

Update on the Lawsuit Against the Arizona Corporation Commission

Leading up to the close 3 - 2 decision by the Commission to approve the Certificate of Environmental Compatibility for the proposed SunZia Transmission Project, several local groups intervened in the Arizona line siting hearings.

The two local Natural Resource Conservation Districts ("NRCs" of Winkelman and Redington) initially opposed issuing the state permit, but SunZia offered to pay them a total of \$600,000 in post-construction payments, plus NRC legal fees, plus allow NRC input on the SunZia Plan of Development, all in exchange for the NRCs dropping all opposition to the transmission project. The NRCs agreed to those terms.

Christina McVie, of the Tucson Audubon Society, actively intervened in pre-decision hearings. She presented three witnesses who described the significant environmental impacts that would be caused by this project, and who clearly established that the San Pedro Valley qualified for special environmental consideration under a state statute related to regions of extraordinary biological wealth.

Mick Meader, of the Cascabel Working Group, and Peter Else, of the Lower San Pedro Watershed Alliance, also actively intervened. Mick presented evidence contradicting the need for the project, specifically citing the abundance of local renewable energy within Arizona, the competition for line capacity on the Arizona grid between SunZia's termination point near Casa Grande and the energy markets in California, the denial of demand for New Mexico wind energy in California and Arizona, and the existence of a far less impactful upgrade to the Arizona grid in the competing Southline Transmission Project.

Peter presented evidence that only a portion of the project is likely to be constructed, due to the stated interests of the Salt River Project, the high line-burial costs associated with constructing the wind segment of the project in New Mexico, and the economic unfeasibility of transporting primarily an intermittent source of energy over an expensive long-distance line under current and projected market conditions.

Following the close decision by the Commission, Peter filed a complaint in Arizona Superior Court, contending that the **stated basis** of this decision was not supported by the evidence presented during the state permit hearings. Without asking any questions during the oral hearing, the judge in Superior Court denied this complaint at the end of 2016. Peter then filed an appeal in the Arizona Court of Appeals. All written briefs in the appeal case have been submitted by Peter, the Commission, and SunZia. As of today, November 5, 2017, we are awaiting an oral hearing.

Peter's case states that the Commission is required by law to balance the environmental impacts of the project with the need for the project, and to do so "in the broad public interest". All parties agreed in court that the San Pedro Valley warrants special consideration for environmental impacts under state law. Both the Commission and SunZia continue to

contend that the primary purpose of the project is to transmit wind energy from New Mexico, and that this will help fulfill air quality standards in Arizona, as well as provide greater reliability and transmission capacity in Arizona.

The Commission's written decision specifically concluded that matters regarding the need for the project had been resolved through conditions in the state permit, but Peter contends that the evidence in this case does not support this conclusion. Two of the three Commissioners voting to approve the permit specifically cited renewable energy benefits as the compelling need for the project, with the deciding vote by Commissioner Burns being based exclusively on these renewable energy benefits. Those benefits were used to justify significant environmental impacts in the San Pedro Valley.

As the first Arizona line siting case to consider a major privately-financed "merchant" transmission line project, the SunZia permit will set a precedent for future decisions on merchant projects. Peter's legal briefs and Commissioner Little's 8-page dissent to the Commission decision both contend that there is insufficient evidence to support SunZia's long-repeated claims that their project will primarily transport wind energy from New Mexico. Peter's briefs contend it is unlikely that the project will even extend into the wind region of central New Mexico, and that a partial build-out of the transmission lines would primarily be used to transport fossil-fueled energy within Arizona.

Will the Court assess evidence both supporting and contradicting the stated basis of the Commission's decision, in light of the significant impacts to the San Pedro Valley and the stated justification for those impacts? Will we base our public line siting processes on the best available evidence, or on highly speculative benefit claims that are mainly used to obtain federal and state permits? Stay tuned.

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