

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 Lea Márquez-Peterson, Chairwoman  
4 Sandra D. Kennedy  
5 Justin Olson  
6 Anna Tovar  
7 Jim O’Connor

8 IN THE MATTER OF THE APPLICATION )  
9 OF SUNZIA TRANSMISSION LLC, IN )  
10 CONFORMANCE WITH THE )  
11 REQUIREMENTS OF ARIZONA REVISED )  
12 STATUTES 40-360, ET SEQ., FOR A )  
13 CERTIFICATE OF ENVIRONMENTAL )  
14 COMPATIBILITY AUTHORIZING THE )  
15 SUNZIA SOUTHWEST TRANSMISSION )  
16 PROJECT, WHICH INCLUDES THE )  
17 CONSTRUCTION OF TWO NEW 500 KV )  
18 TRANSMISSION LINES AND )  
19 ASSOCIATED FACILITIES ORIGINATING )  
20 AT A NEW SUBSTATION (SUNZIA EAST) )  
21 IN LINCOLN COUNTY, NEW MEXICO, )  
22 AND TERMINATING AT THE PINAL )  
23 CENTRAL SUBSTATION IN PINAL )  
24 COUNTY, ARIZONA. THE ARIZONA )  
25 PORTION OF THE PROJECT IS LOCATED )  
26 WITHIN GRAHAM, GREENLEE, )  
27 COCHISE, PINAL, AND PIMA COUNTIES. )  
28 )

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

Case No. 171

**RESPONSE OF INTERVENER PETER T. ELSE TO SUNZIA’S APPLICATION TO AMEND PURSUANT TO A.R.S. § 40-252**

Intervener Peter T. Else, asserts in this Response that the amendments requested by SunZia Transmission LLC (“SunZia”) on May 13<sup>th</sup>, 2022 to Commission Decision No. 75464 [titled: *Application To Amend Pursuant To A.R.S. § 40-252*] are substantial, not “minor”, and thus warrant evidentiary hearings. I request that the Commission direct SunZia to file the appropriate application before the Arizona Line Siting Committee because of the issues described in section I below. In the event that the Commission chooses not to require Line Siting hearings, I request that the Commission itself hold evidentiary hearings, as requested in section II below.

1 **I. REQUEST TO REFER THIS MATTER TO THE ARIZONA LINE SITING**  
2 **COMMITTEE**

3 The requested amendments are not “minor changes” as claimed by SunZia in the  
4 conclusion of their Application of May 13, 2022 (“Application”). These are substantial  
5 changes, and they require factual assessments.

6 **Criteria for Determining a “Substantial Change”**

7 In Commission Decision No. 58793 (*Whispering Ranch Case*), the Commission adopted  
8 the same criteria set forth in the Administrative Procedures Act related to rule variance (A.R.S §  
9 41-1025 B) to determine if a variance from what is stated in a Certificate of Environmental  
10 Compatibility (“CEC”) would constitute a “substantial change”:

11 A.R.S § 41-1025. Variance between rule and published notice of proposed rule

12 B. In determining whether a rule is substantially different from the published proposed  
13 rule on which it is required to be based, all of the following must be considered:

- 14 1. The extent to which all persons affected by the rule should have understood that the  
15 published proposed rule would affect their interests.
- 16 2. The extent to which the subject matter of the rule or the issues determined by that rule  
17 are different from the subject matter or issues involved in the published proposed rule.
- 18 3. The extent to which the effects of the rule differ from the effects of the published  
19 proposed rule if it had been made instead.

20 These criteria have been used in subsequent cases since adopted [eg. Commission  
21 Decision No. 69639, *Palo Verde Devers I Case*, at 11-14].

22 All three of the criteria referenced in A.R.S § 41-1025 are applicable in this situation.  
23 The requested changes significantly affect the interests of parties to the case, the changes are  
24 substantially different from descriptions provided in the CEC, and the effects of the changes will  
be substantially different from the effects of what was previously described in the CEC.

1           **Evidence that Changes to the SunZia CEC are Substantial or Not Fully Disclosed**

2 1) Even a casual examination of Exhibit 1 in the Application indicates that the new tower  
3 structures requested by SunZia are substantially different from what was described in the  
4 CEC. The new design is 11% (15 feet) higher, and top structures are up to 63% (31 feet)  
5 wider than the previously approved structures. As can be seen in Exhibit 1, the new tower  
6 structures (“Updated DC Structures”) would also include significantly more structural  
7 elements. Additionally, these Updated DC Structures would support two “dedicated metallic  
8 return conductors” [page 3 of the Application], thus doubling the number of conductors  
9 being supported by the towers.

10           These are not “minor changes”, as asserted by SunZia in the conclusion of their  
11 Application. These are substantial changes, closely related to the changes that triggered the  
12 two Commission decision citations cited in the first part of this discussion [*Whispering*  
13 *Ranch Case* and *Palo Verde Devers 1 Case*]. The significant increase in size and number of  
14 structural elements of the towers and the doubling of the number of conductors supported by  
15 the towers will increase impacts on avian flight and damage visual resources.

16           In section IV of the Application, SunZia asserts that these are minor and inconsequential  
17 changes, based upon a declaration from an engineering firm that is being paid by SunZia.  
18 This declaration [Exhibit 3 in the Application] is conclusory in nature and needs to be tested  
19 in an evidentiary hearing that includes cross examination. These conclusions about impacts,  
20 particularly with regard to avian species and visual impacts, are merely the opinion of the  
21 declarant and have no factual basis. A major purpose of holding Line Siting hearings is to  
22 subject opinions to scrutiny by other stakeholders.

1 2) The CEC in this case approved two lines. The Application now proposes that a separate  
2 CEC be issued for each line. The first line planned to be constructed is a DC line. It is the  
3 only line that currently has agreements pending for financing. This line could turn out to be  
4 the only line associated with the original CEC that is ever constructed. SunZia and Pattern  
5 Energy Group LP (“Pattern Energy”) have filed applications with the Federal Energy  
6 Regulatory Commission (“FERC”) that will likely result in Pattern Energy owning the first  
7 line and having transmission rights to 100% of the transmission capacity on that line.

8 The documents filed on the FERC docket should be disclosed at evidentiary hearings and  
9 considered before the Arizona Line Siting Committee. If the pending purchase of the first  
10 line by Pattern Energy is consummated, there is a high probability that Pattern could  
11 establish a vertical monopoly on this line, controlling both energy production and  
12 transmission on a 515-mile interstate tie-line. The implication of this on the Commission’s  
13 policies about fostering a competitive electricity market are significant. The Line Siting  
14 Committee should hear testimony related to how Pattern Energy’s dominance of Arizona’s  
15 grid capacity between the Pinal Central Substation and major demand markets could affect  
16 Arizona's opportunities for renewable energy production, transmission, and export.

17  
18 3) The CEC states that the project includes the construction of a 500kV substation called the  
19 Willow Substation [page 3 of the CEC]. The first line that is proposed to be sold to Pattern  
20 Energy does not include this substation.

21 Eliminating the Willow Substation from the configuration of the first line is a substantial  
22 change from what was described in the CEC. The elimination of this substation also  
23 eliminates economic opportunities for uploading renewable energy produced in Arizona  
24

1 counites that were promoted by SunZia during the development of the CEC and at the  
2 subsequent decision meeting by the Commission. This substantial change needs to be  
3 considered at Line Siting hearings for the first of the two new CECs that SunZia is seeking.  
4

- 5 4) SunZia states on page 2 of their Application that their project will "reduce existing  
6 transmission congestion". The first line now proposed to be constructed would not  
7 accommodate alternative routing of AC grid electricity during periods of congestion or  
8 major line failures. It is a 515-mile DC tie-line originating at a single substation in central  
9 NM and terminating at a single substation in AZ. As a DC tie-line with no other substations  
10 in Arizona, it is debatable whether the line would be helpful in reducing existing congestion.

11 Since the Line Siting Committee had previously been told about the benefits of providing  
12 an alternative and contingency transmission loop around Tucson, that Committee should  
13 reconsider those alleged benefits in evidentiary hearings regarding the first of the two new  
14 CECs that SunZia is seeking in its Application.  
15

- 16 5) It is not disclosed in the Application that towers and possibly lines will have to be  
17 permanently lighted in the San Pedro River valley near the San Manuel Airport and  
18 immediately east of the International Dark Sky designation at Oracle State Park. This  
19 requirement became evident after the 2016 CEC was issued.

20 On April 10, 2019, SunZia filed a notice to their Line Siting Docket regarding a public  
21 meeting in Oracle, Arizona of April 24<sup>th</sup> in the same year. This notice only referenced a line  
22 realignment that was being proposed at the time. However, a SunZia consultant stated at the  
23 public meeting that lines and towers near the San Manuel Airport would need to be  
24 permanently lighted for aeronautical safety.

1 This is a substantial change in an area that has an International Dark Sky designation.  
2 Line Siting hearings did not consider this impact during the development of the CEC, and it  
3 should be considered in new hearings by the Line Siting Committee for both of the two new  
4 CECs being sought in the Application.

- 5  
6 6) It is not disclosed in the recent Application that SunZia is currently seeking a permanent  
7 access road through a conservation easement and a construction staging site in the Paige  
8 Canyon area, which is specifically referenced in CEC condition 26 (and an associated map  
9 of a special designation area in Attachment B) as requiring minimization of ecological  
10 impacts.

11 Condition 26 in the CEC states in part, *“The POD will identify and require the necessary*  
12 *steps to avoid the creation of new roads, including the employment of aerial construction for*  
13 *the setting of transmission structures and conductors within the eight-mile area that includes*  
14 *Paige Canyon.”* Interveners and Line Siting Committee members developed conditions 26  
15 and 28 in the CEC to protect a special designation area of extraordinary biological resources  
16 near Cascabel, Arizona following a Committee field trip to this area and after considerable  
17 discussion at the Line Siting hearings about biological and visual impacts.

18 Currently SunZia is seeking to obtain road access through a conservation easement and a  
19 major vehicle-accessible construction staging area in the heart of the rural Cascabel  
20 community, as well as vehicular access to the centerline of the transmission project, all  
21 within the special designation area. Affected stakeholders need the opportunity to present  
22 evidence of current and ongoing attempt to undermine the purpose of Condition 26. This  
23 substantial change needs to be considered at Line Siting Committee hearings with regard to  
24 both of the new CECs that SunZia is currently seeking in its Application.

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7) A substantial portion of the evidence presented by SunZia to the Line Siting Committee during the development of the CEC included the federal environmental review documents that led to the 2015 federal Record of Decision. SunZia is currently in the process of seeking significant amendments to those documents, including, but not limited to, a route modification and revised location for the termination substation in Pinal County, as well as access roads and workspaces that are located outside of the federal right-of-way in five counties of Arizona.

On June 4, 2021, the Bureau of Land Management published in the Federal Register a notice of intent to prepare an Environmental Impact Statement and Resource Management Plan amendments for the SunZia project. That process and the subsequent Record of Decision will not be complete until at least the end of calendar year 2022. This was not disclosed in the Application to the Commission. A large portion of the evidentiary basis of the CEC is in flux, because it is not known if the federal amendments will be approved.

With the fate of these federal amendments still pending, SunZia is attempting to obtain amendments to its CEC, without any evidentiary hearings, before knowing if the federal amendments will be approved. This attempt to bypass evidentiary hearings for state amendments, while assuming the issuance of interrelated federal approvals, is possibly taking place because SunZia wants to sell out to Pattern Energy as soon as possible. It would not be in the public interest for the Commission to abandon evidentiary hearings to expeditiously grant amendments to the CEC, especially when it is not certain if the federal amendments will be granted.

1 With SunZia now requesting two separate CECs, it is appropriate for the Line Siting  
2 Committee to hear relevant testimony, consider the seven substantial changes described above,  
3 consider substantial changes that other parties may identify in the recent Application, and  
4 develop Committee recommendations regarding each of the two CECs now requested by SunZia.  
5 This is not a minor endeavor, and these are not minor changes that are being requested by SunZia  
6 in their recent Application. The Line Siting Committee was established to do this work. SunZia  
7 should be directed by the Commission to make the appropriate application with the Committee,  
8 and to do so at the appropriate time.

9 **II. IF THE COMMISSION CHOOSES NOT TO REQUIRE LINE SITING HEARINGS,**  
10 **THE COMMISSION ITSELF SHOULD HOLD COMPREHESIVE EVIDENTIARY**  
11 **HEARINGS**

12 The amendments requested by SunZia involve substantial changes, as described above.  
13 One way or another, stakeholders in this decision must be given an opportunity to present  
14 evidence regarding impacts to their interests, such as those described above. Testimony and  
15 cross examination during evidentiary hearings is the only way the public interest can legally be  
16 served by the Commission in considering the substantial changes that are currently being  
17 requested by SunZia. While the Line Siting Committee is the most appropriate forum for  
18 evidentiary hearings that are prescribed by relevant Arizona statutes and case precedents, the  
19 Commission has the option of taking on this task independently.

20 **III. CONCLUSION**

21 In order to serve the public interest and not defer to special interests, evidentiary hearings  
22 are prescribed in all major line siting decisions in Arizona. The changes requested by SunZia in  
23  
24



1 their Application are substantial in nature, according to Commission-adopted criteria cited in  
2 section I of this request.

3 I request that the Commission direct SunZia to make the appropriate application at the  
4 appropriate time to the Arizona Line Siting Committee, as argued in section I, or that the  
5 Commission itself conduct the evidentiary hearings, as argued in section II.

6  
7 Respectfully submitted on May 23, 2022,

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9 

10 Peter T. Else, pro se intervener  
11 PO Box 576  
12 Mammoth, Arizona 85618  
13 (520) 487-1903  
14 bigbackyardfar@gmail.com

15 ORIGINAL of the foregoing and 13 copies were  
16 hand-delivered on this 23rd day of May 2022 to:

17 Arizona Corporation Commission  
18 Docket Control  
19 1200 W. Washington Street  
20 Phoenix, AZ 85007-2996

21 COPIES of the foregoing were e-mailed or postal mailed on May 23, 2022 to:

22 Robin Mitchell  
23 Director and Chief Counsel – Legal Division  
24 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
legaldiv@azcc.gov  
[utildivservicebyemail@azcc.gov](mailto:utildivservicebyemail@azcc.gov) Consented to Service by Email

Anna Lands  
6520 Cascabel Rd.  
Benson, AZ 85602  
[healing@rnsmtc.com](mailto:healing@rnsmtc.com) Consented to Service by Email

1 SunZia Transmission, LLC  
c/o Albert Acken of Acken Law  
2 111 E. Dunlap Ave—Ste 1-172  
Phoenix, AZ 85020  
3 [bert@ackenlaw.com](mailto:bert@ackenlaw.com) Consented to Service by Email

4 Bill Dunn  
Winkelman NRCD  
5 PO Box 486  
Kearney, Arizona 85137

6 Elijah Abinah  
7 Director, Utilities Division  
Arizona Corporation Commission  
8 1200 West Washington Street  
Phoenix, Arizona 85007  
9 [utildivservicebyemail@azcc.gov](mailto:utildivservicebyemail@azcc.gov) Consented to Service by Email

10 Chris Fletcher  
Redington NRCD  
11 PO Box 702  
Mammoth, Arizona 85618

12 Christina McVie  
13 4420 West Cortaro Farms Road  
Tucson, Arizona 85742

14 Kevin Costello  
15 Deputy County Attorney  
Pinal County  
16 PO Box 887  
Florence, Arizona 85132  
17 [kevin.costello@pinalcountyz.gov](mailto:kevin.costello@pinalcountyz.gov) Consented to Service by Email

18 Michael LeBlanc  
Deputy Pima County Attorney  
19 32 N. Stone Avenue, Ste. 2100  
Tucson, Arizona 85701

20 Jay Shapiro  
21 Peter Gerstman  
Attorneys for Robson Communities  
22 1819 E. Morten Avenue, Suite 280  
Phoenix, Arizona 85020  
23 [jay@shapslawaz.com](mailto:jay@shapslawaz.com) Consented to Service by Email

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