Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-023695 10/20/2025

HONORABLE DEWAIN D. FOX

CLERK OF THE COURT
J. Eaton
Deputy

SIERRA CLUB

CHANELE N REYES

v.

ARIZONA CORPORATION COMMISSION, et al.

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JUDGE FOX

UNDER ADVISEMENT RULING ON APPEAL FROM ARIZONA CORPORATION COMMISSION DECISION NO. 79388

What did Arizona's Legislature mean in 1971 when it defined the word "plant" in A.R.S. § 40-360(9)? That is the ultimate issue before the Court in these consolidated appeals challenging Arizona Corporation Commission (the "Commission") Decision No. 79388 (the "Decision"),

which reversed the decision of the Arizona Power Plant and Transmission Line Siting Committee (the "Committee") on this issue. But before the Court can answer that question, the Court must decide whether the Commission even had authority to review the Committee's decision. For the reasons set forth below, the Court concludes that the Commission lacked authority to review the Committee's decision. Based on that conclusion, the Court will vacate the Decision and remand this matter to the Committee for further proceedings.

Factual Background

Intervenor-Defendant UNS Electric, Inc. ("UNSE") owns and operates the Black Mountain Generating Station ("BMGS"). BMGS is a natural-gas-fired power plant near Kingman, Arizona. BMGS currently is comprised of two generator-turbine sets each with nameplate ratings of 61 MW. BMGS' combined nameplate rating is 122 MW.

UNSE seeks to expand the capacity of BMGS by 200 MW (the "Project"). UNSE's expansion plans utilize four 50 MW combustion turbine generator sets to achieve the combined 200 MW additional capacity. The four new generator sets will be on the same BMGS site as the two current generator sets, and the new generator sets will be immediately adjacent to the existing generator sets. The four generator sets will receive natural gas through a shared pipeline that currently supplies the existing generator sets and will send electricity to the electric grid using the same 230kV generation tie line used by the two existing generator sets. In addition, the four new generator sets will share at least 20 items of equipment and facilities.

In 1971, the Legislature adopted the Power Plant and Transmission Line Siting Statutes (the "Line Siting Statutes"), which are codified at A.R.S. §§ 40-360 through 40-360.13. The Committee was established as part of the Line Siting Statutes. The Line Siting Statutes require every utility that plans to construct "a plant" in Arizona to file with the Commission an application for a certificate of environmental compatibility ("CEC"). A.R.S. § 40-360.03(A). The statute requires the Commission to "promptly refer the application and accompanying information to the chairman of the [C]ommittee for the [C]ommittee's review and decision." *Id.*

After enactment of the Line Siting Statutes, the Commission adopted Rules of Practice and Procedure Before Power Plant and Transmission Line Siting Committee. A.A.C. R14-3-201 through R14-3-220. A.A.C. R14-3-203 governs the submission of applications pursuant to A.R.S. § 40-360.03(A). A.A.C. R14-3-203(D) authorizes an applicant to seek a disclaimer of jurisdiction from the Committee: "An application may be filed in the alternative in situations where the applicant is in doubt as to whether an application is required by law. In such instances the application shall request a disclaimer of jurisdiction from the Committee or, in the alternative, a certificate of environmental compatibility."

On March 8, 2024, UNSE filed its "Application For Disclaimer Of Jurisdiction Or, In The Alternative, Certificate Of Environmental Compatibility" (the "Application") for the Project. In the Application, UNSE initially contended that the Project was not a "plant" as defined in the Line Siting Statutes and, as such, the Committee lacked jurisdiction to issue a CEC for the Project. Four parties intervened in the proceeding before the Committee: the Sierra Club; Arizona Solar Energy Industries Association; Western Resources Advocates ("WRA"); and Arizona Center for Law in the Public Interest on behalf of the Southwest Energy Efficiency Project. On April 24 and 25, 2024, the Committee conducted a two-day evidentiary hearing on the Application. Following the hearing, the Committee voted 9-2 to deny the Application based on the conclusion that the Project qualified as a "plant." On May 2, 2024, the Committee filed a written "Order Denying Application For Disclaimer of Jurisdiction" (the "Committee Order").

On May 16, 2024, UNSE requested the Commission to review the Committee Order. On June 11, 2024, the Commission held an Open Meeting. During the Open Meeting, Commission Staff, UNSE, the Committee Chairman, and the intervening parties were allowed to address the Commission. At the conclusion of the Open Meeting, the Commission voted 4-1 to reverse the Committee Order. On June 20, 2024, the Commission issued the Decision, in which it agreed with UNSE's interpretation of "plant" as used in the Line Siting Statutes.

Pursuant to A.R.S. § 40-254(A), Plaintiffs filed these consolidated actions to vacate, set aside, reverse, or remand with instructions to the Commission. Plaintiffs include the State, the Sierra Club, and WRA. The Commission and the elected Commissioners are the Defendants. UNSE also intervened as a Defendant. In addition, the Clean Energy Buyers Association ("CEBA") filed an amicus brief supporting Plaintiffs' position.

On July 21, 2025, after full briefing, Judge David McDowell heard oral argument and took the matter under advisement. Judge McDowell subsequently recused himself, and the matter was reassigned to this division. At the parties' request, rather than setting another oral argument, the Court has read all the briefs and reviewed the FTR recording of the oral argument before Judge McDowell. Based on its review of the record, the Court now makes its ruling.

Analysis

The Commission's Authority To Review The Committee Order

WRA raises the threshold issue of whether the Commission even had authority to review the Committee Order. WRA contends that R14-3-203(D) did not authorize the Commission to conduct the review. The Commission did not address this argument in its answering brief. UNSE addressed the issue only cursorily in a footnote, urging the Court to "swiftly dispose" of WRA's argument because "R14-3-214(B) allows a 'party to a certification proceeding' to request

Commission review" and the proceeding initiated by the Application was a certification proceeding under A.R.S. § 40-360.05(A)(1). (UNSE AB at 6 n.2).

"An administrative agency must follow the rules it promulgates." *Cochise County v. Arizona Health Care Cost Containment System*, 170 Ariz. 443, 445 (App. 1991). It is well-settled "that an agency must follow its own rules and regulations; to do otherwise is unlawful." *Clay v. Arizona Interscholastic Ass'n, Inc.*, 161 Ariz. 474, 476 (1989). "The words and phrases used in statutes and rules have their ordinary meaning unless the context indicates otherwise." *Cochise County, supra*. "The same principles of construction that apply to statutes apply to rules and regulations promulgated by an administrative body." *Marlar v. State*, 136 Ariz. 404, 410 (App. 1983), *superseded by statute on other grounds*, *Simms v. Simms*, --- Ariz. ---, 567 P.3d 92, 101 ¶ 30 (App. 2025). "The fundamental purpose of [regulatory] construction is to determine. . . the intent of the licensing agency which promulgated the regulations . . . ." *Id.* at 410-11.

R14-3-214 governs the Commission's review of the Committee's decisions. It provides:

> A. Within five days of the issuance of a certificate of environmental compatibility, the Committee shall transfer a copy of said certificate along with its written decision, to the Corporation Commission for its review and approval, subject to subsection (B) hereof.
>
> B. Within 15 days after the date the Committee has rendered its written decision any party to a certification proceeding may request a review thereof by the Corporation Commission.
>
> C. Grounds for requesting review shall be stated in a written notice filed with the Corporation Commission with a copy thereof served on the chairman of the Committee and all parties to the certification proceeding.
>
> D. Within five days of receipt of the notice referred to in subsection (C) hereof, the chairman shall transmit to the Corporation Commission the complete record, including a certified transcript.

R14-3-214(B) allows any party to a certification proceeding to request a review by the Commission of a "written decision" by the Committee. Read in the context of R14-3-213(A) and R14-3-214(A), the term "written decision" in R14-3-214(B) is the written decision by which the Committee either "issue[s] or den[ies] a certificate or [sic] of environmental compatibility," which written decision accompanies "the issuance of a certificate of environmental compatibility" and must be transferred by the Committee to the Commission "for its review and approval." Here, the Committee never issued (or denied) a CEC "along with its written decision" because UNSE

immediately sought review of the Committee Order denying UNSE's request to disclaim jurisdiction before the Committee considered UNSE's alternative request to issue a CEC.

In short, the Committee Order is not a written decision accompanying the issuance of a CEC, which is subject to review by the Commission under R14-3-214(B). As such, contrary to what UNSE contends, R14-3-214(B) did not authorize the Commission to review the Committee Order. Neither UNSE nor the Commission cites any other authority empowering the Commission to review the Committee Order denying UNSE's request to disclaim jurisdiction. And the Court's independent research did not reveal any such authority. Because the regulations promulgated by the Commission do not provide for the Commission to review an order by the Committee denying a request to disclaim jurisdiction, the Court must conclude that the Commission exceeded its authority in issuing the Decision overturning the Committee Order. Accordingly, the Court will issue an order setting aside the Decision and remanding this matter to the Committee with instructions to consider UNSE's alternative request for issuance of a CEC.

The Issue Regarding Interpretation Of The Term "Plant" In The Line Siting Statutes

The Court's resolution of this appeal on the basis set forth above does not mean that the Commission never will be able to review the Committee's interpretation of the term "plant" as used in the Line Siting Statutes. Rather, the Commission's review of the Committee's interpretation here was premature. In this regard, when the Committee issues its written decision along with (or denying) a CEC, the Committee's written decision presumably will address its subject matter jurisdiction--which depends on the Committee's interpretation of the term "plant" and determination of whether the Project constitutes one plant or four separate plants. After issuance of that written decision, a party to the certification proceeding may pursue its review options under R14-3-214(B). If that happens, the Commission then will have the opportunity to address the Committee's findings and conclusions in that regard.

Because this jurisdictional issue may recur, the Court considered whether it should proceed to address the statutory interpretation of the term "plant" in the Line Siting Statutes. But the Court concludes that it is appropriate to exercise judicial restraint and not decide an unnecessary issue or issue what could be described as an advisory opinion to the Committee and the Commission. *See Welch v. Cochise County Board of Supervisors*, 251 Ariz. 519, 523 ¶ 12 (2021) ("Arizona courts do 'exercise restraint to ensure they 'refrain from issuing advisory opinions, that cases be ripe for decision and not moot, and that issues be fully developed between true adversaries.'"") (citation omitted); *Freeport McMoRan Corp. v. Langley Eden Farms, LLC*, 228 Ariz. 474, 478 ¶ 15 (App. 2011) ("But because we do not issue advisory opinions or decide unnecessary issues, we decline to address Langley's standing to defend a declaratory judgment."). As such, the Court declines to consider at this time the other arguments made by the parties in their briefing.

Disposition

For the reasons set forth above,

IT IS ORDERED setting aside the Decision and remanding these matters to the Committee to decide UNSE's alternative request for issuance of a CEC without prejudice to any interested party raising the Committee's subject-matter jurisdiction when seeking review from the Committee's final written decision on the alternative request for issuance of a CEC.

IT IS FURTHER ORDERED directing Plaintiffs to lodge a proposed form of final judgment and to file any applications for attorneys' fees and or costs by **November 12, 2025**.[1]

[1] To be clear, the Court has not decided whether to award any attorneys' fees to Plaintiffs. Given the Court's resolution of Plaintiffs' appeals from the Decision, any application for attorneys' fees should address whether it is appropriate to award attorneys' fees at this time or whether the Court should deny any requests for attorneys' fees without prejudice to the prevailing parties requesting attorneys' fees after remand.