

Subject: Comments on SB 1517

Representative Judd

I have just reviewed a tape of the recent SB1517 hearings and your excellent participation. If I had known of these hearings, I would have requested to make a statement, summarized below.

Background.

I was an Energy Commissioner for Santa Cruz County from 2001 to 2008, and intervened in several line siting cases, including ones with NEPA Environmental Impact Statement (EIS). In the past six months, I was nominated by a Commissioner as a candidate to represent "counties" and again for a "public" position on the Line Siting Committee. However, others were ultimately selected.

My objections to this bill are many.

The misleading statements and factual omissions before your committee were alarming.

1. The EIS is an informational document, prepared for decision makers, using the NEPA process when "significant" environmental impacts may result from a decision by a federal decision maker for approval of a project, such as a transmission line, that crosses federal land.
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 relevant conditions to mitigate the impacts on that federal land owner's land (such a Forest Service for FS lands, BLM for BLM lands, etc.) in a public Record of Decision (ROD). This ROD is the most important document in this process and essentially is the "building permit" for the action on such federal land.
4. The EIS does NOT provide conditions or mitigations with respect to private or state lands as those impacts are evaluated by the Arizona Power Plant and Transmission Line Siting Committee in accordance with ARS 40-360 and the Arizona Administrative Code (that includes additional requirements).
5. Siting Committee membership are professionals from various Arizona departments including the ACC, ADWR, ADEQ, Commerce, and ACC-appointed representatives from the public, cities and towns, counties, and agriculture that are selected by the Commission. The Arizona AG appoints the Committee Chair who runs the process. The present Chair, a former Judge and an Assistant Arizona Attorney General, is excellent.
6. The present process requires the Line Siting Committee to use an EIS in its process and an EIS is as a very significant document (duplication is avoided) to help the Committee make its decision to grant a Certification of Environmental Compatibility (CEC).
7. The Committee holds all its hearings as public hearings, after published notices with maps and fliers in customers' billing statements, at the locations impacted by the transmission line, takes recorded testimony from the Applicant, local communities and counties (all impacted are always invited by the Committee to participate), interested industry and environmental groups, the public and Intervenors. An Intervenor must be approved by the Committee, and when so

- approved, submits written testimony, can call and cross-examine witnesses, all recorded in an ACC “docket” and the public record.
8. The Committee usually “tours” the project site, including visually seeing where the plant or line is proposed, including Alternatives, to be constructed.
 9. The Committee, after hearing all the evidence, develops the CEC document, which contains the route (corridor), project details, and many conditions, most are very project specific, even as detailed as “pole shall be located on the north west corner of 4th Ave/Main Street.”
 10. The Applicant also submits a “draft” CEC, with any proposed “Conditions” and should include any ROD mitigation Conditions. The Committee spends many hours discussing and writing Conditions to resolve many issues from the Application (and associated EIS and RODs).
 11. In my opinion, this part of the CEC process is so detailed that it would never be done by the Commissioners, due to already heavy demands on their time and unlikely to have the professional qualifications of the Siting Committee members.
 12. The CEC is then sent to the Commission for approval, denial, or modifications, usually after another public meeting when the Commissioners visit the area impacted to hear comments in person. This process usually is completed within 180 days and there are statutory limits on ensuring speedy review.
 13. This is a participative, transparent, and open process with a legal record, testimonies, transcripts and uses the best qualified to review and Application and the elected officials to review and approve the Committee’s granted CEC.

Summary.

SB1517 skips almost all of the above process, provides a federal decision maker the authority over private and state lands, and usurps the present authority already given and successfully implemented by the Corporation Commission. I have urged the Commission to oppose this bill as it adds no value to the existing process and will probably result in greater angst and conflict than the present process. See <http://www.cascabelworkinggroup.org/SZ1547.html> for these comments.

Comments from the Sun Zia lobbyist made it appear that the Commission really does not listen to their Committee. This is wrong. Only once in the past dozen years has the Commission denied a CEC granted by the Committee (a power plant on the Big Sandy River which had a 5-4 vote by the Committee when water resources could not support the power plant). The Commission has made minor changes but this is not a “political” only decision-making body. Minor changes to a CEC by the Commission are like floor amendments, that cover some specific area of concern. Some CECs are approved by the Commissioners in the “consent” agenda.

Possible Changes.

Some significant flaws in SB 1517 (actually it should be killed) and suggested changes and rationale:

1. A “Final EIS” should be changed to read “Record of Decisions (RODs) by various land agencies”.
2. 360.14.A, a “person” should be an “entity” because companies or utilities apply for CECs. NOTE: the EIS maybe for 5 miles of federal land when a transmission line may go 250 miles on state and private lands.
3. 360.14.B, ninety-days is way to long, maybe 45 days at the most because no one wants this to drag out any longer than necessary. The minimal change of “may” to “shall” in last sentence is essential.

4. 360.14.C, this is the present process, however, 360.14.F makes a major change.
5. 360.14.D, change “shall” to “may” as this really does usurp the Commission’s authority.
6. 360.14.E, change “grant or deny” to “approve, modify, or deny.” FYI, all CEC’s have “conditions” such as “the applicant shall comply with all federal, state, county, etc. laws, regulations” etc.
7. 360.14.F, change “shall” to “will consider and may” and delete all starting with “, except that the Commission may impose...” as this adds nothing to the existing prior clauses 360.01 to 360.13.
8. 360.14.G, this clause should be deleted as its not required because of 40.360.08 earlier.
9. 360.14.H, this clause should be deleted because it conflicts with the intention of a CEC, the Arizona permit to build. A CEC usually has a condition that reads something like “This CEC shall expire if the project is not operational (or construction has not started) within X years of approval by the Commission”. “X” will be very project dependent and requiring 15 years exceeds the usual 5 or so years commonly used for X by the Committee.

Hope this helps resolve this very important issue, because, if approved as is, SB 1517 will seriously cause unintended consequences that will result in major problems in 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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