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MUNGER CHADWICK, P.L.C.

ADMITTED TO PRACTICE IN:
ARIZONA, COLORADO, MONTANA,
NEVADA, TEXAS, WYOMING,
DISTRICT OF COLUMBIA

December 23, 2008

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

DEC 24 2008

Re: Arizona Public Service Company
Docket No. L-00000D-08-0330-00138
Siting Case No. 138

DOCKETED BY *MM*

To Whom It May Concern:

Enclosed for filing in the above-referenced proceeding are the original and twenty-five (25) copies of (i) a Notice of filing of Diamond Ventures, Inc.'s Suggested Revisions To Draft Certificate Of Environmental Compatibility and (ii) Intervenor Diamond Ventures' Suggested Revisions To Draft Certificate Of Environmental Compatibility.

Thank you for your assistance. Please advise me if you have any questions.

Sincerely,

Lawrence V. Robertson, Jr.
Lawrence V. Robertson, Jr.

CC: Chairman Foreman, w-enclosures
All Parties of Record

AZ CORP COMMISSION
DOCKET CONTROL

2008 DEC 24 A 8:32

RECEIVED

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

9 IN THE MATTER OF THE APPLICATION)
10 OF ARIZONA PUBLIC SERVICE COMPANY,)
11 IN CONFORMANCE WITH THE)
12 REQUIREMENTS OF ARIZONA REVISED)
13 STATUTES §§ 40-360, *et seq.*, FOR A) DOCKET NO. L-00000D-08-0330-00138
14 CERTIFICATE OF ENVIRONMENTAL)
15 COMPATIBILITY AUTHORIZING THE TS-5) Case No. 138
16 TO TS-9 500/230 kV TRANSMISSION LINE)
17 PROJECT, WHICH ORIGINATES AT THE) DIAMOND VENTURES, INC.'S
18 FUTURE TS-5 SUBSTATION, LOCATED IN) NOTICE OF FILING OF SUGGESTED
19 THE WEST HALF OF SECTION 29,) REVISIONS TO DRAFT CERTIFICATE
20 TOWNSHIP 4 NORTH, RANGE 4 WEST AND) OF ENVIRONMENTAL
21 TERMINATES AT THE FUTURE TS-9) COMPATIBILITY
22 SUBSTATION, LOCATED IN SECTION 33,)
23 TOWNSHIP 6 NORTH, RANGE 1 EAST, IN)
24 MARICOPA COUNTY, ARIZONA)

19 Diamond Ventures, Inc., by and through its undersigned counsel, hereby files it's
20 Suggested Revisions to the draft Certificate of Environmental Compatibility which was filed
21 with the Arizona Corporation Commission's Docket Control by Arizona Public Service
22 Company on December 16, 2008.

23 Dated this 23rd day of December 2008.

25 Respectfully submitted,

26 

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The original and twenty-five (25) copies
of the foregoing Notice will be filed
on the 24th day of October 2008 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

A copy of the foregoing
Notice will be hand-delivered
That same date to:

John Foreman, Chairman,
Arizona Power Plant and
Transmission Line Siting Committee
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007

A copy of the foregoing Notice will be
emailed/mailed that same date to:
Charles Hains
Janice Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
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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) DOCKET NO. L-00000D-08-0330-00138
CERTIFICATE OF ENVIRONMENTAL)
COMPATIBILITY AUTHORIZING THE TS-5) Case No. 138
TO TS-9 500/230 kV TRANSMISSION LINE)
PROJECT, WHICH ORIGINATES AT THE)
FUTURE TS-5 SUBSTATION, LOCATED IN) INTERVENOR DIAMOND VENTURES,
THE WEST HALF OF SECTION 29,) INC.'S SUGGESTED REVISIONS TO
TOWNSHIP 4 NORTH, RANGE 4 WEST AND) DRAFT CERTIFICATE OF
TERMINATES AT THE FUTURE TS-9) ENVIRONMENTAL COMPATIBILITY
SUBSTATION, LOCATED IN SECTION 33,)
TOWNSHIP 6 NORTH, RANGE 1 EAST, IN)
MARICOPA COUNTY, ARIZONA)

I.

INTRODUCTION

Pursuant to Numbered Paragraph 1 of the Procedural Order issued on December 16, 2008 in the above-captioned and above-docketed proceeding, Diamond Ventures, Inc., ("Diamond Ventures") hereby submits certain suggested revisions to the draft form of Certificate of Environmental Compatibility ("CEC") which was prepared by Arizona Public Service Company ("APS") and filed with the Arizona Corporation Commission's ("ACC") Docket Control on December 16, 2008 in the aforementioned proceeding. The revisions proposed by Diamond Ventures are depicted with red-lining (or underscoring) and strike-

1 throughs in Section III below. The reasoning in support of the proposed revisions is discussed
2 in Section II below, and includes citations to the transcript of the December 2, 2008
3 deliberations of the Arizona Power Plant and Transmission Line Siting Committee (“Siting
4 Committee”) as appropriate.

5 **II.**
6 **DISCUSSION**

7 A. Background Review of Pertinent Siting Committee Deliberations.

8 During the course of their December 2, 2008 deliberations, the members of the Siting
9 Committee had occasion to consider and ultimately vote upon the following request from
10 counsel for Quintero Community Association and Quintero Golf & Country Club, LLC
11 (collectively “Quintero”):

12 “MR. KAFFER: So I would ask Member Noland if she would
13 be opposed to a line with regard to SR 74 that traces the
14 commercial portion of that property on Saddleback Heights, and
15 essentially traces the outline of that property, but prior to it
going north, in order to afford some sort of screening
opportunity.” [Tr. 3451, L. 3-8] [Emphasis added]

16 * * *

17 “MR. KAFFER: I had asked at least for some discussion. . . if
18 Route 3-North is considered, also a consideration of taking that
19 route around the commercial property with regard to
Saddleback Heights so as to avoid at least the entryway with
20 regard to Quintero.” [Tr. 3463, L. 8-13] [Emphasis added]

21 * * *

22 “MR. KAFFER: So what would happen is that it [i.e. the
23 transmission line] would come down, trace the outside of this [i.
24 e. Saddleback Heights] commercial property, and then cross
there.” [Tr. 3468, L. 7-9] [Emphasis added]

25 The vote ultimately taken by the Siting Committee on Quintero’s request came in the
26 form of a motion by Committee Member Haenichen to further amend the Alternate Route 3
North corridor description then under consideration,¹ which was seconded by Committee

27 _____
28 ¹ The original Alternative Route 3 North corridor proposed by Diamond Ventures had previously been amended
to incorporate a 500’ foot widening in one portion, which had been requested by counsel for DLGC II, LLC and

1 Member Wong.^{2 and 3} As articulated by Chairman Foreman, Committee Member Haenichen's
2 motion provided that

3 " . . .the amendment would be to run the line south of SR74 until
4 you are. . .and go around the south side of the [Diamond
5 Ventures] commercial property, and then cross 74 to the north
6 on the east end of that commercial property. . ." [Tr. 3468, L.
7 25 – Tr. 3469, L. 5] [Emphasis added]

8 In connection with the Siting Committee's consideration of the aforesaid motion of
9 Member Haenichen, and prior to its vote upon the same, it became abundantly clear that the
10 Siting Committee did not intend that its attempt to address Quintero's request would result in
11 any form of direct impact on Diamond Ventures' commercial property:

12 "CHMN. FOREMAN: All right. Mr. Acken, how much land
13 outside of the Saddleback Heights commercial property is
14 there? In other words, how narrow a corridor is there in the
15 noticed corridor outside of the Saddleback Heights property?

16 MR. ACKEN: We're going to be working with ballpark
17 numbers and best estimates because we are running on the fly.
18 We checked and it appears that the western boundary of that
19 commercial parcel is 1,350 feet, and that's if you measure it
20 along its longest axis. So that only leaves us about 150 feet
21 additional within our noticed corridor.

22 I will say that where that 1,350 is measured is slightly
23 different than the angle at which the 1,500 feet is measured, so
24 we're somewhere in that 150-foot, 175-foot range, which is,
25 obviously, if you were to keep it completely off of the Diamond
26 Ventures parcel, it would be a very small corridor.

27 CHMN. FOREMAN: Okay. Let me then turn back to
28 Diamond Ventures. Would Diamond Ventures object to
placement of the pole outside Diamond Ventures' property, but
perhaps having a portion of the crossarm of the pole hanging
over the commercial property?

MR. ROBERTSON: I believe the answer to your
question, Mr. Chairman, is yes, for the reasons that Mr.
Abrahams testified to during his testimony in this proceeding.
[Tr. 3472, L. 24 – Tr. 3473, L. 25] [Emphasis added]

* * *

Lake Pleasant Group, LLP (collectively "DLGC"). [Tr. 3456, L. 24 – Tr. 3457, L. 7 and Tr. 3474 L. 17 – Tr. 3475, L. 15]

² Tr. 3469, L. 4-5.

³ Tr. 3474, L. 9-12 and Tr. 3474, L. 17 – Tr. 3475, L. 15]

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“CHMN. FOREMAN: . . .it sounds like there’s at least the possibility that you might be able to squeeze it [i.e. the transmission line] through a narrow corridor [south of Diamond Ventures’ commercial property] in the noticed corridor.” [Tr. 3479, L. 6-8] [Emphasis added]

* * *

“CHMN. FOREMAN: . . .it seems to me that you have to give credit according to the statute to the private and public plans with regard to the use of the land in question.” [Tr. 3479, L. 19-22] [Emphasis added]

* * *

“[CHMN. FOREMAN:] That’s the reason that I support the Alternate 3-North as modified. It’s an attempt to avoid directly impacting or to minimize direct impact upon land development plans that have been made not only by private individuals, but by local governments, cities, and that is something that is statutorily enumerated in the statute that we have to look to.” [Tr. 3480, L. 3-9] [Emphasis added]

* * *

“MEMBER WONG: Yes, thank you.
Just a comment on my support of Alternate 3-North that’s now on the table, the motion right now, as amended.

CHMN. FOREMAN: Yes.

MEMBER WONG: I think this 500kV line, these transmission lines that we’re talking about here trying to site is not that different from siting a highway in that it has a major impact on the land.

I think it’s incumbent upon the government, which, as you say here, this Committee is part of the state government, is to find a way that would be least intrusive to private land, especially to private land that had relied on certain representations when interests were acquired.” [Tr. 3480, L. 24 – Tr. 3481, L. 12] [Emphasis added]

* * *

“CHMN. FOREMAN: Now, the corridor [moving from east to west] is on the south part of State Route 74 until it goes back to the north part, and stays on the north part until we get to the area where the commercial land on – it’s the Saddleback Heights slide 7L is located. At that point the corridor goes back south across State Route 74, so that the line will not directly

1 impact Saddleback Heights land, and continues [westward] in
2 the corridor 1,500 -- up to 1,500 feet south of State Route 74 in
3 a fashion that will not directly impact, that is to say will not go
4 over the platted land of Saddleback Heights, and continue along
5 on the southern portion south of State Route 74 to Milepost
6 25.7, which is the beginning or the end of Alternative 3-North.

7 Now, does that comport with the understanding of
8 everybody on the Committee?

9 All right. I'm going to take that silence as affirmation."
10 [Tr. 3486, L. 14 – Tr. 3487, L. 5]

11 * * *

12 "MR. ROBERTSON: When you said the line continues west
13 once it is moved south of the Diamond Ventures commercial
14 property, was it your intent and that of the Committee for that
15 line to continue west to 179th Avenue?

16 CHMN. FOREMAN: Yes.

17 MR. ROBERTSON: Thank you. That's the clarification
18 that we are seeking." [Tr. 3487, L. 16-22] [Emphasis added]

19 B. Conclusions Which May Be Derived From Background Review.

20 There are several conclusions which may be derived from the preceding background
21 review of the Siting Committee's deliberations with reference to the Alternative Route 3
22 North corridor as ultimately adopted. In turn, each of these has a direct bearing upon the
23 proposed revisions to the draft CEC discussed in Section III below.

24 First, the transmission line to be sited and constructed within that corridor should not
25 be located upon or pass over any portion of the Saddleback Heights acreage which has been
26 planned and approved for residential development by the City of Peoria. At no time during
27 the Siting Committee's deliberations with reference to Member Haenichen's motion was it
28 contemplated that the residential acreage of Saddleback Heights would be directly or
indirectly impacted by the corridor modification which was being considered to address
Quintero's concern.

Second, and similarly, the aforesaid transmission line should not be located upon or
pass over any portion of the Saddleback Heights acreage which has been planned and
approved for commercial development by the City of Peoria, other than

1 “. . .perhaps having a portion of the crossarm of the pole
2 hanging over . . .” [Tr. 3473, L. 20-21] [Emphasis added]

3 a portion of the commercial property; and, such “hanging over” would be necessary, if at all,
4 only in the 150' - 175' “narrow corridor” area which exists between the southwest corner of
5 the Saddleback Heights’ commercial acreage and the southern boundary of the Alternative
6 Route 3 North corridor adopted by the Siting Committee. In that regard, as both Exhibit DV-
7 13, Slide 7L and Exhibit DV-13, Slide 38L indicate, the 150' - 175' “narrow corridor” exists
8 for only a short linear distance; and, it is entirely conceivable that that area could be easily
9 spanned without the need for any overhanging crossarm on the Saddleback Heights
10 commercial acreage.

11 Third, the Siting Committee’s deliberations do not support the location of the 1000
12 foot-wide corridor which APS has proposed in the draft CEC, where the transmission line
13 would cross SR 74 at that point south of SR 74 where the northwest corner of Saddleback
14 Heights residential acreage (Village “A”) and the eastern point of Saddleback Heights’
15 commercial acreage (Village “E”) intersect. As indicated by both Exhibit DV-13, Slide 7L
16 and Exhibit DV-13, Slide 38L, this point of intersection is quite narrow, and can and should
17 be spanned, given the setback requirements of the Arizona Department of Transportation.
18 APS’ proposed location for a 1,000 foot-wide corridor in this area would have the legal effect
19 of imposing a CEC encroachment or overlay on both the western 500 feet of a portion of
20 Saddleback Heights’ residential Village “A,” and the eastern 500 feet of Saddleback Heights
21 commercial Village “E,” absent the “provided, however” CEC language Diamond Ventures is
22 proposing in Section III below. Diamond Ventures’ submits that such a result would be
23 directly contrary to that which the Siting Committee intended. In that regard, and with the
24 objective of mitigating the potential for any indirect impact of the transmission line on
25 Saddleback Heights residential Village “A” acreage, Diamond Ventures suggests that APS’
26 needs for crossing SR 74 in this area could be addressed with CEC language adopting a 1,000
27 foot-wide corridor measured westward from the centerline of the 163rd Avenue alignment,
28

1 subject to an express proviso that none of the transmission line's facilities shall be constructed
2 upon or overhang Saddleback Heights commercial acreage.

3
4 **III.**

5 **SUGGESTED REVISIONS TO DRAFT CEC**

6 For the reasons discussed in Section II(A) and (B) above, Diamond Ventures proposes
7 the following revisions to page 5, line 24 through page 6, line 5 of the draft CEC prepared and
8 filed by APS with the ACC's Docket Control on December 16, 2008.

- 9
- 10 • A 1,500 foot-wide corridor, on the south side of SR 74, that
11 extends east along SR 74 for approximately 2.1 miles from the
12 179th Avenue alignment to the 163rd Avenue alignment;
13 provided, however, that no portion of the transmission facilities
14 to be constructed in this corridor shall be constructed upon or
15 overhang the commercial acreage of Saddleback Heights, as
16 depicted in Exhibit DV-13, Slide 7L and Exhibit DV-13, Slide
17 38L. The corridor width includes 1,500 feet south of the
18 existing SR 74 centerline.
 - 19 • A 1,000 foot-wide corridor, ~~entered on~~measured westward
20 from the centerline of the 163rd Avenue alignment, which
21 crosses SR 74 from south to north and connects that portion of
22 the corridor south of SR 74 with that portion of the corridor
23 north of SR 74; provided, however, that no portion of the
24 transmission facilities to be constructed in this corridor shall be
25 constructed upon or overhang the commercial acreage of
26 Saddleback Heights, as depicted in Exhibit DV-13, Slide 7L
27 and Exhibit DV-13, Slide 38L.

28 **IV.**

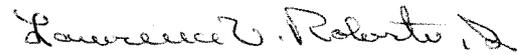
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CONCLUSION

For the reasons discussed in Section II(A) and II(B) above, Diamond Ventures believes that the proposed revisions to the December 16, 2008 draft CEC set forth in Section III above should be adopted by the Chairman of the Siting Committee upon behalf of the Siting Committee as a part of the CEC to be filed with the ACC pursuant to A.R.S. § 40-360 et seq.

Dated this 23rd day of December 2008.

Respectfully submitted,



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John Foreman, Chairman
Arizona Power Plant and
Transmission Line Siting Committee
1275 West Washington
on December 24, 2008,

1 and emailed or mailed that same date to:

2 Charles Hains
3 Janice Alward, Chief Counsel
4 Legal Division
5 Arizona Corporation Commission
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7 Phoenix, Arizona 85007
8 Counsel for Legal Division Staff

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18 *LURZ.*

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