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BEFORE THE ARIZONA CORPORATION COMMISSION

Jeff Hatch-Miller
Chairman
William A. Mundell
Commissioner
Marc Spitzer
Commissioner
Mike Gleason
Commissioner
Kristin K. Mayes
Commissioner

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

INTERVENOR WALKER BUTTE et al.'s BRIEF

Arizona Corporation Commission

DOCKETED

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Pursuant to A.R.S. §40-360.07(B) and the Commission's June 27, 2005 Procedural Order, Walker Butte 700, L.L.C., Walker Butte 300, L.L.C., Walker Butte Granite, L.L.C., Magic Lake 80, L.L.C., Skousen & Highway 87, L.L.C., Hunt & Hooper, L.L.C., Sonoran 382, L.L.C., MLC Farms, L.L.C., General Hunt Properties, Incl., Skousen, CR and Elaine TRS (collectively "Walker Butte *et al.*"), hereby submits its Brief in connection with the Commission's review of the June 8, 2005 decision of the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") to grant a Certificate of Environmental Compatibility ("CEC") to the Applicant(s) in the above-captioned proceeding.

I. INTRODUCTION

The June 27, 2005 Procedural Order contains the following directive in connection with the preparation of briefs:

"The parties should bear in mind that A.R.S. §40-360.07 provides that: 'In arriving at its decision, the commission shall comply with the provisions of §40-360.06 and shall 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.' Briefs that address the factors set forth in A.R.S. §40-360.06 and this standard of review and decision making while citing to specific evidence in the record will assist the Commission." [Procedural Order at page 2, 1.11-17] [Emphasis Supplied]

As part of its Brief, Walker Butte *et al.*, will incorporate this conceptual approach and the analytical framework set forth in A.R.S. §40-360.07(B).

A.R.S. §40-360.07(B) requires that the Commission perform three (3) functions incident to a discharge of its statutory responsibilities thereunder. Two (2) of these functions are explicit; the remaining one (1) is implicit. First, the Commission "shall comply with the provisions of A.R.S. §40-360.06," which requires that the applicable siting factors prescribed in A.R.S. §40-

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360.06(A) be considered “as a basis for its action with respect to the suitability of . . . transmission line siting plans.” Second, the Commission “shall balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power” with a desired minimization of the effect of fulfilling that need upon the “environment and ecology of this state.” Third, and by necessary implication in connection with its performance of the first of these functions, the Commission will examine in Open Meeting whether the Siting Committee properly discharged its statutory responsibilities under A.R.S. §40-360.06(A).

In Section II of its Brief, Walker Butte *et al.*, will discuss and demonstrate how an objective and complete application of the relevant¹ decision making criteria set forth in A.R.S. §40-360.06(A) supports the conclusion that the Modified Eastern Route serves the broad public interest whereas the Backwards “C” Route² does not. In Section III, Walker Butte *et al.*, will discuss and demonstrate how that balancing function required of the Commission under A.R.S. §40-360.07(B) dictates that the Modified Eastern Route be selected instead of the Backwards “C” Route. In Section IV, Walker Butte *et al.*, will discuss and demonstrate how the Siting Committee failed to properly consider and apply the relevant decision making criteria prescribed in A.R.S. §40-360.06(A) incident to its selection of the Backwards “C” Route. Finally, in Section V, Walker Butte *et al.*, will briefly summarize the reasons why it believes that the Commission should (i) deny that portion of the Siting Committee’s June 8, 2005 decision adopting the Backwards “C” Route for Area “C,” and (ii) modify the June 8, 2005 decision and CEC so as to adopt the Modified Eastern Route as the route to be approved and granted for Area “C.”

¹ As will be noted below, certain of the statutory criteria are not impacted by the factual circumstances surrounding a transmission route selection in the Area “C” portion of Case No. 126. Thus, in that sense, they are not “relevant” to this particular dispute.

² For ease of reference, the term “Modified Eastern Route” will be used in this Brief instead of the term “Cornman Road/ Eastern/ Railroad Route,” as that term appears in the evidentiary record and was used in Walker Butte *et al.*’s, “Notice of and Request for Review.”

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2 **II. AN OBJECTIVE APPLICATION OF THE RELEVANT DECISION MAKING**
3 **CRITERIA SET FORTH IN A.R.S. §40-360.06(A) SUPPORTS THE CONCLUSION**
4 **THAT THE MODIFIED EASTERN ROUTE SERVES THE BROAD PUBLIC**
5 **INTEREST WHEREAS THE BACKWARDS "C" ROUTE DOES NOT**

6 **A. Exhibit A-31 Summary of Applicable Criteria and Impacts**

7 Consideration of the Applicant(s)' transmission line routing alternatives through Area "C"
8 encompassed nine (9) full days of evidentiary hearings, involved approximately thirty (30)
9 witnesses and dozens of Exhibits, and produced nearly twenty-five (2500) hundred pages of
10 written transcript. Siting a 500kV transmission line - especially one that will traverse across
11 several municipal jurisdictions, historical sites, and existing or future residential communities - is
12 no easy task. During the course of the Area "C" proceedings, a number of public and private
13 entities offered testimony concerning the potential impact that proposed routing alternatives,
14 including specific segment options, might or might not have on various aspects of each localized
15 area. Also addressed were critical assessments of transmission reliability, need for future
16 planning and construction costs.

17 Towards the end of the hearings, the Applicant(s) prepared and introduced into evidence
18 an exhibit (Exhibit A-31) that, among other things, summarized by various categories the impact
19 of each of the proposed transmission line routings for Areas "A," "B" and "C," respectively.
20 The categories consisted of the following: (i) cost in millions of dollars, (ii) length in miles, (iii)
21 number of existing dwelling units, (iv) acres of habitat, (v) acres of cultural sites, (vi) number of
22 schools and (vii) number of churches. The routes analyzed included all of those proposed by
23 parties during the hearings, and not just those encompassed in the Applicant(s)' original filing.
24 The presumed intent, and clearly the demonstrable effect, of Exhibit A-31 was to provide the
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members of the Siting Committee and the parties with an analytical framework within which many aspects of the voluminous evidentiary record could be digested.³

Page 39 of Exhibit A-31, a copy of which is attached hereto as Appendix "A" and incorporated herein by reference, clearly demonstrates that the Modified Eastern Route better serves the broad public interest than the Backwards "C" Route for Area "C," as the following direct comparison of these two routes illustrates:

SUMMARY OF SR-SEV (within ¼ mile corridor)

Route	Cost (Millions)	Miles	Dwelling Units	Acres of Habitat	Acres of Cultural Sites	Schools	Churches
Cornman Rd./ Backwards C	\$98	68	215	67.4	582.8	0	1
Cornman Rd./ Eastern/ Railroad	\$93	64	131	39.3	450.2	0	1

B. Additional Discussion of Specific Criteria

1. Overall Impact to "Total Environment of the Area"

Although specifically referenced as a separate factor in A.R.S. §40-360.06(A)(6), "total environment of the area" is a broad category that has been effectively narrowed in this case⁴ to the overall impact of different routing alternatives on historical and archeological sites, as well as existing residents. The evidentiary record demonstrates that the Backwards "C" Route will have a greater impact on important historical / archeological sites, and on existing residents, than the Modified Eastern Route.

³ Several of the categories set forth in Exhibit A-31 relate to the decision making criteria prescribed in A.R.S. §40-360.06(A), including subsections 2, 5, 6 and 8. Subsections 3, 4, 7 and 9 do not appear to be relevant under the factual circumstances present in Area "C." Subsection 1 will be discussed in Section IV of this Brief.

⁴ The Backwards "C" Route will have a greater impact upon acres of habitat, when compared to the Modified Eastern Route, but more study would be needed to determine the full extent of that impact. However, impact to habitats was not a primary issue of contention during these proceedings.

1
2 a) Historical / Archeological Sites

3 Two expert witnesses⁵ testified about the impact various routing alternatives would have
4 on historical archeological sites throughout Area "C." Both witnesses identified the Adamsville
5 site as an important Native American historical and cultural site, where prehistoric Hohokam
6 artifact concentrations and human remains are likely to exist. [Tr. 2051, 1.12- Tr. 2052, 1.13; Tr.
7 3178,1.2 – Tr.3180, 1.3] It is also one of three highly sensitive areas⁶ identified in Area "C" by
8 the State Historic Preservation Office. The Applicant(s) witness Cherie Walth testified that the
9 segment option along Highway 287 (incorporated into the Backwards "C" Route) would cross
10 four Adamsville sites to the north, where human remains are known to exist. [Tr. 2062, 1.18-21]
11 By comparison, the Modified Eastern Route would cross Adamsville site rock features that could
12 be avoided depending on structure placement. [Tr. 2052,1.3-13; Tr. 2054, 1.7-19; Tr. 2062,1.18-
13 23]
14
15

16 Intervenor Curry Road Group witness Dr. Douglas Craig, also expressed the opinion that
17 the Modified Eastern Route would have less impact than the Backwards "C" Route. When asked
18 to consider the totality of the circumstances and the routing options available, Dr. Craig
19 responded:

20 Well, to answer that, I would like to sort of throw in
21 one that we haven't talked about, and that's the
22 eastern alternative without the cutback. I understand
23 that the node between 174 and 175 [*i.e* the
24 Backwards "C" Route] is somewhat of a
25 compromise solution. But from an archeological
26 standpoint, the one that would impact archeological
27 resources and the viewshed *the least* would be the
28 straight eastern alternative, the green route that just

27 ⁵ Cherie Walth, Dr. Douglas Craig.

28 ⁶ The Modified Eastern Alignment bypasses two highly sensitive areas in their entirety, the Casa Grande Ruins National Monument and the Grewe site. The remaining site – Adamsville – will experience less impact if the transmission line continues north through Node 175 rather than cutting back west along Highway 287, as it would under the Backwards "C" Route.

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keeps shooting north and doesn't come back across
Adamsville. [Emphasis added] [Tr. 3192, 1.16-23]

The record and expert testimony clearly demonstrates that, when compared against the Backwards "C" Route, the Modified Eastern Route will have less overall impact on important cultural archeological sites within Area "C."

b) Existing Residents

Another aspect of the "total environment of the area" that the Siting Committee considered is the impact of a given proposed route upon existing residences. In that regard, it is undisputed that the Backwards "C" Route will have a greater impact on *existing* residences than the Modified Eastern Route. Because it incorporates the Preferred Route, commencing at node 188, then proceeding north to the Southeast Valley substation, the Backwards "C" Route will bring the transmission line through the Oasis at Magic Ranch and Mirage at Magic Ranch subdivisions, where approximately 533 homes had been constructed and occupied as of the hearings. [Tr. 3430, 1.1] Furthermore, the segment option along Hwy 287 will potentially impact 215 existing residences along this route. Conversely, the Modified Eastern Route represents a variation of the Green alignment that incorporates a segment option⁷ which bypasses (and thus does not impact) approximately 58 residences at Sun Valley Farms, Unit 5. [Tr. 2742, 1.14-16]; and, it does not impact the Magic Ranch subdivisions or the Hwy 287 residences at all. Clearly, the Modified Eastern Route will have less overall impact to existing residents in Area "C" than the Backwards "C" Route.

⁷ Incorporation of this segment option, from Node 81 to Node 45, is also supported by ACC Staff. [Tr. at 3486]

1
2 2. Cost

3
4 “The estimated cost of the facilities” is set forth as a specific decision making criterion at
5 A.R.S. §40-360.06(A)(8). In this regard, the Backwards “C” route is \$6 million more expensive
6 to construct than the Modified Eastern Route. [Tr. 2042, 1.7-9 and Appendix “A”] However, this
7 represents merely construction costs related to the transmission line itself. As Applicant(s)
8 witness Robert Kondziolka testified, in order to accommodate growth in areas located away from
9 a major transmission line, a greater number of substations and lower voltage transmission lines
10 (e.g. 230kV, 115kV, 69kV) will have to be constructed. [Tr. 2077, 1.11-15] Therefore, the
11 Backwards “C” Route will also result in *future additional costs* yet to be determined because of
12 the inefficiency that results from siting a major transmission pathway away from the future rapid
13 growth near Florence, in order to accommodate the desires of its developer advocates.

14
15 **III. THE “BALANCING” REQUIRED BY A.R.S. §40-360.07(B) REQUIRES THAT**
16 **THE COMMISSION SELECT THE MODIFIED EASTERN ROUTE INSTEAD OF THE**
17 **BACKWARDS “C” ROUTE**

18 **A. The Additional Decision Making Standard**

19 As previously noted, A.R.S. §40-360.07(B) contemplates that the Commission shall
20 consider the decision making criteria set forth in A.R.S. §40-360.06(A) incident to reaching a
21 decision under A.R.S. §40-360.07(B). In addition, the latter requires that the Commission:

22 “. . . shall balance, in the broad public interest, the
23 need for an adequate, economical and reliable
24 supply of electric power with the desire to minimize
25 the effect thereof on the environment and ecology of
26 this state.”

27 Thus, the “need” for the proposed electric facilities, and related consideration of that
28 which is “adequate, economical and reliable” for purposes of supplying that need, becomes a
second decision making standard for the Commission under A.R.S. §40-360.07(B). In that

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regard, "need" and "adequate" were not serious issues in Case No. 126. Rather, the focus was upon that which would be "reliable" and "economical."

B. The Modified Eastern Route Would Be More Reliable than the Backwards "C" Route for Area "C."

Although electrical system reliability is not one of the Siting Committee's decision making criteria, its practice has been to allow evidence of that nature as a part of the record it develops for the Commission. In this instance, that practice led to the receipt of the following information from the ACC Staff's expert electrical engineering witness, which makes it abundantly clear that the Modified Eastern Route is more reliable, and thus more preferable, than the Backwards "C" Route from an electrical system reliability perspective:

MEMBER PALMER: Thank you, Madam Chairman. I want to direct my first question to Jerry Smith. Is the reliability differential between the preferred blue route and the green alternative substantial?

MR. JERRY SMITH: To answer that question I need to further ask are you including the backwards C in that consideration?

MEMBER PALMER: Certainly.

MR. JERRY SMITH: I would characterize in the rank of reliability concerns the blue route being the one that provides the most risk, the totally green eastern route, the least risk, and the backward C is somewhat in between, given that the backward C does bring you back to the blue corridor, the preferred route in the vicinity of the Coolidge substation.

MEMBER PALMER: Madam Chairman, Mr. Smith, is that difference substantial enough to warrant rejection of the preferred route absent all other considerations? If that was the only consideration, reliability, would it be so compelling that you would reject the blue route?

MR. JERRY SMITH: Staff's position is that we definitely prefer not to pursue the preferred route because of reliability concerns. And --

MEMBER PALMER: You are sure you are not a lawyer? Just kidding.

MR. JERRY SMITH: -- the reason being, the reason we are having to state it the way we are is because any of these routes will meet the technical industry standards for reliability.

1
2 What Staff is being asked to do is make some professional
3 judgment relative to security risk and extreme contingency
4 considerations that are beyond the normal consideration of the
5 industry. And we have reason for viewing things in that
6 perspective, one of those being the events of this past summer
7 when we had those types of events occur and put the whole
8 metropolitan Phoenix area at risk. And it is from that context that
9 Staff has taken its position that we would prefer not to align with
10 the preferred route. We feel there are better routes from a
11 reliability perspective. [Tr. 4235, 1.23 – Tr. 4237, 1.14] [Emphasis
12 supplied]

13 Thus, even if it were to be assumed that the Modified Eastern Route and the Backwards
14 “C” Route were equal in terms of their impact upon the “environment and ecology of this state,”
15 which Section II above demonstrates is not the case, it is clear from the above that the Modified
16 Eastern Route would be more reliable from an electrical system perspective. As ACC Staff
17 witness Jerry Smith observed, an evaluation of that which is reliable (for purposes of A.R.S.
18 §40-360.07(B)) should include consideration of not only “technical industry standards for
19 reliability,” but also actual events which have affected the integrity and reliability of electrical
20 systems in the State of Arizona. In this regard, his expressed concerns as to “considerations that
21 are beyond the normal consideration of the industry” warrant the serious attention of the
22 Commission.

23 In connection with the above, both the ACC Staff and Applicant(s) indicated that the
24 Backwards “C” Route will take the transmission line near the already congested Coolidge
25 substation. [Tr. 1973, 1.12-19; Tr. 3485, 1.3-22] ACC Staff’s main electric system reliability
26 concern in Area “C” involves the number of connected transmission lines already in existence
27 there.⁸ The Backward “C” Route will add to this congestion, whereas the Modified Eastern
28 Route will not. [Tr. 3484, 1.2 – Tr. 3486, 1.4] Also underscoring its opposition to the Backwards
 “C” Route is ACC Staff’s conclusion that it “doesn’t serve the system in any fashion.” [Tr.

⁸ There are a total of 7 transmission lines currently connected to the Coolidge substation. [Tr. 3484, 1.17-19]

1
2 3485, 1.18-19] ACC Staff further testified that “To put another transmission line in this vicinity
3 of these accumulation of lines is a risk that [I] feel should be avoided if we can.” [Tr. 3485, 1.5-
4 8]⁹ ACC Staff then recommended the Eastern Alignment to avoid such risk.

5 Likewise, the Applicant(s)’ witness panel voiced serious concerns about the Backwards
6 “C” Route. [Tr. 1973, 1.12-19; Tr. 2482, 1.4-13; Tr. 2570, 1.21-25] These concerns include not
7 only its overall impact given numerous siting criteria, but also its detrimental impact on
8 reliability and future planning. [Tr. 2077, 1.11-15] In addition, this design essentially “boxes
9 in” the City of Coolidge (“Coolidge”), and reverses the transmission line’s direction (*i.e.*, a
10 double-back route) to create almost redundant paths along Coolidge’s northern and southern
11 boundaries. [Tr. 1973, 1.12-19]

12
13 **C. The Backwards “C” Route Would be Less Economical (and Efficient) Than the**
14 **Modified Eastern Route**

15 Siting Committee members expressed their support for advanced regional and local
16 planning, and the need to identify and incorporate utility corridors (*e.g.* transmission, highway)
17 as growth occurs. [Tr. 2123, 1.21- Tr. 2124, 1.7; Tr. 2126, 1.13 – Tr. 2127, 1.6; Tr. 2528, 1.17-
18 2533, 1.12] The Applicant(s) witness, Robert Kondziolka testified that, as a general matter, an
19 electrical system which has transmission lines near the load is the most efficient, primarily
20 because of the resulting reduction in the number of substations and lower voltage transmission
21 lines needed to serve growth. [Tr. 2077, 1.11-15] Therefore, the future load areas concentrated
22 near the Town of Florence (“Florence”) – areas which the Backwards “C” Route seeks to avoid
23 – will require the construction of a greater number of substations and lower voltage transmission
24 lines in order to support that growth. Conversely, the Modified Eastern Route is more centrally
25 located through Pinal County, and will not only accommodate growth to the Gila River Indian
26
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28 ⁹ “Staff is not supportive of that [Backwards “C” Route] because Coolidge doesn’t need additional transmission
lines. It has plenty of transmission lines at the Coolidge substation already.” [Tr. 3485, 1.15-19]

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Reservation on the west, but also provide electrical power for future development to the east of Florence. Thus, the Modified Eastern Route is more compatible with advanced planning and efficiency; and, as a consequence, is more "economical," in terms of both initial construction costs and future system development costs, than the Backwards "C" Route.

IV. THE SITING COMMITTEE DID NOT PROPERLY CONSIDER AND APPLY THE DECISION-MAKING CRITERIA PRESCRIBED IN A.R.S. §40-360.06(A) INCIDENT TO ITS SELECTION OF THE BACKWARD "C" ROUTE FOR AREA "C"

A careful review of the May 10, 2005 deliberations of the Siting Committee with regard to the selection of a transmission route for Area "C"¹⁰ discloses an inordinate amount of concern by certain members with regard to the route preference of the Town of Florence and a large developer in the Florence area.¹¹ In fact, on two separate occasions, Chairman Woodall found it necessary to remind the members of the Siting Committee that their statutory responsibility required them to reach a decision which reflected a balanced consideration of the relevant statutory factors:

"Mr. Williamson, I agree that we need to take into consideration the expressed desires and preferences of the local jurisdictions. I do not agree that we should have as a principal basis for our decision making coming up with a route simply because we think it is going to satisfy the current political concerns of the various municipalities. I think our charge is broader than that. And so let me just state that right on the front end." [Tr. 4226, 1.18 – Tr. 4227, 1.1]

* * *

¹⁰ Those deliberations appear at Tr. 4225, 1.17 – Tr. 4287, 1.5
¹¹ See, for example, Tr. 4225, 1.20 - Tr. 4226, 1.17 [Williamson]; Tr. 4227, 1.5-18 [Williamson]; Tr. 4228, 1.11-16 [S. Smith]; Tr. 4239, 1.5-14 [Palmer]; Tr. 4239, 1.18 – Tr. 4240, 1.7 [S. Smith]; Tr. 4240, 1.22 – Tr. 4241, 1.8 [Whalen]; Tr. 4242, 1.11-22 [Whalen]; Tr. 4255, 1.8-16 [S. Smith]; Tr. 4255, 1.19-25 [Whalen]; Tr. 4258, 1.12 – Tr. 4259, 1.4 [S. Smith]; Tr. 4261, 1.21-23 [S. Smith];
Concern was also expressed for what the potential impact could be on existing residences in the subdivisions of Oasis at Magic Ranch, Mirage at Magic Ranch and Johnson Ranch. However, the underlying motivation in that regard appears to have been an effort to muster support for the Backward C Route. See, for example, Tr. 4230, 1.6-24 [S. Smith]; Tr. 4244, 1.13 – Tr. 4246, 1.3 [S. Smith]; Tr. 4246, 1.4-7 [Williamson]; Tr. 4275, 1.19-24 [S. Smith]

1
2 “Again, Mr. Whalen, I will express my view that, while we
3 must take into consideration the views of the various
4 municipalities where these lines go, I do not consider that
5 that is the primary decision point for us. I think that it is
6 why it is coming to a state committee.” [Tr. 4256, 1.1-6]

7 The “existing plans of . . . local government and private entities for other developments
8 at or in the vicinity of the proposed site” is one of the nine (9) decision making factors
9 prescribed by A.R.S. §40-360.06(A). But, as Chairman Woodall noted, it is not “a principal
10 basis” or “the primary decision point” for the decision to be made by the Siting Committee.
11 However, as noted in Walker Butte *et al.*’s June 22, 2005 Notice Of and Request for Review,
12 this factor appears to have been a major consideration for at least four (4) members of the Siting
13 Committee in connection with their respective deliberations and votes on a route for Area “C.”¹²
14 This occurred despite the fact that the record does not provide evidence of any official act, by
15 any affected municipality, to formally support the Backwards “C” Route.

16 The failure of the Siting Committee to employ that comprehensive and balanced decision
17 making approach contemplated and prescribed by A.R.S. §40-360.06(A) is graphically
18 illustrated when the Applicant(s) Exhibit A-31 comparing various categories of impact of the
19 several routes under consideration for Area “C” is considered. As previously noted, the
20 categories of information shown on page 39 of that exhibit (see Appendix “A” hereto) are
21 directly responsive to several of the statutorily prescribed decision making factors. Yet at no
22 time did the members of the Siting Committee make reference to this information during the
23 course of their deliberations on a route for Area “C.” If they had, they would have noted that, as
24 between the Modified Eastern Route and the Backwards “C” Route,¹³ the Modified Eastern
25

26
27 ¹² Walker Butte’s June 22, 2005 Notice Of and Request for Review is incorporated herein by reference in its
entirety as a part of this Brief.

28 ¹³ Although the Preferred Route was the subject of a vote, a review of the deliberations indicates that it received
only limited consideration.

1
2 Route (i) cost less, (ii) was shorter in length, (iii) impacted fewer existing dwelling units,¹⁴ (iv)
3 impacted fewer acres of habitat and (v) impacted fewer acres of cultural sites. The substantial
4 weight of evidence clearly illustrates that the Modified Eastern Route is far preferable to the
5 Backwards "C" Route.¹⁵ In fact, the only depicted category in which the Backwards "C" Route
6 did not have a greater negative impact than the Modified Eastern Route was to churches; and, in
7 that category, there was one existing church within the indicated proximity to each route.
8

9 Given the foregoing, and the amount of discussion during the deliberations devoted to
10 how to address the concerns of the Town of Florence and certain large developers in the
11 Florence area, it is quite evident that the members of the Siting Committee did not properly
12 consider and apply the decision making criteria prescribed in A.R.S. §40-360.06(A) to the
13 record before them incident to the selection of the Backwards "C" Route for Area "C."
14

15 It is difficult to ascertain from the transcript of the deliberations the extent to which
16 comments made by the Mayor of the Town of Florence during the deliberations may have
17 influenced members of the Siting Committee to support the Backwards "C" Route, as modified
18 during a recess. As Chairman Woodall noted, the hearing record had been closed before the
19 deliberations commenced. [Tr. 4259, 1.1-9] The Mayor was allowed to offer some comments
20 thereafter regarding a desire on his part to try to craft a modified Backwards "C" Route. [Tr.
21 4271, 1.9 – Tr. 4272, 1.8] Following his remarks a short recess was taken, and immediately
22 thereafter the Applicant(s)' hearing counsel orally presented to the Siting Committee a
23 modification of the Backwards "C" Route which had been discussed with the Mayor during the
24 recess, and agreed to by the Applicant(s) and the Mayor. [Tr. 4273, 1.5-8; and Tr. 4275, 1.22-25]
25

26 ¹⁴ Exhibit A-31, page 39, did not include the impact on existing residences at the Oasis at Magic Ranch and Mirage
27 at Magic Ranch in the line item information relating to the Backwards "C" Route. When those are taken into
consideration, the adverse impact of the Backward C Route increases by several hundred additional homes.

28 ¹⁵ In this regard, as noted in Walker Butte, *et al.*'s "Notice of and Request For Review," a preponderance of the
parties with Area "C" interests either would not object to or would not be adversely impacted by a Commission
decision adopting the Modified Eastern Route.

1
2 That modification of the Backwards “C” Route was selected by the Siting Committee on its
3 fourth vote of the day, with the Chairman dissenting. Moreover, the Siting Committee also did
4 not discuss nor apply the requisite statutory decision making criteria in evaluating that
5 “compromise” alternative, which widened the transmission corridor by several thousand feet.
6 Hence, its attempt to discharge its responsibilities remains legally suspect, if not patently
7 defective. Furthermore, to the extent that Mayor Rankin’s comments during the deliberations
8 may have influenced the votes of individual members, they relied on matters and considerations
9 not contained in the hearing record.
10

11 Walker Butte *et al.*, does not doubt for a moment that the members of the Siting
12 Committee were motivated by good intentions when they deliberated and ultimately selected a
13 transmission route for Area “C.” Walker Butte *et al.*, also understands that the members of the
14 Siting Committee were probably frustrated at their failure to reach a majority vote during three
15 (3) previous votes on three (3) different route proposals. However, those good intentions and
16 that frustration do not excuse the failure of the Siting Committee to properly consider and apply
17 the decision making criteria prescribed in A.R.S. §40-360.06(A).
18

19 V. CONCLUSION

20 In the preceding sections of its Brief, Walker Butte *et al.*, has discussed and demonstrated
21 the following: (i) in reviewing the June 8, 2005 decision issued and CEC granted by the Siting
22 Committee the Commission will perform three separate statutory functions, two of which are
23 explicit and one of which is implicit; (ii) an objective and complete application of the decision
24 making criteria set forth in A.R.S. §40-360.06(A) supports the conclusion that the Modified
25 Eastern Route serves the broad public interest whereas the Backwards “C” Route does not; (iii)
26 the balancing function required of the Commission under A.R.S. §40-360.07(B) dictates that the
27 Modified Eastern Route be selected instead of the Backwards “C” Route; and (iv) the Siting
28

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1
2 Committee failed to properly consider and apply the relevant decision making criteria prescribed
3 in A.R.S. §40-360.06(A) incident to its selection of the Backwards "C" Route.

4 As a consequence, for all of the reasons discussed above and in its June 22, 2005 Notice
5 Of and Request for Review, Walker Butte *et al.*, believes that it has demonstrated why the
6 Commission should, in the broad public interest (i) deny the portion of the Siting committee's
7 June 8, 2005 decision adopting the Backwards "C" Route for Area "C," and (ii) modify the June
8 8, 2005 decision and CEC so as to adopt the Modified Eastern Route as the route to be approved
9 and granted for Area "C."
10

11 Dated this 6th day of July, 2005.

12
13 Respectfully submitted,

14
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APPENDIX "A"

TO

INTERVENOR WALKER BUTTE *et al.*, BRIEF

Summary of SR-SEV (within 1/4 mile corridor)

Route	Cost (Millions)	Miles	Dwelling Units	Acres of Habitat	Acres of Cultural Sites	Schools	Churches
Cornman Rd./PA	\$97	66	135	74.4	497.0	0	0
Hanna Rd./PA	\$100	68	108	288.2	442.5	0	0
Cornman Rd./Eastern Alternative	\$91	63	151	122.9	439.9	0	1
Cornman Rd./Backwards C	\$98	68	215	67.4	582.8	0	1
Northern Alternative/Pipeline	\$69	47	596	53.4	263.6	1	0
Cornman Rd./Eastern/Railroad	\$93	64	131	39.3	450.2	0	1
ACC Staff Proposal	\$84	60	644	130.3	249.6	1	0