

1 **BEFORE THE ARIZONA POWER PLANT AND**
2 **TRANSMISSION LINE SITING COMMITTEE**

3 IN THE MATTER OF THE APPLICATION
4 OF RWE RENEWABLES DEVELOPMENT,
5 LLC, IN CONFORMANCE WITH THE
6 REQUIREMENTS OF ARIZONA REVISED
7 STATUTES, SECTIONS 40-360, ET. SEQ.,
8 FOR CERTIFICATES OF
9 ENVIRONMENTAL COMPATIBILITY
10 AUTHORIZING THE FORGED ETHIC
11 WIND ENERGY INTERCONNECTION
12 PROJECT LOCATED IN COCONINO
13 COUNTY, ARIZONA.

Arizona Corporation Commission

Docket No.
L-21261A-23-0219-00225

Case No. 225

PROCEDURAL ORDER

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10
11 An Application for Certificates of Environmental Compatibility
12 (“Application”) was filed in the above captioned matter with Docket Control of the
13 Arizona Corporation Commission (“Commission”) on July 24, 2023. A copy of the
14 Application was transmitted to Adam Stafford, designee of the Attorney General of
15 Arizona, Kristin Mayes, as Chairman (“Chairman”) and Presiding Officer of the Arizona
16 Power Plant and Transmission Line Siting Committee (“Committee”). A.R.S. §§ 40-
17 360.01(B)(1) and 40-360.03. As authorized by A.R.S. §§ 40-360.01(C) and (D), 40-360.04
18 and A.A.C. R14-3-201(E), the Chairman issues the following procedural order.

19 **IT IS ORDERED:**

20 1. The Applicant and all potential parties (“person” within the meaning of
21 A.R.S. § 40-360(8) who intends to intervene or requests to intervene, pursuant to A.R.S.
22 § 40-360.05(A)) (hereinafter “potential parties”), shall advise the Chairman in writing on
23 or before the time of the pre-hearing conference, scheduled below, if they disagree that the
24 time limit for decision on the Application by the Committee set by A.R.S. § 40.360.04(D)
25 is January 20, 2024.

26 2. All parties or potential parties listed on pleadings or procedural orders filed
27 by the Applicant or the Chairman shall notify Docket Control of their desire to receive
28 pleadings and procedural orders in this matter and shall regularly review the Docket

1 Control file in this matter to make sure they have received all pleadings and procedural
2 orders relating to this case. Neither the Committee nor the Chairman has the authority to
3 direct Docket Control to send one of the 25 copies of pleadings and procedural orders filed
4 with Docket Control to prospective parties.

5 3. The Applicant shall arrange for the timely publication and posting of notice
6 of the hearing, in a form approved by the Chairman, at locations discussed and agreed to by
7 the Applicant at the pre-filing conference held on July 14, 2023. Posting of the Notice of
8 Hearing should occur at least twenty days before the hearing scheduled below. The
9 Applicant shall provide notice by certified mail to any and all affected jurisdiction within
10 the meaning of A.R.S. § 40-360.04(A), at least twenty days before the hearing scheduled
11 below. Applicant shall also use social media to provide notice of the hearing as discussed
12 at the pre-filing conference held on July 14, 2023. In addition, at the hearing the Applicant
13 shall submit a copy of the notice and present testimony describing the publication,
14 providing of notice and posting of the notice.

15 4. The Applicant shall make arrangements for the hearing to commence in
16 Flagstaff, Arizona. The hearing in Flagstaff, Arizona will be held at the High Country
17 Conference Center's 1899 Ballroom located at 307 West Dupont Ave., Flagstaff, Arizona
18 86001, commencing on September 5, 2023, at 1:00 p.m. and will continue each weekday
19 on September 6, 2023, as necessary, at the same location beginning at 9:00 a.m. on each
20 day unless a tour is taken. If a tour is taken, it will begin on an alternative date and time set
21 by the Chairman of the Committee. Public comment may be taken during the hearing at
22 times designated by the Chairman.

23 Public comment also will be taken in a special evening session on September 5,
24 2023, beginning at 5:30 p.m. via Zoom, via telephone or in person at the same location.
25 Public comment may also be taken at the beginning of each hearing day, or at other times
26 during the hearing, at the discretion of the Chairman of the Committee. **THE PUBLIC**
27 **HAS THE OPTION OF WATCHING THE MEETING ONLINE, LISTENING TO**
28 **THE MEETING VIA TELEPHONE, OR ATTENDING IN PERSON.** At least 24

1 hours in advance of the hearing, information regarding online and telephone hearing access
2 as well as any additional details regarding safety protocols or other revisions to the hearing
3 schedule, will be posted on the Project website at [https://americas.rwe.com/projects-and-](https://americas.rwe.com/projects-and-locations/forged-ethic-wind-energy-project/)
4 [locations/forged-ethic-wind-energy-project/](https://americas.rwe.com/projects-and-locations/forged-ethic-wind-energy-project/) and on the Arizona Corporation Commission
5 (ACC) website at <https://www.azcc.gov/arizona-power-plant/meeting-schedule>. **PLEASE**
6 **BE ADVISED THAT ALL LOCAL AND STATE PUBLIC HEALTH AND SAFETY**
7 **GUIDELINES WILL BE FOLLOWED DURING THE PUBLIC COMMENT**
8 **PERIOD. RESTRICTIONS ON PUBLIC ACCESS, SAFETY PROTOCOLS, AND**
9 **REVISIONS TO THE HEARING SCHEDULE MAY OCCUR DUE TO PUBLIC**
10 **HEALTH CONSIDERATIONS.**

11 5. The Applicant shall contact the appropriate member of the staff of the
12 Commission, and advise them of the Applicant's position concerning reimbursement of the
13 Line Siting Fund should the expenses of the hearing exceed the application fee, and discuss
14 financial arrangements regarding hotel reservations and other expenses of the Committee
15 Members. A.R.S. § 40-360.10. The Applicant shall advise the Chairman of the results of
16 these discussions so that the necessary information may be communicated to the
17 Committee Members.

18 6. The Applicant shall provide a copy of this Procedural Order to all other
19 parties and potential parties who have not already received a copy.

20 7. The Applicant and all other parties and potential parties shall meet and confer
21 prior to the beginning of the hearing, to determine whether any of the parties or potential
22 parties have similar interests in the application process that will allow them to jointly
23 present testimony on direct or cross-examination of witnesses, or to jointly offer exhibits
24 into evidence. The Applicant shall, and any other party or potential party may, report to the
25 Chairman the results of their attempts to resolve the issues and to determine if common
26 interests exist that will allow parties to jointly present evidence and argument or to avoid
27 repetition of testimony and argument at the hearing.

28 8. The Applicant and all other parties and potential parties shall meet and confer

1 as needed before, during, and after the hearing to attempt to resolve any disputes amongst
2 the parties. The parties and potential parties shall also keep all other parties and potential
3 parties advised of their positions and intentions with regard to the presentation of evidence,
4 witnesses, and the application process in general to avoid delay, the presentation of
5 repetitive evidence, and any unfair advantage from surprise.

6 9. Parties and potential parties shall not communicate with any Member of the
7 Committee about any procedural matters, or any factual issues or legal issues relating to the
8 Application, while the Application is pending before the Committee. The only exception is
9 that parties may communicate with the Chairman during the time the Application is
10 pending about procedural matters relating to the Application, preparation of the notice of
11 hearing and its publication, the agenda for the hearing, any pre-hearing conferences, the
12 hearing on the Application, and the decision on the Application by the Committee.
13 Communication by the parties with the Chairman about any procedural matter during the
14 time an Application is pending shall be in writing or, if oral, shall be memorialized by an e-
15 mail or other written summary with a copy of the written communication or summary to all
16 parties and potential parties, or shall be on the record at pre-filing conferences, at pre-
17 hearing conferences, or at the hearing on the Application. Any party who initiates any
18 written communication sent to the Chairman, or who summarizes an oral communication
19 with the Chairman on a procedural matter, shall file with Docket Control a copy of the
20 communication or summary, including its distribution list, within 10 days of sending the
21 written communication or making the oral communication.

22 10. Parties and potential parties shall not communicate with any Commissioner
23 of the Commission concerning the substantive merits of the Application while the
24 Application is pending before the Committee, in accordance with the requirements of
25 A.A.C. R14-3-113.

26 11. Whenever an agenda is filed pursuant to A.R.S. § 38-431.02, all parties and
27 potential parties shall serve upon the Chairman as soon as practicable, and at least forty-
28 eight (48) hours before the hearing or meeting described in the agenda, any objections,

1 additions, or corrections to the agenda they believe are necessary in order to bring the
2 agenda into compliance with A.R.S. § 38-431.02. The objections, additions or corrections
3 shall be in writing and shall be served upon all other parties and potential parties. A copy
4 shall be filed with Docket Control. Objections that are not timely raised will be deemed
5 waived.

6 12. Service of any pleading, document, or writing upon the Chairman may be
7 made electronically to the e-mail address of the Chairman below. Service of any pleading,
8 document or writing upon parties and potential parties may be made electronically to the e-
9 mail address of the parties and potential parties. Any pleading, document or writing filed
10 with Docket Control shall include the appropriate number of copies as determined by
11 Docket Control.

12 13. All parties and potential parties shall file with Docket Control and exchange
13 with all other parties and potential parties brief summaries of the expected direct testimony
14 of each witness they will call. In lieu of a testimonial summary, a party or potential party
15 may file with Docket Control and exchange with all other parties and potential parties all or
16 substantially all of the direct testimony of any witness. In either case, whether testimonial
17 summaries or direct testimony, the parties are expected to present live testimony regarding
18 the matters set forth therein. Testimonial summaries and direct testimony shall be filed
19 with Docket Control and exchanged with parties and potential parties by 5:00 p.m. of the
20 day before the pre-hearing conference set below. Except for good cause, no witness will be
21 allowed to testify on direct examination concerning issues not reasonably identified in the
22 testimonial summary and direct testimony.

23 14. All parties and potential parties shall meet, confer, and exchange all exhibits
24 the party or potential party plans to offer in evidence by 5:00 p.m. of the day before the
25 pre-hearing conference set below. The Applicant shall, and other parties and potential
26 parties may, provide one or more three-ring binders for the Chairman and each Member of
27 the Committee to hold exhibits at the beginning of the hearing and as needed during the
28 hearing. Each party and potential party shall prepare for the Chairman and each Committee

1 Member a numbered list of the exhibits and a copy of all exhibits suitable for placement in
2 the binders that each party and potential party expects to offer in evidence at the hearing.
3 The exhibits shall be provided to the Chairman and each Committee Member at the
4 beginning of the hearing and during the hearing before reference to the exhibit is made in
5 the hearing. In lieu of copies of exhibits in paper format, Applicant may provide the
6 Chairman and each Member of the Committee a laptop, tablet or iPad loaded with
7 electronic copies of the exhibits. Except for good cause, no exhibit that was not exchanged
8 with the other parties shall be considered at the hearing. Any exhibit to which reference is
9 made during any hearing that is not offered or admitted into evidence shall be provided to
10 the court reporter at the hearing for inclusion in the record, unless it is withdrawn and the
11 Chairman determines its filing is not necessary to an understanding of the actions of the
12 Committee.

13 15. All exhibits shall be consecutively numbered, with the Applicant's exhibits
14 denominated: RWE-1, RWE-2 etc. Each intervening party will be assigned by the
15 Chairman a letter or letters of the alphabet as a preface with which to consecutively number
16 its exhibits.

17 16. The Applicant shall create an exhibit summarizing all public outreach efforts
18 concerning the Application, with representatives of federal, state and municipal bodies and
19 the general public, and all comments received as a result of such public outreach, including
20 comments received at meetings, through comment cards, emails, phone calls, faxes,
21 correspondence, social media and through the Applicant's website. Applicant shall
22 exchange the exhibit with all parties and potential parties and the Chairman by 5:00 p.m. of
23 the day before the pre-hearing conference set below.

24 17. The Applicant may make an opening statement at the beginning of the
25 hearing of no more than thirty (30) minutes. Each other party may make an opening
26 statement of no more than five (5) minutes.

27 18. Public comment will be heard after the opening statements and at other times
28 set by the Chairman during the hearing. See ¶ 4 above.

1 19. No tour of the Project Area is planned by the Committee at this time. If the
2 Chairman later decides to conduct a tour, the Applicant shall provide notice that includes a
3 map and itinerary of such tour, and will make the notice available at the hearing and shall
4 post the same on the Project and ACC websites. In the event the Chairman determines that
5 a tour or tours of the proposed locations of facilities proposed in the Application is
6 appropriate, the Applicant shall arrange for transportation for Committee Members who
7 wish to attend. The Applicant shall submit to the Chairman, before the pre-hearing
8 conference set below, a schedule and protocol agreed to by all parties and potential parties
9 for each tour. If all parties and potential parties do not agree upon the schedule and
10 protocol for each tour, the disagreements shall be submitted to the Chairman for resolution.
11 The protocol shall identify the tour route, identify the location of any stops, and identify
12 any witnesses who will accompany each tour. Counsel may ask brief explanatory questions
13 of the identified witness or witnesses during the stops about the location, what can be seen
14 from the location of the stop and the relevance of the location or view to the Application, at
15 the discretion of the Chairman. All witnesses who testify on each tour shall be sworn
16 before their testimony. All questions and answers shall be before a court reporter. No
17 testimony or discussion with or between Committee Members about the merits of the
18 Application will take place, except on the record before a court reporter at the designated
19 stops. The protocol shall provide for access to members of the public to any testimony
20 presented at stops on each tour. Members of the public who wish to observe the tour are
21 encouraged to notify the Applicant or the Chairman in advance of their intention to follow
22 and observe the tour.

23 20. Parties may present their witnesses in panels where appropriate. A party or
24 potential party who intends to present witnesses in panels shall identify the members of any
25 panel at the time it files its testimonial summaries or direct testimony.

26 21. The Applicant shall make arrangements for the preparation of expedited
27 court reporter transcripts of all pre-filing conferences, all pre-hearing conferences, and the
28 hearing, so that the transcripts are available for public inspection within three working days

1 after each hearing date, as required by A.R.S. §§ 38-431.01(D) and 40-360.04(C). In
2 addition, the Applicant shall file a certification with Docket Control that it has provided a
3 copy of the transcripts to two public libraries identified in the certification that are in the
4 vicinity of the proposed route and alternates in the Application. The Applicant shall also
5 post the transcripts on the Applicant's project website at:
6 <https://americas.rwe.com/projects-and-locations/forged-ethic-wind-energy-project/>.

7 Transcripts shall remain on the Applicant's project website until 30 days after the final
8 decision has been issued by the Commission.

9 22. At or before the pre-hearing conference set below, the Applicant shall, and
10 the other parties and potential parties may, file proposed findings of fact, proposed
11 conclusions of law, the wording of any proposed certificate of environmental compatibility,
12 and the wording of any proposed conditions to the certificate.

13 23. If the beginning of closing arguments and the Committee's deliberations are
14 more than one week after the beginning of the hearing, the parties shall meet and confer
15 before closing arguments, concerning proposed findings of fact, proposed conclusions of
16 law, a proposed certificate of environmental compatibility and the wording of any proposed
17 conditions to the certificate. If the parties are able to agree upon part or all of the proposed
18 findings of fact, proposed conclusions of law, proposed forms of a certificate of
19 environmental compatibility and proposed wording of conditions to the certificate, all that
20 is agreed upon should be reduced to writing and filed. If the parties are not able to agree
21 completely, the Applicant shall, and all other parties may, file proposed findings of fact,
22 proposed conclusions of law, proposed wording of a certificate of environmental
23 compatibility and proposed wording of conditions to the certificate on the day before the
24 beginning of closing arguments and the Committee's deliberations.

25 24. If the Applicant or any other party proposes conditions based upon conditions
26 used in prior cases, each proposed condition from a prior case shall contain the case
27 number of the most recent prior certificate of environmental compatibility using the
28 language approved by the Commission. Any proposed additions, deletions or modifications

1 to the language approved by the Commission for each prior condition shall be designated
2 using the "Track Changes" function.

3 25. All pleadings, testimonial summaries, direct testimony, proposed findings of
4 fact, proposed conclusions of law, proposed certificates of environmental compatibility and
5 proposed conditions of certificates that must be filed pursuant to this Procedural Order or
6 otherwise by law, shall be filed with Docket Control. Copies of all documents described in
7 this paragraph that are filed with Docket Control shall be served upon the Chairman, the
8 Committee, all parties, and all potential parties. Before the hearing, documents may be
9 served upon parties and potential parties electronically to the e-mail address or FAX
10 number provided by the party or potential party. Before the hearing, documents may be
11 served electronically upon the Chairman and the Committee, to the e-mail address of the
12 Chairman. Documents that are served during the hearing shall be hand delivered to parties.
13 During the hearing, eleven (11) copies of any filed document shall be delivered to the
14 Chairman for distribution to the Committee, and a copy shall be sent electronically to the e-
15 mail address of the Chairman.

16 26. If the final wording of the certificate of environmental compatibility that is
17 adopted by the Committee at the end of the hearing is in dispute, the Chairman may order
18 the parties to meet and confer in person or electronically to determine if they can agree
19 upon the final wording of a proposed certificate of environmental compatibility. If the
20 parties can agree upon the final wording of a proposed certificate of environmental
21 compatibility, Applicant shall forthwith hand-deliver the agreed-upon proposed certificate
22 of environmental compatibility to the Chairman for signature. If the parties are not able to
23 agree upon a proposed form of certificate of environmental compatibility, the Applicant
24 shall file, and the other parties may file, within ten (10) days after the date of the decision
25 of the Committee, those portions of the proposed certificate of environmental compatibility
26 upon which the parties agree. The Applicant also shall file, and any other party also may
27 file, within ten (10) days after the date of the decision of the Committee, its understanding
28 of any disputed portions of the proposed certificate of environmental compatibility. All

1 proposed forms of the certificate of environmental compatibility and any objections or
2 proposed revisions shall be filed with Docket Control, and a copy shall be hand delivered
3 to the Chairman at 15 South 15th Avenue, Phoenix, Arizona. All other parties shall be
4 served. Objections or suggestions that are not timely filed shall be considered waived.

5 27. The copy of the proposed certificate of environmental compatibility filed by
6 the Applicant and any objections or proposed revisions filed by the parties that are served
7 upon the Chairman, shall include an electronic file containing the wording of the proposed
8 language in a format compatible with Microsoft© Word word-processing program.

9 The Applicant and all potential parties shall meet with the Chairman for a **pre-**
10 **hearing conference on August 29, 2023, beginning at 2:00 p.m. via Zoom at:**

11 <https://us02web.zoom.us/j/88611092752?pwd=M3BMcHZMVjl2NERyK1M3NDlqaVpU>
12 **Zz09; Meeting ID: 886 1109 2752; Passcode: 262600.**

13 28. Parties and potential parties other than the Applicant may appear by
14 telephone with the prior permission of the Chairman. At the final pre-hearing conference,
15 the Chairman shall review with the Applicant and potential parties:

- 16 a. The publication and posting of notices of the hearing;
- 17 b. The proposed agenda for the hearing;
- 18 c. Any notices to intervene, requests to intervene, and applications to
19 make a limited appearance;
- 20 d. The status of attempts to narrow the issues at the hearing or to agree to
21 language in the proposed findings of fact, proposed conclusions of law, proposed
22 certificates of environmental compatibility and proposed conditions to the certificate;
- 23 e. The status of the filing and exchange of witness summaries or written
24 testimony, proposed findings of fact, proposed conclusions of law, proposed certificates of
25 environmental compatibility and proposed conditions to the certificate;
- 26 f. The status of the exchange of exhibits amongst the parties;
- 27 g. Any objections, motions, responses, and legal memoranda that have
28 been filed; and

1 h. Plans and preparations for the hearing, public comment session, and
2 tour of the proposed site.

3 **IT IS FURTHER ORDERED**, the Chairman may amend or waive any portion of
4 this Procedural Order by subsequent Procedural Order, by ruling at a pre-hearing
5 conference, or at a hearing.

6 **DATED** this 27 day of July, 202

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8
9 Adam Stafford
10 Chairman, Arizona Power Plant and
11 Transmission Line Siting Committee
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13 Phoenix, Arizona 85007-2926
14 Adam.Stafford@azag.gov
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1 CERTIFICATION OF MAILING

2 Pursuant to A.A.C. R14-3-204, the **ORIGINAL** of the foregoing and 26 copies were
3 filed this 27 day of July, 2023 with:

4 **Utilities Division - Docket Control**

5 Arizona Corporation Commission
6 1200 West Washington Street
7 Phoenix, AZ 85007

8 **COPIES** of the above mailed this 27 day of July, 2023 to:

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31 CEC 225