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EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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MAR 25 2010

COMMISSIONERS

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- PAUL NEWMAN
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IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY AND VERIZON CALIFORNIA, INC.'S JOINT PETITION FOR THE ESTABLISHMENT OF AN UNDERGROUND COVERSION SERVICE AREA.

Docket Nos. E-01345A-07-0663  
T-01846B-07-0663

Hillcrest Bay, Inc.'s Exceptions

Hillcrest Bay, Inc. (HBI) respectfully submits these exceptions to the Recommended Opinion and Order (ROO) filed March 16, 2010, and requests that the Commission approve the Underground Conversion Service Area (UCSA) for the Arizona Public Service (APS) and Verizon California (Verizon) overhead lines in the Hillcrest Bay subdivision.

I. Introduction.

Located next to Lake Havasu and a national wildlife refuge, Hillcrest Bay is an exceptional community. It has stunning scenic views of Lake Havasu. But those views are sullied by a looming snarl of overhead utility lines, owned by APS and Verizon. The problem is compounded by the many birds from the wildlife refuge who loiter on the wires and generate substantial bird droppings – an inconvenience at best, a health issue at worst. For more than five years, HBI and many dedicated members of the community have devoted great effort to the cause of removing these lines and replacing them with underground lines. HBI and its members also incurred significant expense in pursuing this goal. After this long and difficult process, HBI and the other supporters of the project are greatly disappointed that the ROO recommends rejecting their efforts to form the UCSA.

The ROO's recommendation is based on its finding that the project is not "economically feasible." HBI strongly disagrees with this assessment. When the costs and benefits are fully considered, the UCSA is economically feasible. Importantly, this is not a choice between the

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1 status quo and approving the underground conversion. APS has repeatedly testified that if the  
2 UCSA is not approved, they will add 42 additional utility poles to Hillcrest Bay, only aggravating  
3 the problem.

4 **Benefits**

- 5 ● Significant improvement to Hillcrest Bay's viewshed;
- 6 ● Increased property values;
- 7 ● Jobs will be created;
- 8 ● Preventing 42 new utility poles:
  - 9 ◆ Prevents additional degradation to the viewshed;
  - 10 ◆ Prevents related decrease in property values;
  - 11 ◆ APS avoids the cost of building the 42 new poles;
- 12 ● Potential safety issues regarding overhanging lines eliminated; and
- 13 ● Elimination of bird dropping problem.

14  
15 **Costs** Property owners will have to pay conversion costs; **but**

- 16 ● Low-income lot owners will receive an unprecedented level of support through  
17 Hillcrest's Financial Assistance Program;
- 18 ● Residents of 46 properties with structures encroaching on utility easements will  
19 avoid paying for overhead line relocation or removal of the encroachments;
- 20 ● Costs are likely to be lower due to current economic situation; and
- 21 ● Costs not due until future:
  - 22 ◆ Private costs not due until completion of project
  - 23 ◆ Public costs and service costs can be paid over 15 years

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25 For these reasons, Hillcrest believes that the underground conversion is economically feasible,  
26 and requests that the Commission approve the UCSA.

1 **II. Benefits.**

2 **A. Improvement to viewshed.**

3 The ROO dismisses the improvement to the viewshed as mere “improved aesthetics”<sup>1</sup>, as  
4 though the money would be spent on a statue or some other frivolity. But in recent years, the  
5 Commission has placed significant importance on the viewshed impact of power lines. For  
6 example, in the recent Sulphur Springs rate case, the Commission ordered a delay in a 69 kv  
7 power line, explaining that “we are concerned that once constructed, the project will permanently  
8 change the landscape for the impacted communities and the manner in which electric service is  
9 provided to the cooperative’s customers.”<sup>2</sup> The Commission ordered that the 69 kv line not be  
10 built until after the utility conducted a feasibility study for alternatives.

11 Likewise, the Commission often considers viewshed impacts in power line siting cases.  
12 For example, in the Toltec case, the Commission denied a Certificate of Environmental  
13 Compatibility for the proposed Toltec power plant and a related power line.<sup>3</sup> The Toltec project  
14 was near a national monument, and much of the debate concerned the impact to the viewshed.<sup>4</sup>  
15 More recently, the Commission has required a “Pole Finish Plan” to minimize the visual impact  
16 of the power poles by reducing their contrast to the background.<sup>5</sup>

17 Here, Hillcrest Bay is next to a national wildlife refuge and overlooks Lake Havasu. As  
18 the ROO noted, “Hillcrest Bay is described by some owners as a place of exceptional natural  
19 beauty that is marred by the presence of numerous utility poles and overhead lines.”<sup>6</sup> An  
20 underground conversion will eliminate this problem.

23 <sup>1</sup> ROO at page 60, line 20.

24 <sup>2</sup> Decision No. 71274 (Sept. 8, 2009) at 39.

25 <sup>3</sup> See Decision No. 64445 (Feb. 06, 2002)(denying CEC for power line); Decision No. 64446  
(Feb. 06, 2002)(denying CEC for power plant).

26 <sup>4</sup> See Docket Nos. L-00000Y-01-0113 and L-00000Y-01-0112.

27 <sup>5</sup> Decision No. 71282 (Oct. 7, 2009) at page 3, condition no. 16; See also Decision No. 70850  
(March 17, 2009) at CEC page 10, condition no. 10.

<sup>6</sup> ROO at page 10, lines 10-12.

1           **B.     Property values.**

2           HBI presented the expert testimony of Mr. Garcia, who the ROO acknowledged “has a  
3           wealth of experience in the real estate market.”<sup>7</sup> Mr. Garcia is an expert appraiser, with a  
4           graduate degree in finance from Stanford and with many years of valuation experience, including  
5           a high-level valuation position with PriceWaterhouseCoopers.<sup>8</sup> He testified that 80% of the  
6           properties will see an increase in value from 5-15%.<sup>9</sup> Thus, a home valued at \$200,000 would  
7           likely increase in value between \$10,000 and \$30,000.

8           Mr. Garcia testified that the public costs could be paid back over a 15 years, while the  
9           increase in value will take place as soon as the undergrounding is complete.<sup>10</sup> Mr. Garcia stated  
10          that investing in the undergrounding would likely provide a good “return on investment” given  
11          the likely costs compared to the likely increase in value.<sup>11</sup>

12          Mr. Garcia was the only expert witness on property values presented by any of the parties.  
13          Nevertheless, the ROO concludes that an increase in “property values for the homes in Hillcrest  
14          Bay has not been established by the evidence in this proceeding.”<sup>12</sup> The ROO reaches this  
15          conclusion because Mr. Garcia’s opinion was based on “a normalized real estate market.”<sup>13</sup>  
16          While obviously we are not currently in a “normalized real estate market”, the increase in value  
17          will not occur until after the project is completed, and the increased value will not be realized  
18          until the home is sold.<sup>14</sup> It is not reasonable to assume that the real estate market will never  
19          return to normal; the increase in value will occur – it’s just a question of when. The market may  
20          return to normal at the conclusion of the project, or it may take one or more additional years. But

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23          <sup>7</sup> ROO at page 60, line 9.

24          <sup>8</sup> July 21, 2009 Tr. at 222-223.

25          <sup>9</sup> July 21, 2009 Tr. at 227-228; Ex. H-1 at Ex. C.

26          <sup>10</sup> July 21, 2009 Tr. at 236.

27          <sup>11</sup> July 21, 2009 Tr. at 235.

<sup>12</sup> ROO at page 60, lines 7-9.

<sup>13</sup> ROO at page 60, line 11.

<sup>14</sup> The ROO explains that the “evidence establishes that any increase in value would only be realized upon sale of a parcel.” ROO at page 60, lines 17-18.

1 it will occur. Thus, HBI has established that there will be an increase of value, although there is  
2 some uncertainty when the real estate market will return to normal.

3 **C. Jobs.**

4 HBI presented the testimony of Mr. Chris Kellogg, Senior Vice President of Tades, Inc,  
5 an experienced electrical contractor with experience in power lines. Mr. Kellogg testified that  
6 construction activity in La Paz County is at a standstill, and “absolutely nothing” is being built.<sup>15</sup>  
7 He also testified that the conversion would create 10-15 jobs, and that 50% of the jobs could go  
8 to local residents.<sup>16</sup> This testimony was uncontroverted.

9 **D. Prevention of 42 additional poles.**

10 APS’s witness, Mr. Wilson, testified that if the overhead conversion is not approved,  
11 APS would over time replace the existing back-of-the-lot lines with overhead lines in the front of  
12 lots (i.e. on the street).<sup>17</sup> He testified that 42 new poles would be added.<sup>18</sup> In some cases, up to  
13 four new poles would be added at once.<sup>19</sup> Verizon’s witness, Mr. Kearns, testified that Verizon  
14 would keep its existing lines in the back of the lots.<sup>20</sup> Thus, the new APS poles would be in  
15 addition to the existing poles.<sup>21</sup> These new poles will only exacerbate the situation, adding 42  
16 new poles to the existing 69 poles, for an eventual total of 111 utility poles.

17 The additional poles – and the related lines – will only worsen the viewshed issues in the  
18 scenic area. In addition, Mr. Garcia testified that 42 additional poles would likely worsen  
19 property values.<sup>22</sup> And APS will have to pay for the new poles, adding to rate base, and  
20 ultimately increasing rates (although the impact would be small spread across all of APS’s  
21 customers).

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23 <sup>15</sup> July 21, 2009 Tr. at 129.

24 <sup>16</sup> July 21, 2009 Tr. at 129.

25 <sup>17</sup> July 22, 2009 Tr. at 287-288 and 378; Ex. A-12.

26 <sup>18</sup> Id.

27 <sup>19</sup> July 22, 2009 Tr. at 378.

<sup>20</sup> July 22, 2009 Tr. at 403-404.

<sup>21</sup> Id.

<sup>22</sup> July 21, 2009 Tr. at 227-28.

1 Mr. Wilson testified that the 42 new poles would cost \$327,000.<sup>23</sup> Mr. Wilson explained  
2 that these costs would be avoided if the underground conversion goes forward, and therefore  
3 APS has agreed to reduce the cost of the underground conversion by this amount.<sup>24</sup> A future  
4 underground conversion – after the new poles are built – would not benefit from this offset.  
5 Moreover, Mr. Wilson testified that once the 42 new poles are installed, the “undepreciated  
6 value” of the system would “significantly” increase, and APS would expect to be repaid this  
7 undepreciated value in any future underground conversion.<sup>25</sup> Therefore, this is the best time to  
8 proceed with an underground conversion. In practical terms, it’s now or never.

9 Regarding the additional 42 poles, the benefits of underground conversion include: (1)  
10 preventing the additional impact to the viewshed, (2) preventing additional declines in property  
11 values; and (3) preventing additional expenditure by APS are all benefits of the underground  
12 conversion.

13 **E. Safety issues.**

14 Photographs of Hillcrest Bay show utility lines overhanging patios and backyards, as well  
15 as support wires intermingled into residents’ backyards and patios.<sup>26</sup> In some cases, the  
16 overhead lines are within reach.<sup>27</sup> Mr. Kellogg testified that these lines do not meet current  
17 standards for new construction.<sup>28</sup>

18 Mr. Wilson testified that the lines meet safety standards. However, he testified that this  
19 conclusion was based on the work of an APS employee whose name he does not know, and who  
20 does not directly report to Mr. Wilson.<sup>29</sup> The hearsay statement of an unknown worker with  
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24 <sup>23</sup> July 22, 2009 Tr. at 288.

25 <sup>24</sup> July 22, 2009 Tr. at 275-276; *see also* January 18, 2008 Tr. at 104.

26 <sup>25</sup> July 22, 2009 Tr. at 289.

27 <sup>26</sup> Ex. H-2; Ex. H-1 at Ex. F; Ex. H-7.

28 <sup>27</sup> 2008 Tr. at 177; July 21, 2009 Tr. at 163-64.

29 <sup>28</sup> July 21, 2009 Tr. at 163.

<sup>29</sup> July 22, 2009 Tr. at 376.

1 unknown qualifications is not a sound evidentiary basis for making important safety decisions.  
2 In addition, Mr. Wilson was not able to state one of the relevant safety standards.<sup>30</sup>

3 APS relies on internal APS safety inspection reports. But the inspection reports contain  
4 (at the bottom) an instruction that “Encroachment issues require documentation and are defined  
5 as Immediate Hazard or Potential Safety Concern to the operating system.”<sup>31</sup> At the hearing,  
6 APS’s witness testified that approximately 46 lots have encroachments.<sup>32</sup> Yet the inspection  
7 reports fail to note any encroachments. It’s not as though the inspector missed one isolated  
8 encroachment; APS testified that there are 46. This raises a real question concerning the  
9 thoroughness of these safety inspections. Moreover, the notation that “Encroachment issues  
10 require documentation and are defined as **Immediate Hazard or Potential Safety Concern** to  
11 the operating system”<sup>33</sup> shows that these encroachments are safety issues.

12 Common sense, Mr. Kellogg’s testimony, and APS’s own inspection forms all  
13 demonstrate that power lines within easy reach are a safety hazard. Notably, the ROO does not  
14 find that the current APS system in Hillcrest Bay is safe. Indeed, the ROO states that “[w]e are  
15 concerned about the safety of facilities and believe that any safety concerns resulting from the  
16 age of the current facilities or the location of the overhead power lines would be addressed by the  
17 establishment of the UCSA.”<sup>34</sup>

18 The ROO gives little weight to the safety issue, noting that APS and Verizon are  
19 responsible for the safety of their systems, and that property owners with encroachments are  
20 financially responsible for remedying the encroachments. HBI believes that fixing the safety  
21 issues should take priority over the “blame game” concerning who caused the safety issues. APS  
22 presented no timetable for the removal of encroachments, and APS has taken no action against  
23 some of the encroachments for many years. And the ROO acknowledges that moving the power  
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25 <sup>30</sup> July 22, 2009 Tr. at 376.

26 <sup>31</sup> APS Reply Brief dated September 8, 2009 at Exhibit A.

27 <sup>32</sup> July 22, 2009 Tr. at 369:6-9.

<sup>33</sup> APS Reply Brief dated September 8, 2009 at Exhibit A (emphasis added).

<sup>34</sup> ROO at page 59, line 6-8.

1 lines to the front of the lots (causing the 42 new poles) will not be completed for “several or even  
2 5, 10, 15, 20, or 30 years.”<sup>35</sup>

3 The safety issues should be addressed now; not at some indeterminate and possibly  
4 distant point in the future. The underground conversion is the quickest and surest means of  
5 addressing the safety issues.

6 **F. Bird droppings.**

7 The ROO states that the evidence does not show that the bird droppings are “an actual  
8 health risk”.<sup>36</sup> Concededly, HBI did not present expert medical testimony on this point. Thus, if  
9 the Commission believes that expert testimony is necessary to establish a health risk, it should not  
10 find any health risk. On the other hand, if the Commission believes that a health risk can be  
11 established by common sense, then it should consider the issue. Common sense indicates that  
12 the presence of large amounts of excrement is less healthy than its absence. And in any event,  
13 the bird droppings are at best a significant inconvenience for the residents.

14 **III. Costs.**

15 If the UCSA is approved, property owners will pay “private costs” for connecting their  
16 homes to the new system, and “public” and “service” costs for the utility’s costs in converting to  
17 an underground system.<sup>37</sup> HBI does not dispute that these costs will be significant, and that some  
18 owners may have difficulty making payments. For this reason, HBI has created an unprecedented  
19 Financial Assistance Program to assist its property owners.

20 In addition, the costs are not due upon Commission approval of the UCSA. Private costs  
21 will not be due until the end of the project, when the customer’s service is converted. That may  
22 be a year or more from the time of approval.<sup>38</sup> And the public and service costs can be paid back  
23 over 15 years.

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26 <sup>35</sup> ROO at page 35, line 18.

27 <sup>36</sup> ROO at page 59, line 26.

<sup>37</sup> ROO at page 61, lines 14-26.

<sup>38</sup> July 22, 2009 Tr. at 385-388.

1           Moreover, if the conversion is not approved, approximately 46 owners with  
2 encroachments on utility easements will have to pay to fix the encroachments. In addition, HBI  
3 has worked with a contractor to reduce the overall costs of the project.

4           **A.     Financial Assistance Program.**

5           Hillcrest knows that these are these difficult times, and that the impact is greatest on the  
6 low income property owners. For this reason, Hillcrest has established an unprecedented  
7 Financial Assistance Program for low income residents. The program has three parts: free  
8 conversions, a 15% discount, and a financial assistance fund.

9           Hillcrest has worked with a contractor, Tades Inc., to develop the cost estimates and the  
10 Financial Assistance Program. Tades has offered to do free underground conversions (private  
11 costs) for five low income residents.<sup>39</sup> In addition, Tades has offered a 15% discount for each  
12 low income landowner.<sup>40</sup>

13           In addition to the assistance offered by Tades, Hillcrest has established a fund to assist  
14 low income landowners. The fund has commitments of \$29,200.<sup>41</sup> Of that amount, Hillcrest has  
15 committed \$9,000 itself, and the remainder has been committed by generous Hillcrest  
16 members.<sup>42</sup>

17           Hillcrest sent letters to every lot owner, asked whether they were low-income and needed  
18 financial assistance. The owners who requested assistance were then asked to confidentially  
19 provide an independent CPA with verification of their low income status. Twenty-eight (28) lot  
20 owners (representing 31 lots) responded to the first letter indicating they were low income.<sup>43</sup> Of  
21 these, seven lot owners provided documentation to the CPA.<sup>44</sup> Out of these seven, four indicated  
22 that they did not want help, and three requested assistance.<sup>45</sup> These three owners will receive the  
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24 <sup>39</sup> July 21, 2009 Tr. at 132.

25 <sup>40</sup> Id.

26 <sup>41</sup> July 21, 2009 Tr. at 51-53.

27 <sup>42</sup> Ex. H-4 (Commitment Letters).

<sup>43</sup> Ex. H-1 at 5.

<sup>44</sup> Id.

<sup>45</sup> Id.

1 free installation offered by the contractor. The limited response suggests that inability to pay  
2 will not be an insurmountable problem. In addition, Hillcrest Bay will reopen the Financial  
3 Assistance Program upon approval of the UCSA project.<sup>46</sup>

4 Hillcrest's Financial Assistance Program will help protect low-income landowners from  
5 the burden of the underground conversion. No previous underground conversion has had such a  
6 program. If this UCSA project, with an unprecedented financial assistance program, is not  
7 "economically feasible" it is likely that no other conversions will be approved, and the  
8 underground conversion act will be a dead letter. That could not have been the Legislature's  
9 intent.

10 In passing, the ROO suggests that the Financial Assistance Program might violate A.R.S.  
11 § 40-347(C).<sup>47</sup> That statute provides that if "funds become available from other public or private  
12 sources to pay all or any part of the underground conversion costs, such funds shall be applied on  
13 a pro-rata basis..." The statutory phrase "underground conversion costs" refers only to the  
14 public and service costs.<sup>48</sup> The \$29,200 fund is for private costs, which are not "underground  
15 conversion costs" as defined in the statute. Thus, any restriction imposed by A.R.S. § 40-347(C)  
16 does not apply to those funds. Moreover, the funds and discounts that make up the Financial  
17 Assistance Program were donated expressly for that use, and are therefore not "available" for  
18 other uses. If § 347(C) sweeps as broadly as suggested by the ROO, an owner's family member  
19 could not provide financial assistance to meet the conversion costs without sharing the assistance  
20 with all other owners on a pro-rata basis. That absurd result must be rejected.

21 **B. Prevention of costs to lots with encroachments into utility easements.**

22 Mr. Wilson testified that APS has identified 46 lots with structures encroaching into  
23 utility easements.<sup>49</sup> Mr. Wilson also testified that if the underground conversion is not approved,  
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26 <sup>46</sup> Id.

27 <sup>47</sup> ROO at page 61, lines 4-6.

<sup>48</sup> A.R.S. § 40-341(13); A.R.S. § 40-347(A).

<sup>49</sup> July 22, 2009 Tr. at 369.

1 APS will likely not allow these encroachments to continue.<sup>50</sup> He testified that if APS denies  
2 permission, the landowner has two options: pay APS to move its line, or remove the structure.<sup>51</sup>  
3 The ROO also states that the property owners will be responsible for the costs of addressing the  
4 encroachment issue.<sup>52</sup> APS insists on payment for moving its line; and the other option –  
5 removing the structure – would likely involve costs, as well as possible diminution in value of  
6 the property due to loss of the structure. Under either option, the landowner will face costs – and  
7 those costs can be avoided by the underground conversion.

8 **C. Lower Costs.**

9 Hoping to lower the burden to landowners, Hillcrest sought out a new cost estimate. The  
10 cost estimate was from Tades, Inc., a company specializing in utility work. Tades submitted two  
11 estimates. The first cost estimate incorporates the cost information previously provided by APS  
12 and Verizon, and only updates the “private property” costs. The first cost estimate is \$2,859,435,  
13 a reduction of \$51,093. The second cost estimate assumes that the contractor will be allowed to  
14 do some of the work that APS and Verizon would otherwise have done. Under the second  
15 scenario, the cost is only \$2,245,403.57, a reduction of \$665,124, or about 23%.

16 Thus, if Tades is allowed to do the work, there will be substantial cost savings. At the  
17 July 2009 supplemental hearing, APS suggested that it may not allow Tades to do the work. But  
18 APS’s witness, Mr. Wilson, testified that that APS will typically approve an experienced  
19 contractor that does significant utility work.<sup>53</sup> Chris Kellogg, the Senior Vice President of Tades,  
20 testified as to his many years of experience, and the significant projects that Tades has  
21 undertaken.<sup>54</sup> Thus, Tades is likely to be approved by APS once the final paperwork is  
22 submitted.

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25 <sup>50</sup> Id.

26 <sup>51</sup> Id.

27 <sup>52</sup> ROO at page 59, line 13, citing A.A.C. R14-2-206(C)(7) and R14-2-505(B)(3)(b).

<sup>53</sup> July 22, 2009 Tr. at 292.

<sup>54</sup> July 21, 2009 Tr. at 128.

1 Mr. Wilson testified that the contractor that APS originally selected is no longer available  
2 to do the work.<sup>55</sup> He also testified that the bids APS is receiving are currently less than in 2006  
3 and 2007 due to the economic downturn.<sup>56</sup> Thus, even if APS selects another contractor, costs  
4 are likely to be lower than originally expected. Moreover, if APS places the work out to bid, the  
5 winning bid would have to be at or lower than Tades' estimate (or otherwise Tades would win  
6 the bid).

7 **IV. Level of support.**

8 **A. Statutory requirements for support.**

9 The Act creates a specific sequence of events. First, proponents of an Underground  
10 Conversion Service Area must present a petition ("First Petition") to the relevant utility or  
11 utilities.<sup>57</sup> If the utility or utilities find that the petition is supported by 60% of the lot owners  
12 (and 60% of the area), they must complete a cost study and present the estimated costs in a joint  
13 report to the property owners.<sup>58</sup> Once the joint report is provided to the property owners, the  
14 proponents must gather petition signatures a second time (the "Second Petition"), again showing  
15 60% support (both number of owners and area).<sup>59</sup> If the utility or utilities find that the  
16 proponents have shown 60% support, they must file an application with the Commission for  
17 approval.<sup>60</sup> APS and Verizon believe that these requirements were met, as demonstrated by their  
18 submission of their Joint Application to the Commission.<sup>61</sup>

19 Once the utility or utilities file their application, the Commission is required to hold a  
20 hearing "not later than 60 days nor sooner than thirty days."<sup>62</sup> At this hearing (the "Statutory  
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23 <sup>55</sup> July 22, 2009 Tr. at 292-93.

24 <sup>56</sup> July 22, 2009 Tr. at 363.

25 <sup>57</sup> A.R.S. § 40-342.

26 <sup>58</sup> Id.

27 <sup>59</sup> A.R.S. § 40-343(A).

<sup>60</sup> A.R.S. § 40-343(B).

<sup>61</sup> See also ROO at page 16, lines 11-12 (noting that "APS concluded that the second petition met the 60-percent threshold for both owners and square footage").

<sup>62</sup> A.R.S. § 40-344(A).

1 Hearing”), if more than 40% of the owners, or more than 40% of the area, objects, the UCSA is  
2 defeated.<sup>63</sup>

3 Objections must be received “not later than ten days before the date of the hearing.”<sup>64</sup>  
4 The Statutory Hearing was held on January 18, 2008; thus objections were due on January 8,  
5 2008. Moreover, the public notice required by the Commission’s December 6, 2007 Procedural  
6 Order expressly stated that any property owner seeking to object “**must file an objection... by**  
7 **January 8, 2008.**” (emphasis in original). No one contends that more than 40% of the owners or  
8 more than 40% of the area objected on or before January 8, 2008. Thus, the statutory  
9 requirements for support have been met.

10 The Commission’s most extensive discussion of these express statutory requirements was  
11 in Decision No. 55490 (July 21, 1970). In that case, the Commission stated that the UCSA Act:

12 makes it very clear that it is the responsibility of the public service corporations  
13 involved to determine whether the petitions are sufficient [i.e.  $\geq 60\%$ ] to trigger  
14 an application to the Commission for designation of the area as an underground  
15 CSA. Aside from the Commission’s finding regarding feasibility of conversion,  
16 the Commission’s only function herein is to determine whether 40% or more of  
17 all the property owners have objected to the formation of the underground CSA.<sup>65</sup>

18 The Commission thus did not consider arguments concerning whether subsequent events  
19 rendered invalid some of the initial signatures supporting the conversion. The Commission only  
20 considered whether it received explicit objections exceeding 40%.<sup>66</sup> The Commission was also  
21 clear the objections could not be submitted after the deadline, stating the “statute required those  
22 persons objecting to register their objections with the Commission at least ten days prior to the  
23 hearing.”<sup>67</sup>

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25 <sup>63</sup> A.R.S. § 40-346(A).

26 <sup>64</sup> A.R.S. § 40-344(A).

27 <sup>65</sup> Decision No. 55490 at 5 (emphasis in original).

<sup>66</sup> Id.

<sup>67</sup> Id.

**B. Current level of support.**

Although the statutory requirements for support have been met, the ROO contends that the current level of support may be considered “probative of economic feasibility.”<sup>68</sup> Because the UCSA Act treats the level of support and economic feasibility separately, the Legislature likely viewed them as separate determinations, and the ROO’s attempt to mix them together should be rejected. Moreover, the ROO approves a very specific definition of economic feasibility (“capable of being done as a careful, efficient, and prudent use of resources”) but does not explain how considering the current level of support fits into that definition.<sup>69</sup> Logically, whether a project is “capable of being done as a careful, efficient, and prudent use of resources” is a factual question independent of public support. Rather “economic feasibility” should be based on the economic and cost evidence.

But even if the current level of support is considered as part of economic feasibility, the underground conversion still enjoys majority support, as shown by HBI’s survey, as well as the ROO’s own calculations.

HBI conducted a survey of residents on July 2008, which is the most recent survey of all the residents. HBI mailed additional petitions to 213 property owners. Hillcrest received 193 responses:

	<b># of responses</b>	<b>% of responses</b>
In favor	127	65.8%
Opposed	66	34.2%

Thus, the level of support at the time of the survey remained strong. From that time, several property owners have submitted letters of opposition. But even if very, very late objections are considered, a majority of the owners, and a majority of the area, continue to support the project.<sup>70</sup>

The ROO finds that majority support is not enough, and that a “supermajority of the

<sup>68</sup> ROO at page 41, line 18.  
<sup>69</sup> ROO at page 57, lines 9-10.  
<sup>70</sup> ROO at page 41, lines 10-12.

1 owners who own a supermajority of the square footage of the proposed UCSA.”<sup>71</sup> The  
2 Commission should reject this proposed supermajority requirement. Democracy is based on  
3 “majority rule”, not “supermajority rule.” While the UCSA Act does impose specific  
4 supermajority standards, those standards have been met.

5 Even if it was correct to consider owner support as part of the economic feasibility  
6 analysis, the ROO’s supermajority requirement should be rejected. The statutory scheme for  
7 determining support is based on a supermajority requirement and statutory time limits on that  
8 requirement. In imposing a supermajority requirement as part of the economic feasibility  
9 analysis, long after the statutory time to object has passed, the ROO uses one half of this scheme  
10 while disregarding the other half. In other words, the ROO imposes the supermajority  
11 requirement as part of economic feasibility, without imposing the limits on the supermajority  
12 requirement.

13 If the ROO’s interpretation were correct, objections could be made at any time, and the  
14 statutory time limits on objections would be meaningless surplusage. But statutory language is  
15 presumed to have meaning, rather than being superfluous. As the Arizona Supreme Court stated,  
16 “[w]e interpret statutory language to give effect to each word of the statute, such that no clause,  
17 sentence or word is rendered superfluous, void, contradictory or insignificant.”<sup>72</sup> *State ex rel.*  
18 *Department of Economic Security v. Hayden*, 210 Ariz. 522, 523 ¶ 7, 115 P.3d 116, 117  
19 (2005)(internal quotation omitted).

20 Thus, if the Commission considers the current level of support as part of its economic  
21 feasibility analysis, the Commission should not impose a supermajority requirement.

22 **C. Parcel 274 issue.**

23 The exact percentage of square footage support is dependent on whether Parcel 274 is  
24 included. The ROO states that “Parcel 274 is part of the proposed UCSA.”<sup>72</sup> Hillcrest agrees  
25 with Commission Staff, APS and Verizon that Parcel 274 should be excluded from the  
26

27 <sup>71</sup> ROO at page 56, lines 5-6.

<sup>72</sup> ROO at page 27, lines 22-23.

1 Underground Conversion area.<sup>73</sup> Parcel 274 is owned by La Paz County, and La Paz County  
2 requests that it be excluded.<sup>74</sup> In addition, Parcel 274 is located “in a canyon” and it is not  
3 feasible to develop this lot.<sup>75</sup> Under A.R.S. § 40-346(B), the Commission “shall eliminate any  
4 territory” which “will not be benefited by” the underground conversion, or any parcel where the  
5 “conversion is not economically or technically feasible.” Here, Parcel 274’s location and the  
6 statements of La Paz County show that Lot 274 should be excluded and should not be considered  
7 in determining the amount of support.

8 **V. Conclusion.**

9 Hillcrest Bay’s natural beauty is why its residents treasure this unique area. That beauty  
10 is impaired by the numerous overhead utility lines. The underground conversion offers the  
11 chance to eliminate this unsightly impact to the viewshed. This chance will likely not come  
12 again. The conversion is economically feasible, considering benefits of the program, including:  
13 (1) the improvement to the viewshed; (2) increased property values; (3) creating jobs; (4)  
14 preventing the addition of yet more poles and lines, due to APS’s plan to add 42 additional poles,  
15 and considering HBI’s efforts to mitigate the costs, including: (1) an unprecedented financial  
16 assistance program; (2) preventing removal costs to owners with encroachments; and (3)  
17 obtaining reduced cost estimates.

18 For these reasons, HBI respectfully requests that the Commission approve the  
19 establishment of the Underground Conversion Service Area. A proposed amendment is attached  
20 as **Exhibit A.**

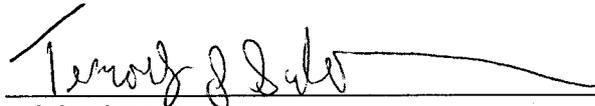
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26 <sup>73</sup> July 21, 2009 Tr. at 76 (Staff position); ROO at page 26, lines 9-12 (APS and Verizon  
positions).

27 <sup>74</sup> Ex. H-6.

<sup>75</sup> July 21, 2009 Tr. at 59-60.

1 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of March 2010.

2 ROSHKA DEWULF & PATTEN, PLC

3  
4 By 

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11 *Attorneys for Hillcrest Bay, Inc.*

12 Original + 13 copies of the foregoing  
13 filed this 25<sup>th</sup> day of March 2010, with:

14 Docket Control  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington  
17 Phoenix, Arizona 85007

18 Copies of the foregoing hand-delivered/mailed  
19 this 25<sup>th</sup> day of March 2010, to:

20 Lyn Farmer, Chief ALJ  
21 Hearing Division  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, AZ 85007

25 Janice Alward, Chief Counsel  
26 Legal Division  
27 Arizona Corporation Commission  
1200 West Washington Street  
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Steve Olea, Director  
Utilities Division  
Arizona Corporation Commission  
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Phoenix, AZ 85007

\*\*\*\*\*All Parties of Record \*\*\*\*\*

28 By 

## Exhibit A

### **HBI Proposed Amendment**

- (1) **DELETE** beginning at page 55, line 23 (beginning with “The interpretation”), to page 56, line 19
- (2) **INSERT** beginning at page 55, line 23 the following:

We agree with APS, Verizon, Staff and HBI that the 60% approval requirements of A.R.S. §§ 40-342 and 40-343(A) have been met. As we stated in Decision No. 55490 (July 21, 1970), the UCSA Act:

makes it very clear that it is the responsibility of the public service corporations involved to determine whether the petitions are sufficient [i.e.  $\geq 60\%$ ] to trigger an application to the Commission for designation of the area as an underground CSA. Aside from the Commission’s finding regarding feasibility of conversion, the Commission’s only function herein is to determine whether 40% or more of all the property owners have objected to the formation of the underground CSA.<sup>1</sup>

Thus, we have two tasks: (1) to determine whether 40% or more of all the property owners, or the owners of 40% of the area of the UCSA have objected within the statutory deadline, and (2) determining the economic and technical feasibility of the underground conversion.

We begin with the first task. It is clear that as of the statutory deadline (10 days before the hearing date of January 18, 2008), there was not opposition on the record from 40% or more of the owners of all the UCSA lands, nor was there opposition from the owners of 40% or more of the area the UCSA.

Our next task is determining the economic and technical feasibility of the UCSA. The UCSA statutes treat the determination of the level of opposition as a separate determination from the determination of economic feasibility. Thus, we do not consider the level of opposition at this stage. There is no dispute that the project is technically feasible. We therefore turn to the question of economic feasibility.

- (3) **DELETE** beginning on page 59, line 1 to page 62, line 24
- (4) **INSERT** beginning on page 59, line 1, the following:

On balance, the evidence in the record demonstrates that an increase in property values is likely upon completion of the underground conversion. Mr. Garcia, who has a wealth of experience in the real estate industry, opined that in a normalized real estate

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<sup>1</sup> Decision No. 55490 at 5 (emphasis in original).

market, the underground conversion will result in an increase of home values between 5% and 15% for 80% of the properties. (Tr. II at 227-228). No other expert testimony was offered on this point, and we find Mr. Garcia's conclusion credible. As Mr. Garcia testified, Arizona is currently not in a "normalized real estate market." However, it is not reasonable to assume that this aberrant condition will continue indefinitely. Thus, the evidence shows that 80% of the homes will increase in value, but the timing of the increase cannot be known with certainty.

Mr. Garcia also testified that the 42 additional poles planned by APS would decrease the value of the properties. (Tr. II at 227-228). Thus, in measuring the economic benefits of the UCSA, we consider the likely increase in value if the UCSA is approved, against the likely decrease in value if the UCSA is not approved.

The residents of Hillcrest Bay appear to have a variety of economic circumstances. We acknowledge that the public, service and private costs may be a burden for some residents, especially low income residence. However, HBI's Financial Assistance Program (FAP) will mitigate the burden for the most severely impacted property owners. We also note that few residents signed up for the FAP when it was originally offered. Moreover, the public and service costs can be paid back over 15 years. We also note that approximately 46 residents have encroachments into utility easements, and those residents bear the financial responsibility for either removing the encroaching structure or paying APS to move the line. Those costs will be avoided if the UCSA is approved.

There was conflicting testimony regarding safety of the current overhead system in Hillcrest Bay. As the photographs provided by HBI demonstrate, in some instances power lines overhang backyards. (Ex. II H-1 at Ex. F; Ex. II H-2). Testimony provided at the hearings indicates that in some cases the overhead lines are within reach. (Tr. I at 177; Tr. II at 128, 163-64). Regardless of whether the current system meets technical safety standards, common sense indicates that an underground system will present less danger of electrocution than an overhead system, especially in areas where the overhead lines are within reach, or if the overhead lines were knocked down in a storm. Thus, we believe that underground conversion will provide at least some increase in the level of safety as compared to the existing system. Regardless, we remind APS and Verizon that they bear full responsibility for maintaining the safety of their distribution facilities. A.A.C. R14-2-206(C)(2) and R14-2-505(B)(3)(b).

Balancing the benefits that would be derived from the establishment of the UCSA against the burdens that would result from the establishment of the UCSA, we find that the overall benefits outweigh the overall burdens. The cost of conversion will be a careful, efficient, and prudent use of resources for the owners. Thus, we find that the UCSA is economically feasible.

- (5) **DELETE** beginning on page 27, line 19 to page 27, line 23
- (6) **INSERT** beginning on page 27, line 19 the following:

Under A.R.S. § 40-346(B), we must “eliminate any territory” which “will not be benefitted by” the underground conversion, or for which the “conversion is not economically or technically feasible.” Parcel 274 is in a canyon and it is not feasible to develop the parcel. (Tr. II at 59-60). We agree with Staff, APS, Verizon and HBI that Parcel 274 should be excluded from the UCSA under A.R.S. § 40-346(B). We therefore do not consider Parcel 274 in determining the percentage of support or opposition.

(7) **DELETE** beginning on Page 41, lines 17 (beginning with “We believe”) to line 18

(8) **MAKE ALL CONFORMING CHANGES**