



1 **Court S. Rich # 021290**
 2 **JORDEN BISCHOFF McGUIRE ROSE & HISER PLC.**
 3 **7272 E. Indian School Road Suit 205**
 4 **Scottsdale, Arizona 85251** Arizona Corporation Commission
 5 **(480) 505-3900** **DOCKETED**

FEB 23 2005

Attorneys for Intervener

DOCKETED BY	<i>[Signature]</i>
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6 **THE ARIZONA POWER PLANT AND TRANSMISSION LINE**
 7 **SITING COMMITTEE**

8
 9 IN THE MATTER OF THE APPLICATION OF)
 10 THE ARIZONA PUBLIC SERVICE)
 11 COMPANY IN CONFORMANCE WITH THE)
 12 REQUIREMENTS OF ARIZONA REVISED)
 13 STATUTES SECTION 40-360, et. seq., FOR A)
 14 CERTIFICATE OF ENVIRONMENTAL)
 15 COMPATIBILITY AUTHORIZING THE WEST)
 16 VALLEY NORTH PROJECT INCLUDING)
 17 THE CONSTRUCTION OF)
 18 APPROXIMATELY 25 MILES OF 230 KN)
 19 TRANSMISSION LINES AND TWO)
 20 SUBSTATIONS IN MARICOPA COUNTY,)
 21 ARIZONA, ORIGINATING AT THE TS2)
 22 SUBSTATION IN SECTION 25; TOWNSHIP 3)
 23 NORTH, RANGE 2 WEST G&SRB&M AND)
 24 CONTINUING TO THE PROPOSED TS1)
 25 SUBSTATION IN SECTION 20, TOWNSHIP 4)
 NORTH, RANGE 2 WEST, G&SRB&M AND)
 TERMINATING AT THE PROPOSED TS5)
 SUBSTATION IN SECTION 29, TOWNSHIP 4)
 NORTH, RANGE 4 WEST, G&SRB&M.)

Docket NO. L-00000D-04-0127

Case No. 127

PROPOSED CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY

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21 Hogan, Parker, Ivan and McDuff, LLC, an Arizona limited liability company
 22 ("HPIM") by and through its undersigned counsel, hereby files its Proposed Certificate of
 23 Environmental Compatibility (the "Proposed CEC") in the above captioned matter. HPIM
 24 respectfully request that the Committee utilize the language of this Proposed CEC in
 25

1 formulating and approving its final CEC. This Proposed CEC is submitted below and is
2 supported by the attached Memorandum of Points and Authorities.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. PROPOSED LANGUAGE FOR CEC**

5 HPIM agrees with the language proposed by the Applicant in all but one area. The
6 following proposed change from the Applicant's language is a fair solution. This proposal
7 allows multiple landowners to share the burden of hosting the TS5 substation (the
8 "Substation") location while leaving the Applicant with the flexibility it needs to design and
9 construct the Substation in a suitable location. This proposal is fair and, according to the
10 Applicant's testimony, it is a feasible location.
11

12
13 **THE APPLICANT'S SUBMITTED CEC LANGUAGE**

14 The relevant portion of the CEC as submitted by the Applicant currently reads:
15 "...and then into the proposed TS5 substation located in Section 29, Township 4 North,
16 Range 4 West." Page 4, Lines 19-20.
17

18 **THE PROPOSED CHANGE**

19 HPIM respectfully requests that the language of page 4, lines 19-20 be changed to
20 read as follows: *...and then into the proposed TS5 substation. The TS5 substation shall be*
21 *sited and constructed so that not less than 50% (one half) of the property acquired and*
22 *utilized for its construction is located in the eastern half of Section 29, Township 4 North,*
23 *Range 4 West.*
24
25

1 **II. ARGUMENT**

2 **A. This Proposal is the only Fair Solution**

3 As the Applicant proposes and as is depicted in the Application, the TS5 Substation
4 is scheduled to be built entirely on the property of one owner, HPIM. The parcel on which
5 the 120 Substation is currently proposed is only a total of 550 acres. Therefore, the
6 Substation would take up approximately 22% of the entire parcel. In contrast, the
7 neighboring landowner to the east, Lyle Anderson, has testified that it is part of an
8 approximately 10,000 acre piece. Even if the entire Substation was sited on the eastern
9 parcel it would make up a mere 1.2% of the total acreage. Lyle Anderson's development
10 will be one of the very reasons this project is needed. 10,000 acres can hold a lot of homes
11 and creates an extreme demand for electric power. Lyle Anderson should not be allowed to
12 get the benefit of this project while placing the burden entirely on its much smaller
13 neighbor. It is simply unfair to place this entire Substation on HPIM's parcel.

14 **B. This Proposal Allows the Applicant Flexibility that it Needs**

15 The Applicant has expressed concerns that it needs flexibility in selecting the land
16 that is appropriate for construction of the Substation. The proposed language does not
17 require any particular acreage on either property but merely requires, "*that not less than*
18 *50% (one half) of the property acquired and utilized for its construction*" be located on the
19 larger Lyle Anderson property to the east. We are not asking that the Committee require 60
20 acres be on one side and 60 acres be on another because this could unreasonably restrict the
21 Applicant. Our proposal for the Substation allows the Applicant a large amount of
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25

1 flexibility as long as it recognizes that it should not overly burden HPIM's dramatically
2 smaller property.

3 **C. This Proposal will not Inhibit the Applicant's Ability to Acquire the**
4 **Property**

5 In conversations with the Applicant it has indicated that it is concerned that this
6 proposed language could in some way impact its ability to acquire the property necessary to
7 construct the Substation. This concern is entirely without merit and, in fact, this proposal is
8 likely to make acquisition easier. Apparently, the concern is that by requiring a certain
9 amount of land to be utilized in one particular place that the landowner could in some way
10 demand a higher price knowing that the Applicant has no other options. The proposal stated
11 herein only requires that at least half of the Substation be sited on the larger eastern
12 property. In contrast, the Application depicts the exact location of the proposed Substation,
13 and shows the location of the 120 acre piece as entirely on HPIM's property. This would
14 certainly strengthen HPIM's bargaining power because it knows that the Applicant intends
15 to only utilize its land for the Substation.
16
17

18 Further, this concern is unfounded when you look at the entirety of this project and
19 other projects. The Applicant is commonly granted corridors for transmission lines that fall
20 entirely on one landowner's land. Despite this situation the Applicant does not complain
21 about this and manages to acquire the land it needs. Of course, while everyone seeks to
22 avoid going to Court, condemnation law insures that the Applicant will not pay greater than
23 fair market value for the property to be acquired if they meet up with a landowner that is
24 being unreasonable.
25

1 **D. The Substation will not have any Greater Impact on the Property to the**

2 **East**

3 The properties to the east and west are similarly situated and both intend to build out
4 with residential homes. The impact on each property will be similar and, therefore, there is
5 no reason to only burden the much smaller parcel. The owners of the larger property to the
6 east have already testified that they need Town of Buckeye approvals of designs before they
7 can even consider beginning construction on their land. They also admitted that they have
8 no pending application in front of the Town. Further, they admitted that the very
9 preliminary plan that they showed the Committee at the hearing was created years ago, and
10 was not even designed to take into account the Applicant's proposed location of the
11 Substation. It is very likely that Lyle Anderson will be redoing these plans even if the
12 Substation is sited as the Applicant currently requests to recognize that this area is now
13 directly adjacent to a substation.
14
15

16 If the Substation is moved to the east it will only affect land that would be directly
17 adjacent to the Substation as proposed by the Applicant anyway. We are not requesting that
18 land that would not have been adjacent to a Substation be impacted in any way.
19

20 **III. CONCLUSION**

21 This Proposed CEC recognizes that it would be unfair to build the entire
22 Substation on one small parcel of property when a similarly situated large parcel sits
23 directly adjacent. There is no valid reason not to consider this proposal as it is fair and does
24 not inhibit the Applicant's ability to construct a sound, reliable Substation.
25

1 WHEREFORE, HPIM respectfully requests that the Committee adopt this Proposed
2 CEC.

3 DATED this 23rd day of February 2005.

4 Jorden Bischoff McGuire Rose & Hiser PLC

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6 _____
7 Court S. Rich 021290
8 7272 E. Indian School Road Suit 205
9 Scottsdale, Arizona 85251
10 Attorneys for Plaintiff

11 Pursuant to A.A.C. R14-3-204,
12 the ORIGINAL and 25 copies were
13 filed this 23rd day of February, 2005,
14 with:

15 Docket Control
16 Arizona Corporation Commission
17 1200 W. Washington
18 Phoenix AZ 85007

19 COPY of the foregoing mailed (or emailed where noted) this
20 23rd day of February, 2005, to:

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22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix AZ 85007

25 Ernest G. Johnson, Director
Utilities Division
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All Intervenors Via Email