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ORIGINAL

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Arizona Corporation Commission

DOCKETED

JUL 07 2005

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| DOCKETED BY | |
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5 Attorney for Intervenors Langley Properties, LLC., Robson Communities, LLC.,
 6 Pulte Home Corporation, Inc., et al.

THE ARIZONA CORPORATION COMMISSION

8 IN THE MATTER OF THE APPLICATION)
 OFSALT RIVER PROJECT)
 9 AGRICULTURAL IMPROVEMENT AND)
 POWER DISTRICT ON BEHALF OF)
 10 ITSELF AND ARIZONA PUBLIC)
 SERVICE COMPANY, SANTA CRUZ)
 11 WATER AND POWER DISTRICTS)
 ASSOCIATION, SOUTHWEST)
 12 TRANSMISSION COOPERATIVE, INC.)
 AND TUCSON ELECTRIC POWER IN)
 13 CONFORMANCE WITH THE)
 REQUIREMENTS OF ARIZONA)
 14 REVISED STATUTES SECTION 40-360,)
 15 et. seq., FOR A CERTIFICATE OF)
 ENVIRONMENTAL COMPATIBILITY)
 16 AUTHORIZING CONSTRUCTION OF)
 THE PINAL WEST TO SOUTHEAST)
 17 VALLEY/BROWNING PROJECT)
 INCLUDING THE CONSTRUCTION OF)
 18 TRANSMISSION LINES FROM PINAL)
 WEST TO THE BROWNING)
 19 SUBSTATION AND OTHER)
 20 INTERCONNECTION COMPONENTS IN)
 PINAL AND MARICOPA COUNTIES,)
 21 ARIZONA.)

Docket NO. L-00000B-04-0126

Case No. 126

NOTICE OF FILING: RESPONSE TO SOVA'S REQUEST FOR REVIEW

AZ CORP COMMISSION DOCUMENT CONTROL

2005 JUL -7 P 4:45

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22
 23 The Maha Ganapati Temple of Arizona, Pulte Home Corporation, Langley Properties,
 24 Robson Communities, Karolyn Clough, Wanda Wood, Linda Beres, et al (herein collectively
 25 "Respondants") hereby submit their Response to SOVA's Request for Review (the "Request")

1 SOVA's proposal is a classic NIMBY argument that, if accepted, would result in the power lines
2 being sited traveling in the wrong direction, at a higher cost, raising serious reliability concerns, and
3 perhaps most importantly, in the backyards of an even greater number of residents. SOVA's
4 argument should be rejected because at its core the argument has a fatal flaw: SOVA complains
5 throughout its Request that the lines should avoid its members' homes, however, it is clear in the
6 record that its proposed solution would impact even more residents than the alignment it opposes.
7 (TR: 944 L. 6-10)

8 This Response is made and supported by the Memorandum of Points and Authorities
9 attached hereto and the Exhibits submitted herewith. The Respondents respectfully request that the
10 Commission reject SOVA's NIMBY arguments and vote to approve the Committee's
11 recommended Certificate of Environmental Compatibility thereby impacting fewer current
12 residents.
13

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 I. INTRODUCTION

16
17 SOVA's route is an alignment that the Applicant and the ACC Staff adamantly oppose and
18 that has been specially designed to benefit one group of landowners and residents to the detriment
19 of an even larger group of landowners and residents. Respondents certainly understand the
20 motivation for SOVA's arguments—get it away from our homes- however, there are no independent
21 or neutral reasons to support or consider SOVA's proposal. It offers no advantages over the
22 alignment chosen by the Committee and is merely one of perhaps an infinite number of possible
23 routing alternatives. In fact, this lack of a compelling reason to support SOVA's alignment is
24
25

1 apparently what prompted the Committee to reject this proposal. As Member Palmer stated while
2 considering the SOVA proposal;

3 I can't find a compelling reason to consider SOVA, because the only reason, at any
4 rate, is the visual impact on one group of people. And there's another group of
5 people that will be equally or to a greater degree impacted if SOVA is adopted, and
6 that is simply not a compelling reason.

(TR. 4044 l. 11-16).

7 **II. ARGUMENT**

8 **A. SOVA MAKES A SERIES OF UNSUBSTANTIATED CLAIMS WITHOUT**
9 **REFERENCE TO THE RECORD- THESE CLAIMS SHOULD BE STRICKEN FROM**
10 **CONSIDERATION**

11 SOVA begins the Request with a series of eight arguments that are unsubstantiated and
12 without any factual foundation in the record and therefore, must not be considered by the
13 Commission. In its Procedural Order dated June 27, 2005, the Commission clearly states that the
14 record in this matter, "...is closed, and additional testimony and evidence cannot be considered by
15 the Commission when making its decision on the certificate." (Procedural Order at p 2 l. 7-8).
16 Based on the Procedural Order the following arguments -while not persuasive even if considered-
17 should not be considered based on the lack of foundation. These arguments are unfounded and will
18 do nothing more than waste this Commission's time.

19
20
21 1. There is no evidence to indicate that particular owners did not receive notice of the process.
22 SOVA begins by complaining that certain landowners did not receive notice of the siting process.
23 SOVA does not reference the record of the proceedings to substantiate this claim and, further, does
24 not even name any particular individual that it claims did not receive notice of the project. The
25 Applicant provided testimony concerning the thousands of notices it sent out and there is no

1 evidence that any individual failed to receive notice. In fact, during the four phases of the
2 Applicant's preparation for this project and community work there were 426,000 notices sent to the
3 affected area over the course of four years and the Applicant held no less than 21 open houses that
4 were all noticed in at least 11 different newspapers. (TR: p. 365 l. 3-4, p. 377 l. 2-19, p. 396 l. 7-14,
5 p. 397 l. 2-3, p. 408, l. 5, p. 411 l. 13). In stark contrast to SOVA's claims the record is full of
6 evidence that notice was given and given often. For the forgoing reasons this claim must be
7 stricken from consideration.

8
9 2. There is no evidence to suggest that the numerous notices sent to landowners were in any way
10 vague. In the Request SOVA makes the unsubstantiated claim that the notices of the proposed
11 project sent to landowners were in some way confusing. Again, SOVA fails to site the record of the
12 proceedings to support this claim and fails to even include a copy of one of the notices. For the
13 forgoing reason this allegation must be stricken from consideration.
14

15
16 3. Area A was the site of additional special open houses and the homeowners' requests and
17 positions were clearly heard and considered. In the Request, SOVA makes the misleading
18 complaint that it was at a disadvantage because the Area A open houses were the last open houses
19 that the Applicant held. Initially, it must be noted that SOVA again fails to site the record to support
20 this claim. To the contrary, the record reflects that Area A actually had the highest number of open
21 houses and that the Applicant even held two special open houses at the request of the SOVA
22 members and that these open houses were very well attended. (TR: p.413 l. 25, p. 415 l. 4-5). The
23 record reflects that not only did SRP hold numerous open houses it even held additional ones in
24
25

1 response to SOVA's requests. (Id.) Because this allegation is not supported and is contradicted with
2 a reference to the record it must be stricken from consideration.

3
4 4. Law does not require the full Committee to be in attendance at all moments of a six month
5 hearing and the law is clear that no vote is necessary by the Committee to reject SOVA's proposal
6 SOVA wrongly complains that the full membership of the Committee may not have been in
7 attendance at various hearings. SOVA again fails to site to the record to support this claim. Further,
8 there is no statutory requirement that over the course of 6 months of hearings every Committee
9 member must be present at every hearing.

10
11 Despite SOVA's absurd protests to the contrary, the law does not require the Committee to
12 take a vote on a route that is one other than that generally proposed in the Application. A.R.S. §40-
13 360.04(A). SOVA misreads the law and by its interpretation the Committee would be burdened
14 with voting down every potential line before it could even consider the lines proposed in the
15 Application. Had anyone on the Committee sought to propose the line then it would have become
16 subject to consideration by the Committee under A.R.S. § 40-360.04(A). Unfortunately for SOVA,
17 not one of the Committee members proposed considering SOVA's route. Without any reference to
18 the record in this matter the Commission must not consider SOVA's allegation.

19
20 5. All meetings of the Siting Committee were legally noticed and there is no evidence to suggest
21 that the length of the proceedings in any way burdened SOVA. Despite SOVA's claims to the
22 contrary, there were agendas and legal notices published for each hearing. (See a copy of one such
23 Notice and Agenda attached hereto as Exhibit "A"). Further, SOVA's attorneys and witnesses were
24 present at all relevant times and do not complain of missing any important moments or occurrences.
25

1 Again, based on the lack of foundation for its claims – not to mention the clear evidence to the
2 contrary- this claim must be stricken from review.

3
4 6. SOVA also makes the unsupported claim that SRP would not give sufficient information at its
5 open houses. Again, SOVA makes this claim without any reference to the record whatsoever.
6 There is no factual basis for this claim and it again should be stricken from the Commission's
7 consideration.

8
9 7. SOVA makes the unsupported claim that the Applicant ignored homeowners while honoring the
10 wishes of developers. First, the Applicant's Preferred Alignment avoids more homeowners than the
11 alignment that SOVA is now advocating for. (TR: 944 L. 6-10). It is also the case that many
12 developers were impacted by this alignment and that some developers even asked for the alignment
13 on their land. (See eg, TR: p. 1058 l. 22-23). SOVA's claim is unsupported by any reference to the
14 record and again must be stricken from review.

15
16
17 8. SOVA makes one last unfounded argument by citing to a quote allegedly taken from a
18 newspaper. The newspaper is not part of the record in this matter and, therefore, this argument must
19 be stricken from review. Furthermore, it is unclear what relevance the opinion of the Mayor of Casa
20 Grande would have to the dealings of SRP and the members of SOVA. Casa Grande has not been
21 concerned with the location of the lines in the area of the SOVA residents and that area is not even
22 close to the City of Casa Grande. Furthermore, since this time the City of Casa Grande has passed a
23 Resolution expressing its support of the alignment chosen by the Committee. (See the Resolution of
24
25

1 the Mayor and the City of Casa Grande attached hereto as Exhibit "B"). This argument again must
2 be stricken from the Commission's consideration.

3
4 **B. SOVA'S PROPOSAL IS NOT SUPERIOR TO THE ALIGNMENT IN THE**
5 **CEC AND THERE IS NO REASON TO CONSIDER IT THAT IS NOT NEGATED BY**
6 **THE PROPOSAL'S IMPACT ON EXISTING RESIDENTS AND SERIOUS RELIABILITY**
7 **CONCERNS**

8 During the hearings SOVA was unable to provide any reason that its proposal was superior
9 to those options put forth by the Applicant. At best, certain criteria may have been similar to the
10 Applicant's proposed alignments and at worst, SOVA's proposal created serious reliability concerns
11 and impacted an increased number of residents. SRP's expert witness Mr. Kondziolka testified that
12 SOVA's alignment was less reliable than the preferred or alternative routes. (TR: p. 945 l. 17-20).
13 Further, the ACC Staff's own Jerry Smith testified that the SOVA alignment would be
14 "inappropriate" and that it caused the Staff concerns from a reliability standpoint. (TR: p. 3437 l.
15 24, p. 3577 l. 1-5). As stated above, SOVA's proposed alignment would also impact a greater
16 number of existing residents than the alignment in the CEC. (TR:p. 944 l. 6-10).

17
18
19 **C. SOVA'S RELIANCE ON A 23 YEAR OLD SITING CASE IS UNFOUNDED**

20 The decisions made 23 years ago in siting Case 61 are completely irrelevant to today's
21 proceeding. The Case 61 line was a smaller 230kV line designed for a different project, under
22 different circumstances and the right-of-way for that line was never acquired. In its request SOVA
23 placed a lot of weight on a siting case that was 23 years old. SOVA ignores the fact that the greater
24 number of residents along its proposed alignment have no knowledge or notice of Case 61. In fact,
25

1 the Applicant testified that the people that live along Barnes Road would have no way of knowing
2 about the Case 61 line because the right-of-way had not yet been acquired. (TR: p. 950 l. 15-16).
3 Further, a 500kV line would take greater amount of right-of-way than the approved 230kV line.
4 (TR: p. 949 l. 15-16). Anyone who lives in Arizona can certainly say without a doubt that Pinal
5 County has changed dramatically since 1983 and to rely on this outdated Case would be a mistake.

6 **III. CONCLUSION**

7 SOVA's proposal is one made in its own self interest. If accepted, SOVA's alignment
8 would result in the siting of a line with serious reliability issues and would put the line in close
9 proximity to an even greater number of existing residents. For the forgoing reasons we respectfully
10 request that the Commission uphold the recommended CEC that was the result of the Committee's
11 careful consideration over the course of six months of hearings. The Committee based its final
12 recommendation on the condition it is required to examine under A.R.S. §40-360.06.

13
14 DATED this 7th day of July 2005.

15 ROSE LAW GROUP PC



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1 Pursuant to A.A.C. R14-3-204,
The ORIGINAL and 40 copies were
2 filed this 7th day of July, 2005,
with:

3 Docket Control
Arizona Corporation Commission
4 1200 W. Washington
Phoenix AZ 85007

5 BY: 

6 COPY of the foregoing emailed this
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10 BY: 
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EXHIBIT A

**NOTICE AND AGENDA OF MEETING OF THE
ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE**

Pursuant to A.R.S. ' 38-431.02, notice is hereby given to the members of the Arizona Power Plant and Transmission Line Siting Committee and to the general public that the Arizona Power Plant and Transmission Line Siting Committee will hold meetings, open to the public on **March 9 and 10, 2005, at 9:30 a.m. at the Embassy Suites Hotel, 1515 North 44th Street (@ McDowell Road), Phoenix, Arizona (telephone: 480-893-3000)**. At the meeting, the Arizona Power Plant and Transmission Line Siting Committee may receive evidence and/or public comment, consider, discuss, deliberate, and/or vote on the items on the agenda. The Committee may conduct a tour of the route.

For the convenience of the Committee, the parties and the public, the order of the agenda items may be changed at the discretion of the Chairman.

The agenda for the meeting is as follows:

1. Call to Order

2. In the Matter of the Application of the Salt River Project Agricultural Improvement and Power District on behalf of itself and Arizona Public Service Company, Santa Cruz Water and 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 Substation and other interconnection components in Pinal and Maricopa Counties, Arizona. Docket No. L-00000B-04-0126, Case No. 126.
 - a. Public comment on the application for a Certificate of Environmental Compatibility;
 - b. Hearing on the application for a Certificate of Environmental Compatibility;
 - c. Discussion of proposed form of decision, form of Certificate of Environmental Compatibility, or amendments thereto; and,
 - d. Vote and decision concerning form of decision, form of Certificate of Environmental Compatibility or amendments thereto.

3. The Committee may tour a portion of the Project area and proposed or alternative routes on a date to be determined later. The proposed route tour will be discussed

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

3 IN THE MATTER OF THE APPLICATION)
4 OF SALT RIVER PROJECT)
5 AGRICULTURAL IMPROVEMENT AND)
6 POWER DISTRICT ON BEHALF OF ITSELF)
7 AND ARIZONA PUBLIC SERVICE)
8 COMPANY, SANTA CRUZ WATER AND)
9 POWER DISTRICTS ASSOCIATION,)
10 SOUTHWEST TRANSMISSION COOPER-)
11 ATIVE, INC. AND TUCSON ELECTRIC)
12 POWER IN CONFORMANCE WITH THE)
13 REQUIREMENTS OF ARIZONA REVISED)
14 STATUTES SECTION 40-360, et. seq., FOR A)
15 CERTIFICATE OF ENVIRONMENTAL)
16 COMPATIBILITY AUTHORIZING)
17 CONSTRUCTION OF THE PINAL WEST TO)
18 SOUTHEAST VALLEY/BROWNING)
19 PROJECT INCLUDING THE CONSTRU-)
20 CTION OF TRANSMISSION LINES FROM)
21 PINAL WEST TO THE BROWNING SUB-)
22 STATION AND OTHER INTERCONNEC-)
23 TION COMPONENTS IN PINAL AND)
24 MARICOPA COUNTIES, ARIZONA.)

Docket No. L00000B-04-0126

Case No. 126

PROCEDURAL ORDER

14
15 IT IS HEREBY ORDERED, that the hearing in this matter will reconvene on **March 9**
16 **and 10, 2005, at 9:30 a.m. at the Embassy Suites Hotel, 1515 North 44th Street, Phoenix,**
17 **Arizona, (602) 244-8800.**

18 DATED, this 3rd day of March, 2005.

19
20 /s/
21 Laurie A. Woodall
22 Assistant Attorney General
23 Chairman, Arizona Power Plant and
24 Transmission Line Siting Committee

25 Pursuant to A.A.C. R14-3-204,
26 the ORIGINAL and 25 copies were
filed March 3, 2005, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
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2 e-mailed/faxed on March 3, 2005, to:

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19 **Walker Butte 300, L.L.C., Walker Butte Granite,**
L.L.C.; Magic Lake 80, L.L.C.,
20 **Skousen & Highway 87, L.L.C.; Hunt & Hooper,**
L.L.C.; Sonoran 382, L.L.C.; MLC Farms, L.L.C.;
21 **General Hunt Properties, Inc.; Skousen, CR**
& Elaine TRS)

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5 **Robson Communities, Inc; Langley Properties, LLC;**
6 **Vistoso Partners, LLC; Pulte Home Corporation, Inc.;**
7 **Jacob Roberts, Gail Robertson and Lonesome Valley**
8 **Farms ("Roberts"); The Francisco Grande Hotel and**
9 **Golf Resort and surrounding property, owned and**
10 **operated by FG Partners, LLP ("Francisco Grande");**
11 **The Maha Ganapati Temple of Arizona (the "Temple");**
12 **Sun Valley Farms Unit 5 Homeowners' Association,**
13 **Inc. ("Sun Valley HOA"); Karolyn Clough, an individual,**
14 **Wanda Wood, an individual, Jean Stout, an individual,**
15 **Linda Beres, an individual, Brenda Scott, an individual,**
16 **and Jackie Guthrie, an individual ("Impacted Neighbors")**

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William Edward Lally, Esq.
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14 **(Counsel for Pivotal Sandia, L.L.C., First American**
15 **Title Company, as Trustee of its Trust Nos. 8572, 8573,**
16 **and 8574; Wuertz Farming Limited Company, L.L.C.;**
17 **Sundance Farms Limited Partnership, LLP; McKinney**
18 **Farming Company; Sarah Wuertz; Gregory Wuertz;**
19 **Carol Wuertz Behrens; and, David Wuertz)**

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212977

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26

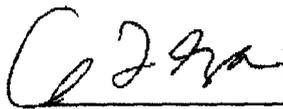
EXHIBIT B

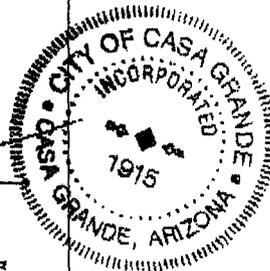
CERTIFICATION

STATE OF ARIZONA }
COUNTY OF PINAL }

I, GLORIA LEIJA, CITY CLERK OF THE CITY OF CASA GRANDE, HEREBY CERTIFY THAT THE ATTACHED *RESOLUTION No. 3639* IS A TRUE AND CORRECT COPY OF AN ORIGINAL.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND THE OFFICIAL SEAL OF THE CITY OF CASA GRANDE, THIS 21ST DAY OF JUNE 2005.


GLORIA LEIJA, MMC
CITY CLERK
CITY OF CASA GRANDE



RESOLUTION NO. 3639

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF CASA GRANDE, ARIZONA, DECLARING ITS SUPPORT FOR THE POWER LINE ALIGNMENT SELECTED ON MAY 10, 2005, BY THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE.

WHEREAS, the Arizona Power Plant and Transmission Line Siting Committee heard and reviewed extensive testimony and evidence concerning the proper placement of power lines in its Case No. 126;

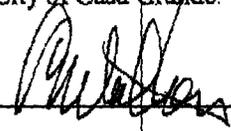
WHEREAS, after hearing and reviewing all evidence, the Arizona Power Plant and Transmission Line Siting Committee selected the alignment depicted in Exhibit "A" (the "Approved Alignment").

WHEREAS, the Mayor and Council of the City of Casa Grande (the "City Council") agrees that the Approved Alignment is in the best interest of the people of the State of Arizona and is preferable above all other alignments; and

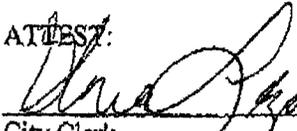
WHEREAS, the City Council endorses the Approved Alignment and urges that the Arizona Corporation Commission issue a final Certificate of Environmental Compatibility incorporating the Approved Alignment selected by the Arizona Power Plant and Transmission Line Siting Committee.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Mayor and City Council of the City of Casa Grande, Arizona, that the City endorses the Approved Alignment and asks that the Arizona Corporation Commission grant a final Certificate of Environmental Compatibility incorporating and adopting the Approved Alignment.

THIS RESOLUTION PASSED AND ADOPTED this 20th day of June, 2005, at a meeting duly called by the Mayor and City Council of the City of Casa Grande.

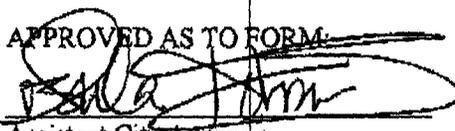


Mayor

ATTEST:


City Clerk



APPROVED AS TO FORM:


Assistant City Attorney