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1 Mark A. Nadeau (Arizona Bar No. 011280)
 2 mark.nadeau@dlapiper.com
 3 Shane D. Gosdis (Arizona Bar No. 022471)
 4 shane.gosdis@dlapiper.com
 5 DLA PIPER LLP (US)
 6 2415 EAST CAMELBACK, SUITE 700
 7 Phoenix, Arizona 85016
 8 Telephone: (480) 606-5100
 9 Facsimile: (480) 606-5101
 10 Attorneys for 10,000 West, L.L.C.

Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

11 IN THE MATTER OF THE APPLICATION) Case No. 138
 12 OF ARIZONA PUBLIC SERVICE)
 13 COMPANY, IN CONFORMANCE WITH) Docket No. L-00000D-08-0330-00138
 14 THE REQUIREMENTS OF ARIZONA)
 15 REVISED STATUTES §§ 40-360, *et seq.*,) **10,000 WEST L.L.C.'S BRIEF**
 16 FOR A CERTIFICATE OF)
 17 ENVIRONMENTAL COMPATIBILITY)
 18 AUTHORIZING THE TS-5 TO TS-9 500/230)
 19 kV TRANSMISSION LINE PROJECT,)
 20 WHICH ORIGINATES AT THE FUTURE)
 21 TS-5 SUBSTATION, LOCATED IN THE)
 22 WEST HALF OF SECTION 29, TOWNSHIP)
 23 4 NORTH, RANGE 4 WEST AND)
 24 TERMINATES AT THE FUTURE TS-9)
 25 SUBSTATION, LOCATED IN SECTION 33,)
 26 TOWNSHIP 6 NORTH, RANGE 1 EAST, IN)
 27 MARICOPA COUNTY, ARIZONA.)
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 ARIZONA CORPORATION COMMISSION
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24 Pursuant to the Procedural Order dated January 22, 2009, intervener 10,000 West,
 25 L.L.C. hereby submits its brief for use by the Arizona Corporation Commission
 26 ("Commission") in reviewing the Certificate of Environmental Compatibility issued by the
 27 Arizona Power Plant and Transmission Line Siting Committee on December 28, 2008. 10,000

1 West requests that the Commission overturn the Committee's purported Certificate of
2 Environmental Compatibility as arbitrary and capricious and as made in violation of relevant
3 Open Meeting laws and that it refuse to authorize construction of the TS-5 to TS-9 500/230 kV
4 Project ("Project").¹

6 **I. INTRODUCTION.**

7 This is a case in which the Committee has approved an electrical transmission line
8 project *in spite* of uncontroverted evidence conclusively establishing that the project is not
9 needed. There is no valid electrical engineering rationale for the Project. As set forth in greater
10 detail below, and contrary to the Applicant's conclusory claims, the uncontroverted evidence
11 shows that the 500 kV portion of the Project is not necessary to increase reliability within the
12 500 kV system; that 500 kV portion of the Project is not necessary to increase import capability
13 into the Phoenix metropolitan area; that the 500 kV portion of the Project is not necessary to
14 increase export capability out of the Palo Verde Hub; that the 500 kV portion of the Project is
15 not necessary to complete a "loop" around the Phoenix metropolitan area; and that the 230 kV
16 portion of the Project is not necessary to serve any discernible future load growth in the region.
17 Indeed, these facts went unchallenged by the Arizona Public Service Corporation ("Applicant")
18 during its cross-examination of 10,000 West's electrical engineering expert, Dr. Hyde Merrill,
19 and during its subsequent rebuttal case.

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25 ¹ 10,000 West was the owner of a 10,000 acre parcel of land in Buckeye, Arizona along the Sun Valley Parkway.
26 The entire parcel is being developed into a mixed-use development known as Festival Ranch, and while 10,000
27 West sold 3,000 acres to Pulte Homes, it retains 7,000 acres subject to the Master Plan. The Festival Ranch
28 Community Master Plan has been approved by the Town of Buckeye, providing for 40,000 residents and over 7
million square feet of entitled commercial space. On July 21, 2008, 10,000 West became a party to the
proceeding by filing its Notice of Intervention.

1 Not only did it fail to establish any valid evidence regarding need, the Applicant made
2 wildly erratic changes to the Project during the course of the hearings that further call into
3 question the rationale for the Project. For instance, the Applicant added a 230 kV line to the
4 Project during the middle of the public comment process, seemingly on a whim. *See* Exhibit B-
5 2 to Application, Newsletter #3, dated November 2007. The Applicant's decision to add the
6 230 kV line is confounding given its repeated admissions that there is no need for the 230 kV
7 transmission line now or in the foreseeable future. *See e.g.*, Docket No. L-00000D-08-0330-
8 00138, Transcript of Hearing "(Transcript)" Transcript at 1063:16-24; 1065:107. Equally
9 confounding is the Applicant's recent admission that it does not intend to build the Project until
10 2014 or 2016, even though it had asserted in its Application (filed only three months earlier)
11 that the Project would be built by 2012. *See id.* at 1029-18-1030:7. The Applicant also
12 recently admitted that it has cut its funding for the Project by approximately eighty-five to
13 ninety percent (85% to 90%) over the next several years. *See id.* at 1120:2-10. These
14 revelations came after the Applicant abruptly and significantly increased the entire scope and
15 cost of the Project only a few months earlier by adding a 230 kV line. In short, the Applicant
16 seeks approval for a Project that is not needed and for which it no longer has money to build.²
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22 Many of the Committee Members voiced concerns regarding these facts during the
23 hearings. Indeed, Committee Member Haenichin specifically asked the Applicant to address
24 these glaring deficiencies in its rebuttal case.
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28 ² These facts are especially disconcerting given that the ultimate costs for this Project will be passed on to the consumer.

1 Committee Member Haenchin: "I think we need a solid rebuttal by
2 the company, by the Applicant, to the assertion that the lines are not
3 needed at all. One of the witnesses quite some time ago, a couple
4 weeks ago, said, well, they are just not needed at all. So I think we
need to address that solidly so we have a better understanding of the
need."

5 *See* Docket No. L-00000D-08-0330-00138, Transcript of Hearing ("Transcript") at 2622:19-25.

6 The Applicant quite literally ignored Committee Member Haenchin's request, brazenly
7 refusing to even address the question of need in its rebuttal case. *See id.* at 3027:14-17
8 (acknowledging that the Applicant "was not putting on any rebuttal case regarding the need for
9 this power source").
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11 These deficiencies are further magnified by the Corporation Commission Staff's failure
12 to thoroughly review the Project. The Corporation Commission Staff suggested to the
13 Committee that it had conducted an independent review of the Project and that it had made an
14 independent determination that the Project was in fact needed. *See id.* at 1145:3-6 (Mr. Ray T.
15 Williamson testifying on behalf of the Corporation Commission that his conclusions regarding
16 need for the Project and that "are *my conclusions* as the representative of Staff." (emphasis
17 added). Only on cross-examination did the Corporation Commission Staff admit that it had
18 done almost nothing to independently review the Project. *See id.* at 1160:9-15 (acknowledging
19 that the Corporation Commission staff did "no independent evaluation or research whatsoever
20 regarding" the Project.). It did not do any independent research regarding the Applicant's
21 purported load studies, population projections, or any other independent evaluation of the need
22 for this Project. In fact, the entirety of the Corporation Commission Staff's analysis of the
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1 Project consisted of reading the Application (which is virtually silent on the issue of need) and
2 reading the Applicant's purported three page "Extreme Contingency Report." *See id.*

3 Not only did it turn a blind eye to the Applicant's failure to establish need, and the
4 Corporation Commission Staff's failure to thoroughly review the Application, the Committee
5 repeatedly violated Arizona's open meeting law requirements and the Committee's own *Ex*
6 *Parte* rule. As set forth in greater detail below, the Committee violated Arizona's open meeting
7 laws and the *Ex Parte* rule by conducting tour of the Project during which the Committee
8 considered the Project while sequestered from the public. In addition to violating Arizona's
9 open meeting laws and the *Ex Parte* rule by conducting its tour of the Project, the Committee
10 repeatedly violated Arizona's open meeting laws and the *Ex Parte* rule by sending and
11 receiving *ex parte* e-mails from the Applicant and various interveners. A number of those e-
12 mails plainly addressed substantive matters regarding the Project.
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16 As a result of the Applicant's failure to establish a genuine need for the Project, along
17 with its material violations of Arizona's open meeting laws and the *Ex Parte* rule, the
18 Commission should overturn the Committee's purported Certificate of Environmental
19 Compatibility as arbitrary and capricious and refuse to authorize construction of the Project.
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22 **II. RELEVANT PROCEDURAL BACKGROUND.**

23 On July 1, 2008, the Applicant filed its Application for a Certificate of Environmental
24 Compatibility for the Project. *See* TS-5 to TS-9 500/230 kV Transmission Line Project,
25 Application for a Certificate of Environmental Compatibility, dated July 1, 2008, relevant
26 portions of which are attached hereto as Exhibit A ("Application"). The Project seeks to
27 connect two extra high voltage transmission lines (a 500 kV and a 230 kV line) from the
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1 Applicant's planned TS-5 Substation in Buckeye, Arizona to its planned TS-9 Substation in
2 Peoria, Arizona. The Application is virtually silent as to the purported necessity of the Project.
3 Indeed, the 700 page Application only mentions the purported need for the Project two times
4 (one minor paragraph in the Introduction and one similar paragraph within the body of the
5 Application) and even then in the most general of ways. *See id.* at IN-1 and at 3. The
6 Application offers no evidence supporting the Applicant's conclusory assertions of need. It
7 contains no mention of current or future population statistics for any of the cities or towns
8 within the Project Study Area and likewise fails to provide any information regarding the
9 current or future load projections associated with any of the towns or cities within the Study
10 Area. *See id.*

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14 On August 18, 2008, hearings began before the Committee on the Application and
15 continued intermittently through December 3, 2008. During the hearings, the Committee heard
16 evidence from three principal witnesses regarding the need for the Project, namely John Lucas
17 ("Mr. Lucas"), the Applicant's Project Engineer; Ray Williamson ("Mr. Williamson"), the
18 Corporation Commission's electrical engineering expert; and Dr. Hyde Merrill ("Dr. Merrill"),
19 10,000 West's electrical engineering expert.³

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24 ³ Dr. Merrill received his Doctorate in electrical engineering from MIT. He has been an independent consulting
25 engineer since 1998, testifying before the Michigan Public Service Commission, the Virginia State Corporation
26 Commission, and the Federal Energy Regulatory Commission (FERC); advising government agencies, including
27 the World Bank, the Inter-American Development Bank, the US Congress Office of Technology Assessment, the
28 New York State Energy R&D Authority, and the Public Utilities Commission of New York, Quebec, Panama,
Venezuela, Tasmania, and Peru; and advising utilities, research and development organizations, and others on
power system planning and operation. He has worked in nearly 40 countries. Transcript at 1570:1-25.

1 On December 29, 2008, the Committee granted the Applicant a Certificate of
2 Environmental Compatibility (“CEC”) for the Project. See Certificate of Environmental
3 Compatibility, dated December 29, 2008, attached hereto as Exhibit B. As part of the CEC, the
4 Line Siting Committee specifically found that the Project “is in the public interest because it
5 aids the state in meeting the need for an adequate, economical and reliable supply of electric
6 power.” See *id.* at 12:25-26. As set forth in greater detail below, the Committee granted the
7 CEC in spite of evidence conclusively establishing that: (1) there is no need for the Project;
8 and (2) in spite of material violations of Arizona’s open meeting laws and the *Ex Parte* rule.
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11 **III. THE UNCONTROVERTED EVIDENCE ESTABLISHES THAT THERE IS NO**
12 **NEED FOR THE PROJECT.**

13 **A. RELIABILITY.**

14 The Application states that the Project is necessary to “provide additional support and
15 reliability for the entire electrical system.” Application at 3. At the hearings, the Applicant
16 placed a heavy emphasis on its reliability claim, primarily arguing that increased reliability in
17 the 500 kV system is necessary to protect against “extreme contingencies.” Transcript at
18 976:3-4. In an attempt to strengthen its conclusory reliability claims, the Applicant belatedly
19 produced a three page “Extreme Contingency Report,” which purported to establish that the
20 Project is indeed necessary to protect against extreme contingencies. See 10,000 West’s
21 Exhibits 10-W27, Extreme Contingency Report, dated October 14, 2008, at 3. The Extreme
22 Contingency Report was authored *after* the Applicant filed its Application. Thus, at the time
23 the Applicant filed its Application, no report existed establishing a need to guard against
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1 extreme contingencies. *See id.* The Applicant compiled the Extreme Contingency Report
2 after-the-fact to establish its reliability claim.⁴

3 Not only was it an after-the-fact attempt to justify the Project, the Extreme Contingency
4 Report in no way establishes an actual need for the Project. The Extreme Contingency Report
5 claims that the Project is necessary if any one of fifteen hypothetical contingencies were to
6 occur involving the simultaneous loss of three completely separate extra high voltage lines
7 anywhere within the Phoenix metropolitan area. *See id.* This is known as an N-2-1
8 contingency. Planning to guard against N-2-1 extreme contingencies is unheard of among
9 electric utility companies. *See* Transcript at 1593:25-594:5 (Dr. Merrill testifying
10 “categorically, I have never heard of anybody using an N-2 or N-2-1 to justify transmission
11 lines”). The Applicant did not present any evidence of any other transmission lines in Arizona
12 ever being built to satisfy the N-2-1 criteria or evidence that any other transmission line has
13 ever been built anywhere in the United States to guard against N-2-1 contingencies for that
14 matter. Indeed, the Corporation Commission has already addressed this very issue. The
15 Corporation Commission’s 2006-2016 Biennial Report provides that:
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20 The extreme contingencies (Category D) require that transmission
21 systems be evaluated for the risks and consequences, **but not for**
22 **planning reinforcements.**

23 *See* 10,000 West Exhibit 10-W3, Fourth Biennial Transmission Assessment for 2006-2015,
24 January 30, 2007 at 32 (emphasis added); *see also* Transcript at 1048:3-5 (Mr. Lucas
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26 ⁴ It is worth noting that the Applicant produced two different Extreme Contingency Reports. The first
27 report was produced on July 18, 2008. Four months later, on October 14, 2008, and during the
28 Committee hearings, the Applicant produced a significantly revised Extreme Contingency Report to
correct purported deficiencies in the original report. *See* 10,000 West’s Exhibits 10-W27 through 10-
W30.

1 confirming that “no, we are not required to build to” the N-2-1 standard). Thus, the
2 Corporation Commission has already deemed N-2-1 contingencies to be so remote and unlikely
3 that additional transmission lines are not to be built to protect against their occurrence.
4

5 In Arizona, the single contingency standard (or N-1 standard) governs transmission line
6 projects. See Transcript at 1047:17-1048:21; see also 10-W3 at 32. The N-1 standard only
7 requires the construction of transmission lines to protect against the loss of a single extra high
8 voltage transmission line. See Transcript at 1578:8-17. Dr. Merrill testified that the Project is
9 not needed to satisfy the N-1 standard.
10

11 Q: Dr. Merrill, is the TS-5 to TS-9 Project needed under a single
12 contingency standard?

13 A: . . . Mr. Lucas confirmed quite specifically that neither the
14 500 kV nor the 230 kV line is needed to meet the N-1 criteria, which
15 again is the governing criteria and the criteria which is basically used
16 by every utility in the United States with occasional minor tweaking,
17 but those tweakings are quite minor.

18 *Id.* at 1579:1-12.

19 The Applicant’s own expert witness, John Lucas, agreed:

20 Q: Okay. So all of your testimony this morning about extreme
21 contingencies and all the stuff we have heard from Mr. DeWitt on
22 that point has no bearing in terms of the NERC criteria, the WECC
23 criteria, and is solely aspirational on APS’s part?

24 A: I would say that those standards of WECC and NERC do not
25 require that line to be put in. I would say that, as in my testimony,
26 that that line is needed to avoid to have such an extreme outage to
27 our customers though.

28 Q: But as a matter of necessity in terms of what APS is supposed
to build lines for, this does not fall within those parameters?

A: **Not to a NERC or WECC criteria it doesn’t, no.**

Id. at 1048:22-1049:10 (emphasis added).

1 The Applicant's claim that the Project is somehow needed to increase reliability flies in
2 the face of the N-1 standard, which has already been adopted by the Corporation Commission
3 and is the accepted standard before regulatory bodies throughout the country. The Applicant's
4 attempt to build the Project to conform with an unsubstantiated standard of its own making is
5 without basis.
6

7 **B. THE LOOP.**
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9 The Application also states that the Project is necessary to "complete a continuous 500
10 kV source from the Palo Verde Hub to the northeast valley (Pinnacle Peak Substation)."
11 Application at 3. Like its reliability claim, the Applicant's claim that the Project is needed to
12 complete a "loop" around the Phoenix metropolitan area is a fiction. The northwest portion of
13 the purported loop (where the Project is proposed to be built) will be complete with or without
14 the Project transmission line. The Project would merely add a *third line* to a section of the loop
15 that already has two lines.
16

17
18 Q. Dr. Merrill, do you agree with APS's assessment that the TS-
19 5 to TS-9 Project is necessary to complete what has been referred to
20 as a loop around the Phoenix metro area?

21 * * *

22 A. My observation is that as far as the loop around Phoenix is
23 concerned, one of the pieces that does exist is the piece on the
24 northwest. Right here you have got a piece of the loop around
25 Phoenix [pointing to the area of the TS-5 to TS-9 line]. When this
26 line is built, and whatever is done down here happens, that loop will
27 be as complete as it will be even if the TS-5 to TS-9 is built. That
28 TS-5 to TS-9 line does not complete the loop. The loop will be as
complete without the line as it will be with the line.

**In fact, what this loop does is this loop adds a third line to –
sorry. This line adds a third line to a side of the loop that
already has two lines.**

1 claim, there is no need to increase import capability into the Phoenix metropolitan area.
2 Dr. Merrill testified that the Project would result in an increase in import capability that is
3 disproportionately high compared to the projected increase in load through 2012. **Dr. Merrill**
4 **testified that even if the Project were never built, the Phoenix metropolitan system would**
5 **still have a surplus of 900 megawatts in import capability in 2012:**

7
8 Q: Dr. Merrill, one of APS's claims in this matter is that the TS-5 to TS-9
9 project is necessary to increase import capability into Phoenix?

10 * * *

11 A: In other words, with the TS-5 to TS-9 project, the import capability
12 increased 1,500 megawatts more than load would increase, making the margin
13 significantly greater than the margin in 2006 was judged to be adequate in the
14 Biennial Report.

15 * * *

16 Although it is just an estimate, that the contribution of the TS-5 to TS-9 line of
17 600 megawatts, if you take those 600 megawatts only then the change in import
18 capability between 2006 and 2016 would be 4,400 megawatts, compared to a
19 change in load of 3,500 megawatts

20 * * *

21 *Id.* at 1579:13-16, 1580:11-15, 18-23. The Applicant did not cross-examine Dr. Merrill
22 regarding this conclusion regarding import capability and never offered any evidence or
23 rebuttal testimony to the contrary. *See id.* at 1626:9-1627:12.

24 Mr. Lucas admitted that there is no real need to increase import capability:

25 Q: So I am obviously not an engineer, and trying to understand
26 kind of what this is saying, but from a layman's perspective it says
27 that the import capability into metro Phoenix is going to increase to
28 5,000 megawatts while at the same time the electric, the demand is
only going to increase to 3500 megawatts, is that right?

A: Yes.

* * *

Q: But in terms of a need, it is obvious it is being overbuilt to the
tune of 1500 extra megawatts, right?

1 A: You know, again, I would disagree with you on the issue of
2 overbuild.

3 Q: I am --

4 A: I see your point.

5 *Id.* at 1069:18-1071:5.

6 **D. EXPORT CAPABILITY FROM THE PALO VERDE HUB**

7 The Application also claims that the Project is necessary to “increase export capability
8 from the Palo Verde Hub.” Application at 3. Like each of its other claims, the Applicant’s
9 claim that the Project is needed to increase export capability is without any basis. Dr. Merrill
10 testified that transmission capability from the Palo Verde Hub is already more than adequate:
11

12 Q: Dr. Merrill, APS also claims that the TS-5 to TS-9 Project is
13 necessary to increase export capability out of the Palo Verde Hub.
14 What are your conclusions in that regard?

15 A: In other words, in 2006, the transmission capability, export
16 capability was, oh, about 600 – 500 or 600 megawatts greater than
17 the total generation, about a 40 percent margin. That’s a lot.

18 * * *

19 So my conclusion, then, is that the transfer capability,
20 ignoring the issue of who owns what, but just physically what you
21 have got in the air in terms of aluminum verses what is going to be
22 producing electricity at the Hub, the conclusion is that the aluminum
23 in the air, the transmission capability coming out of the Hub is more
24 than adequate. **Without this new line, the transmission capability
25 is more than adequate to take all of the power out of that plant.**

26 *Id.* at 1583:2-1584:24. Once again, the Applicant did not cross-examine Dr. Merrill regarding
27 this testimony and never offered any evidence or rebuttal testimony regarding export capability
28 out of the Palo Verde Hub. *See id.* at 1626:9-1627:12.

Mr. Lucas even admitted under oath that there is no real need to increase export
capability out of Palo Verde:

1 Q: So the capacity going out of the east, the 9700 number, will
2 always be sufficient to handle whatever the Palo Verde system can
3 generate?

4 A: Except we don't have rights to all those.

5 Q: APS doesn't have rights?

6 A: Yes.

7 Q: But there is capacity in the system to export that electricity,
8 right?

9 A: Yes.

10 *Id.* at 1081:10-1082:1.

11 **E. LOCAL LOAD GROWTH.**

12 Finally, the Application claims that the Project is necessary "to serve future load growth
13 that will emerge in the largely undeveloped areas in portions of the Town of Buckeye, City of
14 Surprise, City of Peoria, and unincorporated Maricopa County." Application at 3.
15 Dr. Merrill testified that there is no evidence that the Project is necessary to meet current or
16 future load growth in those areas:

17 Q: Dr. Merrill, let's talk for a moment about local area -- local
18 load growth. As you know and you have heard, APS claims that
19 there's a necessity for the 230 kilovolt portion of this project to serve
20 future local load growth. What are your conclusions in that regard?

21 * * *

22 A: Okay, you asked about local load growth. **There's**
23 **absolutely no substantiation as to how much load will be needed,**
24 **how much load growth will occur, and when it will occur in the**
25 **area associated with the 230kV line.**

26 Transcript at 1586:3-1588:6 (emphasis added). Mr. Lucas admitted that the Applicant had not
27 conducted a single load study regarding the need for an additional 230 kV line in the area:
28

1 Q: So since the time that APS decided it wanted the 230 line,
2 have you ever analyzed it from an engineering perspective to see if it
3 is necessary?

4 A: No. We have done no load forecasts for the 230 line.

5 *Id.* at 1064:14-18.

6 As such, there is no evidence of an actual need for the 230 kV portion of the Project.
7 Because it has not conducted any load studies for the 230 kV line, The Applicant's conclusory
8 allegations that load growth may develop within 10-20 years is nothing more than a wild guess.
9 *See* Exhibit B-2 to Application, Newsletter #3, dated November 2007. Load growth may not
10 develop in the area for 20-30 years or possibly 30-40 years. Nobody knows because the
11 Applicant has not presented any actual evidence on the issue and has yet to even study the
12 issue. *See id.* at 1064:14-18.

13
14 In summary, Dr. Merrill testified that the Project is simply unnecessary:

15
16 Q: Mr. Merrill, can you please describe and state your overall
17 conclusions regarding the necessity of the TS-5 to TS-9 Project that
18 we're discussing here today?

19 A: ...[T]he technical need for this project on an engineering
20 basis has not been established. It's not supported in accordance with
21 reliability standards. It's not established that the project is needed to
22 increase the Phoenix area import capability or the export capability
23 of the Palo Verde Hub. It's not needed and it's not been established
24 that it is needed to meet local area load growth, referring here to the
25 230 kV portion of the project. And it is not justified by the extreme
26 contingency analysis that we heard about on Monday. Finally, the
27 project does not close a 500 kV loop.

28 *Id.* at 1572:15-17, 1573:19-1574:6. The Applicant never cross-examined Dr. Merrill on any of
these points and failed (and refused) to address any of these issues in its rebuttal case despite a
direct request from the Committee that it do so. *See id.* at 1626:9-1627:12. As such, the
uncontroverted evidence establishes that there is no actual need for this Project. The

1 Committee's finding that there is need for the Project flies in the face of the evidence actually
2 presented during the Committee hearings and, as a result, was arbitrary and capricious, and
3 without any valid factual or legal basis. The Commission should overturn and disregard the
4 Committee's purported Certificate of Environmental Compatibility as arbitrary and capricious
5 and refuse to authorize construction of the Project.
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7 In addition to its unsubstantiated finding of need, and as set forth below, the Committee
8 repeatedly and materially violated Arizona's open meeting laws and the Committee's own *Ex*
9 *Parte* rule.
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11 **IV. THE COMMITTEE VIOLATED RELEVANT OPEN MEETING LAWS**
12 **DURING THE HEARINGS.**

13 **A. The Committee's July 2, 2008 Notice of Hearing Violates Arizona's Open**
14 **Meeting Laws.**

15 Arizona's open meeting laws apply to public meeting of the Committee. *See* A.R.S.
16 § 38-431, *et seq.* ("Open Meeting Laws"). Section 38-341.02(G) of the Open Meeting Laws
17 requires that the Committee's meetings be noticed and posted with an agenda. *Id.* at § 38-
18 431.02(G). The agenda "shall list the specific matters to be discussed, considered or decided at
19 the meeting." *Id.* at 38-431.02(H). The "public body may discuss, consider or make decisions
20 only on matters listed on the agenda and other matters related thereto." *Id.*
21

22 On July 2, 2008, the Committee filed a Notice of Hearing ("July 2 Notice"). Among
23 other things, the July 2 Notice gave notice of a tour of the Project area and routes:
24

25 The Committee will conduct a tour of the Project area and the
26 proposed routes on August 20, 2008. The map and itinerary for the
27 tour will be available at the hearings and posted on the Project
28 website. Members of the public may follow the Committee in their
own private vehicles. ***During the tour, the Committee will not
discuss or deliberate in any manner concerning the Application.***

1 Notice of Hearing, dated July 2, 2008, attached hereto as Exhibit C. (Emphasis added). The
2 July 2 Notice further provides in relevant part that:

3 This proceeding is governed by Arizona Revised Statutes (A.R.S.)
4 §§ 40-360 to 40-360.13 and Arizona Administrative Code Rules 14-
5 3-201 to R14-3-220 and 14-3-113. *No substantive communication,*
6 *not in the public record, may be made to any member of the*
7 *Committee . .*

8 *Id.*

9 Nowhere does the July 2 Notice refer to the August 20 Tour as an open meeting being
10 held by the Committee pursuant to the Open Meeting Laws. *See id.* The July 2 Notice likewise
11 does not set forth an agenda listing the specific matters to be discussed, considered, or decided
12 on by the Committee during the August 20 Tour. *See id.* As such, the July 2 Notice violates
13 Section 38-341.02(G) and (H) of the Arizona Open Meeting Laws.

14 **B. The August 20, 2008 Tour Violated Arizona's Open Meeting Laws and the**
15 **Committee's *Ex Parte* Rule.**

16 Not only did the July 20 Notice violate the Open Meeting Laws and the *Ex Parte* rule,
17 the Tour itself violated the Open Meeting laws and the *Ex Parte* rule. On August 20, 2008, the
18 Corporation Commission Staff raised concerns regarding the integrity of the August 20 Tour.
19 In particular, the Corporation Commission Staff advised the Committee that it believed that the
20 August 20 Tour violated the Arizona Open Meeting statute:
21

22 CHMN. FOREMAN: . . . As best I can understand, the Staff
23 believes that something inappropriate may have happened on the
24 tours. And as a result, they have asked to question members of the
25 Committee in other cases.

26 Transcript at 956:11-16.

27 Instead of affirming for the record that absolutely no discussions relating to the Project
28 occurred between Members of the Committee, or between Members of the Committee and

1 anyone else, during the August 20 Tour, Chairman of the Committee, John Foreman,
2 (“Chairman Foreman”) instructed the Committee to simply disregard the August 20 Tour:

3 CHMN. FOREMAN: . . . Because there are civil and criminal,
4 potential civil and criminal liability that is associated with that, I
5 have taken the position in the previous cases that the better fix,
6 rather than subjecting the Committee Members to questioning over
7 something that no one has any factual basis for concluding occurred,
8 would be simply to instruct the Committee Members to disregard
9 anything that occurred on the Tour . . .

10 * * *

11 CHMN. FOREMAN: Correct. Thank you for your agreement.

12 And I will instruct the Committee to disregard any reference to the
13 tour, any information relating to the tour, and to make its decision
14 solely on the basis of the material that has been presented here in the
15 hearing room.

16 *Id.* at 956:17-25; 963:21-25.

17 As a result of the Chairman’s actions, the public does not know what discussions, if any,
18 occurred during the six to seven hours that the Committee toured the Project. As a result, and
19 described below, the August 20 Tour violated both Arizona’s Open Meeting laws and the
20 Committee’s *Ex Parte* rule.

21 **1. The August 20 Tour Violated Arizona’s Open Meeting Laws.**

22 Arizona’s Opening Meeting Laws require “that meetings of public bodies be conducted
23 openly. . .” and that the public body not discuss, consider, or decide any matters not set forth in
24 the above-referenced agenda. A.R.S. § 38-431.09. The Committee’s August 20 Tour violated
25 these requirements by conducting a closed meeting within the Tour van(s) used to Tour the
26 Project. The Tour lasted approximately 6-7 hours during which time the Committee Members
27 were sequestered from the public, but during which time the Committee Members *considered*
28

1 and likely *discussed* the preferred and alternative routes proposed by the Applicant for the
2 Project. By doing so, the Committee violated Arizona's Open Meeting statute. *See id.*
3 Chairman Foreman's subsequent directive to the Committee to "disregard" the Tour does not
4 cure a violation of the Opening Meeting laws. *See* Transcript at 956:17-25; 963:21-25; *see also*
5 A.R.S. § 38-431.05 (recognizing the ratification process as the only means of cure).
6

7 **2. The August 20 Tour Likely Violated the Committee's *Ex Parte* Rule.**

8 The Arizona Administrative Code prohibits Members of the Committee from any
9 communications not on public record regarding any substantive matter relating in any way to
10 the Project:
11

12 C. Prohibitions.

13 1. No person shall make or cause to be made an oral or
14 written communication, not on the public record, concerning
15 the substantive merits of siting hearing to member of the
16 Siting Committee involved in the decision-making process for
that siting hearing.

17 2. No member of the Siting Committee shall request,
18 entertain, or consider an unauthorized communication
concerning the merits of a siting hearing.

19 A.A.C. § R-14-3-220(C).

20 To the extent that any communications were made to any Member of the Committee
21 during the August 20 Tour, including, but not limited to, any communications between any two
22 Members of the Committee, the Committee violated the *Ex Parte* rule. Chairman Foreman's
23 directive to the Committee to "disregard" those communications, if any, does not cure a
24 violation of the *Ex Parte* rule. *See id.* at (D). Instead, to cure any such violations those
25 Committee Members involved were required to comply with the *Ex Parte* rule's disclosure
26 requirement by:
27
28

1 [A]dvis[ing] the communicator that the communication will not be
2 considered, a brief signed statement setting forth the substance of the
3 communication and the circumstances under which it was made, will
4 be prepared, and the statement will be filed in the public record of
5 the siting hearing.

6 A.A.C. § R-14-3-220(D)(1).

7 None of the Committee Members have filed such a disclosure statement, although it is
8 likely that they exchanged communications regarding the Project during the course of the
9 August 20 Tour. The Committee Members toured the Project for approximately six to seven
10 hours together in a van and it is unlikely that they sat silent during the entire Tour and did not
11 discuss the Project. Moreover, the Committee has acknowledged having discussions during
12 similar Tours on other recent line siting projects. *See* Arizona Corporation Commission Staff's
13 Request for Review and Notice of Filing of Concerns Related to Irregularities in Proceedings,
14 filed on October 21, 2008, in Case No. 141 (noting "off-the-record discussions" had occurred
15 "during the site tour"). Given the fact that the Committee met in a closed meeting to *consider*
16 and likely to *discuss* the Project as part of its August 20 Tour, the interveners and the public are
17 entitled to know what, if anything, the Committee Members discussed during the course of the
18 Tour. To the extent any such communications did occur, the Committee's Certificate of
19 Environmental Compatibility should be dismissed pursuant to R-14-3-220(D)(3).

20
21
22
23 **C. E-mails to and From Chairman Foreman, the Applicant, and Intervenors
24 Violate Arizona's Open Meeting Laws and the Committee's *Ex Parte* Rule.**

25 On October 24, 2008, the Corporation Commission Staff filed its Request to Supplement
26 the Record ("Request for To Supplement Record"). *See* Arizona Corporation Commission
27 Staff's Request to Supplement the Record, dated October 24, 2008, attached hereto as Exhibit

28 D. In its Request to Supplement the Record, the Corporation Commission disclosed that "e-

1 mail communication has been used extensively to expedite the processing of procedural
2 issues,” “to disseminate documents filed in conformance with the rules of procedure,” and to
3 distribute “potentially substantive e-mails . . . in which the Committee Members were included
4 as well as parties to the above-captioned matter.” *Id.* at 1:13-24. The Corporation Commission
5 Staff further noted that **“the extent and nature of the e-mail communications in this case
6 appear to be more extensive than the off-the-record communications, e-mail or otherwise,
7 employed in prior cases.”** *Id.* (Emphasis added)
8
9

10 One of the e-mails that the Corporation Commission Staff was concerned about was an
11 e-mail that was initiated by Chairman Foreman on September 11, 2008, attaching a draft of a
12 proposed CEC created by Chairman Foreman (“September 11 E-mail Chain”). *See* E-mail
13 from Chairman Foreman, dated September 11, 2008, attached hereto as Exhibit E. The stated
14 purpose of Chairman Foreman’s September 11 E-mail Chain was to solicit “suggestions about
15 how the language could be adapted for use in #138 and about how it could be improved in
16 general.” *See id.* The Chairman and the Applicant then proceeded to exchange several e-mails
17 regarding detailed and substantive modifications to Chairman Foreman’s proposed CEC. *See*
18 *id.*
19
20
21

22 During the October 27, 2008 hearings, the issue of *ex parte* e-mails was raised again.
23 This time, Commissioner Mundell acknowledged that he “remember[ed] glancing at one of [the
24 e-mails at issue] and [he] was concerned about it . . . If I recall, it talked about the length of
25 time of how long a CEC should be.” Transcript at 1652:2-5. Commissioner Mundell further
26 acknowledged that that e-mail was “a substantive discussion that should not be taking place in
27 e-mails.” *Id.* at 1652:14-15. Given the substantive nature of the e-mail, Commissioner
28

1 Mundell (citing the Open Meeting Laws and the *Ex Parte* rule), explained that “you can’t send
2 it to the Committee . . . you can’t send it to us, can’t send it to the Chairman, can’t send it to
3 me. You can’t send it to anybody, if it is nonprocedural.” *Id.* at 1654:17-20. During the course
4 of subsequent hearings on Case No. 141, Chairman Mundell confirmed once again that the e-
5 mails were in fact substantive:
6

7 COMM. MUNDELL: And so-and I even-I said it in this
8 hearing that I sat in on T – T-5 to TS-9. I mean, I – I thought it up in
9 that case, that there was – there wasn’t just procedural discussions in
10 the e-mails, **but there was matters of substance.**

11 *See* Transcript from Case No. 141, Docket No. L-00000HH-08-0422-00141, Transcript from
12 Case No. 141, dated December 5, 2008, at 175:14-18, attached hereto as Exhibit F. (Emphasis
13 added).

14 Subsequently, on October 31, 2008, Chairman Foreman issued his Procedural Order
15 Responding to Arizona Corporation Commission Staff’s Request to Supplement Record
16 (“Procedural Order Responding to Staff”). *See* Procedural Order Responding to Arizona
17 Corporation Commission Staff’s Request to Supplement Record, dated October 31, 2008,
18 attached hereto as Exhibit G. In his Procedural Order Responding to the Corporation
19 Commission Staff, Chairman Foreman attached a copy of selected provisions of the e-mail
20 exchanges regarding the CEC that had been discussed during the October 27th hearing,
21 acknowledging “[a]n exchange of e-mail has occurred amongst counsel for the parties the
22 Chairman and Presiding Officer of the Arizona Power Plant and Transmission Line Siting
23 Committee in the above captioned matter.” *Id.* at 1.
24
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1 In response, on November 24, 2008, the Corporation Commission submitted its Notice
2 of Filing E-Mails to Supplement the Record (“November 24 Filing of E-mails”). See Notice of
3 Filing E-mails to Supplement the Record, dated November 24, 2008, attached hereto as Exhibit
4 H. As part of its November 24 Filing of E-mails, the Corporation Commission identified three
5 groups of e-mails that were attached as exhibits to the November 24 Filing of E-mails,
6 including Attachment A purportedly consisting of procedural e-mails, Attachment B consisting
7 of a “selection of e-mails that appear to be substantive in nature and that illustrate how
8 procedural communications may inadvertently stray into substantive matters,” and Attachment
9 C consisting of the e-mail chain that had been filed by Chairman Foreman as part of his
10 Procedural Order Responding to Staff, but including the e-mail’s distribution list, which
11 apparently had not been included as part of the Procedural Order Responding to Staff. *Id.* at
12 2:1-12. Attachment B consists of a September 12, 2008 e-mail from Diamond Ventures
13 regarding the substantive content of certain simulations being prepared by the Applicant for
14 introduction as exhibits to the proceedings (September 12 E-mail”). *Id.* at 2:4-6 and exhibits
15 thereto.
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20 In addition to the substantive September 11 E-mail Chain and the September 12 E-mail,
21 on August 22, 2008, Chairman Foreman sent an e-mail to the intervenors and to the Applicant
22 attaching a “DRAFT spreadsheet with the positions of the parties that responded to his request
23 to state positions” and also advising that he was “considering both a global settlement process
24 and a trifurcated one split roughly along the lines of the Motion to Partition the Hearing”
25 (“August 22 E-mail Chain” or “August 22 E-mail”) See E-mail from Chairman Foreman, dated
26 August 22, 2008, attached hereto as Exhibit I.
27
28

1 On August 28, 2008, the Applicant responded to Chairman Foreman's e-mail, discussing
2 a number of obstacles to settling the case, including that any settlement was "premature until a
3 more complete record has been created." *See id.* In response to the Applicant's e-mail,
4 Chairman Foreman responded, stating, among other things, that "it appears the major issues of
5 concern deal with the locations of the corridor line, the corridor width, and visual impact of the
6 placement of the line . . . It appears the Committee will be choosing between the 'least bad'
7 option." *See id.*
8
9

10 On September 2, 2008, and in response to Chairman Foreman's implicit admission that
11 the Committee had already determined the Project was necessary (even though it had yet to
12 hear all of the evidence regarding the need for the Project) and pursuant to A.C.C. 14-3-
13 220(D)(2), 10,000 West replied to the original August 22 E-mail to remind Chairman Foreman,
14 and the other interveners, that 10,000 West did "not concede the 'need' for this power line . . .
15 we will not argue it further here, but simply wanted the record to reflect our belief the
16 Committee should continue its inquiry as to the need for such a line." *See id.*
17
18

19 In addition to these e-mails, on August 6, 2008, Diamond Ventures sent an e-mail to
20 Chairman Foreman and the interveners regarding the August 20 Tour, including Diamond
21 Ventures, L.L.C.'s suggestion:
22

23 . . . that the Route Tour include driving along SR 74 in the area
24 encompassed by Alternative Route 3. Inclusion of this portion of SR
25 74 would allow the members of the Siting Committee to personally
26 observe the topography and vegetation north of SR 74, which they
27 would then have as background in connection with their
28 consideration of the transmission route north of SR 74 which will be
proposed by the City of Peoria, Vistancia, Diamond Ventures in the
forthcoming hearings in siting Case No. 138.

1 [cite]. Similarly, on August 25, 2008, Diamond Ventures, L.L.C.
2 sent an e-mail regarding the “need” for the Project and the proposed
in-service date of the Project.

3 See E-mail from Larry Robertson, dated August 6, 2008, attached hereto as Exhibit J.

4 Each of the above-referenced e-mails and e-mail chains plainly address substantive
5 matters regarding the Projects in violation of Arizona’s Open Meeting laws and the *Ex Parte*
6 rule. See A.A.C. § R-14-3-220(C); *Id.* at 38-431.02; see also Transcript from Case No. 141,
7 Docket No. L-00000HH-08-0422-00141, Transcript from Case No. 141, dated December 5,
8 2008, at 17:17-20, attached hereto as Exhibit F (Corporation Commission testifying that “[s]o
9 to think that e-mail could conduct or transact business appropriate to the committee, no it can’t”
10 pursuant to the Open Meeting Laws); 58:12-18 (also attached as Exhibit F) (Commissioner
11 Mundell testifying that “when you start involving the – the committee members, then that’s
12 where the violation, in my opinion, occurs . . . I think it’s going to be fascinating to hear the
13 legal arguments that it’s not a violation”); 125:10-13 (also attached as Exhibit F)
14 (Commissioner Mayes testifying that “from my standpoint, this is going to have to stop, the e-
15 mailing stops, the secret condition writing stops, and the lack of transparency stops, or I don’t
16 vote for any more CEC’s coming out of this Committee”).

17 The fact that the e-mails themselves were filed as part of the record of the Committee
18 hearings in no way cures the Committee’s violations of Arizona’s Open Meeting Laws. The
19 Open Meeting Laws do not recognize subsequent disclosure as a means of cure. See 38-431.05
20 (recognizing a process for ratifying actions taken in violation of the Open Meeting laws as the
21 only means of cure). The subsequent disclosure of the e-mails likewise does not cure violations
22 under the *Ex Parte* rule because Chairman Foreman failed to disclose a number of the e-mails,
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1 failed to advise the authors of those e-mails that the e-mails would not be considered and failed
2 to file a Disclosure Statement regarding any of the e-mails (other than the September 11 E-mail
3 Chain) pursuant to the *Ex Parte* rule's cure provision. See A.C.C. § 14-3-220(D)(1).

4
5 **C. Chairman Foreman's Meeting with Ms. Janice Alward Also Raises Open
6 Meeting and *Ex Parte* Concerns.**

7 During the October 20, 2008 hearings, Chairman Foreman acknowledged that he met
8 with Ms. Janice Alward, Chief Counsel for the Corporation Commission, for an hour and a half
9 on October 15, 2008. Transcript at 957:11-17. Chairman Foreman explained that he met with
10 Ms. Alward to discuss potential violations of Arizona's Open Meeting laws in Case No. 141.
11 *See id.* To the extent Chairman Foreman and Ms. Alward discussed this Project, in addition to
12 Case No. 141, Ms. Alward and Chairman Foreman violated the above-referenced provisions of
13 Arizona's Open Meeting laws and the Committee's *Ex Parte* rule. Based on the Committee's
14 failure to adhere to the Open Meeting Laws and the *Ex Parte* rule, not only in this matter but
15 also in other recent line siting actions,⁵ the intervenors and the public are entitled to a
16 declaration from Chairman Foreman and Ms. Alward that they did not discuss this Project
17 during their October 15th meeting or at any other time.⁶

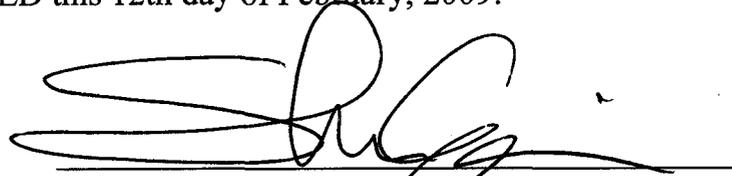
18
19
20
21
22
23 ⁵ See Transcript from Case No. 141, Docket No. L-00000HH-08-0422-00141, Transcript from Case
24 No. 141, dated December 5, 2008, at 7:10-12, attached hereto as Exhibit F. (Open Meeting Law
25 violations are not "contested in terms of whether or not they had occurred").

26 ⁶ In addition to its improper finding regarding the need for the Project and its failure to adhere to the
27 Open Meeting Laws and the *Ex Parte* rule, the routes considered by the Committee were arbitrary and
28 capricious. The Applicant's Preferred Route along Segment 1 of the Project consisted of a single
alternative along the entirety of 10,000 West's property. The Applicant's failure to provide, and the
Committee's failure to require, additional route alternatives along approximately 23% to 28% percent
of the Project was arbitrary and capricious. See Transcript at 1382:10-1383:25 (Mr. Bouchard
testifying that the single route alternative along that much of the Project is inherently unfair and
contrary to the Committee's usual practice).

1 **V. CONCLUSION.**

2 In conclusion, the uncontroverted evidence establishes that there is no actual need for
3 this Project. The Committee's finding that there is need for the Project is contrary to the
4 evidence actually presented during the Committee hearings and has no basis in fact or the law.
5 Further, the Committee repeatedly and materially violated Arizona's Open Meeting Laws and
6 the Committee's own *Ex Parte* rule. As such, the Commission should overturn the
7 Committee's purported Certificate of Environmental Compatibility as arbitrary and capricious
8 and as made in violation of relevant Open Meeting laws and it should refuse to authorize
9 construction of the Project.
10
11

12
13 RESPECTFULLY SUBMITTED this 12th day of February, 2009.

14
15
16 

17 Mark A. Nadeau (Arizona Bar No. 011280)
18 Shane D. Gosdis (Arizona Bar No. 022471)
19 DLA PIPER LLP (US)
20 2415 EAST CAMELBACK, SUITE 700
21 Phoenix, Arizona 85016
22 Telephone: (480) 606-5100
23 Facsimile: (480) 606-5101
24 Attorneys for Defendant 10,000 West, L.L.C.

25
26 **ORIGINAL** and 25 **COPIES** of
27 the foregoing filed this 12th day
28 of February, 2009, to:

Docketing Supervisor
Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

1 **COPY** of the foregoing e-mailed
2 this 12th day of February, 2009, to:

3 Charles Haines
4 Janice Alward, Chief Counsel
5 Legal Division
6 Arizona Corporation Commission
7 1200 W. Washington Street
8 Phoenix, AZ 85007
9 Counsel for Legal Division Staff
10 Thomas H. Campbell
11 Albert Acken
12 Lewis and Roca LLP
13 40 N. Central Avenue
14 Phoenix, AZ 85004-4429
15 Attorneys for Arizona Public Service Company

16 Edward W. Dietrich, Senior Project Manager
17 Real Estate Division Planning Section
18 Arizona State Land Department
19 1616 W. Adams Street
20 Phoenix, AZ 85007

21 James T. Braselton, Esq.
22 Mariscal Weeks McIntyre & Friedlander, PA
23 2901 N. Central Ave., Suite 200
24 Phoenix, AZ 85012-2705
25 Counsel for Intervenor Toll Brothers

26 Lawrence Robertson Jr., Esq.
27 2247 Frontree Rd., Suite 1
28 P.O. Box 1448
Tubac, AZ 85646-0001
Counsel for Intervenor Diamond Ventures

Steve Burg, Chief Assistant City Attorney
City of Peoria
Office of the City Attorney
8401 W. Monroe Street
Peoria, AZ 85345

1 Meghan Grabel
2 Pinnacle West Capital Corporation
3 P.O. Box 53999, M-S 8602
4 Phoenix, AZ 85072-3999

4 Robert N. Pizorno, Esq.
5 Beus Gilbert, PLLC
6 4800 N. Scottsdale Rd., Suite 6000
7 Scottsdale, AZ 85251-7630

7 Court S. Rich, Esq.
8 Rose Law Group
9 6613 N. Scottsdale Rd., Suite 200
10 Scottsdale, AZ 85250-0001

10 Scott McCoy, Esq.
11 Earl Curley Lagarde, PC
12 3101 N. Central Ave., Suite 100
13 Phoenix, AZ 85012-2654

13 Michelle DeBlasi
14 Quarles Brady
15 One Renaissance Square
16 Two North Central Ave.
17 Phoenix, AZ 85004-2391

17 Charles W. and Sharie Civer (realtors)
18 42265 N. Old Mine Rd.
19 Cave Creek, AZ 85331-2806
20 (intervenor on behalf of DLGC II and Lake Pleasant Group)

21 By: 
22 Linda Parrell

EXHIBIT A

INTRODUCTION

Arizona Public Service Company (APS) is applying for a Certificate of Environmental Compatibility for the proposed TS-5 to TS-9 500 kilovolt (kV) and 230kV transmission line project (TS-5 to TS-9 500/230kV Transmission Line Project [Project]).

Project Purpose and Need

The TS-5 to TS-9 500/230kV Transmission Line Project is part of APS' continuing effort to plan and construct the infrastructure necessary to deliver reliable electric energy to the growing communities we serve. The Project will connect two previously approved high voltage substations: the TS-5 (Sun Valley) Substation located north of Sun Valley Parkway in Buckeye and the TS-9 Substation located southeast of Lake Pleasant in Peoria. The connection of the two approved substations will complete a continuous 500kV source from the Palo Verde hub to the northeast valley (Pinnacle Peak Substation). This 500kV connection will increase the import capability to the Phoenix metropolitan area, increase the export capability from the Palo Verde hub, and provide additional support and reliability for the entire electrical system. The 230kV portion of the Project was identified in APS' 2008 ten-year plan as necessary to increase the reliability of the 230kV system and provide a transmission source to serve future load and electrical system expansion that will emerge in the largely undeveloped areas within portions of the Town of Buckeye, City of Surprise, City of Peoria, and unincorporated Maricopa County.

Preferred Route

The Preferred Route includes approximately 39.2 miles of 500kV transmission line and structures that will be required to connect the two approved (previously certificated) substations and, additionally, the capability to add 230kV transmission lines to the same structures in the future.

Environmental and Public Siting Process

The process of identifying and evaluating transmission line route segments for the Preferred Route was conducted from April 2007 through May 2008. This process included an evaluation of potential environmental impacts on existing and future land uses, as well as on visual, biological, and cultural resources. Equally important was the incorporation of an extensive public participation process used to communicate with the public and agencies regarding their concerns associated with the TS-5 to TS-9 500/230kV Transmission Line Project. The public participation process included communication with resource management agencies, planning jurisdictions, and landowners/developers; public official briefings; several public meetings and presentations; and distribution of a series of four project newsletters. Newsletters were sent to more than 37,000 landowners of public record in the approximately 400 square mile study area.

APS considered environmental impacts along with comments received from the public, agencies, jurisdictional representatives, and landowners/developers, as well as engineering, right-of-way, regulatory, and overall cost issues when selecting locations for the 500/230kV transmission line. Advantages of the Preferred Route include the following:

- A majority of the Preferred Route is located on undeveloped land. The Preferred Route is not located through or adjacent to existing residential areas; existing residential uses are generally a minimum of 0.25 mile from the route, a distance that could increase based on the corridor width requested.

Purpose for constructing the transmission line:

The Project is part of APS' continuing effort to plan and construct the infrastructure necessary to deliver reliable electric energy to the growing area. The connection of the two previously approved substations would complete a continuous 500kV source from the Palo Verde hub to the northeast valley (Pinnacle Peak Substation). This 500kV connection would increase the import capability to the Phoenix metropolitan area, increase the export capability from the Palo Verde hub, and provide additional reliability to the existing 500kV electrical system. The 230kV portion of the Project was identified in APS' 2008 Ten-Year Plan. This portion of the project is necessary to provide a 230kV transmission source to serve future load that will emerge in the largely undeveloped areas in portions of the Town of Buckeye, City of Surprise, City of Peoria, and unincorporated Maricopa County and additionally, will increase the reliability of the 230kV electrical system.

4.b.ii Description of geographical points between which the transmission line will run, the straight-line distance between such points and the length of the transmission line for each alternative route for which application is made.

Description of geographical points between which the transmission line will be located:

The proposed transmission line would interconnect the following electrical facilities:

- Future TS-5 (Sun Valley) substation in Section 29, Township 4 North, Range 4 West, G&SRB&M
- Future TS-9 substation in Section 33, Township 6 North, Range 1 East, G&SRB&M

Straight-line distance between such points:

The straight-line distance between the TS-5 and TS-9 substations (sited as part of Line Siting Case Numbers 127 and 131, respectively) would be approximately 26.5 miles.

Length of the transmission line for each alternative route:

- Preferred Route: approximately 39.2 miles
- Alternative Route 1: approximately 39.2 miles
- Alternative Route 2: approximately 34.3 miles
- Alternative Route 3: approximately 37.3 miles

The Preferred Route and Alternative Routes are illustrated on Figure 1. The Preferred Route has been divided into five segments, as shown on Figure 1, to facilitate comparison with the Alternative Routes. These segments are described further in section 4.b.v of this application.

EXHIBIT B

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

3
4 IN THE MATTER OF THE
5 APPLICATION OF ARIZONA PUBLIC
6 SERVICE COMPANY, IN
7 CONFORMANCE WITH THE
8 REQUIREMENTS OF ARIZONA
9 REVISED STATUTES §§ 40-360, *et seq.*,
10 FOR A CERTIFICATE OF
11 ENVIRONMENTAL COMPATIBILITY
12 AUTHORIZING THE TS-5 TO TS-9
13 500/230kV TRANSMISSION LINE
14 PROJECT, WHICH ORIGINATES AT
15 THE FUTURE TS-5 SUBSTATION,
16 LOCATED IN THE WEST HALF OF
17 SECTION 29, TOWNSHIP 4 NORTH,
18 RANGE 4 WEST AND TERMINATES AT
19 THE FUTURE TS-9 SUBSTATION,
20 LOCATED IN SECTION 33, TOWNSHIP
21 6 NORTH, RANGE 1 EAST, IN
22 MARICOPA COUNTY, ARIZONA

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

Case No. 138

23 **CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY**

24 Pursuant to notice given as provided by law, the Arizona Power Plant and
25 Transmission Line Siting Committee (the "Committee") held public hearings on
26 August 18 and 19, 2008, September 8 and 9, 2008, October 20 through 22, 2008, October
27 through 30, 2008, November 17 through 19, 2008, and December 1 and 2, 2008, all in
28 conformance with the requirements of Arizona Revised Statutes ("A.R.S.") §§ 40-360, *et*
29 *seq.*, for the purpose of receiving evidence and deliberating on the Application of Arizona
30 Public Service Company ("Applicant") for a Certificate of Environmental Compatibility
31 ("Certificate") in the above-captioned case (the "Project").

1 The following members and designees of members of the Committee were present
2 at one or more of the hearings for the evidentiary presentations and the deliberations:¹

3 John Foreman Chairman, Designee for Arizona Attorney General,
4 Terry Goddard
5 Paul Rasmussen Designee for Director, Arizona Department of
6 Environmental Quality
7 Gregg Houtz Designee for Director, Arizona Department of Water
8 Resources
9 Jack Haenichen Designee for Director, Energy Office, Arizona
10 Department of Commerce
11 William Mundell Designee for Chairman, Arizona Corporation
12 Commission
13 Patricia Noland Appointed Member
14 Michael Palmer Appointed Member
15 Michael Whalen Appointed Member
16 Barry Wong Appointed Member

17 Applicant was represented by Thomas H. Campbell and Albert H. Acken of Lewis
18 and Roca LLP and Meghan H. Grabel of the Applicant's Legal Department. The
19 following parties were granted intervention pursuant to A.R.S. § 40-360.05:

COUNSEL:	INTERVENING PARTY:
Charles H. Hains Ayesha Vohra	Arizona Corporation Commission Staff ("Staff")
Garry D. Hays	Arizona State Land Department
Mark A. Nadeau Shane D. Gosdis	10,000 West, L.L.C.
Michael D. Bailey	City of Surprise
Scott McCoy	Elliott Homes, Inc.

25 _____
26 ¹ Members David Eberhart and Jeff McGuire recused themselves and did not participate in
deliberations.

COUNSEL:	INTERVENING PARTY:
Jon Paladini	Anderson Land & Development
Andrew Moore	Woodside Homes of Arizona, Inc.
Gary Birnbaum	Surprise Grand Vista JV I, LLC
James T. Braselton	Sunhaven Entities
Court S. Rich	Warrick 160, LLC and Lake Pleasant 5000, LLC
Stephen J. Burg	City of Peoria
Joseph Drazek	Vistancia, LLC
Steve Wene	Vistancia Associations
Lawrence V. Robertson, Jr.	Diamond Ventures, Inc.
Chad Kaffer	Quintero Community Associations and Quintero Golf and Country Club
Scott S. Wakefield	DLGC II, LLC and Lake Pleasant Group, LLP
Christopher S. Welker	LP 107, LLC

At the conclusion of the hearings, the Committee, having received the Application, the appearances of the parties, the evidence, testimony and exhibits presented at the hearings, and being advised of the legal requirements of A.R.S. §§ 40-360 to 40-360.13, upon motion duly made and seconded, voted 9 to 0 to grant Applicant this Certificate of Environmental Compatibility (Case No. 138) for the Project.

The Project as approved consists of approximately 40 miles of 500/230kV transmission line and ancillary facilities along the route described below. A general location map of the Project, described herein, is set forth in **Exhibit A**.

The Project will begin at the TS-5 (Sun Valley) Substation (approved as part of the West Valley North Project, ACC Decision No. 67828, Case No. 127), located in the west half of Section 29, Township 4 North, Range 4 West. The Project will end at the TS-9 Substation (approved as part of the TS-9 to Pinnacle Peak Project, ACC Decision No.

1 69343, Case No. 131), located in Section 33, Township 6 North, Range 1 East. From the
2 TS-5 Substation, the Project's route will be as follows²:

- 3 • A 2,500 foot-wide corridor that extends north for approximately 0.5 miles, from
4 TS-5 to the north side of the existing Central Arizona Project ("CAP") canal. The
5 corridor width includes 2,000 feet west and 500 feet east of the half-section line in
6 Section 29, Township 4 North, Range 4 West.
- 7 • A 2,500 foot-wide corridor that extends northeast for approximately 0.8 miles,
8 paralleling the existing CAP canal. The corridor width includes 2,500 feet
9 northwest of the chain link fence on the northwest side of the CAP, paralleling the
10 certificated West Valley North 230kV line (Line Siting Case No. 127).
- 11 • A 2,500 foot-wide corridor that extends east for approximately 1.8 miles,
12 paralleling the existing CAP canal, to the junction with the existing 500kV Mead-
13 Phoenix transmission line. The corridor width includes 2,500 feet north of the
14 chain link fence on the north side of the CAP, paralleling the certificated West
15 Valley North 230kV line (Line Siting Case No. 127).
- 16 • A 2,000 foot-wide corridor that extends north-northwest for approximately 2.0
17 miles, paralleling the existing Mead-Phoenix transmission line, from the junction of
18 the CAP and the Mead-Phoenix transmission line, to approximately the 275th
19 Avenue alignment. The corridor width includes 1,000 feet west and 1,000 feet east
20 of the Mead-Phoenix transmission line.
- 21 • A 1,000 foot-wide corridor that extends north for approximately 4.1 miles, from the
22 junction of the existing Mead-Phoenix transmission line and the 275th Avenue
23 alignment to the Lone Mountain Road alignment. The corridor width includes
24 1,000 feet east of the 275th Avenue alignment.

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26 ² Referenced road alignments in route description are along section lines unless otherwise
noted.

- 1 • A 3,000 foot-wide corridor that extends east along the Lone Mountain Road
2 alignment for approximately 5.0 miles from the 275th Avenue alignment to the 235th
3 Avenue alignment. The corridor width includes 3,000 feet north of the Lone
4 Mountain Road alignment.
- 5 • A 1,500 foot-wide corridor that extends north along 235th Avenue alignment for
6 approximately 0.5 miles to the half section line north of the Lone Mountain Road
7 alignment. The corridor width includes 1,500 feet west of the 235th Avenue
8 alignment.
- 9 • A 2,500 foot-wide corridor that extends north along 235th Avenue alignment for
10 approximately 2.4 miles from the half section line north of the Lone Mountain
11 Road alignment to the junction with U.S. 60 (Grand Avenue). The corridor width
12 includes 1,500 feet west and 1,000 feet east of the 235th Avenue alignment.
- 13 • A 1,500 foot-wide corridor that extends north for approximately 1.1 miles, from
14 U.S. 60 (Grand Avenue) to the junction of 235th Avenue and the Joy Ranch Road
15 alignment. The corridor width includes 1,500 feet east of 235th Avenue.
- 16 • A 1,500-foot wide corridor that extends east along the Joy Ranch Road alignment
17 for approximately 6.3 miles from 235th Avenue to approximately 0.3 miles east of
18 the 187th Avenue alignment. The corridor width includes 1,500 feet north of the
19 Joy Ranch Road alignment.
- 20 • A corridor up to 2,640 feet wide that extends east along the Joy Ranch Road
21 alignment for approximately 0.7 mile to the 179th Avenue alignment. The entire
22 corridor is located south of the centerline of SR 74 and north of the Joy Ranch Road
23 alignment, with a maximum width up to 2,640 feet north of the Joy Ranch Road
24 alignment.
- 25 • A 1,500 foot-wide corridor on the south side of SR 74 that extends east along SR
26 74 for approximately 2.1 miles from the 179th Avenue alignment to the 163rd

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Avenue alignment. The corridor width includes 1,500 feet south of the existing SR 74 centerline. The corridor excludes the property designated Village 'E' in the record (Exhibit DV-13, slide 7L) owned by Diamond Ventures west of the 163rd Avenue alignment and south of SR 74.

- A 1,000 foot-wide corridor, centered on the 163rd Avenue alignment, which crosses SR 74 from south to north and connects that portion of the corridor south of SR 74 with that portion of the corridor north of SR 74. The corridor excludes the properties designated Village 'A' and Village 'E' in the record (Exhibit DV-13, slide 7L) owned by Diamond Ventures east and west of the 163rd Avenue alignment and south of SR 74.
- A 1,500 foot-wide corridor, on the north side of SR 74, that extends east along SR 74 for approximately 4.9 miles from the 163rd Avenue alignment to approximately 0.3 mile west of the section line between Sections 25 and 26 of Township 6 North, Range 1 West. The southern boundary of the corridor begins 500 feet north of the centerline for SR 74.
- A 1,000 foot-wide corridor, centered on a north-south line 0.3 mile west of the section line between Sections 25 and 26 of Township 6 North, Range 1 West, which crosses SR 74 from north to south and connects that portion of the corridor north of SR 74 with that portion of the corridor south of SR 74.
- A 1,000 foot-wide corridor, on the south side of SR 74, that extends east along SR 74 for approximately 1.3 miles to the eastern boundary of Township 6 North Range 1 West (the 115th Avenue alignment). The northern boundary of the corridor begins 500 feet south of the centerline of SR 74.
- A 1,500 foot-wide corridor, on the south side of SR 74, that extends east along SR 74 for approximately 2.1 miles from the 115th Avenue Alignment to the 99th

1 Avenue alignment in Section 33, Township 6 North, Range 1 East. The northern
2 boundary of the corridor begins 500 feet south of the centerline of SR 74.

- 3 • A corridor up to 2,000 feet wide that extends southeast for approximately 1.0 mile
4 along the existing WAPA 230kV transmission line corridor and then east for
5 approximately 0.3 mile to the termination point at the TS-9 Substation. The
6 corridor width includes 2,000 feet west of the WAPA 230kV transmission line until
7 it turns east and then includes 700 feet north of the Cloud Road alignment.

8 9 CONDITIONS

10 This Certificate is granted upon the following conditions:

- 11 1. The Applicant shall: (i) obtain all required approvals and permits necessary to
12 construct the Project; (ii) shall file its Application for such right(s)-of-way
13 across United States Bureau of Land Management ("BLM") lands as may be
14 necessary within sixty (60) days of the effective date of this Certificate; and (iii)
15 shall file its Application for such rights-of-way across Arizona State Land
16 Department ("ASLD") lands as may be necessary within 12 months of the
17 effective date of this Certificate.
- 18 2. The Applicant shall comply with all existing applicable ordinances, master
19 plans and regulations of the State of Arizona, the County of Maricopa, the
20 United States, and any other governmental entities having jurisdiction.

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3. This authorization to construct the 500 kV circuit of the Project shall expire seven (7) years from the date the Certificate is approved by the Commission and this authorization to construct the 230 kV circuit of the Project shall expire ten (10) years from the date the Certificate is approved by the Commission, unless the specified circuit is capable of operation within the respective time frame; provided, however, that prior to either such expiration the Applicant or its assignees may request that the Commission extend this time limitation.
4. In the event that the Project requires an extension of the term of this Certificate prior to completion of construction, Applicant shall use commercially reasonable means to directly notify all landowners and residents within one mile of the Project corridor for which the extension is sought. Such landowners and residents shall be notified of the time and place of the proceeding in which the Commission shall consider such request for extension.
5. The Applicant shall make every reasonable effort to identify and correct, on a case-specific basis, all complaints of interference with radio or television signals from operation of the transmission lines and related facilities addressed in this Certificate. The Applicant shall maintain written records for a period of five years of all complaints of radio or television interference attributable to operation, together with the corrective action taken in response to each complaint. All complaints shall be recorded to include notations on the corrective action taken. Complaints not leading to a specific action or for which there was no resolution shall be noted and explained.
6. To the extent applicable, the Applicant shall comply with the notice and salvage requirements of the Arizona Native Plant Law and shall, to the extent feasible, minimize the destruction of native plants during Project construction.

1 7. Pursuant to A.R.S. § 41-844, if any archaeological, paleontological or historical
2 site or object that is at least fifty years old is discovered on state, county or
3 municipal land during plan-related activities, the person in charge shall
4 promptly report the discovery to the Director of the Arizona State Museum, and
5 in consultation with the Director, shall immediately take all reasonable steps to
6 secure and maintain the preservation of the discovery. If human remains and/or
7 funerary objects are encountered on private land during the course of any
8 ground-disturbing activities relating to the development of the subject property,
9 Applicant shall cease work on the affected area of the Project and notify the
10 Director of the Arizona State Museum pursuant to A.R.S. § 41-865.

11 8. Within 120 days of the Commission decision granting this Certificate, Applicant
12 will post signs in public rights-of-way giving notice of the Project corridor to
13 the extent authorized by law. The Applicant shall place signs in prominent
14 locations at reasonable intervals such that the public is notified along the full
15 length of the transmission line until the transmission structures are constructed.
16 To the extent practicable, within 45 days of securing easement or right-of-way
17 for the Project, the Applicant shall erect and maintain signs providing public
18 notice that the property is the site of a future transmission line. Such signage
19 shall be no smaller than a normal roadway sign. The signs shall advise:

20 (a) That the site has been approved for the construction of Project facilities;

21 (b) The expected date of completion of the Project facilities;

22 (c) A phone number for public information regarding the Project;

23 (d) The name of the Project;

24 (e) The name of the Applicant; and

25 (f) The website of the Project.
26

- 1 9. Applicant, or its assignee(s), shall design the transmission lines to incorporate
2 reasonable measures to minimize impacts to raptors.
- 3 10. Applicant, or its assignee(s), shall use non-specular conductor and dulled
4 surfaces for transmission line structures.
- 5 11. Before construction on this Project may commence, the Applicant must file a
6 construction mitigation and restoration plan ("Plan") with ACC Docket Control.
7 Where practicable, the Plan shall specify the Applicant's plans for construction
8 access and methods to minimize impacts to wildlife and to minimize vegetation
9 disturbance outside of the Project right-of-way particularly in drainage channels
10 and along stream banks, and shall re-vegetate, unless waived by the landowner,
11 native areas of construction disturbance to its preconstruction state outside of
12 the power-line right of way after construction has been completed; and the
13 Applicant's plans for coordination with the Arizona Game and Fish Department
14 and the State Historic Preservation Office; and shall specify that the Applicant
15 shall use existing roads for construction and access where practicable.
- 16 12. With respect to the Project, Applicant shall participate in good faith in state and
17 regional transmission study forums to coordinate transmission expansion plans
18 related to the Project and to resolve transmission constraints in a timely manner.
19 Without limiting any other aspect of this Condition, APS will in good faith
20 participate in electric system planning within the context of the Long Range
21 Energy Infrastructure Planning Process (the "Infrastructure Process") which was
22 initiated on August 6, 2008 and hosted by the Town of Buckeye for the Buckeye
23 Planning Area in order to establish a regional transmission study ("Regional
24 Transmission Study").
- 25 13. The Applicant shall provide copies of this Certificate to the Town of Buckeye,
26 the City of Peoria, the City of Surprise, the Maricopa County Planning and

1 Development Department, the Arizona State Land Department, the State
2 Historic Preservation Office, and the Arizona Game and Fish Department.

3 14. Prior to the date construction commences on this Project, the Applicant shall
4 provide known homebuilders and developers within one mile of the center line
5 of the Certificated route the identity, location, and a pictorial depiction of the
6 type of power line being constructed, accompanied by a written description, and
7 encourage the developers and homebuilders to include this information in the
8 developers' and homebuilders' homeowners' disclosure statements.

9 15. Before commencing construction of Project facilities located parallel to and
10 within 100 feet of any existing natural gas or hazardous liquid pipeline, the
11 Applicant shall:

12 (a) Perform the appropriate grounding and cathodic protection studies to
13 show that the Project's location parallel to and within 100 feet of such
14 pipeline results in no material adverse impacts to the pipeline or to
15 public safety when both the pipeline and the Project are in operation. If
16 material adverse impacts are noted in the studies, Applicant shall take
17 appropriate steps to ensure that such material adverse impacts are
18 mitigated. Applicant shall provide to Commission Staff reports of
19 studies performed; and

20 (b) Perform a technical study simulating an outage of the Project that may be
21 caused by the collocation of the Project parallel to and within 100 feet of
22 the existing natural gas or hazardous liquid pipeline. This study should
23 either: i) show that such outage does not result in customer outages; or
24 ii) include operating plans to minimize any resulting customer outages.
25 Applicant shall provide a copy of this study to Commission Staff.
26

1 16. Applicant will follow the latest Western Electricity Coordinating Council/North
2 American Electric Reliability Corporation Planning standards as approved by
3 the Federal Energy Regulatory Commission, and National Electrical Safety
4 Code construction standards.

5 17. The Applicant shall submit a self-certification letter annually, identifying
6 progress made with respect to each condition contained in the Certificate,
7 including which conditions have been met. Each letter shall be submitted to the
8 Docket Control of the Arizona Corporation Commission on December 1
9 beginning in 2009. Attached to each certification letter shall be documentation
10 explaining how compliance with each condition was achieved. Copies of each
11 letter along with the corresponding documentation shall be submitted to the
12 Arizona Attorney General and Department of Commerce Energy Office. The
13 requirement for the self-certification shall expire on the date the Project is
14 placed into operation.

15 18. Within sixty (60) days of the Commission decision granting this Certificate, the
16 Applicant shall make good faith efforts to commence discussions with private
17 landowners, on whose property the Project corridor is located, to identify the
18 specific location for the Project's right-of-way and placement of poles.

19 19. The Applicant shall expeditiously pursue reasonable efforts to work with private
20 landowners on whose property the Project right-of-way will be located, to
21 mitigate the impacts of the location, construction, and operation of the Project
22 on private land.

23 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

24 This Certificate incorporates the following findings of fact and conclusions of law:

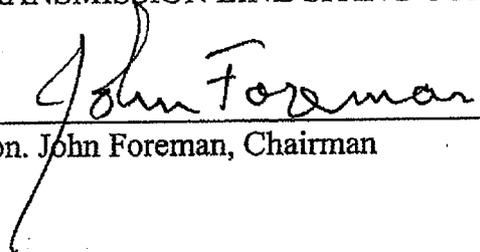
- 25 1. The Project is in the public interest because it aids the state in meeting the need
26 for an adequate, economical and reliable supply of electric power.

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2. In balancing the need for the Project with its effect on the environment and ecology of the state, the conditions placed on the CEC by the Committee effectively minimize its impact on the environment and ecology of the state.
3. The conditions placed on the CEC by the Committee resolve matters concerning the need for the Project and its impact on the environment and ecology of the state raised during the course of proceedings, and as such, serve as the findings on the matters raised.
4. In light of these conditions, the balancing in the broad public interest results in favor of granting the CEC.

December 29, 2008

THE ARIZONA POWER PLANT AND
TRANSMISSION LINE SITING COMMITTEE



Hon. John Foreman, Chairman

EXHIBIT A

Certificated Corridor

TS-6 to TS-9 500/230KV Project

Legend

- Project Features**
- Certificated Corridor
 - Future Transmission Facilities
 - Approved High-Voltage Substation
 - Approved High-Voltage Transformer
 - Existing Transmission Facilities
 - Existing High-Voltage Substation
 - ▲ Existing High-Voltage Transformer
 - Existing 500KV Transmission Line
 - Existing 230KV Transmission Line
 - Existing 66KV Transmission Line

General Reference Features

- Ripper Road
- Railroad
- Canal
- County Boundary
- Regional Park
- Central Address Project Canal
- Lake Park
- Authority Field #1
- Authority Field #2
- Authority Field #3
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Source: Arkansas State Land Department 2000, 2007
USGS Database 2007



APS

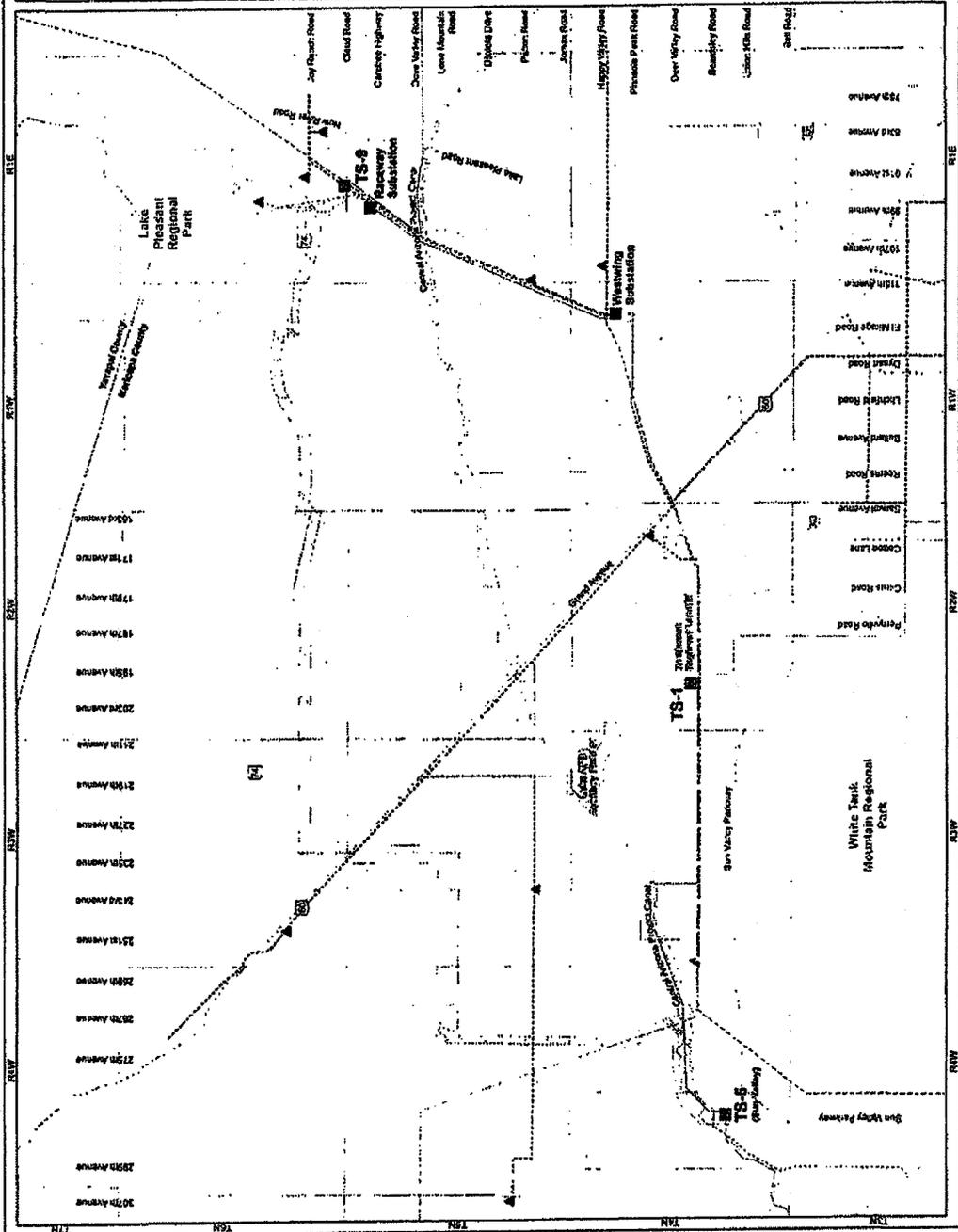


EXHIBIT C

ORIGINAL

RECEIVED

BEFORE THE ARIZONA POWER PLANT
AND TRANSMISSION LINE SITING COMMITTEE -2 A.D. 09

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.

AZ CORP COMMISSION
DOCKET CONTROL

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

Case No. 138

Arizona Corporation Commission

DOCKETED

JUL -8 2008

DOCKETED BY	mm
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NOTICE OF HEARING

A PUBLIC HEARING WILL BE HELD before the Arizona Power Plant and Transmission Line Siting Committee ("Committee") regarding the Application of Arizona Public Service Company ("Applicant") for a Certificate of Environmental Compatibility authorizing the TS-5 to TS-9 500/230kV Transmission Line Project ("Project") in Maricopa County, Arizona. The hearing will be held at the Renaissance Hotel, located at 9495 West Coyotes Blvd., Glendale, Arizona 85305; telephone: (623) 937-3700. The hearing shall begin on August 18, 2008 at 9:30 a.m. and will continue on August 19, 2008, September 8, 2008, and September 9, 2008 respectively, each beginning at 9:30 a.m. The hearings will adjourn at approximately 5:00 p.m. Additional hearing days, if necessary, will be noticed on the Project and Arizona Corporation Commission ("ACC") websites. The Applicant's Project website can be found at www.aps.com/siting. The ACC website is: www.azcc.gov/AZ_Power_Plant/LineSiting-Calendar.asp.

PUBLIC COMMENT WILL BE TAKEN AT THE BEGINNING OF EACH HEARING DAY. PUBLIC COMMENT ALSO WILL BE TAKEN IN A SPECIAL EVENING SESSION ON AUGUST 18, 2008, BEGINNING AT 6:00 P.M., AT THE RENAISSANCE HOTEL, LOCATED AT 9495 WEST COYOTES BLVD. GLENDALE, ARIZONA, 85305.

The Committee will conduct a tour of the Project area and the proposed routes on August 20 2008. The map and itinerary for the tour will be available at the hearings and posted on the Project website. Members of the public may follow the Committee in their own private vehicles. During any tour, the Committee will not discuss or deliberate in any manner concerning the Application.

The Project consists of approximately 40 miles of 500/230kV transmission lines and require substation modifications. A general location map of the Project area and Applicant's proposed routes and requested corridor widths are set forth below.

784394

1 Beginning at the TS-5 Substation (approved as part of the West Valley North Project, ACI
 2 Decision #67828, Line Siting Case Number 127), located in the west half of Section 25
 3 Township 4 North, Range 4 West, the Preferred Route consists of the following:

- 4 • A 3,000-foot-wide corridor that extends north for 0.5 miles, from TS-5 to the north side
 5 of the existing Central Arizona Project (CAP) canal. The corridor width includes 2,500
 6 feet west and 500 feet east of the half-section line in Section 29, Township 4 North
 7 Range 4 West.
- 8 • A 3,000-foot-wide corridor that extends northeast for 0.8 miles, paralleling the existing
 9 CAP canal. The corridor width includes 3,000 feet northwest of the chain link fence on
 10 the northeast side of the CAP. This corridor allows for the line to be located parallel to
 11 the certificated West Valley North 230kV line (Line Siting Case Number 127).
- 12 • A 3,000-foot-wide corridor that extends east for 1.8 miles, paralleling the existing CAP
 13 canal to the junction with the existing Western Area Power Administration (WAPA)
 14 500kV Mead-Phoenix transmission line. The corridor width includes 3,000 feet north of
 15 the chain link fence on the north side of the CAP. This corridor allows for the line to be
 16 located parallel to the certificated West Valley North 230kV line (Line Siting Case
 17 Number 127).
- 18 • A 3,000-foot-wide corridor that extends north-northwest for 2.0 miles, paralleling the
 19 existing WAPA line, from the junction of the CAP and the WAPA Mead-Phoenix
 20 transmission line to the section line (approximately the 275th Avenue alignment). The
 21 corridor width includes 1,500 feet west and 1,500 feet east of the Mead-Phoenix
 22 transmission line.
- 23 • A 3,000-foot-wide corridor that extends north for 6.1 miles, from the junction of the
 24 existing WAPA line and the 275th Avenue alignment (a section line) to the Carefree
 25 Highway alignment (a section line). The corridor width includes 1,500 feet west and
 26 1,500 feet east of the 275th Avenue alignment.
- A 2,000-foot-wide corridor that extends east for 5.0 miles along the Carefree Highway
 alignment from the 275th Avenue alignment until reaching the 235th Avenue alignment (a
 section line). The corridor width includes 1,500 feet north and 500 feet south of the
 section line (Carefree Highway alignment).
- A 3,000-foot-wide corridor that extends north for 1.0 mile, from the junction of the 235th
 Avenue alignment and the Carefree Highway alignment to U.S. 60 (Grand Avenue). The
 corridor width includes 1,500 feet west and 1,500 feet east of the 235th Avenue
 alignment.
- A 2,000-foot-wide corridor that extends north for 1.5 miles, from U.S. 60 (Grand
 Avenue) to the junction of 235th Avenue and the half section alignment north of the Joy
 Ranch Road alignment. The corridor width includes 500 feet west and 1,500 feet east of
 235th Avenue.
- A 3,000-foot-wide corridor that extends east along the half section alignment north of the
 Joy Ranch Road alignment for 7.0 miles, from 235th Avenue to approximately the 179th
 Avenue alignment (a section line), just south of State Route (SR 74). The corridor width
 includes 3,000 feet south of the half section alignment.

- 1 • A 3,000-foot-wide corridor that extends south along 179th Avenue for 2.4 miles from the
2 half section line north of the Joy Ranch Road alignment (just south of SR 74) to the
3 Carefree Highway alignment (a section line). The corridor width includes 3,000 feet
4 west of 179th Avenue.
- 5 • A 4,000-foot-wide corridor that extends east along the Carefree Highway alignment for
6 10.0 miles from 179th Avenue to approximately 99th Avenue (at the junction with
7 existing transmission lines, including two Navajo 500kV lines and one WAPA 230kV
8 line). The corridor width includes 2,000 feet north and 2,000 feet south of the Carefree
9 Highway alignment.
- 10 • A 5,000-foot-wide corridor that extends northwest for 1.2 miles along the existing
11 transmission line corridor to the termination point at the TS-9 Substation (approved as
12 part of the TS-9 to Pinnacle Peak Project, Decision No. 69343, Line Siting Case Number
13 131) located in Section 33, Township 6 North, Range 1 East. The corridor width includes
14 5,000 feet west of the line, the westernmost existing transmission line in the existing
15 corridor.

16 The Application also sets forth three proposed alternative routes as described below:

17 Alternative Route 1

18 The corridor for Alternative 1 would be the same as described for the Preferred Route, except
19 that it diverges from the Preferred Route at the intersection of the 275th Avenue and Lone
20 Mountain Road alignments. The corridor requested from that location consists of the following

- 21 • A 3,500-foot-wide corridor that extends east along the Lone Mountain Road alignment
22 for 5.0 miles from the 275th Avenue alignment to the 235th Avenue alignment. The
23 corridor width includes 3,000 feet north and 500 feet south of the Lone Mountain Road
24 alignment.
- 25 • A 3,000-foot-wide corridor that extends north along 235th Avenue alignment for 2.1
26 miles from the Lone Mountain Road alignment to the Carefree Highway alignment. The
corridor width includes 1,500 feet west and 1,500 feet east of the 235th Avenue
alignment.
- At the intersection of the 235th Avenue alignment and Carefree Highway alignment
Alternative Route 1 would reconnect with the Preferred Route.

27 Alternative Route 2

28 The corridor for Alternative 2 would be the same as described for the Preferred Route, except
29 that it diverges from the Preferred Route at the intersection of the 275th Avenue and Lone
30 Mountain Road alignments. The corridor requested from that location consists of the following

- 31 • A 3,500-foot-wide corridor that extends east along the Lone Mountain Road alignment
32 for 5.0 miles from the 275th Avenue alignment to the 235th Avenue alignment. The
33 corridor width includes 3,000 feet north and 500 feet south of the Lone Mountain Road
34 alignment. (This is the same as the corridor described for Alternative 1).

- 1 • A 1,000-foot-wide corridor that extends east along the Lone Mountain Road alignment
2 for 3.0 miles from the 235th Avenue alignment to U.S. 60 (Grand Avenue). The corridor
width includes 500 feet north and 500 feet south of the Lone Mountain Road alignment.
- 3 • A 2,000-foot-wide corridor that extends east along the Lone Mountain Road alignment
4 for 3.0 miles from U.S. 60 (Grand Avenue) to the 187th Avenue alignment. The corridor
width includes 1,500 feet north and 500 feet south of the Lone Mountain Road
5 alignment.
- 6 • A 4,500-foot-wide corridor that extends north along the 187th Avenue alignment for 2.1
7 miles from the Lone Mountain Road alignment to the Carefree Highway alignment. The
corridor width includes 1,500 feet west and 3,000 feet east of the 187th Avenue
alignment.
- 8 • A 4,000-foot-wide corridor that extends east along the Carefree Highway alignment for
9 1.0 mile from the 187th Avenue alignment to the 179th Avenue alignment. The corridor
width includes 2,000 feet north and 2,000 feet south of the Carefree Highway alignment.
- 10 • At the intersection of the 179th Avenue alignment and Carefree Highway alignment
Alternative Route 2 would reconnect with the Preferred Route.

11 Alternative Route 3

12 The corridor for Alternative 3 would be the same as describe for the Preferred Route, except that
13 it diverges from the Preferred Route just south of SR 74 near the 179th Avenue alignment. The
corridor requested from that location consists of the following:

- 14 • A 3,500-foot-wide corridor that extends east along SR 74 for 10.4 miles from the 179th
15 Avenue alignment to the 99th Avenue alignment. The corridor width includes 2,000 feet
north and 1,500 south of the existing SR 74 centerline.
- 16 • A 2,000-foot-wide corridor that extends southeast for 1.2 miles along the existing
17 WAPA 230kV transmission line corridor to the termination point at the TS-9 Substation
18 (approved as part of the TS-9 to Pinnacle Peak Project, Line Siting Case Number 131
located in Section 33, Township 6 North, Range 1 East. The corridor width include
19 2,000 feet west of the WAPA 230kV transmission line.

20 More complete maps, along with more detailed textual descriptions of the proposed routes are
available in the Application itself and on the Project website. The Application, including
21 detailed maps of the proposed Project, is on file with the Docket Control Center of the Arizona
Corporation Commission, 1200 West Washington Street, Suite 108, Phoenix, Arizona 85007.
22 Copies of the Application also are available for review at the Buckeye Public Library, 310 North
6th Street, Buckeye, AZ, 85326, and the Peoria Public Library, 8463 West Monroe Street
23 Peoria, AZ, 85345.

24 Depending on the issues raised and the number of intervenors appearing during the hearing, the
Committee may deem it appropriate at some point to recess the hearing to a time and place to be
25 announced during the hearing, or to be determined after the recess. These dates and places will
be posted on the Project and ACC websites. At the discretion of the Committee, such resumed
26 hearings may be held at a date, time and place designated by the Committee or its Chairman.

1 **NOTE: NOTICE OF SUCH RESUMED HEARING WILL BE GIVEN. PUBLISHED**
2 **NOTICE OF SUCH RESUMED HEARING IS NOT REQUIRED.**

3 Each county and municipal government and state agency interested in the proposed Project and
4 desiring to become a party to the proceeding, shall, not less than ten (10) days before the date set
5 for hearing, file with the Director of Utilities, Arizona Corporation Commission, 1200 West
6 Washington Street, Phoenix, Arizona 85007, a notice of its intent to be a party.

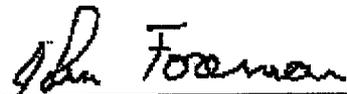
7 Any domestic, non-profit corporation or association, formed in whole or in part to promote
8 conservation of natural beauty, to protect the environment, personal health or other biological
9 values, to preserve historical sites, to promote consumer interests, to represent commercial and
10 industrial groups or to promote the orderly development of the area in which the Project is to be
11 located and desiring to become a party to the certification proceeding, shall, not less than ten
12 (10) days before the date set for hearing, file with the Director of Utilities, Arizona Corporation
13 Commission, 1200 West Washington Street, Phoenix, Arizona 85007, a notice of its intent to be
14 a party.

15 The Committee or its Chairman, at any time deemed appropriate, may make other person
16 parties to the proceedings.

17 Any person may make a limited appearance at the hearing by filing a statement in writing with
18 the Director of Utilities, Arizona Corporation Commission, 1200 West Washington Street
19 Phoenix, Arizona 85007, not less than five (5) days before the date set for hearing. A person
20 making a limited appearance shall not be a party or have the right to present testimony or cross
21 examine witnesses.

22 This proceeding is governed by Arizona Revised Statutes (A.R.S.) §§ 40-360 to 40-360.13 and
23 Arizona Administrative Code Rules R14-3-201 to R14-3-220 and 14-3-113. No substantive
24 communication, not in the public record, may be made to any member of the Committee. The
25 written decision of the Committee shall be submitted to the Arizona Corporation Commission
26 pursuant to A.R.S. § 40-360.07. Any person intending to be a party before the Arizona
Corporation Commission must be a party to the certification proceedings before the Committee.

DATED this 2nd day of July, 2008.



Hon. John Foreman, Chairman
Arizona Power Plant and
Transmission Line Siting Committee
Assistant Attorney General

337558

EXHIBIT D

RECEIVED

OCT 27 2008

DLA PIPER

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BEFORE THE ARIZONA POWER PLANT
AND TRANSMISSION LINE SITING COMMITTEE

13
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23
24

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-9 500/230 kV 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

ARIZONA CORPORATION
COMMISSION STAFF'S
REQUEST TO SUPPLEMENT
THE RECORD

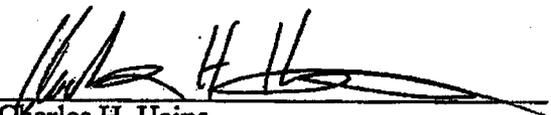
25
26
27
28

On July 1, 2008, applicant Arizona Public Service Corporation ("APS") applied to the Arizona Powerplant and Line Siting Committee ("Committee") for a Certificate of Environmental Compatibility in the above-docketed matter. In the course of these proceedings, e-mail communication has been used extensively to expedite the processing of procedural issues. Likewise, e-mail been employed to rapidly disseminate documents filed in conformance with rules of procedure and with the procedural order issued by the Attorney General's designee to the Committee, who acts as the Chairman and presiding officer. In addition, potentially substantive e-mails have also been exchanged in which the Committee members were included as well as parties to the above-captioned matter. All of these communications should be part of the record in this matter. Staff notes that the extent and the nature of the e-mail communications in this case appear to be more extensive than the off-the-record communications, e-mail or otherwise, employed in prior cases.

Staff respectfully requests that the Chairman, in his capacity as the Attorney General's designee and presiding officer, file in the docket copies of all e-mails in his possession that were transmitted among parties and the Chairman of the Committee and/or Committee members, even if such communications may not be construed as substantive in nature. Staff notes that the Arizona

1 Corporation Commission Executive Director has earlier requested that the Chairman docket these
2 matters, and it is Staff's understanding that the Chairman has agreed. Any other e-mails among
3 Committee members or between Committee members and parties should be similarly docketed by
4 those involved. Further, Staff would recommend that future e-mails among parties, the Chairman of
5 the Committee, and/or Committee members, even if procedural in nature, be docketed. This will
6 help to ensure a complete record.

7 RESPECTFULLY SUBMITTED this 24th day of October, 2008.

8
9 

10 Charles H. Hains
11 Ayesha Vohra
12 Janet Wagner
13 Attorneys, Legal Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007
17 (602) 542-3402

18 Original and twenty-eight (28)
19 copies of the foregoing filed this
20 24th day of October, 2008 with:

21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25 Copies of the foregoing
26 mailed/e-mailed this 24th day of
27 October, 2008 to:

28 John Foreman, Chairman
Arizona Power Plant and
Transmission Line Sitting Committee
Office of the Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
john.foreman@azag.gov
susan.ellis@azag.gov

Meghan Grabel
Pinnacle West Capital Corporation
P.O. Box 53999, Mail Station 8602
Phoenix, Arizona 85072-3999
meghan.grabel@pinnaclewest.com

<p>1 Edward W. Dietrich 2 Senior Project Manager 3 Real Estate Division Planning Section 4 Arizona State Land Department 5 1616 West Adam Street 6 Phoenix, Arizona 85007 7 <u>edietrich@land.az.gov</u></p> <p>8 James T. Braselton 9 Gary L. Birnbaum 10 Mariscal Weeks McIntyre & Friedlander, PA 11 2901 North Central Avenue, Suite 200 12 Phoenix, Arizona 85012-2705 13 Counsel for Intervenor Surprise Grand Vista 14 JVI, LLC and Counsel for Sunhaven Property 15 Owners 16 <u>james.braselton@mwmf.com</u> 17 <u>gary.birnbaum@mwmf.com</u></p> <p>18 Thomas H. Campbell 19 Albert Acken 20 40 North Central Avenue 21 Phoenix, Arizona 85007 22 Counsel for Applicant, APS 23 <u>tcampbell@lrlaw.com</u> 24 <u>aacken@lrlaw.com</u></p> <p>25 Lawrence Robertson Jr. 26 2247 East Frontree Rd., Suite 1 27 P.O. Box 1448 28 Tubac, Arizona 85646-0001 Counsel for Intervenor Diamond Ventures <u>tubaclawyer@aol.com</u></p> <p>Steve Burg Chief Assistant City Attorney City of Peoria Office of the City Attorney 8401 West Monroe Street Peoria, Arizona 85345 Counsel for City of Peoria, Arizona <u>steve.burg@peoriaaz.gov</u></p> <p>Robert N. Pizorno Beus Gilbert, PLLC 4800 North Scottsdale Rd., Suite 6000 Scottsdale, Arizona 85251-7630 <u>rpizorno@beusgilbert.com</u></p>	<p>Court S. Rich Ryan Hurley Rose Law Group, PC 6613 North Scottsdale Rd., Suite 200 Scottsdale, Arizona 85250-0001 Counsel for Intervenor Lake Pleasant 5000, LLC <u>crich@roselawgroup.com</u> <u>rhurley@roselawgroup.com</u></p> <p>Scott McCoy Earl Curley Legarde, PC 3101 North Central Avenue, Suite 1000 Phoenix, Arizona 85012-2654 Counsel for Intervenor Elliot Homes, Inc. <u>smccoy@ecclaw.com</u></p> <p>Andrew Moore Earl Curley Legarde, PC 3101 North Central Avenue, Suite 1000 Phoenix, Arizona 85012-2654 Counsel for Intervenor Woodside Homes of Arizona, Inc. <u>amoore@ecclaw.com</u></p> <p>Joseph A. Drazek Michelle De Blasi Roger K. Ferland Quarles Brady One Renaissance Square Two North Central Avenue Phoenix, Arizona 85004-2391 Counsel for Intervenor Vistancia, LLC <u>jdrazek@quarles.com</u> <u>mdeblasi@quarles.com</u> <u>rferland@quarles.com</u></p> <p>Michael D. Bailey City of Surprise Attorney's Office 12425 West Bell Road Surprise, Arizona 85374 Counsel for Intervenor City of Surprise <u>michael.bailey@surpriseaz.com</u></p> <p>Jay Moyes Steve Wene Moyes, Sellers, & Sims 1850 North Central Avenue, Suite 1100 Phoenix, Arizona 85004 Counsel for Vistancia HOA's <u>swene@lawms.com</u> <u>jimoyes@lawms.com</u></p>
--	---

1 Scott S. Wakefield
2 Ridenour, Hienton, Kelhoffer & Lewis, PLLC
3 201 North Central Avenue, Suite 3300
4 Phoenix, Arizona 85004-1052
5 Counsel for DLGC II and Lake Pleasant
6 Group
7 sswakefield@rhhklaw.com
8
9 Garry D. Hays
10 Law Office of Garry D. Hayes, PC
11 1702 East Highland Avenue, Suite 400
12 Phoenix, Arizona 85016
13 Counsel for Arizona State Land Department
14 ghays@lawgdh.com
15
16 Christopher S. Welker
17 Holm Wright Hyde & Hayes, PLC
18 10201 South 51st Street, Suite 285
19 Phoenix, Arizona 85044
20 cwelker@holmwright.com
21
22 John Paladini
23 Dustin C. Jones
24 Tiffany & Bosco, PA
25 2525 East Camelback Rd., Third Floor
26 Phoenix, Arizona 85016
27 Counsel for Intervenor Anderson Land
28 Development, Inc
imp@tblaw.com
dcj@tblaw.com

Jeanine Guy
Town Manager
Town of Buckeye
1101 East Ash Avenue
Buckeye, Arizona 85326
Intervenor Town of Buckeye
kguy@buckeyeaz.gov

Chad R. Kaffer
Fredrick E. Davidson
The Davidson Law Firm, PC
8701 East Vista Bonita Drive, Suite 220
P.O. Box 27500
Scottsdale, Arizona 85255
Counsel for Quintero Association
fed@davidsonlaw.net
crk@davidsonlaw.net

Mark A. Nadeau
Shane D. Gosdis
DLA Piper US LLP
2415 East Camelback Rd., Suite 700
Phoenix, Arizona 85016-4246
Counsel for 10,000 West, LLC
mark.nadeau@dlapiper.com
shane.gosdis@dlapiper.com

Copies of the foregoing
mailed this 24th day of
October, 2008 to:

Mike Biesemeyer
3076 East Blue Ridge Place
Chandler, Arizona 85249

Art Othon
Office of the Attorney
8401 West Monroe Street
Peoria, Arizona 85345

Charles W. and Sharie Civer (Realtors)
42265 North Old Mine Rd.
Cave Creek, Arizona 85331-2806
Intervenor on behalf of DLGC II and Lake
Pleasant Group



EXHIBIT E

Charles Hains

From: John Foreman [John.Foreman@azag.gov]
Sent: Thursday, September 11, 2008 12:03 PM
To: Lawrence Robertson; Charles Hains; Janet Stone; Robert Pizorno; Frederick Davidson; Laurie Ehlers; Mark Nadeau; Charles & Sharie Civer; Andrew Moore; Scott McCoy; Edward Dietrich; Garry Hays; Jay Moyes; Steve Wene; Betty Griffin; Thomas Campbell; Gary Birnbaum; Jim Braselton; Steve Burg; Joseph Drazek; Michelle De Blasi; Roger Ferland; Scott Wakefield, Esq.; Court Rich; Michael Bailey; Dustin Jones
Cc: Marta Hetzer
Subject: CEC CONDITIONS

Attachments: PHX-#283427-v1-CEC_CONDITIONS.DOC



PHX-#283427-v1-C
EC_CONDITIONS....

I have attached a draft of Conditions for CECs generally that I would propose be applied in Application #138. I am soliciting suggestions about how the language could be adapted for use in #138 and suggestions about how it could be improved in general. Please give me your thoughts.

John Foreman
Assistant Arizona Attorney General
Chair, Arizona Power Plant and Transmission Line Siting Committee
1275 W. Washington
Phoenix, AZ 85007
Tel: 602-542-7902
FAX: 602-542-4377
john.foreman@azag.gov

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Draft CEC Conditions

The Certificate of Environmental Compatibility ("CEC") is granted conditioned upon the Applicant's compliance with the following:

1. The Applicant shall obtain all permits, licenses and approvals required by the United States of America or its agencies, the State of Arizona or its agencies, and any local government or local governmental agency that are legally required to construct and to operate the transmission line [power plant].
2. The Applicant shall comply with all applicable statutes, regulations and master plans of the United States of America or its agencies, the State of Arizona or its agencies, and any local government or local governmental agency in the construction and operation of the transmission line [power plant].
3. If any archaeological, paleontological or historical site or object that is at least fifty years old is discovered on state, county or municipal land during the construction or operation of the transmission line [power plant], the Applicant or its representative in charge shall promptly report the discovery to the Director of the Arizona State Museum, and in consultation with the Director, shall immediately take all reasonable steps to secure and maintain the preservation of the discovery. A.R.S. § 41-844.
4. If human remains and/or funerary objects are encountered on private land during the course of any ground-disturbing activities relating to the construction or operation of the transmission line [power plant], the Applicant shall cease work on the affected area of the Project and notify the Director of the Arizona State Museum. A.R.S. § 41-865.
5. The Applicant shall comply with the notice and salvage requirements of the Arizona Native Plant Law (A.R.S. §§ 3-901 et seq.) and shall, to the extent feasible, minimize the destruction of native plants during the construction and operation of the transmission line [power plant].
6. This CEC shall expire five years from the date of its final approval by the Arizona Corporation Commission ("ACC") unless prior to that time the expiration date of the CEC is extended by the ACC after a timely application has been filed by the Applicant or its successors in interest.
7. The Applicant shall document and make reasonable efforts to correct each complaint of interference with radio or television signals from the operation of the transmission lines [power plant] and related facilities identified in the CEC. The Applicant shall maintain written records for a period of five years of all complaints of radio or television interference attributed to the operation of the transmission line. The documentation shall include the date of the complained interference, the name and identifying information of the complaining party, the corrective action taken, and the results of the corrective action. If no corrective action was taken, the documentation shall explain why no action was taken.
8. The Applicant shall design and construct the transmission line [power plant] to minimize impact upon raptors.

9. The Applicant shall use non-specular conductor and dulled surfaces for the transmission line structures.
10. Within 120 days of the ACC decision approving this CEC, the Applicant shall post signs in public rights-of-way giving notice of the Project corridor to the extent authorized by law. The Applicant shall place signs in prominent locations at reasonable intervals so the public will be notified of the future location of the transmission line along the full length of the corridor until the transmission structures are constructed. Within 45 days of securing easements for rights-of-way through land that was not public for the Project, the Applicant shall erect and maintain signs providing public notice that the property is the site of a future transmission line. Signs shall be no smaller than twelve inches by twenty four inches. The signs shall advise:
 - a. A CEC has been granted authorizing the construction of a transmission line at this site;
 - b. The name of the Project;
 - c. The expected dates construction will begin and be completed;
 - d. A telephone number, postal address and e-mail address that may be contacted by a member of the public to obtain information about the Project; and
 - e. The name, postal address and website address of the Applicant.
11. During the construction and maintenance of the transmission line [power plant], to the extent practicable the Applicant shall use existing roads for construction and access, minimize impacts to wildlife, minimize vegetation disturbance outside of the Project right-of-way, and revegetate native areas following construction disturbance. Before construction commences, the Applicant shall file with the ACC Docket Control a construction mitigation and restoration plan that lists how the Applicant will use existing roads for construction and access, minimize impacts to wildlife, minimize vegetation disturbance outside of the Project right-of-way, and revegetate native areas following construction disturbance.
12. The Applicant shall participate in good faith in regional, state and local transmission study forums to coordinate transmission expansion plans related to the Project and to resolve transmission reliability and adequacy issues.
13. The Applicant shall provide copies of this CEC to the Maricopa County Planning and Development, the Arizona State Land Department, the State Historic Preservation Office, and the Arizona Game and Fish Department.
14. Within 120 days after the approval of this CEC by the Arizona Corporation Commission, the Applicant shall provide a copy of this CEC to all persons or business entities who are known to have plans to develop or build homes on property within one mile from the center line of the transmission line corridor [power plant location] authorized by this CEC, a map showing the location of the transmission line [power plant], and a pictorial representation of the transmission line [power plant] that will be constructed. The Applicant shall request the developers and homebuilders include this information in the developers' and homebuilder's disclosure statements to prospective buyers.

15. If the Project authorizes a transmission line to be constructed within 100 feet of any existing natural gas or hazardous liquid pipeline, the Applicant shall construct and maintain the line so that it will result in no material adverse impacts to the pipeline or to public safety. Before commencing construction of any portion of the Project located within 100 feet of any existing natural gas or hazardous liquid pipeline, the Applicant shall:
 - a. Perform the appropriate grounding and cathodic protection studies to show the Project's location will result in no material adverse impacts to the pipeline or to public safety when both the pipeline and the Project are in operation. The Applicant shall provide to the ACC Staff all reports of studies performed; and
 - b. Perform a technical study simulating an outage of the Project that may be caused by the collocation of the Project within 100 feet of the existing natural gas or hazardous liquid pipeline. The Applicant shall provide to the ACC Staff all reports of studies performed.
16. The Applicant shall submit a self-certification letter describing progress made toward compliance with each condition of this CEC. Each letter shall be submitted to the Utilities Division Director of the ACC within ten days after December 1 of each year beginning with 20___. Copies of each letter along with the corresponding documentation shall be submitted to the Arizona Attorney General and the Department of Commerce Energy Office. The requirement for the self-certification shall expire on the date the Project is placed into operation.
17. The Applicant shall follow the latest standards set by the Western Electricity Coordinating Council/North American Electric Reliability Corporation Planning as approved by the Federal Energy Regulatory Commission, and the National Electrical Safety Code in the construction and maintenance of the transmission line [power plant].

Charles Hains

From: Acken, Albert [AAcken@lrlaw.com]
Sent: Monday, September 29, 2008 5:19 PM
To: Campbell, Tom; John Foreman
Cc: meghan.grabel@aps.com; michael.dewitt@aps.com; Lawrence.Krueger@aps.com; amorre@ecllaw.com; Charles Hains; chrich@roselawgroup.com; crk@davidsonlaw.net; cwelker@holmwright.com; dcj@tblaw.com; gary.birnbaum@mwmf.com; ghays@lawgdh.com; hharpest@holmwright.com; jdrazek@quarles.com; jguy@buckeyeaz.gov; jim.braselton@mwmf.com; jimoyes@lawms.com; jmp@tblaw.com; mark.nadeau@dlapiper.com; mdeblasi@quarles.com; michael.bailey@surpriseaz.com; rferland@quarles.com; rhurley@roselawgroup.com; shane.gosdis@dlapiper.com; smcco@ecllaw.com; sswakefield@rhhklaw.com; steve.burg@peoriaaz.gov; susan.watson@dlapiper.com; swene@lawms.com; TubacLawyer@aol.com; Campbell, Tom
Subject: RE: CEC CONDITIONS

Chairman Foreman

Thank you for the opportunity to comment on your draft CEC conditions. The concept you have presented, to have clear and appropriate CEC conditions, is a good one. Over the years, as various conditions have been modified and new conditions added, many conditions have become somewhat duplicative, unclear in meaning, or simply outdated. While the Applicant makes a good faith effort before filing a draft CEC to tailor standard conditions to the specific project at issue, identify and eliminate outdated conditions, and add new conditions as warranted, it is an ongoing effort.

Following are our specific comments to some of the draft conditions you have proposed:

1. In recent cases, term limits imposed in CECs have varied from five years (see, e.g., Case 129) to nearly 20 years (see, e.g., Cases 126, 132, and 137), depending on the specifics of each case. The Applicant agrees with this ongoing practice of evaluating term length on a case by case basis. As a result of numerous case-specific factors, limiting the term to five years in this case will likely impose additional burdens on the Applicant, Commission Staff, the Commission and perhaps others.

Additionally, the Applicant and other utilities have heard repeatedly from the Commission, local jurisdictions, and other stakeholders that they want utilities to engage in long-term transmission planning. As we have heard in this case, the affected jurisdictions do not include future electric facilities (and their proposed locations) as part of their general plans. Limiting the CEC to a five-year term would likely discourage utilities from planning utility corridors well in the advance of future development and would result in identifying facilities on a "just in time" basis which could result in limited routing options with greater impacts.

Finally, the term "timely" is unclear because neither statutes nor rules impose a specific deadline for submittal of an application requesting a CEC extension.

2. A number of the proposed conditions impose obligations during the operation of the Project. This approach departs from the statutory regime, which applies to the construction of facilities, not ongoing operations. See, e.g., 40-360.03 and 40-360.07.A. A CEC is issued with conditions that assure the Commission and public that the construction of the project is done in a manner that limits impacts to the environment. If the CEC imposes operational requirements in addition to construction requirements, then it could be argued that the Applicant must seek an extension at the end of the term of the CEC to authorize continued operations, even if construction is complete.

The imposition of operating requirements, in conjunction with a short CEC term, could result in an obligation to file extension requests every five years during the Project's lifetime. This would impose significant burdens on the Applicant, the Commission, the Commission Staff, and any other interested party.

3. Draft Condition 2 differs somewhat from the statutory language found in 40-360.06.D.

4. Some standard conditions, such as Applicant's Draft Conditions 4, 6 and 11, reflect conditions crafted by current Commissioners.

5. Draft Condition 8 is no longer necessary. As a result of this condition in earlier CECs, APS' high voltage transmission structure and line designs have incorporated the necessary measures to minimize impacts to raptors.

6. Draft Condition 10 eliminates the "to the extent practicable" for the placement of signs. This is an important limitation given access difficulties and potentially applicable approval processes on state and federal land. Additionally, the original sign condition dealt only with the actual acquisition of the ROW. In Case 120 Commissioner Mundell requested a condition be added to inform potential homeowners of a future transmission line. In this case, even on much of the private property, the land is undeveloped, not accessible and lacks public rights of way.

7. Draft Condition 11 could be interpreted to mandate the revegetation of disturbed areas and the use of existing access roads. However, in many portions of the route, there are no existing access roads. Even in corridors with existing roads, those roads may not provide access, depending on the final placement of the line. Additionally, APS must work with existing landowners and it may not make practical or economic sense to revegetate disturbed areas, depending on the landowners' plans for those areas in the future. In addition, the Applicant's proposal to file a construction mitigation and restoration plan with the ACC before construction begins will provide the ACC the opportunity to review and approve that plan.

8. Draft Condition 15 revises a carefully crafted agreement between Commission Staff and several utilities. While perhaps intended only to clarify, it does change the meaning and scope of the condition. For example, the concerns that this condition was originally drafted to address are limited to situations where pipelines parallel transmission lines and the lines are within 100 feet of each other. Please note, the Applicant does not believe that the current project will be constructed within 100 feet of an existing gas or petroleum line but is agreeing to include it at the request of Staff.

Thank you again for providing your draft conditions for review and comment.

Bert Acken

-----Original Message-----

From: John Foreman [mailto:John.Foreman@azag.gov]

Sent: Thursday, September 11, 2008 12:03 PM

To: Lawrence Robertson; Charles Hains; Janet Stone; Robert Pizorno; Frederick Davidson; Laurie Ehlers; Mark Nadeau; Charles & Sharie Civer; Andrew Moore; Scott McCoy; Edward Dietrich; Garry Hays; Jay Moyes; Steve Wene; Griffin, Betty Jean; Campbell, Tom; Gary Birnbaum; Jim Braselton; Steve Burg; Joseph Drazek; Michelle De Blasi; Roger Ferland; Scott Wakefield, Esq.; Court Rich; Michael Bailey; Dustin Jones

Cc: Marta Hetzer

Subject: CEC CONDITIONS

I have attached a draft of Conditions for CECs generally that I would propose be applied in Application #138. I am soliciting suggestions about how the language could be adapted for use in #138 and suggestions about how it could be improved in general. Please give me your thoughts.

John Foreman

Assistant Arizona Attorney General

Chair, Arizona Power Plant and Transmission Line Siting Committee

1275 W. Washington

Phoenix, AZ 85007

Tel: 602-542-7902

FAX: 602-542-4377

john.foreman@azag.gov

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Phoenix (602) 262-5311

Tucson (520) 622-2090

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Charles Hains

From: John Foreman [John.Foreman@azag.gov]
Sent: Friday, October 03, 2008 10:29 AM
To: Albert Acken
Cc: TubacLawyer@aol.com; Lawrence.Krueger@aps.com; meghan.grabel@aps.com; michael.dewitt@aps.com; Charles Hains; William Mundell; Jack Haenichen; Paul Rasmussen; Mike Biesemeyer; Gregg Houtz; Barry Wong; jguy@buckeyeaz.gov; Mike Whalen; crk@davidsonlaw.net; mark.nadeau@dlapiper.com; shane.gosdis@dlapiper.com; susan.watson@dlapiper.com; amorre@ecllaw.com; smccoy@ecllaw.com; cwelker@holmwright.com; hharpest@holmwright.com; Patricia Noland; ghays@lawgdh.com; jimoyes@lawms.com; swene@lawms.com; Tom Campbell; gary.birbaum@mwmf.com; jim.braselton@mwmf.com; Mike Palmer; steve.burg@peoriaaz.gov; jdrazek@quarles.com; mdeblasi@quarles.com; rferland@quarles.com; sswakefield@rhhklaw.com; chrich@roselawgroup.com; rhurley@roselawgroup.com; michael.bailey@surpriseaz.com; dcj@tblaw.com; jmp@tblaw.com
Subject: RE: CEC CONDITIONS

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FAX: 602-542-4377
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>>> "Acken, Albert" <AAcken@lrlaw.com> 9/29/2008 5:19 PM >>>
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Additionally, the Applicant and other utilities have heard repeatedly from the Commission, local jurisdictions, and other stakeholders that they want utilities to engage in long-term transmission planning. As we have heard in this case, the affected jurisdictions do not include future electric facilities (and their proposed locations) as part of their general plans. Limiting the CEC to a five-year term would likely discourage utilities from planning utility corridors well in the advance of future development and would result in identifying facilities on a "just in time" basis which could result in limited routing options with greater impacts.

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Sent: Thursday, September 11, 2008 12:03 PM

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EXHIBIT F

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING
2
3 BEFORE THE ARIZONA CORPORATION COMMISSION
4 IN THE MATTER OF THE)
APPLICATION OF COOLIDGE POWER))
5 CORPORATION IN CONFORMANCE)
WITH THE REQUIREMENTS OF)
6 ARIZONA REVISED STATUTES)
§§ 40-360.03 40-360.06,) Docket No.
7 ET SEQ., FOR A CERTIFICATE OF) L-00000HH-08-0422-00141
ENVIRONMENTAL COMPATIBILITY)
8 AUTHORIZING CONSTRUCTION OF A) Case No. 141
NOMINAL 575 MW NATURAL)
9 GAS-FIRED, SIMPLE CYCLE) Special Open Meeting
GENERATING FACILITY LOCATED)
10 WITHIN THE CITY OF COOLIDGE)
IN PINAL COUNTY, ARIZONA.)
11 _____)

12

13 At: Phoenix, Arizona
14 Date: December 5, 2008
15 Filed:

16

17 TRANSCRIPT OF PROCEEDINGS

18

Agenda Item No. U-3

19

20

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Court Reporting
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2200 North Central Avenue
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Transcribed by:
Katherine A. McNally
CERTIFIED TRANSCRIBER
CET**D-323

25

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING
2 orders in the future.

3 MS. ALWARD: Chairman, Commissioner Mayes,
4 Staff -- Utilities Division Staff and I have discussed
5 this, and we believe that the approval of the application
6 is in the public interest, although we also felt it was
7 important to draw to the Commission's attention the -- the
8 underlying issues we felt needed to be corrected in order
9 to provide, I suppose, confidence in this record.

10 The ratification is intended to cure the open
11 meeting law violations, which I don't think are contested
12 in terms of whether or not they had occurred.

13 There may be some view that they may be
14 technical violations. I don't find that compelling, in
15 light of the Attorney General's handbook, which says that
16 even technical violations -- if -- if we would consider
17 those technical violations -- need to be avoided by -- by
18 the public bodies who are under the open meeting law.

19 As in terms of the e-mail, I -- I do think that
20 there are issues raised by a process that encourages the
21 conduction of business -- the conducting of business
22 outside of the public view.

23 It seems to me that the sheer volume of the
24 e-mail that we filed in this, and in the case that you're
25 going to be considering later, is such that I think the

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2 necessarily the committee -- and the public has had a
3 chance to see them.

4 But my question is -- my next question is,
5 at -- when were they docketed? I believe the answer is
6 "after the hearing."

7 But were they docketed after the hearing? And
8 if so what implications does that have for the opportunity
9 of the committee to assess the kind of substantive
10 discussions that were going on off the record, behind the
11 scenes? And what implications does it have for the
12 public's ability to participate in this process?

13 MS. ALWARD: Chairman, Commissioner, you raise
14 a good point. Rather than not have them docketed at all
15 in the record -- and I don't see them as extending the
16 record -- I see them as informing the record of matters
17 that occurred.

18 So from one point of view, they're not
19 post-record, but they are part of the review process that
20 you have before you. And your point is well taken.

21 COM. MAYES: So they were --

22 MS. ALWARD: I don't know if the committee
23 members had access to these -- this information. It's
24 likely they did not, if it was only between the chairman
25 and the parties, or the chairman and -- and a limited

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2 broadcast.

3 So in this instance -- in this case, these were
4 filed with the second request for review after
5 ratification.

6 COM. MAYES: So that was after the hearing
7 closed?

8 MS. ALWARD: That's correct.

9 COM. MAYES: Okay.

10 MS. ALWARD: But --

11 COM. MAYES: So for all intents and purposes,
12 unless these -- unless the changes that were being made to
13 the -- to these conditions were heard -- discussed in the
14 hearing -- and I'll ask the chairman and -- and counsel
15 for the applicant this question -- but unless they were --
16 unless all of these changes that were being discussed by
17 e-mail were discussed in the hearing, it's possible that
18 some of the changes would have occurred outside the
19 purview of the public?

20 MS. ALWARD: Chairman, Commissioner, you'll --
21 you'll have to ask the -- the parties and the chairman
22 that specific question. Some of those matters were
23 discussed at the course of the hearing.

24 COM. MAYES: Okay. At -- at what point -- so
25 at what point -- and again, I'm going to ask this question

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2 of -- of counsel for the applicant.

3 I think -- they probably ought to just come to
4 the table, because this is going to be an extensive
5 discussion, Mr. Moyes.

6 At what point for -- at what point was Staff
7 made aware of -- of the existence of these e-mails?

8 I mean, because -- because Staff was -- was
9 copied on some of them. So at what point did Staff become
10 concerned about them and decide to bring them to light?

11 MS. ALWARD: First of all, I wanted to note
12 that the CEC condition that Staff was proposing in e-mails
13 between the Staff and the applicant were not copied, at
14 least by -- by me, to the chairman and the committee
15 members.

16 So if that occurred, it -- it -- it wasn't the
17 way Staff would have approached the discussion of CECs
18 with another party.

19 Why did we feel the e-mails needed to be
20 filed?

21 I think we stepped back after the open meeting
22 law violations, and the apparent inability of the chairman
23 to understand the concerns that we were raising in a way
24 that we thought could correct them in prospective cases.

25 And so the chairman and, say, an -- an attorney

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2 for the Staff may not have completely coincident
3 interests, but they should have been that way.

4 And so we wanted to give you, the Commission,
5 the best record we could. And when we stepped back and
6 looked at the e-mails in this case in Solana and in a case
7 that's going to come before you later, we thought that the
8 sheer volume was such that it was -- it was important to
9 bring the matter to your attention.

10 The -- the problem that -- that occurs -- or
11 that became apparent to me at the ratification proceeding
12 was that although they seemed to be within the
13 (indiscernible) of the chairman of the committee, the
14 committee members also felt -- or expressed opinions, in
15 some instances, of -- of either confusion or disagreement
16 with some of the -- the -- the irregularities that Staff
17 counsel have identified.

18 And I -- I think it's important that the
19 committee members understand that Staff is not trying to
20 make allegations that -- that impact any of the committee
21 member's integrity or dedication to -- to this process.

22 After almost 25 years of working with various
23 committees, I can say, without qualification, this is one
24 of the hardest working committees in state government, and
25 they do an important task, as this Commission does.

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING

2 Once these -- these power plants and
3 transmission lines are sited, I sometimes think that the
4 impact of our decisions here, and the committee's
5 decisions, aren't fully understood.

6 One of the things that we do here in siting is
7 to forever change the landscape and the environment of
8 this state with these transmission lines and power
9 plants.

10 And from that perspective, every -- every step
11 we take, from my point of view, needs to be transparent to
12 the public. And that's because the siting statutes do
13 impact just about every citizen, every environmental
14 issue, that the State considers when we make these very
15 difficult decisions.

16 COM. MAYES: I appreciate the -- the
17 statement. And -- and I agree.

18 You know, I did see the transcript and -- and
19 the exchange, a couple of the exchanges that occurred with
20 committee members who thought that somehow the integrity
21 of the committee and -- and the chairman was being
22 challenged. I think that's not the case.

23 But -- but we -- these are multibillion dollars
24 projects. And one of them is -- is critical to the
25 state's largest utilities efforts to meet our renewable

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING

2 And again, it's one thing for -- let's be clear
3 here, too -- it's one thing I think for the lawyers to
4 e-mail each other back and forth, because that happens in
5 litigation all the time -- and I said this in the line
6 siting committee that I sat on.

7 It's another thing to copy the committee
8 members and -- and -- and the chairman. You guys can --
9 the lawyers can talk back and forth as much as they want
10 about issues -- and that happens all the time in
11 litigation.

12 But when you start involving the -- the
13 committee members, then that's where the violation, in my
14 opinion, occurs. And we'll -- let's have that discussion,
15 because I think it's going to be fascinating to hear the
16 legal arguments that it's not a violation when you're
17 talking about the merits of the case and then sending
18 those e-mails to the committee.

19 And then these e-mails would have never come to
20 light, but for the Staff request -- requesting this
21 proceeding.

22 Thank you.

23 CHMN. GLEASON: Okay. Commissioner Pierce --
24 Commission Pierce -- excuse me (indiscernible).

25 COM. PIERCE: Thank you. I -- it's great to

1 THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING
2 to believe that it's the chairman --

3 MR. MOYES: The -- the --

4 COM. MAYES: -- or somebody else. Maybe --
5 maybe some -- I don't know, you know, what happened.

6 But that's not the way this process goes.
7 That's not the process that this commission has
8 established, and it's certainly not the process that
9 Chairman Woodall carried out for many years.

10 And from my standpoint, this is going to have
11 to stop, the e-mailing stops, the secret condition writing
12 stops, and the lack of transparency stops, or I don't vote
13 for any more CECs coming out of this committee.

14 Thank you, Mr. Chairman.

15 CHMN. GLEASON: Okay. We're going to recess
16 for an hour to -- that's 20 minutes till 2:00, I guess by
17 that -- by that clock on the wall.

18 (Recess taken.)

19 CHMN. GLEASON: Okay. It looks like it's 20
20 till, and we'll come the back to -- come back to order.

21 And I gather that Commissioner Mayes is -- all
22 the pressure is off?

23 COM. MAYES: Yeah, you bet.

24 CHMN. GLEASON: Well, Mr. Pierce?

25 COM. PIERCE: Thank you.

EXHIBIT G

ORIGINAL

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION)
 OF ARIZONA PUBLIC SERVICE COMPANY,) Arizona Corporation Commission
 IN CONFORMANCE WITH THE REQUIREMENTS)
 OF ARIZONA REVISED STATUTES §§ 40-360,) Docket No. L-00000 D-08-0330-00138
 et seq., FOR A CERTIFICATE OF ENVIRONMENTAL)
 COMPATIBILITY AUTHORIZING THE TS-5 TO TS-9) Case No. 138
 500/230kV TRANSMISSION LINE PROJECT, WHICH)
 ORIGINATES AT THE FUTURE TS-5 SUBSTATION,)
 LOCATED IN THE WEST HALF OF SECTION 28,)
 TOWNSHIP 4 NORTH, RANGE 4 WEST AND)
 TERMINATES AT THE FUTURE TS-9 SUBSTATION,)
 LOCATED IN SECTION 33, TOWNSHIP 8 NORTH,)
 RANGE 1 EAST, IN MARICOPA COUNTY, ARIZONA)

RECEIVED
 JUN 31 P 3 21
 ARIZONA CORPORATION COMMISSION
 LEGAL COUNSEL

Procedural Order Responding to Arizona Corporation Staff's Request to Supplement Record

On October 24, 2008, counsel for the Arizona Corporation Staff requested that the Chairman of the Arizona Power Plant and Transmission Line Siting Committee "file in the docket copies of all e-mails in his possession that were transmitted among parties and the Chairman of the Committee and/or Committee members, even if such communications may not be construed as substantive in nature. Staff notes that the Arizona Corporation Commission Executive Director has earlier requested that the Chairman docket these matters, and it is Staff's understanding that the Chairman has agreed." At the hearing in this matter on October 27, 2008, this matter was discussed.

After a review of e-mails that have been saved it appears that the Chairman agreed to file in the docket the e-mails below that related to form conditions that might or might not be helpful to counsel in drafting the proposed Certificates of Environmental Compatibility that counsel were directed to prepare later before closing argument. A draft of a pleading referring to the agreement and containing the e-mails dated October 6, 2008, was found printed, but not filed. It does not appear from the e-mails or the pleading of October 6, 2008, any agreement was reached for the Chairman to capture or file all e-mails either amongst counsel or the Committee. However as stated at the October 27, 2008, hearing, the Chairman continues to have no objection to any party who feels it important to capture and file any e-mail communication amongst counsel. Counsel for the Arizona Corporation Staff should be a participant in those e-mails. What follows is the body of the October 6, 2008, pleading in its entirety:

An exchange of e-mail has occurred amongst counsel for the parties the Chairman and Presiding Officer of the Arizona Power Plant and Transmission Line Siting Committee in the above captioned matter. All the communications relating to the Draft Conditions for the proposed Certificate of Environmental Compatibility from the e-mails are reproduced below.

Arizona Corporation Commission
DOCKETED

JUN 30 2009

DOCKETED BY 

The following conditions were originally circulated for comment by the Chairman by e-mail on September 11, 2008:

The Certificate of Environmental Compatibility ("CEC") is granted conditioned upon the Applicant's compliance with the following:

1. The Applicant shall obtain all permits, licenses and approvals required by the United States of America or its agencies, the State of Arizona or its agencies, and any local government or local governmental agency that are legally required to construct and to operate the transmission line [power plant].
2. The Applicant shall comply with all applicable statutes, regulations and master plans of the United States of America or its agencies, the State of Arizona or its agencies, and any local government or local governmental agency in the construction and operation of the transmission line [power plant].
3. If any archaeological, paleontological or historical site or object that is at least fifty years old is discovered on state, county or municipal land during the construction or operation of the transmission line [power plant], the Applicant or its representative in charge shall promptly report the discovery to the Director of the Arizona State Museum, and in consultation with the Director, shall immediately take all reasonable steps to secure and maintain the preservation of the discovery. A.R.S. § 41-844.
4. If human remains and/or funerary objects are encountered on private land during the course of any ground-disturbing activities relating to the construction or operation of the transmission line [power plant], the Applicant shall cease work on the affected area of the Project and notify the Director of the Arizona State Museum. A.R.S. § 41-865.
5. The Applicant shall comply with the notice and salvage requirements of the Arizona Native Plant Law (A.R.S. §§ 3-901 et seq.) and shall, to the extent feasible, minimize the destruction of native plants during the construction and operation of the transmission line [power plant].
6. This CEC shall expire five years from the date of its final approval by the Arizona Corporation Commission ("ACC") unless prior to that time the expiration date of the CEC is extended by the ACC after a timely application has been filed by the Applicant or its successors in interest.
7. The Applicant shall document and make reasonable efforts to correct each complaint of interference with radio or television signals from the operation of the transmission lines [power plant] and related facilities identified in the CEC. The Applicant shall maintain written records for a period of five years of all complaints of radio or television interference attributed to the operation of the transmission line. The documentation shall include the date of the complained interference, the name and identifying information of the complaining party, the corrective action taken, and the results of the corrective action. If no corrective action was taken, the documentation shall explain why no action was taken.
8. The Applicant shall design and construct the transmission line [power plant] to minimize impact upon raptors.

9. The Applicant shall use non-specular conductor and dulled surfaces for the transmission line structures.
10. Within 120 days of the ACC decision approving this CEC, the Applicant shall post signs in public rights-of-way giving notice of the Project corridor to the extent authorized by law. The Applicant shall place signs in prominent locations at reasonable intervals so the public will be notified of the future location of the transmission line along the full length of the corridor until the transmission structures are constructed. Within 45 days of securing easements for rights-of-way through land that was not public for the Project, the Applicant shall erect and maintain signs providing public notice that the property is the site of a future transmission line. Signs shall be no smaller than twelve inches by twenty four inches. The signs shall advise:
 - a. A CEC has been granted authorizing the construction of a transmission line at this site;
 - b. The name of the Project;
 - c. The expected dates construction will begin and be completed;
 - d. A telephone number, postal address and e-mail address that may be contacted by a member of the public to obtain information about the Project; and
 - e. The name, postal address and website address of the Applicant.
11. During the construction and maintenance of the transmission line [power plant], to the extent practicable the Applicant shall use existing roads for construction and access, minimize impacts to wildlife, minimize vegetation disturbance outside of the Project right-of-way, and revegetate native areas following construction disturbance. Before construction commences, the Applicant shall file with the ACC Docket Control a construction mitigation and restoration plan that lists how the Applicant will use existing roads for construction and access, minimize impacts to wildlife, minimize vegetation disturbance outside of the Project right-of-way, and revegetate native areas following construction disturbance.
12. The Applicant shall participate in good faith in regional, state and local transmission study forums to coordinate transmission expansion plans related to the Project and to resolve transmission reliability and adequacy issues.
13. The Applicant shall provide copies of this CEC to the Maricopa County Planning and Development, the Arizona State Land Department, the State Historic Preservation Office, and the Arizona Game and Fish Department.
14. Within 120 days after the approval of this CEC by the Arizona Corporation Commission, the Applicant shall provide a copy of this CEC to all persons or business entities who are known to have plans to develop or build homes on property within one mile from the center line of the transmission line corridor [power plant location] authorized by this CEC, a map showing the location of the transmission line [power plant], and a pictorial representation of the transmission line [power plant] that will be constructed. The Applicant shall request the developers and homebuilders include this information in the developers' and homebuilder's disclosure statements to prospective buyers.

15. If the Project authorizes a transmission line to be constructed within 100 feet of any existing natural gas or hazardous liquid pipeline, the Applicant shall construct and maintain the line so that it will result in no material adverse impacts to the pipeline or to public safety. Before commencing construction of any portion of the Project located within 100 feet of any existing natural gas or hazardous liquid pipeline, the Applicant shall:
- Perform the appropriate grounding and cathodic protection studies to show the Project's location will result in no material adverse impacts to the pipeline or to public safety when both the pipeline and the Project are in operation. The Applicant shall provide to the ACC Staff all reports of studies performed; and
 - Perform a technical study simulating an outage of the Project that may be caused by the collocation of the Project within 100 feet of the existing natural gas or hazardous liquid pipeline. The Applicant shall provide to the ACC Staff all reports of studies performed.
16. The Applicant shall submit a self-certification letter describing progress made toward compliance with each condition of this CEC. Each letter shall be submitted to the Utilities Division Director of the ACC within ten days after December 1 of each year beginning with 20___. Copies of each letter along with the corresponding documentation shall be submitted to the Arizona Attorney General and the Department of Commerce Energy Office. The requirement for the self-certification shall expire on the date the Project is placed into operation.
17. The Applicant shall follow the latest standards set by the Western Electricity Coordinating Council/North American Electric Reliability Corporation Planning as approved by the Federal Energy Regulatory Commission, and the National Electrical Safety Code in the construction and maintenance of the transmission line [power plant].

On September 29, 2008, Bert Acken, counsel for the Applicant responded:
Chairman Foreman

Thank you for the opportunity to comment on your draft CEC conditions. The concept you have presented, to have clear and appropriate CEC conditions, is a good one. Over the years, as various conditions have been modified and new conditions added, many conditions have become somewhat duplicative, unclear in meaning, or simply outdated. While the Applicant makes a good faith effort before filing a draft CEC to tailor standard conditions to the specific project at issue, identify and eliminate outdated conditions, and add new conditions as warranted, it is an ongoing effort.

Following are our specific comments to some of the draft conditions you have proposed:

- In recent cases, term limits imposed in CECs have varied from five years (see, e.g., Case 129) to nearly 20 years (see, e.g., Cases 126, 132, and 137), depending on the specifics of each case. The Applicant agrees with this ongoing practice of evaluating term length on a case by case basis. As a result of numerous case-specific factors, limiting the term to five years in this case will likely impose additional burdens on the Applicant, Commission Staff, the Commission and perhaps others.

Additionally, the Applicant and other utilities have heard repeatedly

from the Commission, local jurisdictions, and other stakeholders that they want utilities to engage in long-term transmission planning. As we have heard in this case, the affected jurisdictions do not include future electric facilities (and their proposed locations) as part of their general plans. Limiting the CEC to a five-year term would likely discourage utilities from planning utility corridors well in the advance of future development and would result in identifying facilities on a "just in time" basis which could result in limited routing options with greater impacts.

Finally, the term "timely" is unclear because neither statutes nor rules impose a specific deadline for submittal of an application requesting a CEC extension.

2. A number of the proposed conditions impose obligations during the operation of the Project. This approach departs from the statutory regime, which applies to the construction of facilities, not ongoing operations. See, e.g., 40-360.03 and 40-360.07.A. A CEC is issued with conditions that assure the Commission and public that the construction of the project is done in a manner that limits impacts to the environment. If the CEC imposes operational requirements in addition to construction requirements, then it could be argued that the Applicant must seek an extension at the end of the term of the CEC to authorize continued operations, even if construction is complete.

The imposition of operating requirements, in conjunction with a short CEC term, could result in an obligation to file extension requests every five years during the Project's lifetime. This would impose significant burdens on the Applicant, the Commission, the Commission Staff, and any other interested party.

3. Draft Condition 2 differs somewhat from the statutory language found in 40-360.06.D.

4. Some standard conditions, such as Applicant's Draft Conditions 4, 6 and 11, reflect conditions crafted by current Commissioners.

5. Draft Condition 8 is no longer necessary. As a result of this condition in earlier CECs, APS' High voltage transmission structure and line designs have incorporated the necessary measures to minimize impacts to raptors.

6. Draft Condition 10 eliminates the "to the extent practicable" for the placement of signs. This is an important limitation given access difficulties and potentially applicable approval processes on state and federal land. Additionally, the original sign condition dealt only with the actual acquisition of the ROW. In Case 120 Commissioner Mundell requested a condition be added to inform potential homeowners of a future transmission line. In this case, even on much of the private property, the land is undeveloped, not accessible and lacks public rights of way.

7. Draft Condition 11 could be interpreted to mandate the revegetation of disturbed areas and the use of existing access roads. However, in many portions of the route, there are no existing access roads. Even in corridors with existing roads, these roads may not provide access, depending on the final placement of the line. Additionally, APS must work with existing landowners and it may not make practical or economic sense to revegetate disturbed areas, depending on the landowners' plans for those areas in the future. In addition, the Applicant's proposal to file a construction mitigation and restoration plan with the ACC before construction begins will provide the ACC the opportunity to review and approve that plan.

8. Draft Condition 15 revises a carefully crafted agreement between Commission Staff and several utilities. While perhaps intended only to clarify, it does change the meaning and scope of the condition. For

example, the concerns that this condition was originally drafted to address are limited to situations where pipelines parallel transmission lines and the lines are within 100 feet of each other. Please note, the Applicant does not believe that the current project will be constructed within 100 feet of an existing gas or petroleum line but is agreeing to include it at the request of Staff.

Thank you again for providing your draft conditions for review and comment.

Bert Achen

On October 3, 2008, Chairman Foreman replied:

Bert,

Thank you for your response to the proposed conditions. Your comments were constructive and very helpful. I have been asked to include the draft conditions in the docket so all members of the Commission will be able to view them. I think that is a good idea. I will also file your response and my reply. All future comments should be filed with docket control in this file.

Let me reply to some of the concerns you raise by paragraph:

1. The conflict between allowing the companies a longer time frame on the one hand and the changing proof regarding the factors in the statute remains. A longer time frame will allow longer range planning that I believe should be encouraged. However, granting a CEC for a longer time frame means that when the project is actually built, the statutory factors may have changed from the time the CEC was granted. I do not know how to solve this problem without using the renewal process. The renewal process will allow the Commission to decide if a change in circumstance has occurred that requires new findings or balancing. The renewal process has been used in the past on multiple occasions, but no rules exist for its use. Certainly an application to renew should be "timely". The Commission will have to decide what is "timely" until the process is better defined by rule or statutory change. Five years is rough approximation of the event horizon for the most credible expert predictions about the factors now listed in the statute.

2. Your response raises an interesting general point. What is the power of the Commission to regulate on going operation of a project? I think they do have the power and I think using the conditions as a way to sculpt that regulation is reasonable. If they have other ways of regulating and would rather use those other ways, I do not have a problem deleting some of the conditions. If they do not or if they want to use the conditions, I see no reason to change that practice in this case. Long term review and reform is not something we can accomplish in this application.

In addition, some of the Committee's findings and conclusions may be based upon the assumption the project will be constructed or operated according to a condition. It is not unreasonable to incorporate some of those understandings into the CEC.

3. Draft Condition #2 is more inclusive than A.R.S. § 40-360.06D and it was intended to be. The applicant should follow all laws and regulations. If local ordinances etc. are too restrictive, the notice and potential override provisions of § 40-360.06D should be implemented before not after the CEC is granted.

4. I understood some of the provisions were crafted by individual commissioners and that tells me they view the imposition of "conditions" as something they support. The reason to review the conditions is to determine whether each individual makes sense for that CEC (see your comments #5 and #8, below) and to see if we can draft the language in a way that is clear and covers exactly what we want covered.

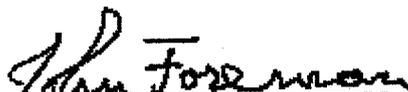
5. If Draft Condition #8 is no longer necessary, let us have some testimony on that subject—I missed it if we did. It should not be used if it is unnecessary.

6. You raise a couple of good points here. The Applicant obviously cannot post a sign unless they have a legal right to enter. I agree the language should reflect that limitation.

7. I think your points here are also well taken. The burden of "revegetation" for damage to the land and plants not caused by the Applicant should not be automatically placed upon the Applicant. It may be the construction mitigation plan process will give the Commission the authority to deal with this problem.

8. If the route ultimately selected will not cross or approach within 100' of a gas pipe line, Draft Condition 15 should not be used. I would like to hear from the Commission Staff about whether they believe the language changes are a problem. I look forward to hearing from other parties. I would like all future responses to be filed with docket control in this file.

DATED: October 31, 2008


John Foreman, Chairman
Arizona Power Plant and
Transmission Line Siting
Committee
Assistant Attorney General
john.foreman@azcc.gov

Pursuant to A.A.C. R14-3-204,
The Original and 25 copies were
filed October 31, 2008 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Copy of the above mailed
October 31, 2008 to:

Charles Hains
Janice Alward, Chief Counsel
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
Counsel for Legal Division Staff

Brian C. McNeil
Executive Director
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Linda Hogan
Assistant to the Executive Director
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Thomas H. Campbell, Esq.
Albert Acker, Esq.
Lewis & Roca, LLP

EXHIBIT H

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

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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-9 500/230 kV 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

**NOTICE OF FILING E-MAILS TO
SUPPLEMENT THE RECORD**

Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") hereby provides notice of filing certain e-mail communications between and among parties and members of the Arizona Power Plant and Line Siting Committee ("Committee"). In the course of proceedings in the above-captioned matter, e-mail communication has been used extensively to expedite the processing of procedural issues. Likewise, e-mail been employed to rapidly disseminate documents to parties in conformance with procedural orders. In addition, potentially substantive e-mails have also been exchanged in which the Committee members were included as well as parties to the above-captioned matter. All of these communications should be part of the record in this matter.

Staff believes that, in order for the public to have confidence that the record being developed at the publicly held proceedings is complete and free of the concern that parallel proceedings are occurring outside of the public scrutiny, it would be appropriate to provide in the docket copies of all e-mails that have been distributed between parties and members of the Committee. Further, Staff requests that any future e-mails that are transmitted to both parties and Committee member(s) be filed in the docket by the sending party or the Chairman of the Committee.

...

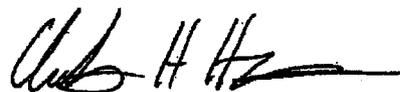
...

1 The printouts of e-mail communications included in this notice of filing are provided under
2 three separate attachments.¹ Attachment A is the complete set of e-mails in Staff's possession,
3 including those that are not reasonably considered substantive, that include both parties and
4 Committee member(s) among recipients. Attachment B contains a selection of e-mails that appear to
5 be substantive in nature and that illustrate how procedural communications may inadvertently stray
6 into substantive matters. Finally, Attachment C provides copies of a series of e-mails that have
7 already been discussed generally during these proceedings.

8 The e-mails provided in Attachment C address certain proposed conditions and contains an
9 acknowledgment that such discussions would be docketed. On October 31, 2008, this e-mail was
10 docketed by the Chairman of the Committee; that filing, however, does not include the distribution
11 list for that e-mail. Attachment C therefore includes that distribution list in order to complete the
12 record.

13 In order to complete the record and to provide a full context for the discussions that have
14 occurred during the noticed proceedings, Staff provides these e-mails so that they may be included as
15 part of the record herein. Staff also respectfully requests that any additional e-mails between any
16 party and any Committee member(s) not included in Attachment A to this pleading be filed with the
17 docket in this matter and that all future e-mails between parties and Committee member(s) be
18 docketed as well.

19 RESPECTFULLY SUBMITTED this 13th day of November, 2008.

20
21 

22 Charles H. Hains
23 Ayesha Vohra
24 Janet Wagner
25 Attorneys, Legal Division
26 Arizona Corporation Commission
27 1200 West Washington Street
28 Phoenix, Arizona 85007
(602) 542-3402

1 Staff notes that, in order to present the sequence of e-mails received and responses provided by other individuals,
several of the e-mails produced within the Attachments are duplicated in later e-mail responses.

1 Original and twenty-five (25)
2 copies of the foregoing filed this
3 13th day of November, 2008 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington Street
7 Phoenix, Arizona 85007

8 Copies of the foregoing
9 mailed/e-mailed this 13th day of
10 November, 2008 to:

11 John Foreman, Chairman
12 Arizona Power Plant and
13 Transmission Line Sitting Committee
14 Office of the Attorney General
15 1275 West Washington Street
16 Phoenix, Arizona 85007
17 john.foreman@azag.gov
18 susan.ellis@azag.gov

19 Meghan Grabel
20 Pinnacle West Capital Corporation
21 P.O. Box 53999, Mail Station 8602
22 Phoenix, Arizona 85072-3999
23 meghan.grabel@pinnaclewest.com

24 Edward W. Dietrich
25 Senior Project Manager
26 Real Estate Division Planning Section
27 Arizona State Land Department
28 1616 West Adam Street
Phoenix, Arizona 85007
edietrich@land.az.gov

James T. Braselton
Gary L. Birnbaum
Mariscal Weeks McIntyre & Friedlander, PA
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012-2705
Counsel for Intervenor Surprise Grand Vista
JV I, LLC and Counsel for Sunhaven Property
Owners
james.braselton@mwmf.com
gary.birnbaum@mwmf.com

Thomas H. Campbell
Albert Acken
40 North Central Avenue
Phoenix, Arizona 85007
Counsel for Applicant, APS
tcampbell@lrlaw.com
aacken@lrlaw.com

Lawrence Robertson Jr.
2247 East Frontree Rd., Suite 1
P.O. Box 1448
Tubac, Arizona 85646-0001
Counsel for Intervenor Diamond Ventures
tubaclawyer@aol.com

Steve Burg
Chief Assistant City Attorney
City of Peoria
Office of the City Attorney
8401 West Monroe Street
Peoria, Arizona 85345
Counsel for City of Peoria, Arizona
steve.burg@peoriaaz.gov

Robert N. Pizorno
Beus Gilbert, PLLC
4800 North Scottsdale Rd., Suite 6000
Scottsdale, Arizona 85251-7630
rpizorno@beusgilbert.com

Court S. Rich
Ryan Hurley
Rose Law Group, PC
6613 North Scottsdale Rd., Suite 200
Scottsdale, Arizona 85250-0001
Counsel for Intervenor Lake Pleasant 5000,
LLC
crich@roselawgroup.com
rhurley@roselawgroup.com

Scott McCoy
Earl Curley Legarde, PC
3101 North Central Avenue, Suite 1000
Phoenix, Arizona 85012-2654
Counsel for Intervenor Elliot Homes, Inc.
smccoy@ecllaw.com

1 Andrew Moore
2 Earl Curley Legarde, PC
3 3101 North Central Avenue, Suite 1000
4 Phoenix, Arizona 85012-2654
5 Counsel for Intervenor Woodside Homes of
6 Arizona, Inc.
7 amoore@ecllaw.com

8 Joseph A. Drazek
9 Michelle De Blasi
10 Roger K. Ferland
11 Quarles Brady
12 One Renaissance Square
13 Two North Central Avenue
14 Phoenix, Arizona 85004-2391
15 Counsel for Intervenor Vistancia, LLC
16 jdrazek@quarles.com
17 mdeblasi@quarles.com
18 rferland@quarles.com

19 Michael D. Bailey
20 City of Surprise Attorney's Office
21 12425 West Bell Road
22 Surprise, Arizona 85374
23 Counsel for Intervenor City of Surprise
24 michael.bailey@surpriseaz.com

25 Jay Moyes
26 Steve Wene
27 Moyes, Sellers, & Sims
28 1850 North Central Avenue, Suite 1100
Phoenix, Arizona 85004
Counsel for Vistancia HOA's
swene@lawms.com
jimoyes@lawms.com

Scott S. Wakefield
Ridenour, Hienton, Kelhoffer & Lewis, PLLC
201 North Central Avenue, Suite 3300
Phoenix, Arizona 85004-1052
Counsel for DLGC II and Lake Pleasant
Group
sswakefield@rhhklaw.com

Garry D. Hays
Law Office of Garry D. Hayes, PC
1702 East Highland Avenue, Suite 400
Phoenix, Arizona 85016
Counsel for Arizona State Land Department
ghays@lawgdh.com

Christopher S. Welker
Holm Wright Hyde & Hayes, PLC
10201 South 51st Street, Suite 285
Phoenix, Arizona 85044
cwelker@holmwright.com

John Paladini
Dustin C. Jones
Tiffany & Bosco, PA
2525 East Camelback Rd., Third Floor
Phoenix, Arizona 85016
Counsel for Intervenor Anderson Land
Development, Inc
jmp@tblaw.com
dcj@tblaw.com

Jeanine Guy
Town Manager
Town of Buckeye
1101 East Ash Avenue
Buckeye, Arizona 85326
Intervenor Town of Buckeye
iguy@buckeyeaz.gov

Chad R. Kaffer
Fredrick E. Davidson
The Davidson Law Firm, PC
8701 East Vista Bonita Drive, Suite 220
P.O. Box 27500
Scottsdale, Arizona 85255
Counsel for Quintero Association
fed@davidsonlaw.net
crk@davidsonlaw.net

Mark A. Nadeau
Shane D. Gosdis
DLA Piper US LLP
2415 East Camelback Rd., Suite 700
Phoenix, Arizona 85016-4246
Counsel for 10,000 West, LLC
mark.nadeau@dlapiper.com
shane.gosdis@dlapiper.com

Copies of the foregoing
mailed this 24th day of
October, 2008 to:

Mike Biesemeyer
3076 East Blue Ridge Place
Chandler, Arizona 85249

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Art Othon
Office of the Attorney
8401 West Monroe Street
Peoria, Arizona 85345

Charles W. and Sharie Civer (Realtors)
42265 North Old Mine Rd.
Cave Creek, Arizona 85331-2806
Intervenor on behalf of DLGC II and Lake
Pleasant Group

ABL

EXHIBIT I

From: Nadeau, Mark
Sent: Tuesday, September 02, 2008 12:20 PM
To: John Foreman; TubacLawyer@aol.com; chains@azcc.gov; jguy@buckeyeaz.gov; crk@davidsonlaw.net; Gosdis, Shane; Watson, Susan; amoore@ecllaw.com; smccoy@ecllaw.com; cwelker@holmwright.com; hharpest@holmwright.com; ghays@lawgdh.com; jimoyes@lawms.com; swene@lawms.com; Albert Acken; gary.birnbaum@mwmf.com; jim.braselton@mwmf.com; steve.burg@peoriaaz.gov; jdrazek@quarles.com; mdeblasi@quarles.com; rferland@quarles.com; sswakefield@rhhklaw.com; chrich@roselawgroup.com; rhurley@roselawgroup.com; michael.bailey@surpriseaz.com; dcj@tblaw.com; jmp@tblaw.com
Cc: Tom Campbell
Subject: RE: FW: #138 POSITION CHART SS

Chairman Foreman: We applaud your efforts at getting the parties to talk. Even so, we do wish to make the point that 10,000 West does not concede the "need" for this power line. To the contrary, as we know you appreciate and will consider, there are a number of constituents here that believe it is a very expensive redundancy which is not justified by the testimony thus far submitted. We will not argue it further here, but simply wanted the record to reflect our belief the Committee should continue its inquiry as to the need for such a line.

Respectfully,

Mark A. Nadeau
Partner

DLA Piper US LLP
2415 East Camelback Road, Suite 700
Phoenix, Arizona 85016-4245

480.606.5110 T
480.606.5510 F
602.908.8820 M
Mark.Nadeau@dlapiper.com

www.dlapiper.com

-----Original Message-----

From: John Foreman [mailto:John.Foreman@azag.gov]
Sent: Tuesday, September 02, 2008 10:15 AM
To: TubacLawyer@aol.com; chains@azcc.gov; jguy@buckeyeaz.gov; crk@davidsonlaw.net; Nadeau, Mark; Gosdis, Shane; Watson, Susan; amoore@ecllaw.com; smccoy@ecllaw.com; cwelker@holmwright.com; hharpest@holmwright.com; ghays@lawgdh.com; jimoyes@lawms.com; swene@lawms.com; Albert Acken; gary.birnbaum@mwmf.com; jim.braselton@mwmf.com; steve.burg@peoriaaz.gov; jdrazek@quarles.com; mdeblasi@quarles.com; rferland@quarles.com; sswakefield@rhhklaw.com; chrich@roselawgroup.com; rhurley@roselawgroup.com; michael.bailey@surpriseaz.com; dcj@tblaw.com; jmp@tblaw.com
Cc: Tom Campbell
Subject: Re: FW: #138 POSITION CHART SS

Counsel for the Applicant has made a number of good points in discussing the possibilities of settlement. I have spent the last week trying to come up with a plan for a meaningful settlement process. So let me try to set some parameters for settlement discussions:

1. Any "settlement" in this matter would amount to agreement amongst parties to compromise their positions to join a common position.
2. Any "settlement" would be taken into consideration by the Line Siting Committee and presumably the Arizona Corporation Commission as a part of their decision making, but it would not limit their options.

3. Any decision by the Committee and the Commission must be based upon a record that supports the conclusions reached by the Committee.

So what can a "settlement" process accomplish?

From listening to the opening statements and the public comment so far to the application, it appears the major issues of concern deal with the location of the corridor line, the corridor width, and visual impact of the placement of the line. While the line siting statute explicitly refers to "existing scenic areas," (A.R.S. 40-360.06(A)(5)), it does not refer to economic loss due to changes in scenery. As I have previously told you, it does not appear the choice of any option will meet with the approval of all. It appears the Committee will be choosing the "least bad" option. Under these circumstances the Committee and the Commission might be very interested in having one or two (or three) options with multiple parties supporting each option rather than eighteen different positions on what it must choose. This is especially true when the basis for the options involve scenery impact issues that are difficult to objectively evaluate.

I have tried and tried to think of a way to deal with the absent party problem and I have no solution. If the BLM, Maricopa County, or an individual homeowner chooses not to take part in the process, we can only make our decision based upon what is in the record.

What is clear to me is that a proceeding that has seventeen different cross-examiners for each witness and eighteen different theories about what should be done runs the risk of being too long and too disorganized to serve anyone's interests. My hope is a "settlement process" can encourage interests to coalesce and to make the record more intelligible.

Timing any "settlement process" is also important. Certainly the Applicant will need to present its case and I think the ACC Staff should present its case. However, I do not want the parties to wait until after the Staff case is complete to begin talking because that may be in late October or November. I expect these discussions to take time. I do not want to have to postpone returning to a partitioned hearing until after the first of the year.

One final thought for those who might be thinking that a long drawn out process is a good idea, please read A.R.S. §§ 40-360.04(D) and 40-360.08(B). In my Pre-hearing Procedural Order I asked if anyone disagreed with my calculation that the time limit would run on December 28, 2008. No one did. The Commission needs at least 30-60 days to review a record and they have said in another matter they would like all decisions to be made this year ready for decision by December 15. Who thinks we will be done by November 1, if we continue at the present pace? We need to "think outside the box" in this matter. I encourage your creative suggestions.

John Foreman
Assistant Arizona Attorney General
Chair, Arizona Power Plant and Transmission Line Siting Committee
1275 W. Washington
Phoenix, AZ 85007
Tel: 602-542-7902
FAX: 602-542-4377
john.foreman@azag.gov

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>>> "Acken, Albert" <AAcken@lrlaw.com> 8/29/2008 4:17 PM >>>

Chairman Foreman:

Thank you for compiling the attached draft spreadsheet of parties' positions. Pursuant to your request, the Applicant confirms that the spreadsheet accurately reflects APS's position.

Thank you also for extending the opportunity to present our thoughts on potential settlement processes. The Applicant understands the desire to have the parties to engage in settlement discussions, and will participate in good faith in any such discussions that the Committee proposes. However, while settlement can be very effective in resolving private disputes, settlement is a more limited tool in a siting case for several reasons.

First, the Siting Committee and ACC must select a route from a public interest perspective. The statute provides numerous factors for consideration by the siting committee and ACC. Future land use, the focus of most of the interveners in this case who would be the major participants in any settlement discussion, is only one factor to be considered. Existing residential uses, biological, visual and cultural impacts and other factors also play an important role.

Second, to be effective in proceedings of this type, a settlement generally requires agreement by all interested parties. In this case, not all interested parties are part of the proceeding. For instance, it is difficult to envision a settlement along Route 74 if the largest landowner, the BLM, and Maricopa County are not parties.

Third, settlement in line siting proceedings may be premature until a more complete record has been created. The Applicant's environmental case is yet to be presented, which provides APS's findings and recommendations concerning environmental impacts in accordance with §40-360.06. The interveners will then present their cases. At that point, the Committee will then have a complete record as a basis for its decision and the ACC's review. APS, and the other major utilities, have been successful in siting lines and support the siting process which is an open, complete process in which all interested parties can provide information for the Committee and Commission's ultimate decision.

Despite these limitations, APS agrees that settlement can be useful in a line siting case on certain issues. For instance, the width of a corridor may be resolved if all the owners impacted by a particular corridor are part of the settlement. If Surprise Grand Vista, ASLD and APS can agree on a more narrow corridor within Segment 3, and Maricopa County can agree to the placement of that corridor, then that issue may be resolved. In addition, settlement among some of the parties on particular segments or alternatives may shorten the proceeding if multiple interveners settle their differences and present a consolidated case. For instance, if all parties with an interest in Route 74 can agree and present one case, it should expedite the proceedings.

Sincerely, Bert Acken

-----Original Message-----

From: John Foreman [mailto:John.Foreman@azag.gov]
Sent: Friday, August 22, 2008 3:14 PM
To: Lawrence Robertson; Charles Hains; Janet Stone; Robert Pizorno; Mark Nadeau; Charles & Sharie Civer; Scott McCoy; Edward Dietrich; Steve Wene; Griffin, Betty Jean; Campbell, Tom; Gary Birnbaum; Jim Braselton; Steve Burg; Michelle De Blasi; Court Rich
Cc: Marta Hetzer; Susan Ellis
Subject: #138 POSITION CHART SS

#138 Parties,
I have attached a DRAFT spread sheet with the positions of the parties that have responded so far to my request to state positions. I have inferred the position of the Applicant and some of the other positions.

Therefore, I would like each party who is listed on it to review my characterization and confirm that it accurately states your position or notify me how I should change it.

For those who have not responded, please do.

I have also asked some for suggestions about potential mediators. I extend that request to all. It is possible we may need more than one mediator. I am considering both a global settlement process and a trifurcated one split roughly along the lines of the Motion to Partition the Hearing. If any of you have thoughts on that, please communicate them to all of us.

John Foreman
Assistant Arizona Attorney General
Chair, Arizona Power Plant and Transmission Line Siting Committee
1275 W. Washington
Phoenix, AZ 85007
Tel: 602-542-7902
FAX: 602-542-4377
john.foreman@azag.gov

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EXHIBIT J

Haberman, Marjorie

From: Campbell, Tom
Sent: Thursday, August 07, 2008 4:42 PM
To: 'TubaLawyer@aol.com'; John.Foreman@azag.gov
Cc: CHains@azcc.gov; mark.nadeau@dlapiper.com; Steve.Burg@peoriaaz.gov; mdeblasi@quarles.com; michael.bailey@surpriseaz.com; JIMoyes@LAWMS.COM; SWakefield@azruco.gov; SWene@LAWMS.COM; CRich@roselawgroup.com; smccoy@eclaw.com; ghays@lawgdh.com; jim.braselton@mwmf.com; Acken, Albert; Meghan.Gabel@pinnaclewest.com; Michael.Dewitt@aps.com
Subject: RE: APS TS5-TS9 Route tour

Larry,

The yellow line on the map indicates the actual route that we will be driving. As you will see, it does include SR 74 in front of your client's property.

Tom

From: TubaLawyer@aol.com [mailto:TubaLawyer@aol.com]
Sent: Wednesday, August 06, 2008 9:40 AM
To: John.Foreman@azag.gov
Cc: CHains@azcc.gov; mark.nadeau@dlapiper.com; Steve.Burg@peoriaaz.gov; mdeblasi@quarles.com; michael.bailey@surpriseaz.com; JIMoyes@LAWMS.COM; SWakefield@azruco.gov; SWene@LAWMS.COM; CRich@roselawgroup.com; smccoy@eclaw.com; ghays@lawgdh.com; jim.braselton@mwmf.com; Acken, Albert; Meghan.Gabel@pinnaclewest.com; Michael.Dewitt@aps.com; Campbell, Tom
Subject: Re: APS TS5-TS9 Route tour

Chairman Foreman,

This email is in response to the proposed Route Tour suggested by Tom Campbell in his email to you of yesterday.

As I indicated in the Request For Leave To Intervene filed upon behalf of Diamond Ventures in Siting Case No. 138, Diamond Ventures currently anticipates collaborating with at least two (2) other parties in presenting an evidentiary case which will propose a specific transmission line route north of SR 74 in the area encompassed by Arizona Public Service Company's ("APS") Alternative Route 3. Those two (2) other parties are the City of Peoria and Vistancia.

In reviewing the ~~Physical Route Tour Stop/Point Description~~ transmitted to you and the parties by Mr. Campbell, it is unclear as to whether APS is proposing that the Route Tour include driving along SR 74 in the area encompassed by Alternative Route 3. In that regard, in discussing Stop 7, the description provided by Mr. Campbell indicates that Stop 7

"...is also the point of origin for Alternative Route 3. Alternative Route 3 would follow SR 74 east from this point."

However, there is no indication as to whether the proposed Route Tour includes driving SR 74 in an easterly direction from Stop 7 to the easterly end point of APS' Alternative Route 3.

Against the above background, Diamond Ventures would like to suggest for your consideration that the Route Tour include driving along SR 74 in the area encompassed by Alternative Route 3. Inclusion of this portion of SR 74 would allow the members of the Siting Committee to personally observe the topography and vegetation north of SR 74, which they would then have as background in connection with their consideration of the transmission route north of SR 74 which will be proposed by the City of Peoria, Vistancia and Diamond Ventures in the forthcoming hearings in Siting Case No. 138.

Thank you in advance for your consideration of this request.

Larry Robertson

In a message dated 8/5/2008 3:27:26 PM US Mountain Standard Time, TCampbel@lrlaw.com writes:

12/8/2008

Chairman Foreman,

Attached is a proposed route tour including a map and a proposed tour protocol for the APS TS5-TS9 project.

The applicant has scheduled a meet and confer with intervenor counsel for August 11 at 10:30 in our office pursuant to paragraph 5 of your procedural order. We will report to you on the results of our meeting at the 1:30 procedural conference that afternoon.

Intervenor counsel, for those who cannot attend the meet and confer in person, the call-in number is 1-866-496-2887. The bridge code is 5723#.

Tom Campbell

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