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November 19, 2004

Colleen Ryan, Supervisor  
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1200 W. Washington  
Phoenix, AZ 85007

Arizona Corporation Commission

**DOCKETED**

NOV 22 2004

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Re: In the matter of Salt River Project *et al.*  
Docket No. L-00000B-04-0126

Dear Ms. Ryan:

Enclosed for filing in the above-captioned proceeding are the original and twenty-eight (28) copies of Intervenor SOVA's Procedural Request and Supporting Memorandum of Points and Authorities on behalf of Save Our Valley Association.

Also enclosed are two additional copies to be conformed and returned in the self-addressed stamped envelope we have provided for your convenience.

Please let me know if you have any questions, and thank you for your assistance.

Sincerely,

Lawrence V. Robertson, Jr.

LVR:cl

cc: All Parties of Record  
enclosures

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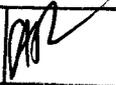
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Lawrence V. Robertson, Jr.  
State Bar No.: 001709

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Attorney for Intervenors

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

IN THE MATTER OF THE APPLICATION )  
OF SALT RIVER PROJECT )  
AGRICULTURAL IMPROVEMENT AND )  
POWER DISTRICT ON BEHALF OF ITSELF )  
AND ARIZONA PUBLIC SERVICE )  
COMPANY, SANTA CRUZ WATER AND )  
POWER DISTRICTS ASSOCIATION, )  
SOUTHWEST TRANSMISSION )  
COOPERATIVE, INC. AND TUCSON )  
ELECTRIC POWER IN CONFORMANCE )  
WITH THE REQUIREMENTS OF ARIZONA )  
REVISED STATUTES SECTION 40-360, et. )  
seq., FOR A CERTIFICATE OF )  
ENVIRONMENTAL COMPATIBILITY )  
AUTHORIZING CONSTRUCTION OF THE )  
PINAL WEST TO SOUTHEAST )  
VALLEY/BROWNING PROJECT )  
INCLUDING THE CONSTRUCTION OF )  
TRANSMISSION LINES FROM PINAL )  
WEST TO THE BROWNING SUB-STATION )  
AND OTHER INTERCONNECTION )  
COMPONENTS IN PINAL AND MARICOPA )  
COUNTIES, ARIZONA. )

Docket No. L00000B-04-0126

Case No. 126

**INTERVERNOR SOVA'S  
PROCEDURAL REQUEST AND  
SUPPORTING MEMORANDUM OF  
POINTS AND AUTHORIES**

**I.**

**PROCEDURAL REQUEST**

Pursuant to R14-3-201(E)(6) of the Rules of Practice and Procedure Before the Power Plant and Transmission Line Siting Committee ("Committee"), and Section 3 of the November 17, 2004 Procedural Order issued by the Chairman of the Committee, Save Our Valley

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1 Association (“SOVA”) hereby requests that the Chairman enter a procedural order providing that  
2 any field inspection tour taken by the members of the Committee with regard to the preferred and  
3 alternative transmission line routings proposed by the Applicants (for the project segment  
4 between West Pinal Substation and Santa Rosa Substation) shall also include the alternative  
5 transmission line routing to be proposed by SOVA during the forthcoming evidentiary hearings.  
6 This procedural request is supported by the following Memorandum of Points and Authorities.  
7

8 **II.**

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **A. Committee Authority to Consider Intervenor Proposals.**

11 The underlying statutory scheme and the Committee’s Rules of Practice and Procedure  
12 clearly contemplate and provide that the Committee shall have the authority to consider siting  
13 alternatives proposed by parties other than an applicant.  
14

15 For example, A.R.S. § 40-360.04(C) provides that

16 “The Committee or hearing officer shall receive  
17 under oath and before a court reporter the material,  
18 non-repetitive evidence and comments of the parties  
19 to the proceedings, and any rebuttal evidence of the  
20 applicant. . .” [emphasis supplied] [ also, see R14-3-  
21 208(D)]

22 In addition, R14-3-201(E)(2) authorizes the Presiding Officer to “receive relevant evidence.” In  
23 this regard, what is “material” and “relevant” includes evidence relating to that siting alternative  
24 which best satisfies the statutory decision-making criteria set forth at A.R.S. §40-360.06(A) and  
25 the overall statutory objective of A.R.S. §§40-360 *et seq.* R14-3-208(E), in pertinent part,  
26 further provides that:  
27  
28

1                   “ . . . the applicant shall open and close...Intervenors  
2                   shall follow the applicant in whose behalf or in  
3                   opposition to whom the intervention is made.”  
                  [emphasis added]

4                   It is clear from the above that both the underlying statutory scheme and the rules  
5                   governing the Committee’s implementation of that scheme contemplate that the Committee is to  
6                   have access to and consider evidence offered by intervenors in opposition to, as well as in  
7                   support of, that which an applicant proposes. Further, there is nothing in the provisions of  
8                   A.R.S. §§ 40-360 *et seq.* or R14-3-201 *et seq.* which precludes an intervenor from including  
9                   within the evidence it submits an alternative siting proposal to that proposal or those proposals  
10                  which the applicant advocates. To the contrary, the intent is to provide the Committee with  
11                  evidence which will allow it to make an informed determination as to which siting proposal  
12                  before it best satisfies the decision-making criteria set forth in A.R.S. § 40-360.06 and the overall  
13                  statutory objective of minimizing the effect of the contemplated activity(ies) “on the  
14                  environment and ecology of this state.” [See, e.g. A.R.S. §40-360.07(C)]. Moreover, as noted in  
15                  the discussion set forth in Section II(B) below, the Committee has the authority to suggest  
16                  proposals of its own for consideration.

17  
18  
19                  Stated differently, in discharging its statutory responsibilities, the Committee is not  
20                  constrained to consider only the siting routing(s) proposed to it by the Applicants. Rather, its role  
21                  requires it to consider all proposed routings submitted to it which are supported by credible  
22                  evidence.

23  
24                  **B. Committee Authority To Approve a Site Other Than The Site(s) Proposed By An Applicant.**

25                  Supportive of the foregoing proposition is the language of A.R.S. §40-360.04(A) which  
26                  provides, in pertinent part, as follows:  
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“ . . . If the Committee subsequently proposes to condition the certificate on the use of a site other than the site or alternative sites generally described in the [public] notice [of the application] and considered at the hearing, a further hearing shall be held thereon after public notice.” [emphasis supplied] [also see R14-3-208(G)]

Further, A.R.S. § 40-360.04(E) states that

“Should the estimated cost of the facilities or site be increased as a result of the action of the Committee, such increase, as determined by an independent engineering firm selected jointly by the Committee and applicant, shall be reflected in the certificate issued by the Committee.” [emphasis supplied][also see R14-3-213(E)]

Thus, it is unequivocally clear from the foregoing that the Committee has the authority to approve a site or sites other than what is proposed by an applicant. The Committee’s selection must be based upon credible evidence contained in the hearing<sup>1</sup> record; and, in reaching its decision, the Committee must consider the decision-making factors set forth at A.R.S. § 40-360.06(A). But, the Committee is not limited to considering only the siting proposal(s) sponsored by the applicant. It may also consider alternatives sponsored by other parties and supported by evidence in the hearing record.

C. **Any Field Inspection Tour Taken By the Members of the Committee Should Include All Transmission Line Routings Proposed By Parties to the Proceeding.**

If the Committee is going to objectively and fairly consider and evaluate each transmission line routing proposal which may be presented to it through evidence in the forthcoming public hearings, it is imperative that it include all such proposals within the scope of any field inspection tour of suggested alignments that it may decide to undertake. To do less

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<sup>1</sup> In a situation where the Committee has exercised its authority under A.R.S. §40-360.04(A), the “hearing record” will consist of evidence received at both the initial hearing and the subsequent hearing.

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1 would be a disservice to both the purpose of A.R.S. §§ 40-360 *et seq.* and the responsibilities of  
2 the Committee.

3  
4 **III.**

5 **CONCLUSION**

6 WHEREFORE, for the reasons discussed above, SOVA requests that the Chairman enter  
7 a procedural order providing that any field inspection tour taken by the members of the  
8 Committee shall include all transmission line routings (for the project segment between West  
9 Pinal Substation and Santa Rosa Substation) proposed by parties through evidence presented in  
10 the forthcoming hearings in the above-captioned proceeding, and not just the preferred and  
11 alternative routings proposed by the Applicants.

12 DATED: November 19, 2004

13 Respectfully submitted,

14 

15 \_\_\_\_\_  
16 Lawrence V. Robertson, Jr.  
17 Munger Chadwick, P.L.C.  
18 Attorneys for SAVE OUR VALLEY  
19 ASSOCIATION

20 An original and 28 copies of the  
21 foregoing were filed on the 22<sup>nd</sup>  
22 day of November, 2004 with:

23 Docket Control  
24 Arizona Corporation Commission  
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26 Phoenix, Arizona 85007  
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