

FENNEMORE CRAIG, P.C.3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

JUL 10 '06 PM 1:02

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Date:	July 10, 2006	Fax No Later Than:	AS SOON AS POSSIBLE
To:	Office of Electricity Delivery and Energy Reliability, Room 8H-033	From:	C. Webb Crockett
Fax No.:	(202) 586-1472	Bus. No.:	(602) 916-5333
Bus. No.:		Pages (including cover):	24

Please telephone 602-916-5117 if all pages are not received.

Please see following.

CWC:mb
63177.004

Law Offices:

Phoenix
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012

Tucson
One South Church Avenue
Suite 1000
Tucson, AZ 85701

Nogales
420 West Mariposa Road
Suite 200
Nogales, AZ 85621

4

FENNEMORE CRAIG, P.C.

3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
(602) 916-5000

C. Webb Crockett
Direct Phone: (602) 916-5333
Direct Fax: (602) 916-5533
wcrocket@fclaw.com

Law Offices
Phoenix (602) 916-5000
Tucson (520) 879-6800
Nogales (520) 761-4215

July 10, 2006

Via U.S. Mail and Facsimile to (202) 586-1472

Office of Electricity Delivery and Energy Reliability
Room 8H-033
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: West-wide Energy Corridor PEIS
Preliminary Draft - Potential Energy Corridor
on Federal Lands in Western States; DOE/EIS-0386
COMMENTS ON PRELIMINARY ENERGY CORRIDOR MAP

Dear Sir or Madam:

This firm represents Marley Cattle Company ("Marley"), which owns several thousand acres of ranch land in southern Arizona. Marley is currently in the process of analyzing the potential for developing its land into residential and commercial properties. The purpose of this letter is to provide written comments on the preliminary West-wide Energy Corridor Map ("Preliminary Map") for the Western States recently completed by the Department of Energy ("DOE").

As you might be aware, in January 2002, the Arizona Corporation Commission ("ACC") approved an application by Tucson Electric Power Company ("TEP") for a Certificate of Environmental Compatibility ("CEC") to construct a 345kV transmission line to Nogales, Arizona for an interconnection with the Republic of Mexico (the "Gateway Project"). In Decision No. 64356 (January 15, 2002), the ACC approved TEP's "Western Route" alternative, which brings the 345kV line through portions of the Coronado National Forest, thereby requiring approval from federal agencies. ACC Docket No. L-00000C-01-0111 and L-00000F-01-0111 ("Case No. 111").

The Gateway Project is the result of an earlier order by the ACC requiring improvements in the electric system in Santa Cruz County, Arizona. In 1999, the ACC ordered Citizens Utilities Company ("CUC") to improve service quality for customers located in Santa Cruz County, particularly in the City of Nogales, Arizona. After purchasing the electric system from CUC in early 2001, TEP and its affiliates broadened the plans to improve the transmission and

FENNEMORE CRAIG, P.C.

Office of Electricity Delivery and Energy Reliability
July 10, 2006
Page 2

sub-transmission system required by the ACC into an interconnection with Mexico. *See* ACC Docket No. E-01032A-99-0401 ("Service Quality Docket").

In January 2005, the ACC re-opened both the Service Quality Docket and Case No. 111 to review the status of transmission reliability and the need for a second transmission line in Santa Cruz County, Arizona. *See* ACC Decision No. 67506, attached hereto as Exhibit 1, and ACC Decision No. 67509, attached hereto as Exhibit 2. Marley is a formal intervenor in both proceedings, and has participated in extensive hearings concerning these issues. Marley contends that TEP's proposed Gateway Project is not in the public interest because less expensive transmission and sub-transmission alternatives exist to ensure reliability and continuity of service in Santa Cruz County. Furthermore, the speculative nature of the Gateway Project is enhanced by the absence of agreements with Mexican utilities for the sale and purchase of electricity between the southern Arizona and northern Mexico regions.

In reviewing the DOE Preliminary Map, Marley was pleased to learn that it does not identify or contain an energy corridor through the Coronado National Forest designated for TEP's Western Route (or any route) for the Gateway Project. While it recognizes that the Preliminary Map will be finalized in August 2007, Marley strongly urges the DOE to recognize that TEP's Gateway Project is not critical transmission infrastructure that Congress intended to facilitate when it passed Section 368 of the Energy Policy Act of 2005 or that there is a need for a new transmission corridor in the area.

In 1999, several electric reliability concerns surfaced in Santa Cruz County, Arizona. After several months of investigation, the ACC determined that the transmission and sub-transmission system was not adequate to provide reliable electricity service to customers, and ordered CUC to make specific improvements and upgrades. None involved the construction of a 345kV transmission line to Mexico. Again, these issues are currently being re-examined by the ACC, and should be resolved at the state level.

We appreciate the opportunity to provide these comments. If there are any questions or concerns, please do not hesitate to contact us at your earliest convenience.

Very truly yours,



C. Webb Crockett

CWC:mb
cc: Marley Cattle Company
Encls.
1812766.1/63177.011

EXHIBIT 1



0000015415

P1
CD

IN THE MATTER OF SERVICE QUALITY
ISSUES, ANALYSIS OF TRANSMISSION
ALTERNATIVES AND PROPOSED PLAN OF
ACTION IN THE SANTA CRUZ ELECTRIC
DIVISION OF CITIZENS UTILITIES COMPANY.

DOCKET NO. E-01032A-99-0401
DECISION NO. 67506

ORDER

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On December 3, 2004, Tucson Electric Power Company ("TEP") and UniSource Energy Services, Inc. ("UES") (collectively, "Joint Applicants") filed a Motion to Extend Time Limitation of Certificate of Environmental Compatibility ("Motion").

In their Motion, the Joint Applicants ask that the Arizona Corporation Commission ("Commission"):

1. Extend the time limitation of the CEC, prior to January 15, 2005;
2. Re-open the record in consolidated Docket Nos. L-00000C-01-0111 and L-00000F-01-0111 for the limited purpose of reviewing alternatives to the approved Preferred Route based upon information that has come to light after the issuance of Decision No. 64356²;
3. Convene a procedural conference to establish the scope, forum and schedule for the proceeding in the re-opened consolidated dockets; and
4. Waive the requirement in Decision No. 67151 (August 3, 2004) that the Federal

The Motion was captioned using the docket number from this matter, as well as the CEC application Docket Nos. L-0000C-01-0111 and L-00000F-01-0111, however, the dockets have not been consolidated, and separate orders will be issued for each docket.

See Reporter's Special Open Meeting Transcript of Proceedings at 126.

1 Agency Records of Decision ("RODs") be provided with this Motion.

2 On December 14, 2004, the Commission's Utilities Division Staff ("Staff") filed a Response
3 to the Joint Applicant's Motion.

4 In its Response, Staff requests that the Commission:

- 5 1. Grant an indefinite extension of time for the CEC beyond January 15, 2005, until the
6 conclusion of all proceedings related to Docket Nos. E-01032A-99-0401, L-00000C-
7 01-0111 and L-00000F-01-0111.
- 8 2. Bifurcate Dockets Nos. L-00000C-01-0111 and L-00000F-01-0111 from Docket No.
9 E-01032A-99-0401, and send the former dockets back to the Arizona Power Plant and
10 Transmission Line Siting Committee ("Committee").
- 11 3. For Docket No. E-01032A-99-0401, establish a procedural schedule, including the
12 filing of pre-filed testimony by UES and TEP, and from any intervenors, and a Staff
13 Report.
- 14 4. Grant the request by TEP and UES to waive the requirement that RODs be filed with
15 their motion, so long as the final EIS and any corresponding RODs are filed by them
16 as soon as they are publicly available.

17 BACKGROUND

18 On October 20, 1998, Citizens Utilities Company ("Citizens") filed with the Commission a
19 notice of intent to form a holding company (Docket No. E-01032A-98-0611 et al). During the course
20 of reviewing Citizens' application, the Commission issued Decision No. 61383 (January 29, 1999)
21 which ordered Citizens to file an "Analysis of Alternatives and Plan of Action (Plan) to rectify the
22 service problems in its Santa Cruz Electric Division. . . [t]he Plan should include a cost-benefit
23 analysis of alternatives, the alternative chosen and proposed deadlines for implementation of the
24 alternative chosen." (Decision No. 61383 at 2) In June of 1999, Citizens notified the Commission
25 that the proposed reorganization would not take place, and by Procedural Order issued July 15, 1999,
26 the holding company docket was closed and Docket No. E-0132A-99-0401 (the "Service Quality"
27 docket) was opened to resolve the Commission's concerns regarding Citizens' Santa Cruz Electric
28 Division.

1 On October 27, 1998, the City of Nogales, Arizona, filed a Complaint against Citizens
2 concerning electrical outages in Nogales, Arizona (Docket No. E-01032B-98-0621). In its
3 Complaint, the City of Nogales alleged that numerous electric outages caused by Citizens' failure to
4 adequately maintain its transmission lines and back-up generation capacity had resulted in economic
5 damages to Nogales and its residents and endangered the community's welfare. The City of Nogales
6 and Citizens entered into a Settlement Agreement, and in Decision No. 61793 (June 29, 1999), the
7 Commission dismissed the Complaint and ordered that Citizens provide a planned service date and
8 cost-benefit analysis for system components of a second transmission line in the Plan of Action to be
9 filed in compliance with Decision No. 61383.

10 In August 1999, the Commission's Utilities Division Staff and Citizens filed a Settlement
11 Agreement regarding Citizens' Plan of Action, in the Service Quality Docket. The Settlement
12 Agreement, which was approved by the Commission in Decision No. 62011 (November 2, 1999),
13 committed Citizens to a Plan of Action which included a requirement that Citizens build a second
14 transmission line to serve its customers in Santa Cruz County by December 31, 2003; established a
15 schedule for obtaining a Certificate of Environmental Compatibility ("CEC") and penalties if the
16 schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second
17 transmission line; preserved Staffs right to challenge any capital expenditure associated with
18 constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures
19 should be postponed until a filing is made to recover costs.

20 On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC. In Decision No.
21 64356 (January 15, 2002), the Commission granted the CEC to construct the proposed Gateway 345
22 kV and 115kV Transmission Project ("Gateway Project" or "Project") for the preferred western
23 route, which had been granted by the Committee. The Gateway Project incorporated the second
24 transmission line required by Decision No. 62011. Need for the Gateway Project was established in
25 that docket.

26 On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-Service
27 Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the Service
28 Quality Docket. The Joint Applicants stated that additional time was necessary to obtain the required

1 approvals from federal agencies. On October 10, 2003, TEP and UniSource Electric, Inc. ("UNS
2 Electric") filed a supplement.³ The supplement proposed to provide short-term relief until the second
3 transmission line was constructed and became operational. In Decision No. 66615 (December 10
4 2003), the Commission waived the penalty provided for in the Settlement Agreement approved in
5 Decision No. 62011, until June 1, 2004; ordered TEP and UNS Electric to submit an updated "Outage
6 Response Plan"; and ordered Staff to file a Report on the sufficiency of the updated Outage Response
7 Plan.

8 On February 9, 2004, TEP and UniSource Energy Services, Inc. ("UES") filed their updated
9 Outage Response Plan and on March 11 and May 27, 2004, Staff filed its Staff Reports regarding the
10 sufficiency of the updated Outage Response Plan.

11 On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an "Application to
12 Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for
13 Consideration The Fulfillment of Decision No. 62011".

14 On July 28, 2004, the Commission held a Special Open Meeting in Tucson, Arizona to review
15 the status of compliance with Decision No. 62011 and the requested waiver of penalties. During the
16 Special Open Meeting, the Commissioners discussed whether intervening circumstances, the passage
17 of time, and what may be inconsistent results reached by the Committee and the Department of
18 Agriculture Forest Service necessitate the re-opening of the record in the Line Siting dockets. The
19 Commissioners directed TEP and UES to reopen the docket in Decision No. 64356 granting the
20 CEC.⁴ Further, the Commissioners discussed the issues of reliability and need for a second
21 transmission line, and indicated that these issues were appropriate for a hearing before a Commission
22 Administrative Law Judge. The Commissioners expressed an interest in having this issue handled on
23 a faster track, and invited parties to file pleadings in the event that they thought there were alternative
24 ideas relating to the reliability issue in Santa Cruz County.⁵ No such pleadings have been filed since
25 the Special Open Meeting.

26
27 Citizens sold its assets to UniSource Energy Corporation ("UNS") which formed UniSource Energy Services, Inc.
UES"). UNS is also the parent holding company for TEP. Citizens' CEC was transferred to UES.
28 Transcript at 53, 54, 55
Transcript at 54

1 On August 3, 2004, the Commission issued Decision No. 67151 which waived the penalty
2 provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject to
3 numerous conditions contained in the order.

4 DISCUSSION

5 In Staffs Response to the Motion, Staff states that this docket was established in 1999 to
6 specifically address reliability-related matters concerning the Santa Cruz electric division. Staff
7 believes that re-opening this docket would be revisiting Decision No. 62011's determination that a
8 second transmission line is needed to serve Nogales and Santa Cruz County, and would "simply be
9 updating findings made on the need for a second transmission line and the Gateway Project." During
10 the course of the Special Open Meeting, there was discussion of a plan by Marshall Magruder to use
11 a 46 kV alternative, and the Commissioners expressed interest in having the reliability issue set
12 before an Administrative Law Judge to "develop the status of reliability in Santa Cruz County and to
13 look at alternatives including but not limited to the Marshall (Magruder) Plan."⁶ Although the
14 Commission invited parties to file pleadings in the event that they thought there were alternative
15 plans/ideas relating to the reliability issue in Santa Cruz County, no such pleadings have been filed
16 since the Special Open Meeting.⁷ No party has objected to re-opening the docket.

17 Accordingly, we will re-open the record in Decision No. 62011 to allow interested parties to
18 present evidence on the status of reliability in Santa Cruz County and on the need for a second
19 transmission line.⁸ We will direct the Hearing Division to issue a Procedural Order establishing dates
20 for filing of prefiled testimony and a Staff Report, and other procedural deadlines. The record in this
21 matter will likely be helpful to the Committee's consideration of the re-opened CEC dockets.

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
24 Commission finds, concludes, and orders that:

25
26 Transcript at 53
27 A letter docketed August 3, 2004 suggested that the Commission "divorce the 345 kV option from the 62011 mandated
second line."

28 Even though no party or person responded to our invitation, we believe that it will be helpful to get an update from Staff
and an analysis of the plan proposed by Mr. Magruder.

FINDINGS OF FACT

1
2 1. In Decision No. 62011 (November 2, 1999), the Commission approved a Settlement
3 Agreement between Staff and Citizens which committed Citizens to a Plan of Action which included
4 a requirement that Citizens build a second transmission line to serve its customers in Santa Cruz
5 County by December 31, 2003; established a schedule for obtaining a CEC and penalties if the
6 schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second
7 transmission line; preserved Staffs right to challenge any capital expenditure associated with
8 constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures
9 should be postponed until a filing is made to recover costs.

10 2. On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC.

11 3. In Decision No. 64356 (January 15, 2002), the Commission granted the CEC to
12 construct the proposed Gateway 345 kV and 115kV Transmission Project for the preferred western
13 route, which had been granted by the Arizona Power Plant and Transmission Line Siting Committee.
14 The Gateway Project incorporated the second transmission line required by Decision No. 62011.

15 4. On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-
16 Service Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the
17 Service Quality Docket.

18 5. On October 10, 2003, TEP and UNS Electric filed a supplement.

19 6. In Decision No. 66615 (December 10, 2003), the Commission waived the penalty
20 provided for in the Settlement Agreement approved in Decision No. 62011, until June 1, 2004;
21 ordered TEP and UNS Electric to submit an updated "Outage Response Plan"; and ordered Staff to
22 file a Report on the sufficiency of the updated Outage Response Plan.

23 7. On February 9, 2004, TEP and UES filed their updated Outage Response Plan and on
24 March 11 and May 27, 2004, Staff filed its Staff Reports regarding the sufficiency of the updated
25 Outage Response Plan.

26 8. On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an Application to
27 Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for
28 Consideration The Fulfillment of Decision No. 62011.

1 9. On July 28,2004, the Commission held a Spccial Open Meeting in Tucson, Arizona to
2 review the status of compliance with Decision No. 62011 and the requested waiver of penalties.

3 10. During the course of the Special Open Meeting, there was discussion of a plan by
4 Marshall Magruder to use a 46 kV alternative, and the Commissioners expressed interest in having
5 the reliability issue set before an Administrative Law Judge to "develop the status of reliability in
6 Santa Cruz County and to look at alternatives including but not limited to the Marshall (Magruder)
7 Plan."

8 11. On August 3, 2004, the Commission issued Decision No. 67151 which waived the
9 penalty provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject
10 to numerous conditions contained in the order.

11 12. On December 3, 2004, the Joint Applicants filed a Motion to Extend Time Limitation
12 of Certificate of Environmental Compatibility.

13 13. In their Motion, the Joint Applicants ask that the Commission: 1) extend the time
14 limitation of the CEC, prior to January 15, 2005; 2) re-open the record in consolidated Docket Nos.
15 L-00000C-01-0111 and L-00000F-01-0111 for the limited purpose of reviewing alternatives to the
16 approved Preferred Route based upon information that has come to light after the issuance of
17 Decision No. 64356; 3) convene a procedural conference to establish the scope, forum and schedule
18 for the proceeding in the re-opened consolidated dockets; and 4) waive the requirement in Decision
19 No. 67151 (August 3, 2004) that the Federal Agency Records of Decision be provided with the
20 Motion.

21 14. On December 14, 2004, Staff filed a Response to the Joint Applicants' Motion
22 requesting that the Commission: 1) grant an indefinite extension of time for the CEC beyond January
23 15, 2005, until the conclusion of all proceedings related to Docket Nos. E-01032A-99-0401, L-
24 00000C-01-0111 and L-00000F-01-0111; 2) Bifurcate Dockets Nos. L-00000C-01-0111 and L-
25 00000F-01-0111 from Docket No. E-01032A-99-0401, and send the former dockets back to the
26 Committee; 3) for Docket No. E-01032A-99-0401, establish a procedural schedule, including the
27 filing of pre-filed testimony by UES and TEP, and from any intervenors, and a Staff Report; 4) grant
28 the request by TEP and UES to waive the requirement that RODs be filed with their motion, so long

1 as the final EIS and any corresponding RODs are filed by them as soon as they are publicly available.

2 15. Although the Commission invited parties to file pleadings in the event that they
3 thought there were alternative plans or ideas relating to the reliability issue in Santa Cruz County, no
4 such pleadings have been filed since the Special Open Meeting.

5 16. No party has objected to re-opening the docket.

6 17. The record in Decision No. 62011 should be re-opened to allow interested parties to
7 present evidence on the status of reliability in Santa Cruz County and on the need for a second
8 transmission line.

9 18. We believe that an analysis of the plan proposed by Mr. Magruder and an update from
10 Staff on the issues of reliability and need are appropriate.

11 19. We will direct the Hearing Division to issue a Procedural Order establishing dates for
12 filing of prefiled testimony/Staff Report, hearing, and other procedural matters.

13 **CONCLUSIONS OF LAW**

14 1. TEP and UNS Electric are public service corporations within the meaning of Article
15 XV, Section 2 of the Arizona Constitution.

16 2. The Commission has jurisdiction over TEP and UNS Electric and over the subject
17 matter of this docket.

18 3. There is good cause to re-open Docket No. E-01032A-99-0401 and Decision No.
19 52011 to review the status of reliability and need for a second transmission line in Santa Cruz
20 County, pursuant to A.R.S. § 40-252.

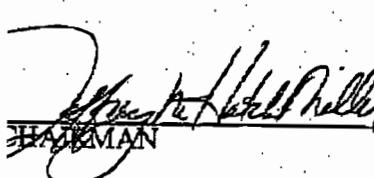
21 **ORDER**

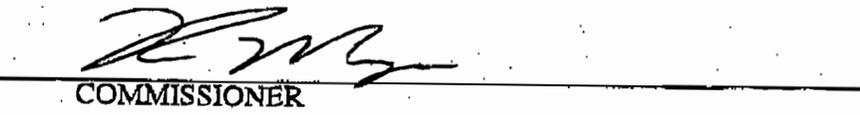
22 IT IS THEREFORE ORDERED that Docket No. E-01032A-99-0401 and Decision No. 62011
23 are re-opened to review the status of reliability and need for a second transmission line in Santa Cruz
24 County, pursuant to A.R.S. § 40-252.

1 IT IS FURTHER ORDERED that the Hearing Division shall issue a Procedural Order
2 establishing dates for filing of prefiled testimony/Staff Report, hearing, and other procedural matters.

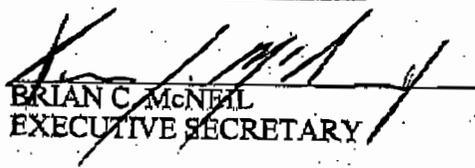
3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7
8  CHAIRMAN  COMMISSIONER  COMMISSIONER

9
10  COMMISSIONER  COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 20th day of Jan, 2005.

17 
BRIAN C. McNEIL
EXECUTIVE SECRETARY

18 DISSENT _____

20 DISSENT _____

EXHIBIT 2



BEFORE THE ARIZONA CORPORATION COMMISSION

2 ICE
07

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JAN 20 2005

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY
nr

IN THE MATTER OF THE JOINT APPLICATION OF TUCSON ELECTRIC POWER COMPANY AND CITIZENS COMMUNICATIONS COMPANY FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY FOR A PROPOSED 345 KV TRANSMISSION LINE SYSTEM FROM TUCSON ELECTRIC POWER COMPANY'S EXISTING SOUTH 345 KV SUBSTATION IN SEC. 36, T. 16S., R. 13E, SAHUARITA, ARIZONA, TO THE PROPOSED GATEWAY 345/115 KV SUBSTATION IN SEC. 12, T. 24S., R. 13E., NOGALES, ARIZONA WITH A 115 KV INTERCONNECTION TO THE CITIZENS COMMUNICATIONS COMPANY'S 115 KV VALENCIA SUBSTATION IN NOGALES, ARIZONA, WITH A 345 KV TRANSMISSION LINE FROM THE PROPOSED GATEWAY SUBSTATION SOUTH TO THE INTERNATIONAL BORDER IN SEC. 13, T. 24S., R. 13E.

DOCKET NO. L-00000C-01-0111
DOCKET NO. L-00000F-01-0111

DECISION NO. 67509

ORDER

Open Meeting
January 11 and 12, 2005
Phoenix, Arizona

BY THE COMMISSION:

On December 3, 2004, Tucson Electric Power Company ("TEP") and UniSource Energy Services, Inc. ("UES") (collectively, "Joint Applicants") filed a Motion to Extend Time Limitation of Certificate of Environmental Compatibility ("Motion").¹

In their Motion, the Joint Applicants ask that the Arizona Corporation Commission ("Commission"):

1. Extend the time limitation of the CEC, prior to January 15, 2005;

¹ The Motion was captioned using the docket numbers from the CEC application as well as Docket No. E-01032A-99-3401, a docket concerning service quality and other issues in Santa Cruz County, however, the dockets have not been consolidated, and separate orders will be issued for each docket.

1 of reviewing Citizens' application, the Commission issued Decision No. 61383 (January 29, 1999)
2 which ordered Citizens to file an "Analysis of Alternatives and Plan of Action (Plan) to rectify the
3 service problems in its Santa Cruz Electric Division. . . [t]he Plan should include a cost-benefit
4 analysis of alternatives, the alternative chosen and proposed deadlines for implementation of the
5 alternative chosen." (Decision No. 61383 at 2) In June of 1999, Citizens notified the Commission
6 that the proposed reorganization would not take place, and by Procedural Order issued July 15, 1999,
7 the holding company docket was closed and Docket No. E-0132A-99-0401 (the "Service Quality"
8 docket) was opened to resolve the Commission's concerns regarding Citizens' Santa Cruz Electric
9 Division.

10 On October 27, 1998, the City of Nogales, Arizona, filed a Complaint against Citizens
11 concerning electrical outages in Nogales, Arizona (Docket No. E-01032B-98-0621). In its
12 Complaint, the City of Nogales alleged that numerous electric outages caused by Citizens' failure to
13 adequately maintain its transmission lines and back-up generation capacity had resulted in economic
14 damages to Nogales and its residents and endangered the community's welfare. The City of Nogales
15 and Citizens entered into a Settlement Agreement, and in Decision No. 61793 (June 29, 1999), the
16 Commission dismissed the Complaint and ordered that Citizens provide a planned service date and
17 cost-benefit analysis for system components of a second transmission line in the Plan of Action to be
18 filed in compliance with Decision No. 61383.

19 In August 1999, the Commission's Utilities Division Staff and Citizens filed a Settlement
20 Agreement regarding Citizens' Plan of Action, in the Service Quality Docket. The Settlement
21 Agreement, which was approved by the Commission in Decision No. 62011 (November 2, 1999),
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23 transmission line to serve its customers in Santa Cruz County by December 31, 2003; established a
24 schedule for obtaining a Certificate of Environmental Compatibility ("CEC") and penalties if the
25 schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second
26 transmission line; preserved Staff's right to challenge any capital expenditure associated with
27 constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures
28 should be postponed until a filing is made to recover costs.

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3 kV and 115kV Transmission Project ("Gateway Project" or "Project") for the preferred western
4 route, which had been granted by the Committee. The Gateway Project incorporated the second
5 transmission line required by Decision No. 62011. Need for the Gateway Project was established in
6 that docket.

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10 approvals from federal agencies. On October 10, 2003, TEP and UniSource Electric, Inc. ("UNS
11 Electric") filed a supplement.³ The supplement proposed to provide short-term relief until the second
12 transmission line was constructed and became operational. In Decision No. 66615 (December 10,
13 2003), the Commission waived the penalty provided for in the Settlement Agreement approved in
14 Decision No. 62011, until June 1, 2004; ordered TEP and UNS Electric to submit an updated "Outage
15 Response Plan"; and ordered Staff to file a Report on the sufficiency of the updated Outage Response
16 Plan.

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18 Outage Response Plan and on March 11 and May 27, 2004, Staff filed its Staff Reports regarding the
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22 Consideration The Fulfillment of Decision No. 62011".

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24 the status of compliance with Decision No. 62011 and the requested waiver of penalties. During the
25 Special Open Meeting, the Commissioners discussed whether intervening circumstances, the passage
26 of time, and what may be inconsistent results reached by the Committee and the Department of
27

28 ³ Citizens sold its assets to UniSource Energy Corporation ("UNS") which formed UniSource Energy Services, Inc. (UES). UNS is also the parent holding company for TEP. Citizens' CEC was transferred to UES.

1 Agriculture Forest Service necessitate the re-opening of the record in the Line Siting dockets. The
2 Commissioners directed TEP and UBS to reopen the docket in Decision No. 64356 granting the
3 CEC.⁴ Further, the Commissioners discussed the issues of reliability and need for a second
4 transmission line, and indicated that these issues were appropriate for a hearing before a Commission
5 Administrative Law Judge. The Commissioners expressed an interest in having this issue handled on
6 a faster track, and invited parties to file pleadings in the event that they thought there were alternative
7 ideas relating to the reliability issue in Santa Cruz County.⁵ No such pleadings have been filed since
8 the Special Open Meeting.

9 On August 3, 2004, the Commission issued Decision No. 67151 which waived the penalty
10 provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject to
11 numerous conditions contained in the order.

12 DISCUSSION

13 Decision No. 64356 affirming the grant of the CEC contained a condition that authorization to
14 construct the Project would expire three years from the date of the Decision. In Decision No. 67151,
15 issued in August of 2004, the Commission authorized the Joint Applicants to seek an extension of
16 that time limit. Without an extension, the CEC would expire January 15, 2005. Staff believes that
17 since the Commission wants the record in the dockets to be re-opened to review information that has
18 come to light after the CEC was granted, extending the time beyond January 15, 2005 is appropriate.
19 Further, certain Federal Agencies must grant approval or permits prior to construction. No party to
20 the dockets has objected to either the re-opening of the dockets, nor to the extension of the CEC
21 approval.

22 Given the intervening circumstances, the passage of time, and what may be inconsistent
23 results reached by the Power Plant and Transmission Line Siting Committee and the Federal
24 Agencies, including the Department of Agriculture Forest Service, the record in Dockets L-00000C-
25 01-0111 and L-00000F-01-0111 should be re-opened and referred to the Committee for further fact
26 finding, review, and consideration.

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28 ⁴ Transcript at 53, 54, 55

⁵ Transcript at 54

1 Although Decision No. 67151 indicated that a completed Federal Environmental Impact
 2 Statement ("EIS") and associated Records of Decisions should be filed with a motion for extension of
 3 time limit, the Joint Applicants were unable to file such documents because they are not yet available.
 4 Accordingly, we will require the Joint Applicants to file the EIS and any RODs as soon as they are
 5 publicly available.

6 * * * * *

7 Having considered the entire record herein and being fully advised in the premises, the
 8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. In Decision No. 62011 (November 2, 1999), the Commission approved a Settlement
 11 Agreement between Staff and Citizens which committed Citizens to a Plan of Action which included
 12 a requirement that Citizens build a second transmission line to serve its customers in Santa Cruz
 13 County by December 31, 2003; established a schedule for obtaining a CEC and penalties if the
 14 schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second
 15 transmission line; preserved Staff's right to challenge any capital expenditure associated with
 16 constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures
 17 should be postponed until a filing is made to recover costs.

18 2. On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC.

19 3. In Decision No. 64356 (January 15, 2002), the Commission granted the CEC to
 20 construct the proposed Gateway 345 kV and 115kV Transmission Project for the preferred western
 21 route, which had been granted by the Arizona Power Plant and Transmission Line Siting Committee.
 22 The Gateway Project incorporated the second transmission line required by Decision No. 62011.

23 4. On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-
 24 Service Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the
 25 Service Quality Docket.

26 5. On October 10, 2003, TEP and UNS Electric filed a supplement.

27 6. In Decision No. 66615 (December 10, 2003), the Commission waived the penalty
 28 provided for in the Settlement Agreement approved in Decision No. 62011, until June 1, 2004;

1 ordered TEP and UNS Electric to submit an updated "Outage Response Plan"; and ordered Staff to
2 file a Report on the sufficiency of the updated Outage Response Plan.

3 7. On February 9, 2004, TEP and UES filed their updated Outage Response Plan and on
4 March 11 and May 27, 2004, Staff filed its Staff Reports regarding the sufficiency of the updated
5 Outage Response Plan.

6 8. On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an Application to
7 Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for
8 Consideration The Fulfillment of Decision No. 62011.

9 9. On July 28, 2004, the Commission held a Special Open Meeting in Tucson, Arizona to
10 review the status of compliance with Decision No. 62011 and the requested waiver of penalties.
11 During the Special Open Meeting, the Commissioners discussed whether intervening circumstances,
12 the passage of time, and what may be inconsistent results reached by the Line Siting Committee and
13 the Department of Agriculture Forest Service necessitate the re-opening of the record in the Line
14 Siting docket. The Commissioners directed TEP and UES to reopen the docket in Decision No.
15 64356 granting the CEC.

16 10. On August 3, 2004, the Commission issued Decision No. 67151 which waived the
17 penalty provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject
18 to numerous conditions contained in the order.

19 11. On December 3, 2004, the Joint Applicants filed a Motion to Extend Time Limitation
20 of Certificate of Environmental Compatibility.

21 12. In their Motion, the Joint Applicants ask that the Commission: 1) extend the time
22 limitation of the CEC, prior to January 15, 2005; 2) re-open the record in consolidated Docket Nos.
23 L-00000C-01-0111 and L-00000F-01-0111 for the limited purpose of reviewing alternatives to the
24 approved Preferred Route based upon information that has come to light after the issuance of
25 Decision No. 64356; 3) convene a procedural conference to establish the scope, forum and schedule
26 for the proceeding in the re-opened consolidated dockets; and 4) waive the requirement in Decision
27 No. 67151 (August 3, 2004) that the Federal Agency Records of Decision be provided with the
28 Motion.

1 Extend Time Limitation.

2 5. There is good cause to re-open the record in Docket Nos. L-00000C-01-0111 and L-
3 00000F-01-0111 to review alternatives to the approved Preferred Route based upon information that
4 has come to light after the issuance of Decision No. 64356 and to review the evidence presented in
5 Docket No. E-01032A-99-0401, pursuant to A.R.S. § 40-252.

6 6. Pursuant to A.R.S. § 40-360.06, the Committee and the Commission will review the
7 new information and make the appropriate determinations.

8 **ORDER**

9 IT IS THEREFORE ORDERED that the Motion to Extend Time Limitation of Certificate of
10 Environmental Compatibility is granted and the authorization to construct the Project will expire one
11 year from the date that all required approvals have been obtained.

12 IT IS FURTHER ORDERED that Docket Nos. L-00000C-01-0111 and L-00000F-01-0111
13 are re-opened and referred to the Power Plant and Transmission Line Siting Committee to review
14 alternatives to the approved Preferred Route based upon information that has come to light after the
15 issuance of Decision No. 64356 and to review the evidence presented in Docket No. E-01032A-99-
16 0401, pursuant to A.R.S. § 40-252.

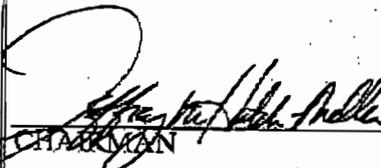
17 IT IS FURTHER ORDERED that neither Tucson Electric Power nor UniSource shall
18 commence construction of a second transmission line to Santa Cruz County until a new decision is
19 issued in Docket Nos. L-00000C-01-0111 and L-00000F-01-0111.

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IT IS FURTHER ORDERED that TEP and UNS Electric shall file the final Environmental Impact Statement and any Federal Agencies Records of Decisions with the Commission as soon as they are made publicly available.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7  CHAIRMAN

8  COMMISSIONER

 COMMISSIONER

10

11  COMMISSIONER

12  COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 20th day of Jan., 2005.

17 

18 BRIAN C. McNEIL
EXECUTIVE SECRETARY

19 DISSENT _____

21 DISSENT _____

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