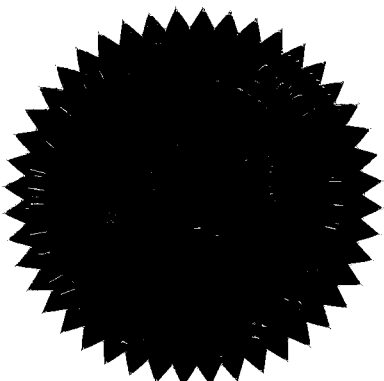
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COMMISSIONER

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COMMISSIONER

COMMISSIONER



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10 IN WITNESS WHEREOF, I, JODI JERICH, Executive
11 Director of the Arizona Corporation Commission, have
12 hereunto, set my hand and caused the official seal of this
13 Commission to be affixed at the Capitol, in the City of
14 Phoenix, this 22nd day of February, 2016.

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16 JODI JERICH
EXECUTIVE DIRECTOR

17 DISSENT: Tru. F...

18 DISSENT: J.B. ...

1 SERVICE LIST FOR: SUNZIA TRANSMISSION, LLC
 2 DOCKET NO. L-00000YY-15-0318-00171

3 Chairman Thomas Chenal
 4 Arizona Power Plant & Transmission
 5 Line Siting Committee
 6 Attorney General's Office
 7 1275 West Washington Street
 8 Phoenix, Arizona 85007
 9 thomas.chenal@azag.gov

10 Albert "Bert" Acken
 11 Samuel L. Lofland
 12 RYLEY CARLOCK & APPLEWHITE
 13 One North Central Avenue, Suite 1200
 14 Phoenix, Arizona 85004-4417
 15 aacken@rcalaw.com
 16 slofland@rcalaw.com

17 Lawrence V. Robertson, Jr.
 18 Of Counsel to MUNGER CHADWICK, PLC
 19 P.O. Box 1448
 20 Tubac, Arizona 85646-1448
 21 tubaclawyer@aol.com

22 Lisa Atkins
 23 ARIZONA STATE LAND DEPARTMENT
 24 1616 West Adams Street
 25 Phoenix, Arizona 85007
 26 latkins@azland.gov

27 Phillip Ronnerud
 28 GREENLEE COUNTY
 29 253 Fifth Street
 30 P.O. Box 908
 31 Greenlee, Arizona 85533

32 Joe Goodman
 33 GRAHAM COUNTY
 34 General Services Building, 2nd Floor
 35 921 Thatcher Blvd.
 36 Safford, Arizona 85546

37 Mary Gomez
 38 COCHISE COUNTY
 39 1415 Melody Lane, Bldg. E
 40 Bisbee, Arizona 85603

41 Steve Abraham
 42 PINAL COUNTY
 43 31 North Pinal Street, Bldg. F
 44 Florence, Arizona 85132

45 Chuck Huckleberry
 46 PIMA COUNTY
 47 130 West Congress Street, 10th Floor
 48 Tucson, Arizona 85701

49 Rick Miller
 50 CITY OF COOLIDGE
 51 131 West Pinkley Avenue
 52 Coolidge, Arizona 85228

53 Norm "Mick" Meader, Co-Chair
 54 CASCABEL WORKING GROUP
 55 3443 East Lee Street
 56 Tucson, Arizona 85716
 57 nmeader@cox.net

58 Jay Shapiro
 59 SHAPIRO LAW FIRM
 60 1819 East Morten Avenue, Suite 280
 61 Phoenix, Arizona 85020
 62 jay@shapslawaz.com
 63 Counsel for Robson Communities

64 Peter Gerstman
 65 Executive V.P. & General Counsel
 66 ROBSON COMMUNITIES
 67 9532 East Riggs Road
 68 Sun Lakes, Arizona 85248-7463
 69 Peter.Gerstman@robson.com

70 Let Celmins
 71 MARGRAVE CELMINS, P.C.
 72 8171 East Indian Bend Road, Suite 101
 73 Scottsdale, Arizona 85250
 74 lcelmins@mclawfirm.com
 75 Counsel for Winkelman & Redington

76 Cedric I. Hay, Deputy County Attorney
 77 PINAL COUNTY ATTORNEY'S OFFICE
 78 P.O. Box 887
 79 Florence, Arizona 85132
 80 Counsel for Pinal County, Arizona
 81 Cedric.hay@pinalcountyyaz.gov

82 Peter T. Else
 83 P.O. Box 576
 84 Mammoth, Arizona 85618
 85 bigbackyardfar@gmail.com

1 Christina McVie
4420 West Cortaro Farms Road
Tucson, Arizona 85742
2 Christina.mcvie@gmail.com
3 Linda Pollock
4 Linda.pollock@azag.gov
5 Greg Stanley
Gregory.Stanley@pinalcountyz.gov
6 Chris Keller
7 Chris.Keller@pinalcountyz.gov
8 Matt Clark
mclark@tucsonaudubon.org
9 Karne Fogas
10 kfogas@tucsonaudubon.org
11 Tim Hogan
thogan@aclpi.org

Rob Peters
rpeters@defenders.org
Sandy Bahr
Sandy.bahr@sierraclub.org
Peter Steere
Peter.steere@tonation-nsn.gov
Elna Otter
Elna.otter@gmail.com
Hallock & Gross
halgros@hallockgross.com
Pearl Mast
cpearlmast@gmail.com

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COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



**ARIZONA CORPORATION
 COMMISSION**

DOUG LITTLE
CHAIRMAN
 Direct Line: (602) 542-0745
 Email: DLittle-web@azcc.gov

February 22, 2016

Re: Docket L-00000YY-15-0318-00171

DISSENT BY CHAIRMAN DOUG LITTLE

As a Commissioner, it is my responsibility to review the recommendations of the Transmission and Line Siting Committee regarding the environmental compatibility of the applicant's request for an approved route. There are several considerations that, by necessity and statute must be a part of that review. My dissent will address the three issues of need, benefit to the community and environmental impact.

Need

A principal consideration of any applicant's petition is whether or not a need exists for the additional transmission capacity. Under normal circumstances, it is the burden of the applicant to prove such need exists. Typically, the applicant is an electric utility and that utility as part of their petition provides a justification of need for the new line. It is interesting to note that the relevant statutes (ARS 40-360.01 – 40-360.13) actually refer specifically to "utility" several times.

Historically when establishing need, the utilities' arguments have centered on reliability concerns and/or a need for additional capacity to accommodate actual or projected load growth in the utilities' service territories. The statements of need have specifically related to the utilities' ability to provide reliable and affordable energy to the ratepayers in their service territory. This is important since the ratepayers will ultimately fund the cost of construction when the line enters service and is placed in the utilities' rate bases.

The application by SunZia Transmission, LLC is unique and unprecedented since it is the first instance of a merchant transmission line application.

In the executive summary of the applicant's application for a Certificate of Environmental Compliance for the SunZia Southwest Transmission Project, under the heading "Project Need and Benefits", the applicant states that the project will "(1) reduce existing transmission congestion, (2) support the development and transmission of

renewable energy resources, such as solar and wind energy, currently located within areas of undeveloped renewable resource potential, (3) provide power to help meet future electricity demand in Arizona, (4) provide a strategic option for Arizona, and its utilities, to comply with increasingly burdensome federal air quality standards; and (5) provide needed jobs and state and local revenues.”

The summary goes on to cite references to the project’s ability to help utilities meet Arizona’s renewable energy standards tariff and achieve emission targets in the Clean Power Plan¹ (“CPP”) as additional justifications.

All of these things, if true or likely, would be potentially beneficial to Arizona. However, the record contains either no evidence or questionable evidence that any of these benefits will actually materialize.

(1) Reducing existing transmission congestion.

The record does not identify any specific congestion point that will be alleviated by the proposed line. I am not aware of any Arizona utilities or merchant generators that have claimed the proposed line is necessary to relieve congestion affecting their system.

(2) Support the development and transmission of renewable energy.

This claim is highly speculative. There is no real assurance that the proposed line will actually lead to the development of additional renewable energy resources. Furthermore, there is no evidence on the record that allowing for importation of wind power from New Mexico is the most cost effective way to develop renewable generation.

(3) Provide power to help meet future electricity demand in Arizona.

No Arizona utility has indicated that the proposed line is necessary for meeting future demand. There is no evidence on the record that building the proposed line will provide for meeting future demand in a more cost effective manner than what is currently contemplated without the line.

(4) Provide a strategic option for compliance with increasingly burdensome federal air quality standards.

Again, there is no evidence on the record that the proposed line is a preferred option for compliance with federal air quality standards. The proposed line was not compared to any other potential or current options for such compliance. We simply do not know whether the proposed line is relatively cost effective or has a relatively greater chance of success than other options. One can reasonably surmise that they are referring to the EPA’s Clean Power Plan (CPP) here.

Other than the vague claims of the applicant, I am not aware of any evidence regarding the need for the SunZia line to allow for CPP¹ (or any other environmental) compliance. Based on my knowledge concerning the implementation of the CPP and the preliminary compliance strategies being developed by Arizona utilities, none of Arizona's utilities anticipated using renewable energy from the SunZia project. Moreover, with the recent issuance of a stay on the implementation of the Clean Power Plan by the Supreme Court, whether or not the rule will ever be implemented is in serious question.

(5) Provide needed jobs and state and local revenues.

The application speaks to providing jobs and revenue in Arizona, stating that the project "will provide significant employment opportunities during its anticipated construction period (over 2500 jobs in Arizona); tax benefits through property, state and local taxes; and significant revenue to the Arizona State Land Department."

By way of confirmation of this, SunZia submitted a study performed by the University of Arizona and New Mexico State University outlining the economic impact of the SunZia project. The study projected that 2,200 jobs would be created during the four year construction phase of the project.

During testimony, SunZia stated that was the total number of jobs, not the number of concurrent jobs on the project. SunZia reiterated in the open meeting that not all portions of the line are built at one time. A reasonable person would conclude that as the construction moved along the 199 mile route, people would be hired and released as the project moved in and out of areas on the route. In any case, it is also unclear how many of the jobs would be higher paying skilled jobs and how many would be lower paying unskilled jobs. The study also stated that after construction, only 80 jobs would remain during the operation and maintenance phase of the project.

The study also projected potential economic benefits that could result from the construction of the SunZia project. It projected the potential for 16,000 jobs and up to \$1.2 billion in potential economic benefit. Without seeing the data and underlying assumptions from this study it is difficult to accurately assess whether or not the results are overly optimistic or realistic. Regardless, the study is still based on an "if we build it, they will come" model. I am very suspicious of this type of "hope as a strategy" approach as a basis for sound decision-making. Where are the letters of intent for renewable projects along the line? It is also worth noting that SunZia paid the universities to perform the study and provided data for their analysis.

In short, this project is entirely speculative. In the application and during the Line Siting Committee's hearing and the Open Meeting, the project was characterized as a way to bring tremendous amounts of stranded wind resources from Lincoln County, New Mexico to Arizona. The applicant claims that Lincoln County, New Mexico is the proposed location for a number of wind farms that would produce thousands of

¹ One can reasonably surmise that the applicant is referring to the EPA's Clean Power Plan (CPP) here.

megawatts of wind energy and bring it west to Arizona and other western markets. No evidence was presented that this massive increase in Lincoln County's wind capacity is seriously contemplated in the near term.

The eastern portion of the line would provide the reason for outside parties, specifically, unregulated merchant generators, to consider construction of the wind projects. SunZia is essentially taking an "if we build it, they will come" approach to the development of renewable generation. Again, this is unprecedented. This Commission has never approved (or even considered) a transmission line proposed under such a paradigm.

SunZia states that Arizona utilities would benefit from electricity produced in New Mexico, yet there is a stunning fact in the proceeding that jumped out at me. No Arizona utility intervened in the line siting hearings. Not one. No Arizona utility claimed that the SunZia line would be necessary (or even helpful) in complying with Arizona's REST rules, the CPP or even in simply providing reliable and economic service generally.

The only Arizona utility with any seeming interest in the project was SRP. In response to a data request by ACC Staff, SRP stated that they joined the effort to permit SunZia in 2008. At the time, they had an interest in procuring renewable energy that was located both inside and outside of Arizona. In the data request response dated October 2, 2015, SRP stated "*Over time as the price of various renewable resources has changed, SRP's focus has narrowed to mostly renewable resources located close to the load we serve, primarily solar projects in the Phoenix metropolitan area. Second, there is a long-term interest to develop additional transmission from existing generation sources located in eastern Arizona to serve load in central Arizona.*" (Emphasis added)

Based on the foregoing, there are serious questions in my mind regarding whether or not there is a real "need" for this project that cannot be addressed in a different way with less risk.

Benefit to the Community

During the course of testimony and during the Open Meeting, there was support offered for the project by County Supervisors from Graham, Greenlee and Cochise County. All felt that the project could provide economic benefit and jobs to their communities. If the project were to proceed exactly as proposed, I would tend to agree with them. As a County Supervisor, it is their obligation to do whatever is possible to benefit their counties and their constituents. I am extremely sensitive to the economic conditions that exist in many of our rural counties. I have seen first-hand how hard they have been hit and how difficult their economic situation has been over the past several years.

However, I have a different perspective to offer. Currently there are several existing power plants and coal mines in rural Arizona. Those plants are owned by Arizona utilities and employ thousands of Arizonans. The salaries, property tax and sales tax revenues contributed by those Arizona utilities pump millions of dollars into rural

Arizona economies. Currently any surplus power produced is sold by those utilities and the savings go back into the pocket of Arizona ratepayers.

SunZia, if completed and operated as promised, would supply between 4-6 gigawatts of additional electricity from Lincoln County, New Mexico. This would be surplus electricity that does not necessarily have a customer willing to purchase it.

Allowing for the importation of excess energy from New Mexico could very well cause Arizona utilities to buy energy and curtail generation. This could potentially lead to the early closure of generation plants currently located in rural Arizona. We have already seen such plant closures of coal-fired generating stations and the economies of the rural communities where those plants are located have been devastated.

Do we really want to encourage a project that would hasten the closure of more of those plants, especially understanding that the money would be benefitting New Mexico producers of energy and a merchant transmission company, not Arizona utilities or Arizona ratepayers.

In summary, when reviewing the questions of community benefit, SunZia has painted a very rosy picture of how wonderful things "could be". However, they have failed to point out that most, if not all of the proposed benefits will not materialize if the project does not go as planned. Also, they fail to point out there could be significant potential negative impacts from the project.

Environmental Impact

ARS 40-360.06, paragraph A, states that "the (Transmission and Line Siting) committee may approve or deny an application and may impose reasonable conditions on the issuance of a certificate of environmental compatibility and in so doing shall consider the following factors as a basis for its action with respect to the suitability of either plant or transmission line siting plans."

The statute further enumerates several factors that should be considered when evaluating an application, specifically:

- Fish, wildlife and plant life and associated forms of life on which they depend
- The proposed availability of the site to the public for recreational purposes, consistent with safety considerations and regulations.
- Existing scenic areas, historical sites and structures or archaeological sites and or in the vicinity of the proposed site.
- The total environment of the area.

It further states in paragraph B, that “The committee *shall* give special consideration to protected areas unique because of biological wealth or because they are habitats for rare and endangered species” (Emphasis added.)

On numerous occasions in testimony, several witnesses, including Intervenors Else, McVie and Meader provided compelling evidence that the portion of the SunZia route that runs along the San Pedro River Valley is an “area unique because of biological wealth” and that part of the route provides “habitats for rare and endangered species.” While the CEC does contain significant conditions to mitigate the environmental harm to that portion of the route, the fact that the Line Siting Committee and the Commission were effectively barred from considering alternative routes that avoided the San Pedro River Valley altogether severely limited what “special consideration” could be given to the area.

This leads to another disturbing aspect of this case: the different routes available for consideration were evaluated by the Bureau of Land Management (BLM) not by Arizona’ Line Siting Committee or the Commission. This is another unique aspect of this case. Typically, the Line Siting Committee and the Commission have several routes to choose from, thus allowing the pros and cons of the various routes to be evaluated on the record. In this case, the Line Siting Committee and the Commission were essentially presented with an “up or down vote” on the entire route, as a whole.

This apparent usurpation of Arizona’s jurisdiction by a federal agency is disturbing for many reasons. It raises significant questions about State and Federal jurisdiction that are beyond the scope of this Dissent. Additionally, the “testimony” of the Director of the Arizona office of the BLM before the Line Siting Committee raised several disturbing issues:

1. The route was determined by the BLM, with the New Mexico BLM office acting as the lead.²
2. The Obama administration was pushing BLM to site this line quickly.³
3. The Arizona BLM Director received “a lot of pressure” for considering an alternative route along I-10.⁴
4. The Director of the BLM’s Arizona office could not answer questions about the alternative route through Tucson.⁵
5. The Director of BLM’s Arizona office spoke in front of the Line Siting Committee but he was not subject to cross-examination. In fact, no one from either the Arizona or New Mexico BLM office was available for cross-examination in the hearings on this matter.

² Transcript Vol X, page 1727, Lines 3-5

³ Transcript Vol X, page 1729, lines 3-6

⁴ Transcript Vol X, page 1731, lines 7-11

⁵ Transcript Vol X, page 1731, line 17 to page 1733

Thus, our ability to develop a record on why the proposed route was chosen over other potential routes was severely limited. I see all of the above as significant defects in the review of the environmental aspects of the SunZia project.

At the Open Meeting, the “energy-water nexus” and the need for significant water conservation were raised by one Commissioner as justifications for the approval of the SunZia project. This warrants comment: The relevance of the “energy-water nexus” was never discussed on the record in this case. Furthermore, no party presented any evidence that the SunZia line would result in lower water use. Presumably, SunZia would achieve water savings by replacing fossil generation with wind generation. However, as stated above, there is no guarantee that the hoped for wind generation will ever materialize. More importantly, there is no evidence on the record that importing wind power from New Mexico is the least cost and/or the most effective way to reduce water use.

This reliance on facts and arguments that were never discussed or brought up on the record in this case calls the legitimacy of the Commission’s vote on this matter into question.

Concluding Remarks

In conclusion, there are several reasons why I chose to vote “no” on the approval of the SunZia CEC and why I am providing this Dissent to the Order.

First, I do not believe the record in this case establishes a need for the SunZia project.

Second, the benefits of the project laid out by the applicants are highly speculative and questionable.

Third, our statutory requirement to “give special consideration to protected areas unique because of biological wealth or because they are habitats for rare and endangered species” was impeded because we were unable to consider any other routes.

Fourth, the BLM’s selection of the route raises jurisdictional questions and the record reflects several issues with the BLM route selection process.

Fifth, at the Open Meeting, one Commissioner appeared to base their vote on information not contained on the record.

In summary, it is my sincerely held belief that the review process by the Line Siting Committee was substantially flawed, not by the actions or the work of the Committee, but by the failure of the applicant to provide reasonable statements of need and reasonable route alternatives that the Committee could fairly consider.

Furthermore, I also believe the record is flawed since parties to the review were not able to fully explore, understand and vet the route selection process by the New Mexico and

Arizona Bureau of Land Management. The inability of the parties to cross-examine any BLM representatives resulted in the record containing inadequate evidence for the Commission to make an informed determination.

Finally, I believe that in presenting only a single route for consideration by both the Line Siting Committee and the Commission, the applicant used state and federal jurisdictional issues to effectively usurp the jurisdiction of the Commission in this matter.

I respectfully dissent.