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

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY, IN
CONFORMANCE WITH THE
REQUIREMENTS OF ARIZONA
REVISED STATUTES §§40-360, *et
seq.*, FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AUTHORIZING THE TS-5 TO TS-9
500/230kV TRANSMISSION LINE
PROJECT, WHICH ORIGINATES AT
THE FUTURE TS-5 SUBSTATION,
LOCATED IN THE WEST HALF OF
SECTION 29, TOWNSHIP 4 NORTH,
RANGE 4 WEST AND TERMINATES
AT THE FUTURE TS-9
SUBSTATION, LOCATED IN
SECTION 33, TOWNSHIP 6 NORTH,
RANGE 1 EAST IN MARICOPA
COUNTY, ARIZONA.

Docket No. L-00000D-08-0330-00138

Case No. 138

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER
DISTRICT'S AMICUS BRIEF ON THE
DESIGNATION OF UTILITY CORRIDORS
IN SITING CASES**

Arizona Corporation Commission

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An attorney for a developer intervenor in this docket has raised concerns about the designation of utility corridors. As the designation and use of utility corridors is essential for sound utility and urban planning, Salt River Project Agricultural Improvement and Power District ("SRP") respectfully submits this *amicus* brief to discuss the importance of maintaining the current practice of designating utility corridors. SRP appreciates the opportunity to file this brief with the Arizona Power Plant and Transmission Line Siting Committee ("Committee").

I. SUMMARY OF SRP'S POSITION ON THE DESIGNATION OF UTILITY CORRIDORS

As discussed in more detail below: (1) Advance planning through the designation of utility corridors is established in law and the Siting Committee is part of a much broader planning process; (2) The detailed process of engineering and

1 determining precise pole locations is a task that should not be undertaken in a
2 siting (hearing) process; and (3) The Designation of utility corridors through the
3 siting process does not create a compensable taking.

4 SRP suggests that the most effective process is for the Committee to
5 continue to determine general route alignments with appropriately sized corridors
6 that are consistent with the environmental criteria under which the Committee
7 operates.

8 **II. THE DESIGNATION OF UTILITY CORRIDORS IS ESTABLISHED IN LAW**

9 The advance designation of general "corridors" or locations for public
10 facilities, in advance of detailed engineering, has long been an essential part of
11 urban planning. During the late 1990s Arizona focused attention on urban planning
12 in an unprecedented way, by enacting the "Growing Smarter" Act¹ and the
13 "Growing Smarter Plus" Act². These acts mandated that local jurisdictions give
14 greater thought to how and where growth would occur, and how it would be
15 financed. Specifically these acts, among other things, direct cities to conduct
16 advance planning of facilities, including:

17 public services and facilities element showing general plans for police, fire,
18 emergency services, sewage, refuse disposal, drainage, local utilities, rights-
of-way, easements and facilities for them³

19 The concept and requirement for advance planning for utility facilities was
20 strengthened in 2006, in the same statutory section from which this Committee
21 derives its authority (A.R.S. § 40-360 *et seq.*), by the addition of a requirement
22 that municipalities and counties "cooperate and work with" utilities to engage in
23 advance planning of utility facilities, and to include the facilities in "the municipality
24 general plan under A.R.S. § 9-461.05 or the county comprehensive plan under

25 _____
26 ¹ HB 2361, Ch. 204, Arizona 1998

² SB1001, Ch. 1, Arizona 2000

³ A.R.S. § 9-461.05

1 section A.R.S. § 11-821.⁴

2 Layered onto the concept of establishing corridors for urban planning is the
3 involved process of establishing corridors for transmission planning. These plans
4 occur at the utility level (e.g. the ten year plans filed with the Arizona Corporation
5 Commission), at the state level (e.g. the Central Arizona Transmission Study), at
6 the multistate or sub-regional level (e.g. the Southwest Area Transmission Planning
7 Group), at the western interconnection or regional level (e.g. the Western
8 Electricity Coordinating Council), and at the national level (Department of Energy
9 designation of critical utility corridors⁵). These levels of advance planning are
10 essential to insure electric system reliability and availability of power to the growing
11 demands nationwide.

12 **III. CORRIDORS IN SITING CASES**

13 Over the years both the Committee and the Corporation Commission have
14 strongly encouraged advance planning and siting of transmission facilities. They
15 understood that the earlier a corridor can be identified, the better surrounding
16 development can adapt to the facilities. While in some instances the Committee
17 and the Corporation Commission have imposed construction time lines, they have
18 often identified and permitted corridors well in advance of the need to construct
19 along with a requirement to place signs in the corridor to notify the public about the
20 existence of the route.

21 The ACC's process generally has focused its efforts on determining general
22 routing alignments in broad corridors, leaving the specific engineering and location
23 of each transmission pole within the approved corridor to the interaction among the
24 cities, landowners and utilities at the time that the right-of-way is acquired. This
25

26 ⁴ A.R.S. §§ 40-360.52 and 40-360.53.

⁵ Section 368(a) of the Energy Policy Act of 2005 (EPACT), Public Law 109-58 (H.R. 6).

1 practice is quite consistent with the general goal of identifying locations for facilities
2 in advance of development.

3 Determining general alignments has a practical element that drives the
4 process. The engineering and siting of precise pole locations, for example, would
5 require much greater involvement of cities, counties, and landowners, not to
6 mention the considerable expense of engaging in engineering for multiple potential
7 alignments. Also, this practice would entail multiple permit revisions, as specific
8 coordination issues develop after the siting process or during construction. This
9 approach would basically bring the siting process to a halt.

10 **IV. THE DESIGNATION OF UTILITY CORRIDORS DOES NOT CREATE A COMPENSABLE**
11 **TAKING.**

12 It may go without saying, as compensation is an issue beyond the Committee
13 jurisdiction, but it is quite clear in Arizona that sound urban planning, including the
14 designation of infrastructure corridors, does not create a compensable taking of
15 property rights. In fact, in the 2006 property right initiative, Proposition 207, the
16 designation of utility corridors by the Committee was expressly exempted from the
17 concept of a compensable taking by governmental action:

18 12-1134. Diminution in value; just compensation

19 A. If the existing rights to use, divide, sell or possess private real property
20 are reduced by the enactment or applicability of any land use law enacted
21 after the date the property is transferred to the owner and such action
22 reduces the fair market value of the property the owner is entitled to just
23 compensation from this state or the political subdivision of this state that
24 enacted the land use law.

25 B. This section does not apply to land use laws that:

26 5. Establish locations for utility facilities;

27 This 2006 initiative language basically leaves intact the law of Arizona that a
28 regulatory designation does not create a right of compensation. In *City of Phoenix*
29 *v. Fehlner*, the Arizona Supreme Court held that "[t]o sustain an attack upon the

1 validity of the ordinance an aggrieved property owner must show that if the
2 ordinance is enforced the consequent restrictions upon his property preclude its use
3 for any purpose to which it is reasonably adapted.' " 90 Ariz. at 19, 363 P.2d at 611
4 (quoting *Arverne Bay Const. Co. v. Thatcher*, 278 N.Y. 222, 226, 15 N.E.2d 587,
5 589 (1938)); see also, *City of Phoenix v. Oglesby*, 112 Ariz. 64, 66, 537 P.2d 934,
6 936 (1975).

7 In cases attacking the validity of a zoning ordinance, the courts have
8 interpreted this "reasonable use" standard as an economic viability test. *Ranch 57*
9 *v. City of Yuma*, 152 Ariz. 218, 226-27, 731 P.2d 113, 121-22 (Ariz. Ct. App.
10 1986). A landowner must demonstrate that the applicable ordinance has deprived
11 him of any reasonable return on his property. *Ranch 57 v. City of Yuma*, 152 Ariz.
12 218, 226-27, 731 P.2d 113, 121-22 (Ariz. Ct. App. 1986).

13 Clearly, the designation of a utility corridor, whether by a city or county, by
14 the Committee, or by the utility itself, does not rise to this standard. SRP is aware
15 of numerous instances where development proceeds within designated corridors.
16 In fact, the possibility of development is an incentive to utilities to acquire the
17 needed rights of way early, to avoid expense and controversy later on.

18 **V. CONCLUSION**

19 To insure sound transmission planning and sound utility planning the
20 advance designation of transmission corridors should not be discouraged or limited
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1 in any manner. SRP respectfully suggests that the debate on the effect on land
2 values of the designation of corridors for public facilities be conducted elsewhere.

3 Dated this 9th day of September, 2008.

4 JENNINGS, STROUSS & SALMON, P.L.C.

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6
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11 ORIGINAL and 25 copies of the
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18 Copy of the foregoing delivered e-
19 mailed on this 9th day of September,
20 2008, to:

21 All parties of record

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