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IN THE MATTER OF THE APPLICATION OF SALT RIVER PROJECT, OR THEIR ASSIGNEE (S), IN CONFORMANCE WITH THE REQUIREMENTS THE ARIZONA REVISED STATUTES 40-360.03 AND 40-360.06 FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE CONSTRUCTION OF NATURAL GAS-FIRED, COMBINED CYCLE GENERATING FACILITIES AND ASSOCIATED INTRAPLANT TRANSMISSION LINES, SWITCHYARD IN GILBERT, ARIZONA LOCATED NEAR AND WEST OF THE INTERSECTION OF VAL VISTA DRIVE AND WARNER ROAD

CASE NO. 105
DOCKET NUMBER
L00000B-00-0105

POST HEARING BRIEF
IN SUPPORT OF TESTIMONY
AND EVIDENCE SUBMITTED
DURING THE HEARINGS IN
THESE PROCEEDINGS

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Intervenor Cathy Lopez hereby submits her Post Hearing Brief In Support Testimony and Evidence submitted during the hearings in these proceeding as set forth below.

I. INTRODUCTION:

The Applicant in this proceeding has the burden to prove "the need **outweighs** the environmental impact upon the surrounding community." This Committee must consider each and every factor as a basis for its action with respect to the **suitability** of this plant as specifically set forth in A.R.S. 40-360.06 (A) 1-9. Though the Arizona Utility Investors Association may have attempted to lead this committee to believe **they** have successfully argued on behalf of the Applicant that "SRP" has meet its burden of proof, simply put, AUIA is not the applicant nor do they hold any responsibility or liability to anyone or anything in this community.

This Committee must look at all the evidence and testimony submitted in this proceeding, including all the evidence and testimony at the hearings, the entire record maintained at the Arizona Corporation Commission and the post-hearing briefs submitted in these proceedings.

**ARGUMENTS WHY APPLICANT SHOULD NOT RECEIVE
A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY**

II. Environmental Impact vs. Need

This Committee has heard testimony regarding the environmental impact this plant expansion would have upon this community. The testimony was submitted under oath and is a part of the record in these proceedings. As I will outline below, each and every impact upon this community must be taken and considered in its entirety respecting the reasons why this applicant should not receive a certificate of environmental compatibility.

a) COMPATIBILITY

While the Applicant has skirted the issue of compatibility, this Committee must closely address this issue before the issuance of a "certificate of **environmental compatibility**". The irony of this entire proceeding at least for the applicant is to be granted a certificate of environmental compatibility. This is paramount to the applicant yet we have heard very little from the applicant on the issue of compatibility. Instead, what we have heard is how much money and how many gifts they are planning to contribute in order to receive a certificate of compatibility.

The applicant can not buy a certificate of environmental compatibility, but if they could you bet they would. The applicant did not present one shred of evidence that the proposed expansion would be compatible to this community. I would suspect the reasons they avoided the entire issue of compatibility is because they know their plans are not compatible to the surrounding community. The essence of the word "compatibility" is defined as well matched, well suited, and complementary. I do not believe that the proposed expansion is well matched, well suited, or complementary to the surrounding community. The first clue for this Committee not to issue a certificate of compatibility is the applicant's suggestion that spending millions and millions of dollars to help in the offsets and mitigation of damages for the proposed plant. These millions of dollars proposed by the applicant are to be spent on some items which may help in the setoffs of damages and some items are what I would call nothing less than **very** expensive gifts in exchange for support of the proposed plant. In the April 10, 2000 Minutes of the Board of Directors for Salt River Project Agricultural Improvement and Power District, Page 13, Ms. Alfano' stated:

"SRP has agreed to fund certain aesthetic projects and to relocate the Eastern Canal in exchange for the Town's support of SRP's permit application and affirmation that SRP is not subject to the Town's jurisdiction."

Let's take a look at the breakdown of the millions being proposed:

1. Expansion of Warner Road – Preliminary Cost Estimated \$400,000 – 1,600,000
2. **Widening of Val Vista at Plant Entrance – Preliminary Cost Estimated \$250,000 – 250,000**
3. Design and Construction of Horseback and Hiking Trails - Preliminary Cost Estimated \$80,000 - \$200,000
4. Relocation of Eastern Canal - Preliminary Cost Estimated \$700,000 - \$900,000
5. **Screening of Facility - Preliminary Cost Estimated - \$850,000 – 1,800,000**
6. Removal of Training Tower - Preliminary Cost Estimated - \$75,000 – 150,000
7. Revegetation along RS 18 - Preliminary Cost Estimated - \$450,000 – 1,200,000
8. **Dust Control - Preliminary Cost Estimated - \$525,000 – 1,500,000**

9. Off-Site Tree Planning Preliminary Cost Estimated - \$100,000 – 100,000

Additional Contributions according to SRP's 21 conditions submitted:

10. Gilbert Unified School District – Green Diesel or alternative fuel as may be feasible, and will contribute \$330,000

11. Major Investment Study through the regional Public Transit Authority to develop concept plans for commuter rail system and will contribute \$400,000

12. Replacement the Town of Gilbert's two existing street sweepers with certified PM10 efficient equipment estimated at \$175,000 each for a total of \$350,000.

This Committee must look at the applicant's proposed expenditures to determine those items which they believe have any direct relevancy to the proposed plant¹. Furthermore, once this Committee has determined which items are believed to truly reflect expenditures associated with the plant expansion impacts, they must determine if those expenditures will justify the need outweighs the environmental impact on this community even in light of any relevant expenditures². The land surrounding the proposed plant expansion is several master planned residential communities, schools, light retail and nowhere in the surrounding community is there any existence of industrial land uses. (See Exhibit 1 – photos graphs from my neighborhood and my environment.)

Finally, any plant addition would contribute to the existence of a public nuisance and continue to cause harm to the residents of this community. This Committee must act responsible and in the protection of the health and welfare of this community.

b) **ZONING AND LAND USE.** The property on which the plant is situated is zoned Agriculture **not** industrial. Under the Town of Gilbert's Land Use Code and Zoning code the Applicant's plant is not allowed. Reference is made to the Town of Gilbert's zoning map, which was entered, as evidence in this proceeding. For this Committee to entertain the idea of approving the expansion of the existing plant would continue to send a message that land use and zoning codes are **not** designed to protect the health and welfare of the public. We have rules and regulations in place for the purpose of protecting property values, public health, and welfare. When the rules and regulations are not followed this creates anarchy. These residential communities surrounding this plant are unlike any other this committee has had before them.

This committee heard the testimony of Councilman Mike Evans regarding his opinion that the general plan was amended some time ago in an attempt to cover up the zoning and land use issues surrounding this plant. This Committee should consider this testimony and the other testimony presented in these proceedings regarding the land use and zoning issues surrounding this plant. To ignore these issues would be in direct controversy of the state of Arizona legislative intent for the establishment

¹ I have highlighted those expenditures, which I believe are relevant to the plant expansion.

² In a recent article published in the Arizona Republic on December 29, 2000, SRP's spoke person Scott Harelson stated that SRP is willing to spend up to **15 million dollars to lessen the effects of the plant on neighbors.**

of zoning and land use regulations. While the Town of Gilbert may have attempted to waive jurisdiction over SRP in what I believe to be a total disregard of local, state and federal laws, that does not mean that this Committee must accept the arguments set forth in the agreement between SRP and the Town of Gilbert entered into on April 25, 2000 known as the Intergovernmental Agreement.

My review of the state of Arizona statutes on Special Taxing Districts does not automatically allow SRP to claim jurisdiction over any other governmental entity. The Town of Gilbert's attorney and SRP's attorney cleverly drafted the IGA to ensure what I call a way out for the Town of Gilbert to be responsible to the citizens of the Town of Gilbert. Through several inquiries with both the Town of Gilbert and SRP, on the issue of jurisdiction, I never once received a legitimate answer to my questions on jurisdiction. I was told by SRP's counsel that this was a legal argument, which in my opinion is certainly a colorful argument. For SRP and the Town of Gilbert to enter into such an agreement without due process of the law is unjust and inequitable to every member of this community.

I performed countless hours of research on the non-disclosure of the power plant and the lack of proper zoning hearings. One of the most compelling pieces of documents I reviewed was the Town of Gilbert's zoning map which has been made an official exhibit in these proceedings. This zoning map indicates the property in which the plant is located is zoned agriculture **not** industrial.

This committee must also review the statement made by Phil Long, Gilbert Council member from 1993-1996, entered as evidence in this proceeding regarding the development of this community. SRP's never once voiced a concern, made an objection, disclosed their resource plans,³ or attempted to disclose the existence of this plant. What this Committee may not know and what I have recently discovered is that the development of this community and surrounding communities was one of the longest and heated zoning cases in the town's history. For SRP to simply keep their mouth shut is irresponsible.

In 1996 SRP sold off their 18+-acre property they initially purchased for **residential buffer** knowing this area was being developed for several master planned communities. During cross-examination of Mr. Areghini, he testified that SRP would have knowledge and received documentation for such mastered planned communities. This is an important point in that SRP responded to one of my data request indicating that they had no records regarding the development of Finley Farms. Mr. Areghini testified that such records would be kept at their branch offices on Power road. During a conference call with Chairman Bullis regarding discovery issues and my motion to preclude the testimony of Sheri Libicki, SRP's counsel was ordered to provide me a with due diligence statement indicating the records I sought through my data request did not exist, I have yet to receive such a statement.

c) **QUALITY OF LIFE AND OUR ENVIRONMENT.**

As a long time resident of Gilbert, I can attest to several matters on the quality of life my family has been so very fortunate to be afforded. As I stated in my direct testimony before this Committee, this is our second home in Gilbert. While both my husband and I both commute for our employment, we made a choice that residing in this community would be a quality of life choice.

³ If each member of this Committee reviews the Power Committee Minutes (1991-2000) I submitted with my Initial List of Witnesses and Exhibits, it would be evident that SRP has had resource plans developed for years and SRP's claims that the resources needed for the years to come is simply no surprise to them.

Finley Farms is a master planned residential community with open spaces, parks and a walk to school elementary school. There is light retail at the corners of Val Vista and Warner Roads with the remaining surrounding area residential. This is the type of community we wanted so much to raise our family. There are no junkyards, manufacturing plants or industrial areas surrounding this community. While we were aware that the corners at Val Vista Drive and Warner Roads were undeveloped but planned for light retail we did not know or were we disclosed in the existing of the plant⁴.

This Committee did not hear any evidence or testimony that SRP, their attorneys, consultants, expert witnesses, or employees would want to live next to or raise their families next to this plant. The simple truth is that the record speaks for itself on this issue. As I stated in my testimony, each Committee member must ask themselves if they would choose to buy a house and raise a family or recommend that a family member or friend purchase a home next to the proposed plant? If your answer is no you would not want to live next to this plant, this answer must lead each Committee member to vote against the applicant.

d) HEALTH AND WELFARE ISSUES

This Committee heard testimony from both SRP and the intervenors on this issue. While SRP banks on the sole testimony of their expert witness Sheri Libicki indicating there are "indiscernible" effects" on the expected emissions from the proposed plant, this Committee can not reply upon such testimony.

First, Sheri Libicki is not qualified to testify regarding medical issues, as she does not hold a license to practice medicine. A review of Sheri Libicki's credentials will reflect she simply is not qualified to testify relating to health issues. What this Committee can reply upon is the written statements of the following qualified medical doctors:

1. J.T. Danforth, M.D.;
2. Carlin G. Bartschi, M.D.;
3. Randy H. Lavitt, M.D., and
4. Gary G. Auxier, M.D.

This Committee can also reply upon the testimony of the following doctors:

1. Dr. Christopher Labon; and
2. Dr. Todd Taylor.

Now lets look at Maricopa County and its air quality problems. According to the American Lung Association's State of the Air 2000 covers county by county static's related to exposure and assigns grades to ozone air pollution, based on ozone monitoring data from 1996-1998. Data are based on information available through the EPA. It is no surprise that Maricopa County received an "F". It is also no surprise that the Santan Generating Station ranks among one of the top contributors in pollution in the Gilbert area.

⁴ While I am limited regarding my comments on non-disclosure issues as we are discussing this issue with our attorney, I can assure this committee that non-disclosure of this plant is wide spread throughout this community.

Each and every emission from this plant is a major source of pollutants which is controlled under Title V. Each and every emission from this plant can have serious and deadly effects upon "the at risk groups" and can contribute to breathing problems in healthy children and adults. It is undisputed that the emissions from this plant will have an adverse effect on children. This Committee must look at the data from EPA, the American Lung Association, and the Department of Public Health. Countless studies have shown that environmental pollutants which children are exposed will have serious health consequences. These studies have shown that because children's systems are still developing they are more susceptible to environmental threats. SRP's plans to expand are nothing less than a threat to each and every child surrounding this plant. We all know that there are alternatives available to SRP but big business does not concern itself with the protection of children. It is the responsibility of each parent to protect their children and in this case it is also the responsibility of this Committee to ensure the protection of the children in this community.

While SRP has not addressed the economic factors of health costs associated with their own environmental pollutants, I believe this Committee must look at the health cost and its impacts the emissions from this plant will have on this community. The cost of asthma to the U.S. economy was estimated to be 6.2 billion in 1990. SRP did not perform a health impact study nor did they indicate they would perform one. I can only assume that a third party unbiased health impact study would certainly change many claims SRP has attempted to persuade this Committee that there is no "indiscernible" effects from the emissions of this plant.

While SRP has recently taken steps to clean up the NOx emissions at Santan due in large part and in to achieve lower NOx emissions as a result of the combined existing and proposed plant emissions. Four out of Five emissions will **significantly increase** and they are CO, PM10, VOCs and Sox.

I would like to direct this Committee's attention to what I call a questionable reduction in the NOx emissions at Santan. A review of SRP's exhibit 79-1, indicates that the total expected NOx emission from Santan would be 811 tons per year. A review of SRP's exhibit number 78, July 10 2000 letter from Michael Hitt, Manager at Santan generating station to Dale Lieb, Maricopa County Environmental Services Division, Introduction, page 2, last paragraph states:

"SRP proposes to limit future NOx emissions following the installation of the low NOx burners to 1056 tons per year. "

Based upon the following, I can only assume that Santan generating station has allowable NOx emissions to 1056 versus 811 tons per year.

For SRP to claim that the emissions from this plant will not contribute or cause any adverse health effects to children or adults surrounding this plant is nothing less than irresponsible and a total disregard in the protection of human health and welfare.

e) **PROPERTY VALUE ISSUES -**

Again, SRP paid a lot of money for two property valuation reports. These reports were performed on a very limited scope and for a certain conclusion. The fact of the matter is SRP is not willing to place any guarantees on property valuation as a direct result of their proposed plant expansion. While SRP may want

to argue that it is difficult to determine property loss issues, it certainly is not impossible. SRP would like this Committee to believe that the neighborhoods surrounding this plant expansion are not controlled and protected by HOA's and the enforcement of CC&Rs to help protect property values. If any Committee member drove around the surrounding residential communities, they would or have come to the conclusion that residents have spent a lot of money and time in the upkeep and improvement of their homes. We are not talking about lower level housing or government housing here; we are talking about upper middle class neighborhoods. This Committee has heard statements on the record that people have already lost the sale of their homes as a direct result of the proposed plant. This Committee must look at the fact of what will happen to this community if the proposed plant is constructed. I personally believe this will result in a disastrous economic impact upon property values.

We have recently discovered additional information indicating that sales of homes are being lost as a direct result of the existence of a power plant and the proposed expansion of one is simply unacceptable. I can attest that the two house on my block have now been on the market for well over 120 days and I have been informed that the power plant has had an influence upon the decision not to purchase these homes. We hope to provide this Committee some additional evidence regarding the loss in sales very shortly.

f) PRIOR TESTIMONY BEFORE THIS COMMITTEE

This Committee has heard prior testimony in the Redhawk power plant case from the engineering staff at the Arizona Corporation Commission that it is not a good idea to build local generation within the non-attainment area. One of the arguments presented was air quality issues and the non-attainments status for Maricopa County. This Committee has also heard from the Applicant on their plans to bring in more transmission lines. This testimony is reflected in the January 26, 2000 workshop on the present and future electric transmission needs of the state. In this testimony, this Committee heard that the resource planning of SRP in its transmission lines and the proposed expansion of Kyrene (750 mw) would best serve their customers in terms of providing them with adequate reliable and low cost electricity. SRP also indicates later on in the **decade** they would seek to expand Santan.

g) THE SEARCH FOR THE TRUTH

I. Resource Planning - Meetings with the Town of Gilbert (500 – 750 MW)

As this Committee heard in the testimony of Mr. Bosnall, SRP first starting meeting with the Town of Gilbert in early 1999 on the Santan plant expansion. There was a meeting in July 1999 wherein SRP, NRG and possibly others presented information and materials regarding Desert Center Energy Project, NRG, Dynegy and the ownership and operation of the proposed expansion of Santan. The materials presented at this meeting to the Town of Gilbert indicated the plant expansion would be from 500-750 MW.

We have now been advised by SRP that Dynegy and NRG are no longer involved in the plant expansion and all resources from this plant will go to serve local needs. I have many doubts relating to Dynegy and NRG's involvement now or in the future in this plant. We did not hear any testimony from SRP why this companies or partnerships are no longer involved in this plant expansion.

II. Kyrene Plant

Initially SRP claimed they needed an additional 825 megawatts. One of the reasons for downsizing this plant according to the testimony of Mr. Bosnall was the issue of offsets which could not be available on a purely local basis. Further testimony of Mr. Bosnall indicated that downsizing the Kyrene plant expansion would meet SRP's load requirements.

III. Economics - Banking on Advance Gas Turbines

There is a study, which I am sure SRP is well aware of regarding Banking on Advance Gas Turbines, WEFA Energy Services. The study outlines several issues including the natural gas supply and price forecasting, performance issues, emissions, durability, reliability, and availability. As a long time customer of SRP, I know I have great concerns regarding the availability of natural gas supplies and pricing forecast of such supply. I did not hear any testimony presented by SRP indicating long term contracts to ensure lower costs to residents as a result of the gas turbine technology they are proposing.

It was recently discovered that SRP has been burning diesel oil at the Santan site. This has occurred in December and January. The black clouds from the burning of diesel caused great concerns from the local residents. I was told that the burning of oil was due to the gas shortages. This issue must be carefully reviewed and each Committee member should ask the following questions:

1. Is banking on natural gas turbine technology a wise and prudent proposition giving the natural gas shortages?
2. In the event that natural gas becomes so expensive or there are greater shortages, will it be feasible for the natural gas turbine technology to be retrofitted with technology to burn diesel oil? What would be the impact have on this community is those events played out?
3. Is banking on natural gas turbine technology prudent given the water assumption needed for such technology?

Finally, I want to thank each member of this Committee for their dedication in this proceeding. All across America people are asked to get involved in their community and I am certain that all the intervenors involved have assisted this process in insightful arguments and the presentation of evidence before this Committee. Based upon the arguments set forth above and all the arguments and evidence brought before this Committee, the applicant's request for a certificate of environmental compatibility must be denied as a direct result of the non-suitability and the total environmental impact upon this community.

Respectfully Submitted this 18th day of January 2001.

Cathy Lopez

Original and copies filed with the
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This 18th day of Janaury, 2001 with copies to:

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