

NO. L-00000C-08-0011-00137 VOL IX 6-3-2008
1843

1 BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION
2 LINE SITING COMMITTEE
3 IN THE MATTER OF THE APPLICATION)
4 OF TUCSON ELECTRIC POWER COMPANY,)
5 AND ITS ASSIGNEES, FOR A) Docket No.
6 CERTIFICATE OF ENVIRONMENTAL) L-00000C-08-0011-00137
7 COMPATIBILITY FOR THE VAIL AREA)
8 138KV TRANSMISSION LINE LOCATED)
9 NEAR THE INTERSECTION OF) Case No. 137
10 INTERSTATE-10 AND COLOSSAL CAVE)
11 ROAD, PIMA COUNTY, ARIZONA,)
12 ORIGINATING NEAR HOUGHTON ROAD AND)
13 INTERSTATE-10 IN T.16S., R.15E.,)
14 SEC.11, AND TERMINATING NEAR MARSH)
15 STATION ROAD AND INTERSTATE-10 IN) PHASE II
16 T.17S, R.16E., SEC.2) VOTING
17) RECONSIDERATION

11 At: Phoenix, Arizona
12 Date: June 3, 2008
13 Filed:
14

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17 (Pages 1843 through 1858)

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1 BE IT REMEMBERED that the above-entitled and
 2 numbered matter came on to be heard before the Power
 3 Plant and Transmission Line Siting Committee, at 15
 4 South 15th Avenue, Basement Conference Room A, Phoenix,
 5 Arizona, commencing at 11:03 a.m. on the 3rd day of
 6 June, 2008.

7
 8 BEFORE: JENNIFER A. BOUCEK, Committee Chairman

9 DAVID L. EBERHART, Arizona Corporation
 Commission (Appearing via teleconference)
 10 PAUL W. RASMUSSEN, Department of Environmental
 Quality
 11 JACK HAENICHEN, Department of Commerce
 (Appearing via teleconference)
 12 MICHAEL WHALEN, Appointed Member
 MICHAEL PALMER, Appointed Member
 13 (Appearing via teleconference)
 JEFF MCGUIRE, Appointed Member
 14 (Appearing via teleconference)
 BARRY WONG, Appointed Member
 15 (Appearing via teleconference)

16 APPEARANCES:
 17 For the Applicant:

18 ROSHKA, DEWULF & PATTEN, P.L.C.
 19 By Messrs. J. Matthew Derstine and Jason Gellman
 One Arizona Center
 20 400 East Van Buren, Suite 800
 Phoenix, Arizona 85004-2262

21 and

22 Mr. Marc Jerden, Senior Counsel
 23 Tucson Electric Power Company
 One South Church Avenue, Suite 200
 24 Legal Department, P.O. Box 711
 Tucson, Arizona 85702-0711
 25 (Appearing via teleconference)

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1 APPEARANCES:

2 For the Arizona Corporation Commission:

3 Mr. Charles H. Hains, Staff Attorney, Legal Division
4 1200 West Washington Street
Phoenix, Arizona 85007-2927

5 For Mountain View Ranch:

6 MUNGER CHADWICK, P.L.C.
7 By Lawrence V. Robertson, Jr.
National Bank Plaza, Suite 300
8 333 North Wilmot
Tucson, Arizona 85711

9 For Elizabeth Buchroeder Webb:

10 Ms. Elizabeth Buchroeder Webb
11 13105-2 East Colossal Cave Road
Vail, Arizona 85641
12 (Appearing via teleconference)

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14 Certified Reporter
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1 CHMN. BOUCEK: Let's go on the record.
2 I am calling this meeting to order. This is a
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3 continuation of the hearing on TEP's application for a
4 certificate of environmental compatibility in Case
5 No. 137 previously identified as the Vail to Cienega
6 case.

7 I will begin with a roll call. My name is
8 Jennifer Boucek. I am the Attorney General's designee
9 on the Line Siting Committee and serve as Chair of the
10 Committee.

11 David Eberhart.

12 MEMBER EBERHART: Here.

13 CHMN. BOUCEK: Jack Haenichen.

14 MEMBER HAENICHEN: Here.

15 CHMN. BOUCEK: Jeff McGuire.

16 MEMBER MCGUIRE: Here.

17 CHMN. BOUCEK: Mike Palmer.

18 MEMBER PALMER: Here.

19 CHMN. BOUCEK: Paul Rasmussen.

20 MEMBER RASMUSSEN: Here.

21 CHMN. BOUCEK: Mike Whalen.

22 MEMBER WHALEN: Here.

23 CHMN. BOUCEK: Barry Wong.

24 MEMBER WONG: Here, representing the public.

25 CHMN. BOUCEK: Okay. Gregg Houtz.

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1 (No response.)

2 CHMN. BOUCEK: And Joy Rich.

3 (No response.)

4 CHMN. BOUCEK: All right. At the last meeting
5 of this Committee, on May 13th, 2008, we voted on TEP's
6 application for a certificate of compatibility. The
7 Committee voted by eight to zero to approve the
8 application for what the applicant described as Phase I
9 of the project from the Vail substation to the proposed
10 Cienega substation. The Committee then voted on
11 Phase II of the project. The vote on that motion was
12 three in favor and five against including Phase II of
13 the project within the certificate of environmental
14 compatibility in Case 137.

15 And the statutes governing the line siting
16 process state that the Committee shall by majority of
17 the members issue or deny a certificate of compatibility
18 within 180 days after the application has been filed. A
19 majority of the Committee which is made up of 11 members
20 is at a minimum six members.

21 All right. Before I continue, I will at this
22 time then take appearances of the parties for purposes
23 of the record. For the applicant.

24 MR. DERSTINE: Matt Derstine and Jason Gellman
25 appearing on behalf of the applicant, Tucson Electric

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1 Power Company.

2 CHMN. BOUCEK: And, Mr. Jerden, are you on the
3 phone as well?

4 MR. JERDEN: Yes, I am. This is Marc Jerden,
5 senior counsel for TEP by phone from Tucson.

6 CHMN. BOUCEK: And for intervenors,
7 Mr. Robertson.

8 MR. ROBERTSON: Thank you, Chairman Boucek.
9 Lawrence V. Robertson, Jr. appearing on behalf of the
10 intervenor Mountain View Ranch.

11 CHMN. BOUCEK: For Staff.

12 MR. HAINS: Thank you. Good morning, Madam
13 Chairman, members of the Committee. Charles Hains on
14 behalf of staff of the Utilities Division.

15 CHMN. BOUCEK: And Ms. Webb.

16 MS. WEBB: Elizabeth Buchroeder webb on behalf
17 of myself.

18 CHMN. BOUCEK: All right. The applicant --
19 after the vote last time we had a procedural conference
20 call on this matter in which the parties were
21 represented. During that conference and actually at the
22 end of the last hearing, it became clear that TEP takes
23 the position that, because at least six members did not
24 vote for or against Phase II, the Committee in effect,
25 quote, unquote, failed to act, close quote, on Phase II.

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1 And as a result, in TEP's view, the provisions of A.R.S.
2 40-360.08B are triggered, which means that TEP could in
3 its discretion immediately proceed with the construction
4 of the line.

5 However, it should be noted that during our
6 procedural conference call, TEP did degree to stipulate

7 that it would agree to have Phase II submitted to the
8 Corporation Commission for review. Commission Staff,
9 however, took issue with this position on the ground
10 that the applicant cannot confer jurisdiction on the
11 Commission by stipulation.

12 Basically because a cloud hangs over the
13 application as a result of the vote taken on Phase II of
14 the application, we have convened this meeting of the
15 Committee to vote on a motion to reconsider Phase II of
16 the application.

17 Now, unless any of the Committee members have
18 any objection, I will ask for a motion to reconsider the
19 Committee's May 13th, 2008 vote on Phase II of the
20 application.

21 MEMBER RASMUSSEN: So moved.

22 MEMBER WHALEN: Second.

23 MEMBER WONG: Madam Chair, point of information.

24 CHMN. BOUCEK: Yes.

25 MEMBER WONG: I wanted to know which members may

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1 make a motion for reconsideration, the members in the
2 majority side or the minority side of the vote.

3 CHMN. BOUCEK: My review of Robert's Rules of
4 Order is that they must be in the majority. And so
5 Mr. Rasmussen, who voted no on Phase II, and Mr. Whalen
6 are the respective members who moved for reconsideration
7 and seconded the motion.

8 Does that comport with your understanding,
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9 Mr. Wong?
10 MEMBER WONG: That's my understanding. So that
11 the individuals who made the motion, were they on the
12 derailling side?
13 CHMN. BOUCEK: Yes. They voted no.
14 MEMBER WONG: Okay, okay.
15 CHMN. BOUCEK: Okay? All right.
16 MEMBER WONG: No objection.
17 CHMN. BOUCEK: All right. Any discussion? All
18 right.
19 MEMBER PALMER: Yes, Madam Chairman, if I can.
20 CHMN. BOUCEK: Who is this speaking?
21 MEMBER PALMER: This is Mike Palmer. A couple
22 of issues.
23 One, the saturation study provided for as much
24 as a 15-year protection of population growth and density
25 in the area. And we have a countervailing force in Pima

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1 County. At least three of the members of the board of
2 supervisors have expressed concerns over controlling
3 growth in the area and creating both conservation and
4 preservation areas as was done with the Bar V Ranch.

5 It would seem premature to assume that that
6 saturation study will come to fruition. And it is
7 possible to serve the area in what would be a median
8 growth in the area by a 69kV line which is not subject
9 to the jurisdiction of the Line Siting Committee.

10 CHMN. BOUCEK: Thank you, Mr. Palmer.

11 Just for everyone's information, at this time we
12 will be voting on a motion to reconsider and then we
13 will have a second vote on the application. So you can
14 also, I will entertain additional comments from the
15 Committee members at that time, assuming the motion for
16 reconsideration passes.

17 All right. Any further discussion?

18 (No response.)

19 CHMN. BOUCEK: All right. I will do a roll call
20 vote.

21 Mr. Eberhart.

22 MEMBER EBERHART: Aye.

23 CHMN. BOUCEK: Mr. Haenichen.

24 MEMBER HAENICHEN: Aye.

25 CHMN. BOUCEK: Mr. McGuire.

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1 MEMBER MCGUIRE: Aye.

2 CHMN. BOUCEK: Mr. Palmer.

3 MEMBER PALMER: Aye.

4 CHMN. BOUCEK: Mr. Rasmussen.

5 MEMBER RASMUSSEN: Aye.

6 CHMN. BOUCEK: Mr. Whalen.

7 MEMBER WHALEN: Aye.

8 CHMN. BOUCEK: Mr. Wong.

9 MEMBER WONG: Aye.

10 CHMN. BOUCEK: And I vote aye as well.

11 By your vote of eight ayes to zero nays, the
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12 motion to reconsider passed.

13 We will move now to the next item on the agenda,
14 which is the vote and decision on Phase II of the
15 application for a certificate of environmental
16 compatibility.

17 MEMBER RASMUSSEN: Madam Chair, I move the
18 motion for compatibility be rejected, or a no vote.

19 CHMN. BOUCEK: So are you moving to deny?

20 MEMBER RASMUSSEN: I am sorry, moving to deny
21 the Phase II.

22 MEMBER WHALEN: Second.

23 MEMBER HAENICHEN: I can't hear.

24 MEMBER RASMUSSEN: That was Paul Rasmussen,
25 moving to deny.

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1 CHMN. BOUCEK: Mr. Rasmussen has made a motion
2 to deny the application for a certificate of
3 environmental compatibility as to Phase II of the
4 application.

5 MEMBER PALMER: Mike Palmer seconds the motion.

6 MEMBER WHALEN: It has already been seconded.

7 CHMN. BOUCEK: Mr. Whalen already seconded.

8 That was not heard. So the motion has been seconded by
9 Mr. Whalen.

10 Thank you, Mr. Palmer.

11 Any discussion?

12 MEMBER RASMUSSEN: Yes, Madam Chair. This is

13 Paul Rasmussen.

14 I won't revisit all of my comments at the last
15 meeting in which I voted in the same way as I am going
16 to do today. I do appreciate Tucson Electric's desire
17 for long-range planning. That certainly is a laudable
18 and desirable type of approach in terms of utility
19 corridors. However, in this situation there were just a
20 large number of both contradictory and unknowns in terms
21 of this particular proposed line siting. And as
22 Mr. Palmer suggested, the county was against it
23 primarily in regards to its impact on conservation and
24 open space in that general region.

25 I personally felt that additional alternates to

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1 the one proposed line was desirable. And for both of
2 those very strong reasons, I would vote nay.

3 CHMN. BOUCEK: Wait. For point of order here,
4 we have moved to deny.

5 MEMBER RASMUSSEN: I am sorry.

6 CHMN. BOUCEK: This is --

7 MEMBER RASMUSSEN: I apologize. I would vote to
8 approve the denial.

9 CHMN. BOUCEK: Mr. Haenichen.

10 MEMBER HAENICHEN: Yes, this is Jack Haenichen.

11 I voted for Phase II because it was my
12 understanding that the Corporation Commission desired
13 and had so instructed utilities to plan for possible
14 future growth. And my feeling about approving this

15 phase is this: If the county does indeed enact all
16 these conservation areas and there won't be growth
17 there, they can simply abandon the approved corridor.
18 They are not actually going to build a transmission line
19 until it is needed. So that was the reason that I voted
20 aye.

21 CHMN. BOUCEK: Any other discussion by Committee
22 members?

23 (No response.)

24 CHMN. BOUCEK: Okay. I am going to call the
25 roll at this time. I do want to remind everyone this is

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1 a motion to deny the application for CEC. So keep that
2 in mind as you place your vote.

3 All right. Mr. Eberhart.

4 MEMBER EBERHART: Aye.

5 CHMN. BOUCEK: Mr. Haenichen.

6 MEMBER HAENICHEN: No.

7 CHMN. BOUCEK: Mr. McGuire.

8 MEMBER MCGUIRE: No.

9 CHMN. BOUCEK: Mr. Palmer.

10 MEMBER PALMER: Aye.

11 CHMN. BOUCEK: Mr. Rasmussen.

12 MEMBER RASMUSSEN: Aye.

13 CHMN. BOUCEK: Mr. Whalen.

14 MEMBER WHALEN: Aye.

15 CHMN. BOUCEK: Mr. Wong.

16

MEMBER WONG: Aye.

17

CHMN. BOUCEK: All right. It is time for my vote. And I would just like to explain my vote.

19

Actually, in the time that we have had since the last vote, I have considered this matter. And, quite frankly, I took to heart Mr. Palmer's comments with regard to the planners in Pima County. And I know that he has served in a capacity in Cochise County in connection with their local government. So with regard to this vote, I vote aye as well.

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Therefore, by your vote of six ayes, two nays, the application for certificate of environmental compatibility as to Phase II of the project is denied.

4

I will be preparing an order regarding this decision at the same time. As you are aware, we did vote on the Phase I application. And the applicant has submitted an order for my signature and I will be signing that order that reflects the eight-to-zero vote of the committee to grant the application as to Phase I. But I will be issuing a separate order confirming the Committee's decision to deny Phase II of the application.

10

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13

Any other discussion by the parties, by the Committee members?

14

15

MEMBER HAENICHEN: Madam Chair.

16

CHMN. BOUCEK: Yes, Mr. Haenichen.

17

MEMBER HAENICHEN: Jack Haenichen. I might

18 suggest that you or the new Chair that is going to be
19 taking your place try to talk to the Commissioners and
20 get them to provide us with some more guidance on what
21 they mean by utilities should do future planning and
22 maybe perhaps make it a little more clear so that the
23 next time this comes up it will be easier for us.

24 CHMN. BOUCEK: Okay. Thank you, Mr. Haenichen.
25 All right. Any other discussion?

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1 (No response.)

2 CHMN. BOUCEK: All right. With that, this
3 meeting of the Line Siting Committee is adjourned.
4 Thank you.

5 (The proceedings concluded at 11:17 a.m.)

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.

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I, COLETTE E. ROSS, Certified Reporter No. 50658 for the State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this day
of , 2008.

COLETTE E. ROSS
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