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ARIZONA CORPORATION COMMISSION

August 14, 2007

The Honorable Jon Kyl
United States Senator
2200 East Camelback Road, Suite 120
Phoenix, AZ 85016

Dear Senator Kyl:

The Arizona Corporation Commission ("ACC") would like to reiterate its concerns with Section 1221 of the Energy Policy Act of 2005 ("EPAAct 2005"), in particular the provisions establishing FERC "back-stop" siting authority for transmission lines. The ACC believes that federal preemption of Arizona's line siting authority is unnecessary and inappropriate.

While other states may have failed to adequately site transmission and generation, Arizona has been proactive in siting the infrastructure necessary to keep up with the explosive growth of our state. Since 2000, the ACC has approved more than 20 major transmission projects across Arizona ranging from 115 kV to 500 kV and totaling approximately 600 miles of transmission corridor plus associated substation facilities. This past approval rate of approximately 100 miles of transmission corridor per year in Arizona is anticipated to continue for the foreseeable future. Since 1998, the ACC has approved 13 separate generation projects, adding 10,462 MW in new electric generation in Arizona.

We believe that Congress intended to allow FERC to act as back-stop siting authority in a National Interest Electric Transmission Corridor ("NIETC") only if a state failed to follow its own siting law or if the state's law did not meet certain criteria. If a state has siting authority that complies with EPAAct 2005, and properly exercises its siting authority, then FERC has no jurisdiction. Congress did not give FERC unlimited authority to overrule a state's lawful siting decision. However, if a state were to "withhold approval" by refusing to consider the application or by not satisfying its obligations under EPAAct 2005 and state law, then the imposition of FERC's "back-stop" authority might be appropriate.

Unfortunately, FERC has taken the position that "withholding approval" includes lawful denial of an application by a state. This viewpoint is not shared by all of the FERC Commissioners, as evidenced by Commissioner Kelly's vigorous dissent. The majority's interpretation would broaden FERC's authority beyond what Congress intended, giving FERC unlimited pre-emption over state siting authority. If this were Congress' intent, it would have used the word "denied" instead of the carefully chosen term "withholding approval." The EPAAct 2005 was intended to fill gaps in state siting authority, not to replace it.

The ACC recently denied an application by Southern California Edison for a 500kV line ("DPV2") from the Palo Verde sub to the Devers substation in California. This Commission reached its decision after extensive hearings and careful evaluation of the criteria established by state law, as well as considering the benefits accruing to California as required under the EPAAct 2005. The interests of the stakeholders were weighed and this Commission determined that in this case the costs outweighed the benefits. The ACC did not "withhold approval" but lawfully denied the application.

The Department of Energy ("DOE") is currently in the process of designating an NIETC consisting of Maricopa, La Paz, and Yuma counties. A petition to FERC from Southern California Edison for a transmission permit for DPV2 will certainly follow such a designation. If FERC pre-emption is allowed for DPV2, then Arizona will be forced to pay for California's flawed energy policy of not building adequate new generation and at the same time retiring too many older power plants. While Arizona has been siting and building primarily gas-fired power plants to meet our electricity needs into the future, California has not, despite its greater access to natural gas transmission and storage. Instead, California seeks a transmission solution, allowing it to import more and more power from Arizona. This "solution" would increase air pollution in Arizona and have a negative impact on our water supply, which is particularly vulnerable in this time of tremendous growth and severe drought. Based on the facts of this case, we determined that DPV2, as proposed, placed more costs on Arizona than it conveyed benefits to both Arizona and California.

We respectfully request that legislation be enacted to clarify that FERC has only limited authority to preempt state siting decisions, as originally envisioned by Congress. Thank you for your attention to this matter.

Sincerely,



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