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Tucson, AZ 85716
March 29, 2011

Delivered electronically March 29, 2011

Mr. Gary Pierce, Chair
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Dear Commissioner Pierce:

The following discusses legal problems associated with SB 1517, Line Siting, Environmental Compatibility Certificates, and suggests an alternative to address the concerns raised by Tom Wray of SunZia and Stan Barnes of Copper State Consulting regarding the redundancy of NEPA and Line Siting Committee processes. I believe that their approach will result in serious legal consequences for the Commission and that a safer alternative to this exists.

Problems With the EIS Public Record

Mr. Wray and Mr. Barnes have repeatedly stated that the public record from the NEPA process is so voluminous that any Line Siting Committee processes would simply duplicate it. This statement suggests that they have not fully examined the BLM's public scoping comments for the SunZia project and do not understand the bias in them. I have reviewed all 1768 pages of scoping materials released following the first scoping period and all 990 pages of comments acquired during the extended scoping period. While this is voluminous indeed, the record is also very unbalanced. This lack of balance results from the nature of BLM scoping procedures. Also, none of this public input is associated with the standard testimony and cross-examination process used by the Line Siting Committee, which allows public representatives to more deeply explore specific issues and concerns.

The public record for SunZia scoping is characterized by abundant input for particular places and a total lack of it elsewhere where it is truly needed. This underlies much of the problem with simply replacing Line Siting Committee oversight with the NEPA record and using that record to make a decision about the project. This places the Commission in the position of having to determine where public input is yet needed and arranging the hearings to acquire it. As a commissioner you have many other duties to execute and do not really have time for this. In addition, the ACC would have to develop a specific set of rules and criteria to determine whether or not to forward the application to the Line Siting Committee (LSC). These criteria must establish a clear separation of the influence of an applicant's request to forego LSC review from the methods used to reach a determination. Establishing these internal rules would also be subject to public input at hearings.

Actions Required by the ACC

While the summary of public comments in an environmental impact statement denotes areas of particular concern, the summary does not mention areas of importance for which no or few comments were recorded. This is to say, the environmental impact statement does not list areas where additional input is needed to fully represent public interest. After grouping comments together by area of concern, the Commission or Line Siting Committee would then have to examine the full route of the transmission project and determine all such areas of potential conflict along it. It can be difficult to be certain that all areas are represented, and determining them requires careful assessment.

Past records of Line Siting Committee CEC reports indicate that in at least some cases the Committee designates a subgroup of members to examine the full length of the route on the ground to assess and determine these areas of potential concern. The Committee then determines the number of hearings required to obtain necessary input and where these should be held.

Recommendations to Avoid Problems

If you were to comply with what Mr. Wray and Mr. Barnes will request when they submit SunZia's application – accept the NEPA record as a full substitute for Line Siting Committee review and hold a single public hearing to allow any additional voices to be heard – it is probable that the Commission would be sued because some key interests would not be represented. The BLM's process is simply too non-uniform and insufficiently comprehensive to ensure that the Commission can avoid this. If the Commission is sued, it could easily take longer to resolve the lawsuit than for the Line Siting Committee to process the application according to its standard procedures, and this litigation could be costly to the state.

Given the incomplete nature of the NEPA record and the partial redundancy of public comment between the NEPA and Line Siting Committee processes, it would be legally sounder and more expeditious to give the Line Siting Committee the discretion to determine what is required to fully represent important public interests. I believe that this is where your focus should be. The Committee already has the legal opportunity to accept information from the federal process. Simply giving the Commission the discretion to dismiss all Line Siting Committee review rather than giving the Line Siting Committee the discretion to determine the number and location of hearings needed to fulfill normal line siting requirements will only result in legal challenges, I believe, especially when communities and other interests find SunZia traversing their areas of concern without ever having learned of the project. It is likely that legal complications will result if SunZia's proposed procedure is used.

As I understand, giving the Line Siting Committee wider discretion in using federal input can be accomplished by adopting rules internally within the Committee rather than by amending statutes. The adoption of internal rules must undergo public review and participation, and various public concerns would have to work together on devising them to ensure a robust response to public interests.

Conclusion

I understand the issue that concerns Mr. Wray and Mr. Barnes, but I also understand the unbalanced nature of the public record for the environmental impact study undertaken for SunZia. In pursuing their current legal course to address the issue of redundancy, SunZia may find itself in legal tangles that will only prolong the issuance of a certificate of environmental compatibility rather than shorten it. I thus think it best to forego SB 1517, both for the Commission's sake and theirs.

Sincerely,

A handwritten signature in cursive script that reads "Norm 'Mick' Meader".

Norm "Mick" Meader
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cc: Mr. John Foreman, Chair, Line Siting Committee
Representative Frank Pratt
Representative Peggy Judd
Mr. Tom Wray, Southwestern Power Group/SunZia
Mr. Stan Barnes, Copper State Consulting Group