IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

PETER T. ELSE,
Plaintiff/Appellant,

v.
ARIZONA CORPORATION COMMISSION,
Defendant/Appellee,

and

SUNZIA TRANSMISSION, LLC,
Intervenor/Appellee.

No. 2 CA-CV 2023-0247
Filed June 13, 2024

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Maricopa County
No. CV2023050310
The Honorable Melissa Iyer Julian, Judge

AFFIRMED

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MEMORANDUM DECISION

Presiding Judge O'Neil authored the decision of the Court, in which Judge Sklar and Judge Gard concurred.

O' N E I L, Presiding Judge:

¶1 The Arizona Corporation Commission (ACC) approved an amendment to SunZia Transmission LLC's Certificate of Environmental Compatibility (CEC) 171, which authorized the construction of two transmission lines—at least one of which was required to be an Alternating Current (AC) line. The amendment bifurcated CEC 171 into two separate CECs: CEC 171-A, authorizing the construction of a Direct Current (DC) line, and CEC 171-B, authorizing the construction of an AC line. Peter Else, a party to the amendment proceedings, appeals from the superior court's ruling affirming the ACC's decision to amend, asserting, in part, that the ACC failed to consider the impact of bifurcation when it balanced the need for electric power with the desire to minimize environmental and ecological harm. *See* A.R.S. §§ 40-360(3), 40-360.07(B). We conclude the ACC considered the impact of bifurcation on that balance. Its decision was supported by substantial evidence, and we therefore affirm the court's decision.

Background

¶2 In 2015, SunZia applied for a CEC for a transmission project. The proposed project would include two transmission lines, around two hundred miles of which would be located in Arizona. The lines would originate at a substation in New Mexico, enter Arizona in Greenlee County, travel through Graham, Cochise, and Pima counties, and terminate at the existing Pinal Central Substation in Pinal County. The project would also include construction of Willow Substation in Graham County. The two substations would "provide Arizona's utilities and load centers with access to the energy, including renewable energy, transmitted by" the project. The project would include either two AC lines or one AC and one DC line. Any DC line would also require the construction of a DC converter station adjacent to the Pinal Central Substation.

¶3 After an evidentiary hearing, the Arizona Power Plant and Transmission Line Siting Committee[1] issued CEC 171, which the ACC later approved in decision number 75464. *See* § 40-360.07(A) ("No utility may construct a plant or transmission line within this state until it has received a [CEC] from the [C]ommittee with respect to the proposed site, affirmed and approved by an order of the [ACC] . . . ."). CEC 171 required that "[a]t least one (1) of the two (2) 500 kV transmission lines w[ould] be constructed and operated as an alternating current (AC) facility; the other transmission line will be either an AC or DC facility." The existing Pinal Central Substation and the proposed Willow Substation would provide Arizona utilities access to the energy transmitted on the lines at two locations. If SunZia opted to construct a DC line, a DC converter station would "convert the flow of electricity from DC to AC and thereby allow the DC line to deliver energy to the Pinal Central Substation." The project authorization would expire in 2026, for the first transmission line and Willow Substation, and in 2031, for the second transmission line.

¶4 In 2022, SunZia applied to bifurcate CEC 171 into "two CECs, one for each line," to "facilitate necessary financing and assignment of the CEC authorizations if ownership of either line changes in the future." It also requested to extend the expiration date of the first line, which it specified would be a DC line, to 2028 and to "authorize the use of updated structure designs and additional structure types."

[1]The ACC establishes the Committee, which has the authority to issue CECs. *See* A.R.S. §§ 40-360.01(A), 40-360.06(A).

¶5 Although SunZia requested that the ACC "approve the amendments without an evidentiary hearing, consistent with precedent for other amendments with similarly minor changes," the ACC decided, in decision number 78600, to refer the amendment request to the Committee for an evidentiary hearing because the structural amendments constituted "major changes" and the request for a second CEC required additional consideration of the "circumstances."

¶6 At the evidentiary hearing, SunZia requested that the Committee also extend the time to construct the Willow Substation to 2031 because, it explained, "currently the term for the Willow [Substation] is tied to Line 1" and now it is going to be "part of the planning for Line 2." After the hearing, the Committee ordered amendments authorizing CEC 171-A for the DC line and CEC 171-B for the AC line, extending the expiration date for the construction of CEC 171-A and Willow Substation to 2028 and 2031, respectively, and authorizing the structural-design changes.

¶7 Else filed a request for the ACC to review the Committee's decision, and the ACC approved the Committee's orders to issue CEC 171-A and CEC 171-B. Else then filed an application for rehearing and reconsideration, which was denied by operation of law. *See* A.R.S. §§ 40-253(A), 40-360.07(C).

¶8 Else commenced an action in the superior court to challenge the ACC decision, and the superior court affirmed. This appeal followed. We have jurisdiction. *See* A.R.S. §§ 12-120.21(A)(1), 12-2101(A)(1), 40-254(D).

Discussion

¶9 On appeal, Else argues the ACC acted arbitrarily in failing to consider an important implication of bifurcation on SunZia's plan of electrical service, exceeded its statutory authority by solely considering regional power needs, and approved the amendments without substantial evidence of in-state power need for the amended project.[2]

[2]The ACC asserts that Else's arguments constitute an "impermissible collateral attack on Decision Nos. 75464 and 78600"; SunZia similarly asserts that Else's challenge amounts to an "impermissible collateral attack" on decision number 75464. *See* A.R.S. § 40-252 ("In all collateral actions or proceedings, the orders and decisions of the [ACC] which have become

¶10 In general, the ACC may "alter or amend any order or decision made by it" after providing notice and an opportunity to be heard. A.R.S. § 40-252. Else's challenge concerns an amendment to a CEC that was fully litigated and confirmed in a previous decision. *See Else v. Ariz. Corp. Comm'n*, No. 1 CA-CV 17-0208 (Ariz. App. Jan. 25, 2018) (mem. decision). In this case, the ACC referred the application to the Committee, which then issued CEC 171-A and CEC 171-B to SunZia upon approving the amendment. "[A]ny party to a certification proceeding may request a review of the [C]ommittee's decision by the [ACC]." § 40-360.07(A). "In arriving at its decision" to "confirm, deny or modify any certificate granted by the [C]ommittee," the ACC must "balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state." § 40-360.07(B). Else's challenge therefore depends on the extent to which the ACC's review of a decision to issue an amended CEC requires the ACC to rebalance the need for power with the desire to minimize environmental effects.

¶11 "[T]he burden of proof shall be upon the party adverse to the [ACC] or seeking to vacate or set aside any determination or order of the [ACC] to show by clear and satisfactory evidence that it is unreasonable or unlawful." § 40-254(E). "'Clear and satisfactory' is the same as 'clear and convincing' and is a standard of proof greater than 'by a preponderance of the evidence.'" *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 243 (1982) (quoting *Chicago, R.I. & P.R. Co. v. Neb. State Ry. Comm'n*, 124 N.W. 477, 481 (Neb. 1910)). "Accordingly, [Else] is required to demonstrate, clearly and convincingly, that the [ACC]'s decision is arbitrary, unlawful or unsupported by substantial evidence." *Litchfield Park Serv. Co. v. Ariz. Corp. Comm'n*, 178 Ariz. 431, 434 (App. 1994).

¶12 The scope of our review is "coextensive with the Superior Court's scope." *City of Tucson v. Citizens Utils. Water Co.*, 17 Ariz. App. 477, 480 (1972). Thus, we review the ACC's legal conclusions de novo, and we will defer to the ACC's factual determinations if supported by substantial evidence, unless such determinations are arbitrary or unlawful. *See, e.g.*, *Grand Canyon Tr. v. Ariz. Corp. Comm'n*, 210 Ariz. 30, ¶ 13 (App. 2005); *Sierra Club – Grand Canyon Chapter v. Ariz. Corp. Comm'n*, 237 Ariz. 568, ¶ 22 (App. 2015). We will uphold the ruling "if it is supported by any reasonable

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final shall be conclusive."). Else's challenges are within the scope of the amendment to bifurcate CEC 171, and, thus, we address them.

evidence." *Sun City Water Co. v. Ariz. Corp. Comm'n*, 113 Ariz. 464, 465 (1976); *see also Tucson Elec. Power Co.*, 132 Ariz. at 244 ("[A]n appellate court reviews the Superior Court's decision and not the [ACC]'s, and a Superior Court's ruling on the [ACC]'s decision will be upheld if supported by reasonable evidence.").

I. Interpretation of Need for Power

¶13 Else asserts the ACC exceeded its statutory authority by considering "solely out-of-state power needs." He argues that § 40-360.07(B) requires the ACC to "balanc[e] the need for power in Arizona against the environmental damage to Arizona." (Emphasis omitted.) "We review issues of statutory interpretation de novo." *Ariz. Chapter of the Associated Gen. Contractors of Am. v. City of Phoenix*, 247 Ariz. 45, ¶ 7 (2019).

¶14 The ACC seems to suggest Else failed to exhaust his administrative remedies concerning this argument. *See Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, ¶ 11 (2022) ("A litigant must exhaust a statutorily prescribed administrative remedy before seeking judicial relief from actual or threatened injuries."). It relies in part on the requirement under § 40-253(C) that a party be limited to the challenges it raised in a motion for rehearing. Else did, however, argue in his request for review that the ACC had a "mandate to facilitate the development of an adequate, economical, and reliable supply of electricity in Arizona and to assure that Arizona would benefit to a similar degree as energy interests in New Mexico and California." And in his motion for rehearing, Else argued that there was not substantial evidence of Arizona's need for power from the amended project. Those arguments necessarily imply that the ACC must consider in-state power needs. Thus, Else exhausted his administrative remedies.

¶15 Also, as Else notes in his reply brief, the specific legal argument "became relevant" when the superior court based its decision on the regional need for power. After noting that the statute "does not limit an evaluation of energy needs to those needs of Arizona consumers," the court reasoned there was substantial evidence of a "need for energy infrastructure in the southwest region" to support the ACC's decision. To the extent Else did not raise this argument in the superior court, such that the ACC is asserting that he has waived the argument on appeal, "we may forego application of the [waiver] rule when justice requires." *Liristis v. Am. Fam. Mut. Ins. Co.*, 204 Ariz. 140, ¶ 11 (App. 2002). We therefore address the argument on its merits.

¶16 In order to meaningfully review the ACC's decision, we must first determine, as a matter of law, whether the statute requires the ACC to consider the need for power within Arizona. "We interpret statutory language in view of the entire text, considering the context and related statutes on the same subject." *Nicaise v. Sundaram*, 245 Ariz. 566, ¶ 11 (2019). If the clear statutory language reasonably supports only one meaning, that is the meaning we apply. *Molera v. Hobbs*, 250 Ariz. 13, ¶ 34 (2020). "But if the language is susceptible to more than one reasonable meaning, we apply secondary interpretive principles, such as considering 'the statute's subject matter, historical background, effect and consequences, and spirit and purpose.'" *Id.* (quoting *Rosas v. Ariz. Dep't of Econ. Sec.*, 249 Ariz. 26, ¶ 13 (2020)).

¶17 Section 40-360.07(B) states that the ACC must "balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state." Thus, it requires consideration of both "the need for . . . electric power" and "the desire to minimize the effect . . . on the environment and ecology." § 40-360.07(B). The question is whether the concluding modifier, "of this state," applies only to "the effect . . . on the environment and ecology" or also to "the need for . . . electric power." *Id.*

¶18 "When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012). However, "[w]ith postpositive modifiers, the insertion of a determiner before the second item tends to cut off the modifying phrase so that its backward reach is limited—but that effect is not entirely clear." *Id.* at 149. In § 40-360.07(B), the modifier "of this state" might plausibly apply to both "the need for . . . electric power" and "the effect . . . on the environment and ecology." But the statute inserts "the" as a determiner before each, rendering this interpretation of the statute doubtful. A more straightforward interpretation would be to apply "of this state" to each item in the noun series it most immediately follows: "environment" and "ecology." § 40-360.07(B); *see* Scalia & Garner, *supra*, at 149. This would suggest the same modifier would not also apply to "the need for . . . electric power." § 40-360.07(B).

¶19 Regardless, even if § 40-360.07(B) does not expressly limit the ACC's consideration to the power needs of Arizona, it would not necessarily follow that the ACC is required to balance the needs of other

states—or any other entity, for that matter, such as foreign nations or wholly private or personal interests. Rather, the meaning of the clause would remain uncertain: it would mean the statute simply does not identify whose need for electric power the ACC is required to consider. It would not resolve the ambiguity.

¶20 The statutory context indicates the statute contemplates "the need for . . . electric power" in Arizona. *Id*. A related statute provides for the submission of ten-year plans by any "person contemplating construction of any transmission line within the state." A.R.S. § 40-360.02(A). The statute expressly requires the ACC to review the plans and determine their adequacy "to meet the present and future energy needs *of this state* in a reliable manner." § 40-360.02(G) (emphasis added). This requirement suggests that the electric power needs the ACC considers when approving a CEC should also reflect the energy needs of this state. *See* § 40-360.07(B); *see also Nicaise*, 245 Ariz. 566, ¶ 11. The alternative would place § 40-360.02 in tension with § 40-360.07, requiring the ACC to consider Arizona's needs exclusively when approving ten-year plans for transmission lines, yet permitting the ACC to disregard Arizona's needs entirely when approving construction of transmission lines in a CEC.

¶21 The legislative declaration of policy, which the legislature adopted when it passed § 40-360.07(B) in 1971, also suggests the ACC must consider in-state power needs. *See* 1971 Ariz. Sess. Laws, ch. 67, § 1; *Grand Canyon Tr.*, 210 Ariz. 30, ¶ 43 ("When . . . the legislature specifies its purpose in the session law that contains the statute, it is appropriate to interpret the statutory provisions in light of that enacted purpose."). That declaration of policy "is part of the bill that legislators have before them and approve, and has the same force of law as codified law." *Planned Parenthood Ariz., Inc. v. Mayes*, ___ Ariz. ___, ¶ 24, 545 P.3d 892, 899 (2024). The legislature enacted the article including § 40-360.07(B) in response to a perceived "lack of adequate statutory procedures," which would potentially result in the "inability of the electric suppliers to meet the needs and desires of the people of the state for economical and reliable electric service." 1971 Ariz. Sess. Laws, ch. 67, § 1. We conclude that § 40-360.07(B) requires the ACC to consider Arizona's need for power in determining whether to approve a CEC.[3]

[3]Because of our conclusion, we need not reach Else's argument that interpreting the statute to allow the ACC to make its decision based solely on out-of-state power needs would "violate the major questions doctrine."

¶22 The ACC argues this interpretation would prohibit it from considering "interstate need for power," which it contends would violate the dormant commerce clause. But we do not read § 40-360.07 to prohibit consideration of interstate power altogether. The statute "does not require that the need for power be determined based solely on the power needs of in-state consumers," *Grand Canyon Tr.*, 210 Ariz. 30, ¶ 35, but in conducting the required balancing, the ACC must not omit in-state power needs from consideration.

II. Arbitrary and Capricious

¶23 Else argues it was arbitrary and capricious for the ACC to approve the amendments without considering how bifurcation would alter the balance of statutory interests, including the likelihood that the project will meet the need for electric power. Else points out that after bifurcation, the AC line and the DC line would no longer be part of the same project. Instead, he argues, a project for a DC line might move forward alone, while an AC line may never be completed as contemplated in CEC 171. And without the AC line, Else contends that "[a] single DC line would not have any grid benefits to Arizona because [SunZia] is the only entity that will be able [to] hook up to it." Thus, Else maintains the ACC was required to conduct "the mandated statutory balancing in the absence of an AC line."

¶24 To determine if an agency "has abused its discretion by acting in an arbitrary and capricious manner, we review the record to determine whether there has been 'unreasoning action, without consideration and in disregard for facts and circumstances.'" *Petras v. Ariz. State Liquor Bd.*, 129 Ariz. 449, 452 (App. 1981) (quoting *Tucson Pub. Schs., Dist. No. 1 v. Green*, 17 Ariz. App. 91, 94 (1972)); *see also Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency acts arbitrarily if it "entirely failed to consider an important aspect of the problem"); *Compassionate Care Dispensary, Inc. v. Ariz. Dep't of Health Servs.*, 244 Ariz. 205, ¶ 25 (App. 2018) ("An agency acts arbitrarily and capriciously when it does not examine 'the relevant data and articulate a satisfactory explanation for its action . . . .'" (quoting *Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 43)). We conclude the ACC did not act arbitrarily or capriciously here.

¶25 Section 40-252 expressly permits the ACC to "rescind, alter or amend any order or decision made by it." Nothing in the statutory language limits this authority to circumstances where rescission, alteration, or amendment would not impact the balance of needs and impacts under § 40-360.07(B). Nor does § 40-360.07(B) suggest a requirement that the ACC disregard its prior balancing of needs and impacts from the original

certification proceeding when reviewing a proposed amendment. To the extent Else's argument suggests the ACC was required to review each bifurcated CEC anew, wholly independent from its prior balancing of needs and impacts for the original CEC, we reject that contention.

¶26 We need not decide, however, the precise outer limits of the ACC's authority, when reviewing a committee decision, to rescind, alter, or amend a prior decision. *See* §§ 40-252, 40-360.07(B). In this case, the ACC reasonably considered the impact of the amendments on the statutory balance. Thus, assuming without deciding the amendments implicated the project's impact on the need for power in Arizona, Else has not shown clear and convincing evidence that the ACC acted arbitrarily and capriciously by failing to consider such implication. *See Litchfield Park Serv. Co.*, 178 Ariz. at 434.

¶27 Before the evidentiary hearing on SunZia's amendment application, the Committee requested and received an opinion from ACC staff concerning the project's benefits to Arizona. That opinion, based on a review of SunZia's application and response to a data request, indicated that "the proposed Project could help improve reliability, safety of the grid, and the delivery of power in Arizona." The ACC cited the staff opinion in its final order approving bifurcation. The ACC also discussed the original CEC, including its anticipated benefits to satisfy the need for power in Arizona, and considered the possibility that the proposed amendments, including bifurcation, could impact those benefits.

¶28 In his briefing on the motion to review, Else argued the new plan would offer fewer "benefits to Arizona" because it "would eliminate the Willow Substation" from CEC 171-A and the DC line would not distribute electricity to two substations in Arizona. "With larger and more complex DC line structures now being proposed" for CEC 171-A, Else contested there would be "no opportunity to access this line for distributed energy generation within Arizona." In its decision, the ACC considered Else's argument that the amendment constituted "a new plan of service . . . with potential impacts on the grid."

¶29 The ACC also considered evidence in the record concerning the benefits that wind energy from New Mexico could offer as a complement to solar power in Arizona and natural gas resources. It considered further evidence that the amendments offered overall improvements to the environmental impact of the project relative to the original CEC. It noted evidence that that the Pinal Central Substation would be able to accept and transmit power, accommodating multiple

transmission systems in multiple directions. And it took into account evidence that bifurcation could increase the prospects of completing the entire project, that wind power could attract customers in Arizona, and that satisfying regional power demands benefits Arizona. The ACC expressly recognized SunZia's request to bifurcate and considered the impacts of bifurcation. It follows that it necessarily considered each of the above issues in the context of bifurcation.

¶30 In its decision, as Else points out on appeal, the ACC stated that "there has not been a change in the anticipated use of the lines." Although Else interprets this language as demonstrating the ACC's failure or refusal to consider the potential impact of bifurcation—including the "possibility" that the "AC line is unlikely to be built"—we do not read it that way, particularly given the express attention the ACC paid to both the environmental impact and the power benefits to Arizona after bifurcation. The ACC considered evidence that both the AC line and the DC line would be pursued after bifurcation. Indeed, as noted, there was evidence that bifurcation would increase the likelihood that the entire project would be completed. Even if bifurcation raised a theoretical possibility that only a DC line would ever be constructed, the ACC provided a reasoned explanation for its finding that there was no "change in the anticipated use of the lines."

¶31 Similarly, contrary to Else's argument on appeal, the ACC's statement that its prior decision to issue CEC 171 is "subject to the doctrine of *res judicata* and is the law of the case" does not demonstrate that the ACC failed to consider the impact of the amendments on the balance of interests reflected in that decision. The ACC explained that "CEC 171 . . . would remain in effect" even if the amendments were not adopted; thus, "[t]he matter before the Commission was . . . to authorize the use of updated structure design changes and additional structure types, to bifurcate the CEC . . . , and to extend the expiration date of Line 1." At most, this demonstrates that the ACC would not "rescind" its prior decision. *See* § 40-252. Even assuming, as Else asserts, that res judicata is not applicable here given the ACC's authority to rescind its prior decisions under § 40-252, the ACC's statement is not clear and convincing evidence that it acted arbitrarily in reviewing the proposed amendments. *See Litchfield Park Serv. Co.*, 178 Ariz. at 434.

¶32 Finally, assuming without deciding the original CEC would have required construction of an AC line first—implicitly or otherwise—we reject Else's contention that the ACC's contrary conclusion that "[t]he

original CEC does not specify which line was to be built first" establishes that it failed to consider the impacts of bifurcation. Else's argument depends on his contention that after bifurcation, constructing the DC line first raises a possibility that the AC line may never be constructed at all. But the ACC offered a reasoned explanation for its decision based, in part, on evidence that both lines were expected to proceed towards completion even after bifurcation. Likewise, we reject Else's suggestion that the ACC's description of the amendments as "narrow," "specific," and "limited" and its statement concerning the absence of an "approved plan of service" when CEC 171 was approved demonstrate arbitrariness. The fact that the ACC characterized the impact of the amendments differently than Else does not suggest that it failed to consider that impact at all. We cannot conclude this is clear and convincing evidence of arbitrary and capricious action. *See Litchfield Park Serv. Co.*, 178 Ariz. at 434 (party adverse to ACC must establish "clearly and convincingly" that ACC's decision arbitrary).

¶33 The ACC stated that it rendered its decision after "balancing the need for an adequate, economical, and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of Arizona." It concluded that "it is in the broad public interest to approve the proposed modifications." However reasonably Else might disagree with the ACC's findings or its evaluation of the impact of bifurcation on the statutory balance, he has not shown that the ACC acted without reason or in disregard of the relevant facts or circumstances. *See Petras*, 129 Ariz. at 452 ("[W]here there is room for two opinions, the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." (quoting *Green*, 17 Ariz. App. at 94)). He has not demonstrated by clear and convincing evidence that the ACC acted arbitrarily and capriciously. *See Litchfield Park Serv. Co.*, 178 Ariz. at 434.

III. Substantial Evidence

¶34 Else asserts "[o]nce vague 'regional' needs are discounted, and without the grid benefits of an AC line, there is no evidence of substantial need in Arizona for [the] DC line" because "there was no testimony that any Arizona utility or customer needed this power." (Emphasis omitted.) We examine the record for substantial evidence to support the ACC's factual conclusions. *See Grand Canyon Tr.*, 210 Ariz. 30, ¶ 13. "Substantial evidence is evidence which would permit a reasonable person to reach the [ACC]'s result." *Sierra Club – Grand Canyon Chapter*, 237 Ariz. 568, ¶ 22; *see also City of Tucson*, 17 Ariz. App. at 481 (substantial

evidence is evidence from which a person may draw a reasonable inference). We conclude the record contains substantial evidence to support the ACC's decision.

¶35 We reject Else's contention that the ACC was required to examine the benefits of the DC line in isolation. Both lines were approved as part of CEC 171. As we have noted, it was not improper for the ACC to consider the implications of the proposed amendments, including bifurcation, on its prior balancing of needs and impacts for CEC 171. The ACC already determined that the project as envisioned in CEC 171 was in the public interest. As discussed above, it considered evidence that bifurcation would enhance the prospect of completing the entire project. Thus, based on that evidence, approving bifurcation for the impending construction of the DC line could also increase the likelihood that Arizona would receive the benefits of the AC line in the future. In considering the impact of bifurcation in context, the ACC could have reasonably concluded that the risk of completing only a DC line was counterbalanced by a greater likelihood of completing both lines. Regardless, the record contains substantial evidence concerning the DC line's benefits to Arizona's need for power and its environmental and ecological impact.

¶36 As we have noted, the ACC considered evidence that the Pinal Central Substation would be able to distribute power to the Arizona grid, that there was a potential market in Arizona for wind energy as a complement to solar and natural gas, and that the broader regional benefits would also benefit Arizona. The ACC also considered evidence that the amended project would be more favorable to the environment and ecology of Arizona. From this evidence, the ACC could have reasonably concluded, weighing the need for electrical power with the desire to minimize environmental and ecological impact, that that the project would continue to serve the public interest after the amendments.

IV. Attorney Fees

¶37 Else requests attorney fees and costs under A.R.S. §§ 12-341; 12-348(A)(2), (7), and the "private attorney general doctrine." Because he is not the prevailing party, we deny his request.

Disposition

¶38 We affirm the superior court's ruling.