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Chairman Jerry Weiers, House Rules Committee

The House Rules Committee:

Representative Kirk Adams, Speaker of the House
Representative Steve B. Montenegro, Speaker Pro Tempore*
Representative Matt Heinz
Representative Debbie Lesko
Representative Richard Miranda
Representative Bob Robson
Representative Andy Tobin
Representative Chad Campbell*

Subject: SB1517 - Statement by Marshall Magruder for the House Rules Committee

Summary.

Based on my experiences as a party in several Line Siting Committee cases, I oppose SB1517. It gives non-elected, federal decision makers the authority to site transmission lines on Arizona public and private lands and specifically prohibits the Corporation Commission, and the dedicated Siting Committee, from changing the federal siting decision in an EIS. The flaws in this bill are so significant that it is not repairable. This bill should not go forward.

Personal Background. I was an Energy Commissioner for Santa Cruz County from 2001 to 2008, and intervened in Line Siting cases, including those with an Environmental Impact Statement (EIS). I was nominated several months ago by a Commissioner to represent "counties" and "the public" on the Line Siting Committee. Others, however, were ultimately selected. I am very familiar with its capabilities.

SB 1517. I understand this bill may go before your Committee soon. The serious flaws in this bill and its passage do not benefit our state nor improve the present siting process.

The critical flaw is it usurps Arizona's authority to site a transmission line and yields this authority to federal non-elected land managers involved in the federal environmental review process. Sec 40-360.14(F) states: "The Commission shall approve a route consistent with the preferred route in a [federal] Final EIS."

SB 1517 authorizes the federal government to site in Arizona, always a state's responsibility.

The Line Siting Committee Presently Incorporates an EIS. This Committee is very experienced in these matters and has, I understand, always met the 180-day mandated requirement for completion of its process. The Arizona Administrative Code (A.A.C.), the rules for the Siting Committee, requires all prior environmental studies, such as an EIS, be included in an Application for a Certification of Environmental Capability (CEC) to the Siting Committee. Further, the rules require an Applicant not present "redundant" information. The present process works fine, without SB 1517, and its probable unintended consequences.

Impact of SB 1517 on the Arizona Siting Committee. As a member of the public, not representing any company, environmental group or organization, but as a citizen in our state, in my opinion, the bypassing of the Siting Committee will be especially harmful for rural Arizonans who have a small voice but are those most impacted by transmission lines and power plants. The Siting Committee's diligently looks at all sides of the issues to decide the best solution for Arizonans when granting a CEC, in effect, the permission to build a transmission line (or power plant) on private and state land. A federal EIS process requires an environmental analysis and consideration of alternatives if federal public land is involved or there is a significant federal action, but is not really a permit. Each process has different constituents; thus both must be considered, as required by A.R.S. 40-360 and A.A.C. R14-3-201. SB 1517 is not necessary.

* Erroneously omitted in copy mailed yesterday, copy mailed today

Proponents for SB 1517. The proponents for SB 1517 are proposing the largest Arizonan transmission line project (Sun Zia) in years, from New Mexico to Casa Grande, with optional routes passing between Sahuarita and Winkleman, a large impacted rural area, with some optional routes going around Tucson.

In general, the “First law for transmission line siting” says existing corridors and routes should always be used first, and the “Last law” is to direct use undisturbed areas only if other facilities exist. Please see the attached map of the route options. Possibly a short 2-3 mile segment on federal land maybe between private and state land that continues for hundreds of miles, with an EIS focused on the short segment.

Proponents want the Corporation Commission to be The Siting Committee. There are existing facilities along the Sun Zia proposed routes on private and state lands. The Siting Committee will evaluate these and eventually grant a CEC for one preferred route in its CEC for Commission review to approve/deny or change, by the Corporation Commission. This Commission cannot perform this detailed review necessary for a “significant impact” project requiring an EIS. The Siting Committee last month conducted hearings/on 4 different CEC Applications. The Committee has the public’s confidence and ensures that the public interest is being served. The Commission does not have state agencies or appointed members representatives that continually work as a team to resolve environmental issues for private citizens, communities, state agencies and local organizations in our state.

The Sun Zia lobbyist comments made it appear the Commission does not listen to the Committee. This is wrong. Once in the past decade has the Commission denied a CEC granted by the Committee for a power plant on the Big Sandy River where limited water resources could not support a power plant. The Commission also denied a CEC for the Devers-Palo Verde 2 Transmission line, after the Line Siting Committee approved it with conditions. Instances where the Commission makes a decision different than the Line Siting Committee are quite rare. The Commissioners use a “consent agenda” to approve some CECs. The misleading statements and factual omissions by the proponents before the Energy and Natural Resources Committee were alarming.

The Arizona Siting Process Already is Coordinated with the Federal NEPA Process. The facts are:

1. The EIS is an informational document, prepared for decision makers, under the NEPA environmental review process, when “significant” environmental impacts may result by a federal decision to approve of a project, such as a transmission line, that crosses federal land. It should be the basis for decisions.
2. The EIS provides several evaluated Alternatives including a No Action (don’t approve) Alternative, compares each of these Alternatives, and makes a recommended or Preferred Alternative selection.
3. Then each decision maker reviews the Final EIS, and can agree/deny, and most commonly, approve with conditions to mitigate the impacts on that federal landowner’s land (such a Forest Service for FS lands, BLM for BLM lands, etc.) in a published Record of Decision (ROD). The ROD is the most important document in this process and a landowner’s “permission” for an action on federal land.
4. The EIS does NOT provide Conditions or Mitigations for private or state lands as determined by the Siting Committee based on ARS 40-360. The A.A.C. has additional requirements.
5. The Committee members are professionals from various Arizona departments, including the Arizona Corporation Commission, Arizona Department of Water Resources, Arizona Department of Environmental Quality and Arizona Energy Office with Commission-appointed representatives from the public, cities and towns, counties and agriculture selected by the Commissioners. The attorney general appoints the Committee Chair. The present Chair, former judge and an assistant Arizona attorney general, is excellent.
6. The present process requires the Committee to use any EIS in its process. The EIS is a significant document (duplication is avoided). The Committee makes its decision on whether or not to grant a CEC or to grant a CEC with conditions.
7. The Committee holds all of its deliberations as public hearings, after having notices published with maps in newspapers and customer billing fliers and takes recorded testimony from an Applicant, local communities and counties, interested business and environmental groups, the public and Intervenors.
8. Intervenors must be approved by the Committee, and when approved, submit testimony, can call witnesses and cross-examine other parties. All is included in an ACC “docket” in the public record.
9. No opportunity for calling witnesses or cross-examining witnesses exists in the NEPA process.
10. The Committee usually “tours” the project site, including visually seeing where the plant or line is

proposed, including the Alternatives to be constructed.

11. The Committee, after hearing the evidence, develops the CEC document, and specifies a preferred route or conditions, such as "pole #4 shall be on the NW corner of 4th Ave and 2nd St."
12. The Applicant also submits a "draft" CEC, with any proposed "conditions" that should include any ROD mitigation conditions. The Committee spends hours discussing and writing Conditions to resolve many issues from the Application (and associated EIS and RODs) when granting a CEC.
13. In my opinion, this part of the CEC process is so detailed it would never be done by the Commissioners, due to already heavy demands on their time, limited staff, and the fact that they are without the full suite of expertise of Siting Committee members.
14. The CEC process usually is completed within 180 days, the statutory limit, to ensure speedy review.
15. The CEC is then sent to the Commission for approval/denial or modification. This is usually after the Commissioners, who visit the area impacted to hear comments in person, hold public meetings.
16. The CEC process is a participative, transparent and open process with a legal record, testimonies, transcripts and uses the best-qualified people to review a CEC Application so actual elected officials can review, approve/deny or revise the Committee's granted CEC.

Conclusion. SB1517 skips almost all of the CEC process, provides federal decision-makers siting authority over private and state lands and usurps the present authority already successfully being implemented by the Corporation Commission. I have urged the Commission to oppose AB 1517 as no value is added to the existing process. It probably will result in greater angst, cost, and conflict than the present CEC process.

Possible Changes to SB 1517. Suggested changes, if the bill is not killed, and rationale are:

1. "Final EIS" should read "Record of Decisions (RODs) by federal land agencies".
2. §360.14(A). "person" should read "entity" because utilities and companies apply for CECs.
3. §360.14(B). Ninety-days is way to long, maybe 60 days at the most, and no longer than necessary. Replacing "may" to "shall" in last sentence is essential.
4. §360.14(C). This is the present CEC process; however, Section 360.14(F) makes a major change.
5. §360.14(D). Change "shall" to "may". This usurps the Commission's authority!
6. §360.14(E). Change "grant or deny" to "approve/deny or modify." CECs always have Conditions such as "the applicant shall comply with all federal, state, county, etc. laws, regulations" etc.
7. §360.14(F). Change "shall" to "shall consider and may". Delete all starting with ", except that the Commission may impose..." This adds nothing to the existing clauses in 40-360.
8. §360.14(G). Delete this clause. Is not required because Section 40-360.08 earlier.
9. §360.14(H). Delete this clause. This conflicts with the intention of a CEC. A CEC usually has a Condition that reads something like "This CEC shall expire if the project is not operational (or has not started) within X years after approval by the Commission". "X" is project dependent. Requiring 15 years exceeds the usual 5 or 10 years commonly used for X by the Committee.

I oppose SB 1517. Its faults are uncorrectable. It would greatly confuse, make more complex, and add both uncertainty and cost for all parties involved in the Siting Committee procedures that have been the standard for all siting on Arizona lands and private property for over three decades. SB 1517 will cause serious unintended consequences and major problems in the rural areas in our Great State.

If you have any questions, please feel free to contact me at the below.

Respectfully,

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Attachment: The Expanded and Revised Sun Zia Transmission Project Study Area in Arizona Encompasses much of Southern Arizona.