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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE) DOCKET NO. L-0000D-08-0330-0138
APPLICATION OF ARIZONA PUBLIC)
SERVICE COMPANY, IN) CASE NO. 138
CONFORMANCE WITH THE)
REQUIREMENT 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.)

Arizona Corporation Commission
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Intervenors Quintero Golf & Country Club, L.L.C. and Quintero Community Association
(collectively hereinafter "Quintero") hereby respectfully submit their written brief objecting to
that portion of the CEC that seeks to site the TS-5 to TS-9 500/230kV line (the "Line") north of

1 SR 74 as (1) siting the Line north of SR 74 would be violative of existing and planned uses and
2 would disrupt the scenic quality of the area; and (2) siting the Line north of SR 74 contains the
3 greatest impediments to implementation.
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5 **I. Background**

6 On or about July 1, 2008, Arizona Public Service Company (the "Applicant") filed its
7 Application before the Corporation Commission seeking a Certificate of Environmental
8 Compatibility for the proposed TS-5 to TS-9 Line. *See Application, gen.* The Application
9 included several proposed routes for the Line, including a route referred to within that
10 Application as "Alternative 3" that traveled along SR 74 between the 179th Avenue alignment
11 and the 99th Avenue alignment. *See Application at 7.* With respect to Alternative 3, the
12 Applicant proposed a utility corridor width of 3,500 feet, 2000 of which was north of the
13 centerline of SR 74 and 1,500 feet of which was south of the centerline of SR 74. *See Id.* With
14 respect to that portion of the proposed corridor north of SR 74, however, the Application at page
15 2-16 footnote 3 noted "The alignment would not intersect with SR 74 as *all avenues considered*
16 *were 500 feet south of the existing centerline* to account for future widening of the highway."
17 *See Application at page 2-16 footnote 3, (Emphasis added).* Testimony by the Applicant
18 confirmed that all routes studied for siting of the Line were in fact south of SR 74. *See e.g.*
19 Testimony of Michael DeWitt, Transcript at 441:13-22.
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26 Despite the representation within the Application that all routes considered for the Line
27 were south of SR-74, during the course of hearings before the Transmission and Line Siting
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1 Committee (the "Committee") an additional alternative was proposed by several intervening
2 parties, referred to throughout the hearings as "Alternative 3 North." Proposed Alternative
3 Route 3 North was located within the 2,000 foot portion of the Alternative Route 3 corridor
4 north of SR 74. *See e.g.* Vistancia Request For Leave to Intervene at 2:7-11. Alternative Route
5 3 North is primarily situated upon lands controlled by the Bureau of Land Management. *See*
6 Application at Fig. 1-2. Of note, BLM has performed extensive studies of those lands north of
7 SR 74 that would be impacted by Alternative Route 3 North in connection with the BLM's
8 proposed Resource Management Plan ("RMP"). *See* Exhibit Q-19-1; Application at 2-17.
9 During hearings before the Committee, the Applicant specifically acknowledged that a route
10 along SR-74 is contrary to BLM plans for the area to remain as natural area open space as set
11 forth in the BLM's proposed RMP. *See* Testimony of Jennifer Frownfelter, Transcript 713:9-
12 714:9. In fact, the BLM specifically decided against the designation of a utility corridor along
13 SR 74 within the RMP, inclusive of the area in which Alternative 3 North is situated. *See*
14 Exhibits Q-11; Q-13-1.

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20 Notwithstanding the foregoing, upon the conclusion of deliberations, the Committee
21 presented a proposed CEC that incorporated a modified version of the Alternative 3 North that
22 would commence on the Joy Ranch Road alignment; turn north along 163d alignment crossing
23 SR 74 into BLM lands; travel east along BLM lands north of SR 74 for 4.9 miles; travel south
24 approximately .3 miles west of the section line between Sections 25 and 26 of Township 6
25 North, Range 1 West; and, would then continue traveling east for approximately 2.1 miles along
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1 the south side of SR 74. *See* CEC at 5-7. Upon the Committee's filing of that CEC, the
2 Applicant filed a request review, noting that the BLM may very well deny a request for right of
3 way along that area north of SR 74 contained within the CEC, thus prohibiting the construction
4 of the Line absent a new hearing. *See* APS Request for Review at 7:24-15:22.
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6 **II. Argument**

7 **A. Standard of Review**

8 In deciding whether to grant a CEC, the Line Siting Committee may approve or deny an
9 application, and may impose reasonable conditions upon the issuance of a certificate for
10 environmental compatibility, upon consideration of the following factors:(1) existing plans of
11 the state, local government and private entities for other developments at or in the vicinity of the
12 proposed site; (2) fish, wildlife and plant life and associated forms of life upon which they are
13 dependent; (3) noise emission levels and interference with communication signals; (4) the
14 proposed availability of the site to the public for recreational purposes, consistent with safety
15 considerations and regulations; (5) existing scenic areas, historic sites and structures or
16 archaeological sites at or in the vicinity of the proposed site; (6) the total environment of the
17 area; (7) the technical practicability of achieving a proposed objective and the previous
18 experience with equipment and methods available for achieving a proposed objective; (8) the
19 estimated cost of the facilities and site as proposed by the applicant and the estimated cost of the
20 facilities and site as recommended by the committee, recognizing that any significant increase in
21 costs represents a potential increase in the cost of electric energy to the customers or the
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1 applicant; and, (9) any additional factors which require consideration under applicable federal
2 and state laws pertaining to any such site. *See* A.R.S. § 40-360.04(A). In weighing those factors,
3 the Committee is required to balance the need for an adequate, economical and reliable supply of
4 electric power with the desire to minimize the effect thereof on the environment and ecology of
5 the state. *See* A.R.S. § 40-360.07. In short, provided a need for the Line has been demonstrated
6 by the Applicant, the Committee should attempt to ensure through its CEC in its decision (1) that
7 the need will actually be met; and, (2) that in meeting that need the impacts on the environment
8 in which the line is sited are minimized. Alternative Route 3 North fails to satisfy either criteria.

12 **B. Alternative Route 3 North Provides No Surety That The Line Will Be Built.**

13 Under A.R.S. § 40-360.07, the Commission is afforded broad discretion in determining
14 whether a particular need for a utility siting has been established by an applicant. *See Grand*
15 *Canyon Trust v. Arizona Corporation Commission*, 210 Ariz. 30, 107 P.3d 356 (App. 2005). In
16 the instant matter, upon the conclusion of deliberations, the Committee made certain Findings of
17 Fact that the Line was needed, and that its construction was therefore in the public interest. *See*
18 proposed CEC at 12:25-26. Accordingly, the relatively low threshold set forth in *Grand Canyon*,
19 *supra*, has been met. It necessarily follows from that finding that the CEC should be granted in
20 such a way as to actually ensure, as practicably as possible, that the line in question will actually
21 be built. *See e.g.* A.R.S. § 40-360.07.

26 Pursuant to 42 U.S.C. 4321, *et. seq.* , the “National Environmental Policy Act,” all federal
27 agencies are required to include the consideration of certain environmental factors in their
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1 decision making process. The BLM is a federal agency, and is therefore required to comply with
2 NEPA regulations. Id. A deviation in the proposed RMP would require an amendment, which
3 triggers the NEPA process. *See* Application at 2-17.
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5 As noted herein *supra*, that area north of SR-74 is owned and maintained primarily by the
6 BLM, and has been reserved in the BLM's RMP as open space for recreational purposes. *See*
7 Application at figure 1-2; Exhibit Q-19-1; Application at 2-17. In fact, the BLM specifically
8 decided against the designation a utility corridor along SR 74 within the RMP, inclusive of the
9 area in which Alternative 3 North is situated. *See* Exhibits Q-11; Q-13-1. In so doing, the BLM
10 noted in its RMP "*No new utility corridors would be designated within this MU*". *See* Exhibit
11 Q-11, (Emphasis in original). Moreover, disturbance of the area by motorized vehicles has been
12 restricted by the BLM to designated areas only, where once travel along existing trails was
13 permitted. *See* Exhibits Q-18; Q-19.
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18 Accordingly, and as also noted, Alternative Route 3 North is contrary to the BLM's
19 proposed usages for that land north of SR 74. *See* Testimony of Jennifer Frownfelter, Transcript
20 713:9-714:9; *See also* Exhibits Q-11; Q-13-1. Alternative Route 3 North is therefore a deviation
21 from the RMP, thus requiring an amendment to that RMP. *See* Application at 2-17. That
22 amendment would therefore trigger the NEPA process. *See Id.*
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25 In order to comply with NEPA requirements, an applicant must first prepare an extensive
26 environmental checklist to inform those affected persons and entities of its intent for purposes of
27 determining the level of analysis required by an applicant. *See* 40 CFR 1501.7. Either at the
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1 conclusion of this process, or concurrent therewith, an amendment to the RMP will likely require
2 an Environmental Impact Study (“EIS”) level of analysis, which may take longer than four years.
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4 *See* Testimony of Jennifer Frownfelter, Transcript 716:22-717:8.

5 Moreover, even after conducting an EIS level of analysis, the BLM still has the power to
6 deny an application to amend the RMP. As explained by Gordon Cheniae, the BLM processes
7 expert witness for Diamond Ventures, one of the chief proponents of Alternative Route 3 North,
8 the “BLM will do it what it wants.” *See* Testimony of Gordon Cheniae, Transcript 2599:20.
9 Accordingly, it is likely that BLM will reject the Applicant’s request for right of way and an
10 amendment to the RMP, even after the Applicant performs its EIS analysis.
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13 Furthermore, those objections raised to a route south of SR 74 by developers Vistancia
14 and Diamond Ventures relate to those subdivision “plans” claimed by Vistancia and Diamond
15 Ventures respectfully to be in place.¹ *See* Vistancia Request for Intervention; Diamond Ventures
16 Request for Intervention, *gen.* A “subdivision” is defined by A.R.S. § 9 - 463.02, however, as
17 “improved or unimproved land or lands divided for the purpose of financing sale or lease... *the*
18 *boundaries of which have been fixed by a recorded plat.*” (Emphasis added). Until such time as
19 a final plat has been recorded, no third party has any right to reliance upon subdivision planning
20 documents or to claim a right of enforcement of those documents against another. *See e.g. La*
21 *Esperanza v. Title Security Agency of Arizona*, 142 Ariz. 235, 241, 689 P.2d 178, 184 (1984);
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27 ¹ Ironically, some of the very intervenors now objecting to that proposed RMP
28 were involved by the BLM in the preparation of that RMP, including the City of Peoria,
the only intervenor who has filed a formal objection to the BLM. *See* Exhibit Q-10-1.

1 Robinson v. Lintz, 101 Ariz. 448, 453, 420 P.2d 293, 298 (1966).

2 At present lands located south of SR 74, specifically within the Vistancia and Diamond
3 Ventures communities are without final platting, meaning that their plans remain malleable.
4 Assuming *arguendo* that the BLM rejects the Applicant's request for right of way and for an
5 amendment to the RMP after a period of 5 years or more to complete the process of EIS analysis
6 necessary for that amendment, it is not only probable but highly likely that Diamond Ventures
7 and Vistancia will indeed have obtained such final platting, which under Arizona law could not
8 later be amended to accommodate the Line absent the unanimous consent of all Lot owners
9 within each development. See La Esperanza, *supra*.

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13 In short, the Committee's decision to utilize the Alternative Route 3 North proposal has
14 placed the viability of the construction of the Line in jeopardy; and, in so doing, has failed to
15 take such steps as are necessary in granting the CEC to ensure that the need for reliable electric
16 power identified therein is met. It is therefore necessary to modify that CEC in such manner that
17 the need is met, specifically, through the routing of the line along proposed Segment 5; or,
18 alternatively, along a route South of SR 74.
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22 **C. Alternative Route 3 North Create Greater Environmental Impact than A Route**
23 **South of SR 74.**

24 In its proposed RMP, the BLM has designated that area north of SR 74 as open space for
25 the purposes of recreation. See Application at figure 1-2; Exhibit Q-19-1; Application at 2-17.
26 To that end, the BLM has restricted the creation of trails within that land for purposes of its
27 preservation. See Exhibits Q-18; Q-19. Moreover, the BLM specifically declined to designate a
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1 utility corridor along SR 74. *See* Exhibit Q-11. That decision has been supported by the Sierra
2 Club, North Country Conservancy, Arizona Game and Fish Department and other related
3 entities. *See* Exhibits A-12; B-2, A-1, *respectively*.

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5 By contrast, Diamond Ventures and Vistancia seek to actually develop that land north of
6 SR 74, not to preserve it. *See* Vistancia Request for Intervention; Diamond Ventures Request
7 for Intervention, *gen*. Moreover, the plans for neither of those developments have not been
8 solidified by means of a final plat. *See* Robinson, *supra*. It stands to reason, therefore, that the
9 construction and development of the Line along lands that are intended for development, and
10 capable of being incorporated into that development have less environmental impact are more
11 compatible than the construction of those lines on lands that have been retained for open space
12 within the confines of a definite plan, in this instance the BLM's RMP.

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16 Therefore, the Committee's decision to utilize the Alternative Route 3 North proposal has
17 placed the environmental compatibility of the construction of the Line in jeopardy. Accordingly,
18 it is therefore necessary to modify that CEC in such manner that the need is met, specifically,
19 through the routing of the line along proposed Segment 5; or, alternatively, along a route South
20 of SR 74.
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22 23 **III. Conclusion**

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25 Provided a need for the Line has been demonstrated by the Applicant, the Committee
26 should attempt to ensure through its CEC: (1) that the need will actually be met; and, (2) that in
27 meeting that need the impacts on the environment in which the line is sited are minimized.
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1 Alternative Route 3 North fails to satisfy either criteria by creating the likely potential of denial
2 of the Applicant's right of way application by the BLM; and, by placing the Line in an area
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4 designated by the BLM as reserved for open space and recreational use, rather than in an area
5 specifically slated for development.
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1 RESPECTFULLY SUBMITTED this 12 day of February, 2009.

2 THE DAVIDSON LAW FIRM, P.C.

3 
4 By _____

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7 The undersigned hereby certifies that the ORIGINAL and
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9 February, 2009 with:

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