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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Arizona Corporation Commission
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ORIGINAL

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KRISTIN K. MAYES
Chairman

4

GARY PIERCE
Commissioner

5

PAUL NEWMAN
Commissioner

6

SANDRA D. KENNEDY
Commissioner

7

BOB STUMP
Commissioner

8

9

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

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

Case No. 138

A.C.C. Decision No. 70850

**ARIZONA PUBLIC SERVICE
COMPANY'S NOTICE OF FILING
APPEAL OF BLM DECISION
AND APPLICATION TO AMEND
RESOURCE MANAGEMENT
PLAN**

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On April 28, 2010, the Bureau of Land Management ("BLM") denied Arizona Public Service Company ("APS") request for a right-of-way within the corridor approved by the Arizona Corporation Commission ("ACC") in Decision No. 70850. A copy of the BLM denial was filed with the ACC on May 7, 2010. APS is now providing the ACC notice that APS has appealed that BLM denial of right-of-way. Attachment #1 is the formal Notice of Appeal filed with the BLM on May 26, 2010. APS must file a Statement

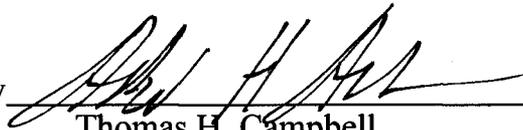
1 of Reasons in support of its Notice of Appeal within thirty (30) days of the date that it filed
2 the Notice of Appeal.

3 In addition to appealing the BLM's denial, APS is also asking the BLM to amend
4 the Bradshaw-Harquahala Resource Management Plan ("RMP") to change the designation
5 for the State Route 74 ("SR 74") Transportation Corridor to a Multi-Use Corridor that
6 would authorize the construction of electric transmission lines on BLM-managed public
7 lands located along SR 74. Attachment #2 is APS's request to amend the RMP.

8 RESPECTFULLY submitted this 4th day of June, 2010.

9 LEWIS AND ROCA LLP

10
11
12 By



13 Thomas H. Campbell
14 Albert H. Acken
15 40 N. Central Avenue
16 Phoenix, Arizona 85007

17 Attorneys for Arizona Public Service Company

18 **ORIGINAL** and thirteen (13) copies
19 of the foregoing filed this 4th day
20 of June, 2010, with:

21 The Arizona Corporation Commission
22 Utilities Division – Docket Control
23 1200 W. Washington Street
24 Phoenix, Arizona 85007

25 **COPY** of the foregoing hand-delivered
26 this 4th day of June, 2010, to:

Honorable Dwight Nodes
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

1 Chairman Kristin K. Mayes
Arizona Corporation Commission
2 1200 W. Washington Street
Phoenix, Arizona 85007

3
4 Commissioner Gary Pierce
Arizona Corporation Commission
5 1200 W. Washington Street
Phoenix, Arizona 85007

6 Commissioner Paul Newman
Arizona Corporation Commission
7 1200 W. Washington Street
Phoenix, Arizona 85007

8
9 Commissioner Sandra D. Kennedy
Arizona Corporation Commission
10 1200 W. Washington Street
Phoenix, Arizona 85007

11 Commissioner Bob Stump
Arizona Corporation Commission
12 1200 W. Washington Street
Phoenix, Arizona 85007

13
14 **COPY** of the foregoing
served electronically via e-mail
this 4th day of June, 2010 to:

15 John Foreman, Chairman
16 Arizona Power Plant and Transmission Line Siting Committee
Office of the Attorney General
17 PAD/CPA
1275 W. Washington Street
18 Phoenix, Arizona 85007

19 Steve Olea, Executive Director
Arizona Corporation Commission
20 1200 West Washington Street
Phoenix, AZ 85007

21 Linda Hogan
22 Assistant to the Executive Director
Arizona Corporation Commission
23 1200 West Washington Street
Phoenix, AZ 85007

24 Charles H. Hains, Legal Division
25 Arizona Corporation Commission
1200 W. Washington Street
26 Phoenix, Arizona 85007

- 1 Mark A. Nadeau
- 2 Shane D. Gosdis
- 3 DLA Piper US LLP
- 4 2415 E. Camelback Road, Suite 700
- 5 Phoenix, Arizona 85016
- 6 Attorneys for 10,000 West, L.L.C.

- 7 Stephen J. Burg, Chief Assistant City Attorney
- 8 City of Peoria
- 9 8401 W. Monroe Street, Room 280
- 10 Peoria, Arizona 85345
- 11 Attorneys for the City of Peoria

- 12 Joseph A. Drazek
- 13 Roger K. Ferland
- 14 Quarles & Brady LLP
- 15 Two North Central Avenue
- 16 Phoenix, Arizona 85004-2391
- 17 Attorneys for Vistancia, LLC

- 18 Michael D. Bailey
- 19 City of Surprise Attorney's Office
- 20 12425 W. Bell Road
- 21 Surprise, Arizona 85374
- 22 Attorneys for City of Surprise

- 23 Jay Moyes
- 24 Steve Wene
- 25 Moyes Sellers & Sims
- 26 1850 N. Central Avenue, Suite 1100
- Phoenix, Arizona 85004
- Attorneys for Vistancia Associations

- 18 Scott S. Wakefield
- 19 201 N. Central Avenue, Suite 3300
- 20 Phoenix, Arizona 85004-1052
- 21 Attorneys for DLGC II, LLC and
- 22 Lake Pleasant Group, LLP

- 23 Court S. Rich
- 24 Rose Law Group PC
- 25 6613 N. Scottsdale Road, Suite 200
- 26 Scottsdale, Arizona 85250
- Attorneys for Warrick 160, LLC and
- Lake Pleasant 5000, LLC

- 24 Lawrence V. Robertson, Jr.
- 25 P.O. Box 1448
- 26 Tubac, Arizona 85646
- Attorney for Diamond Ventures, Inc.

1

Scott McCoy
Earl Curley Lagarde, PC
3101 N. Central Avenue, Suite 1000
Phoenix, Arizona 85012-2654
Attorneys for Elliott Homes, Inc.

4

Andrew Moore
Earl Curley Lagarde, PC
3101 N. Central Avenue, Suite 1000
Phoenix, Arizona 85012-2654
Attorneys for Woodside Homes of Arizona, Inc.

7

Garry D. Hays
Law Offices of Garry D. Hays PC
1702 E. Highland Avenue, Suite 400
Phoenix, Arizona 85016
Attorney for Arizona State Land Department

10

James T. Braselton
Gary L. Birnbaum
Mariscal Weeks McIntyre & Friedlander, PA
2901 N. Central Avenue, Suite 200
Phoenix, Arizona 85012-2705
Attorneys for Surprise Grand Vista JV I, LLC

13

14

Christopher S. Welker
Holm Wright Hyde & Hays PLC
10201 S. 51st Street, Suite 285
Phoenix, Arizona 85044
Attorneys for LP 107, LLC

16

17

Dustin C. Jones
John Paladini
Tiffany & Bosco, P.A.
2525 E. Camelback Road, Third Floor
Phoenix, Arizona 85016
Attorneys for Anderson Land Development, Inc.

20

21

Jeanine Guy, Town Manager
Town of Buckeye
1101 E. Ash Avenue
Buckeye, Arizona 85326
Pro se applicant

23

24

25

26

1 Frederick E. Davidson
Chad R. Kaffer
2 The Davidson Law Firm, P.C.
8701 E. Vista Bonita Drive, Suite 220
3 P.O. Box 27500
Scottsdale, Arizona 85255
4 Attorneys for Quintero

5

6

7

Betty J. Griffin

8

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ATTACHMENT 1

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3 BEFORE THE INTERIOR BOARD OF LAND APPEALS
4 UNITED STATES DEPARTMENT OF THE INTERIOR
5

6 IN THE MATTER OF THE)
7 APPLICATION FOR)
8 TRANSPORTATION AND UTILITY)
9 SYSTEMS AND FACILITIES ON)
10 FEDERAL LANDS BY ARIZONA)
11 PUBLIC SERVICE COMPANY FOR A)
12 RIGHT-OF-WAY ACROSS PUBLIC)
13 LAND FOR THE TS-5 TO TS-9)
14 500/230kV TRANSMISSION LINE)
15 PROJECT, LOCATED IN MARICOPA)
16 COUNTY, ARIZONA)

NOTICE OF APPEAL

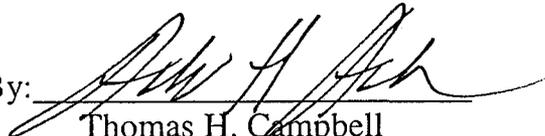
Application No. AZA-35079

13 Notice is hereby given, pursuant to 43 C.F.R. § 4.411, that Arizona Public Service
14 Company ("APS") appeals the April 28, 2010 Decision of the Bureau of Land
15 Management ("BLM"), Phoenix District, Hassayampa Field Office, to reject Application
16 No. AZA-35079 (the "Application") for a right-of-way across public lands for the TS-5 to
17 TS-9 500/230kV Transmission Line Project in Maricopa County, Arizona.

18 In accordance with 43 C.F.R. § 4.412, APS will provide its Statement of Reasons
19 for the Appeal within 30 days of filing this Notice of Appeal.

20 RESPECTFULLY SUBMITTED this 26th day of May, 2010.

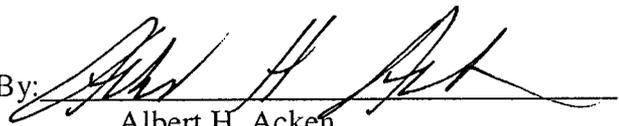
21 LEWIS AND ROCA LLP

22
23 By: 

24 Thomas H. Campbell
25 Albert H. Acken
26 40 North Central Avenue, Suite 1900
27 Phoenix, Arizona 85004-4429
28 Attorneys for APS
602-262-5706 (tel)
602-734-3771 (fax)

1 In accordance with 43 CFR § 4.401(c)(2) I, Albert H. Acken, certify that service has been or will
2 be made as noted below in accordance with applicable rules on May 26, 2010.

3 LEWIS AND ROCA LLP

4 By: 
5 Albert H. Acken
6 40 North Central Avenue
7 Phoenix, Arizona 85004-4429

8 ORIGINAL HAND-DELIVERED
9 on the 26th day of May, 2010 to:

10 Bureau of Land Management
11 Phoenix District, Hassayampa Field Office
12 21605 N. 7th Avenue
13 Phoenix, Arizona 85027-2929
14 ATTN: Steve Cohn

15 COPIES SENT VIA CERTIFIED
16 MAIL (USPS) on the 26th day of May, 2010 to:

17 Office of the Field Solicitor, USDOJ
18 Attn: John Gaudio
19 Sandra Day O'Connor U.S. Courthouse Suite
20 404
21 401 West Washington Street, SPC 404
22 Phoenix, Arizona 85003-2151

Stephen J. Burg,
Chief Assistant City Attorney
City of Peoria
8401 W. Monroe Street, Room 280
Peoria, Arizona 85345
Attorney for the City of Peoria

23 Capital Consultants Management
24 Statutory Agent for:
25 Vistancia Village, a Community Association
26 8360 E. Via Ventura Bldg. L100
27 Scottsdale, AZ 85258

Joseph A. Drazek
Quarles & Brady LLP
Two North Central Avenue
Phoenix, Arizona 85004-2391
Attorneys for Vistancia, LLC

28 Lawrence V. Robertson, Jr.
P.O. Box 1448
Tubac, Arizona 85646
Attorney for Diamond Ventures, Inc

Laura Ziff, Statutory Agent for
Trilogy at Vistancia Community
Association
c/o Associated Asset Management, LLC
7740 N 16th Street, #300
Phoenix, AZ 85020

ATTACHMENT 2

June 4, 2010

U. S. Dept. of the Interior
Bureau of Land Management
Hassayampa Field Office
21605 North 7th Avenue
Phoenix, Arizona 85027-2929
ATTN: Steve Cohn

Re: Request to Amend the Bradshaw-Harquahala Resource Management Plan

Dear Mr. Cohn:

On behalf of our client, Arizona Public Service (“APS”), Lewis and Roca LLP respectfully requests that the Bureau of Land Management (“BLM”) initiate the process to amend the Bradshaw-Harquahala Resource Management Plan (the “RMP”) to change the designation for the State Route 74 (“SR 74”) Transportation Corridor to a Multi-Use Corridor that would authorize the construction of electric transmission lines on BLM-managed public lands located along SR 74.

Basis for Request

Under 43 CFR § 1610.5-5, an amendment to a resource management plan “shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan.” BLM’s Land Use Planning Handbook H-1601-1 (2005) states that new data or information can include “public comment or staff assessments indicating that new information or changed circumstances warrant a reconsideration of the appropriate mix of uses on particular tracts of public land” and “information from the public or others regarding conditions or uses of resources on public lands.”

These factors are present here.

New information and changed circumstances, which arose after the Proposed RMP/Final Environmental Impact Statement was released on August 8, 2008, and therefore are not incorporated in the RMP, justify consideration of an amendment to the RMP.

On March 17, 2009, the Arizona Corporation Commission (“ACC”) issued Decision No. 70850, which granted APS a Certificate of Environmental Compatibility (“CEC”) to construct the TS-5 to TS-9 500/230kV Transmission Line Project (“Project”). The TS-5 to TS-9 Project will provide a critical link between the Phoenix metropolitan area and renewable energy projects proposed to be located in Western Arizona. Facilitating such links is “one of the Department’s highest priorities.” See Secretarial Order No. 3285, March 11, 2009. At the time Secretary Salazar issued this Order, he stated, “[w]e have to connect the sun of the deserts and the wind of the plains with the places where people live.”

The ACC’s Decision is attached as **Exhibit 1**. A portion of the Project corridor approved by the ACC is located on lands managed by the BLM along SR 74. As a result of the ACC’s decision, the current RMP is outdated and no longer consistent with the plans of the State of Arizona.

In addition, on April 26, 2010, the Department of Energy (“DOE”) released its second triennial study of electric transmission congestion and constraints, the 2009 National Electric Transmission Congestion Study (the “2009 DOE Study”). The DOE concluded that the TS-5 to TS-9 Project, along with other planned projects in the Phoenix-Tucson region, will help alleviate transmission congestion in the Phoenix-Tucson region that was previously identified by the DOE.

Due to these new federal and state developments, we respectfully request that the BLM initiate the process to amend the RMP to incorporate a Multi-Use Corridor along SR 74 and take into account this new information and changed circumstances.

Discussion

I. The RMP should be consistent with state plans to the “maximum extent” possible.

Under Section 102(c)(9) of the Federal Land Policy and Management Act [43 U.S.C. § 1712(c)(9)], resource management plans “shall be consistent with State and local plans to the maximum extent [BLM] finds consistent with Federal law and the purposes of the Act.”

To ensure that resource management plans are consistent with state plans, Section 102(c)(9) requires the BLM to:

coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other federal departments and agencies and of the states and local governments within which the lands are located.... In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of state, local, and tribal land use plans....

See also, Section 2.1.6 of the RMP (requiring coordination with other agencies and consideration of local economies).

As required by Section 102 of the FLPMA and also 43 CFR §1610.3-2, the RMP acknowledges the importance of coordinating with other agencies and being consistent with these agencies' plans. RMP Section 1.5, "Management Considerations for Selecting the Approved Plan," includes the following passage:

Consistency of the Approved RMP with other local, state, tribal, and federal plans and policies was also considered as a factor in alternative selection. The Approved RMP is consistent with plans and policies of the Department of the Interior and Bureau of Land Management, other federal agencies, state government, and local governments to the extent that the guidance and local plans are also consistent with the purposes, policies, and programs of federal law and regulation applicable to public lands.

The Arizona Governor's Office did not identify any inconsistencies between the PRMP/FEIS and state or local plans, policies, and programs following the 60-day Governor's Consistency Review of the PRMP/FEIS (initiated on April 15, 2008, in accordance with planning regulations at 43 CFR Part 1610.3 2(e)).

As a result of the ACC's March 17, 2009 decision, the Governor's Consistency Review is outdated. So too is Section 2.1.8 of the RMP, which identifies the state, local, and tribal plans considered when developing the RMP. The ACC's Decision granting APS a CEC for the Project is not incorporated in this list.

To be current and consistent with the state plan, the RMP amendment process should be initiated to consider a Multi-Use Corridor along SR 74.

II. *The state-approved plan is "consistent with the purposes, policies, and programs of federal law and regulation applicable to public lands."*

The CEC proceedings before the Arizona Power Plant and Transmission Line Siting Committee ("State Siting Committee") and the ACC demonstrate that the approved route along SR 74 is environmentally compatible and would be "consistent with the purposes, policies, and programs of federal law and regulation applicable to public lands."

APS and other interested parties worked to keep the BLM informed throughout the Arizona siting process. As the BLM undoubtedly was aware, the sixteen-day hearing before the State Siting Committee included nineteen intervenors. Among the intervenors were two state agencies and two local municipalities: ACC Staff, Arizona State Land Department, City of Peoria, and City of Surprise. These intervenors' participation helped develop a record that was complete and thorough. After hearing the evidence (which is recorded in the 3600+ page transcript), reviewing several dozen exhibits, and being advised of the legal framework governing the siting of utility infrastructure in Arizona, the State Siting Committee voted unanimously to grant APS a CEC to construct the Project.

After the State Siting Committee granted the CEC, the ACC held oral argument and further deliberations. After conducting its review, pursuant to A.R.S. §40-360.07, the ACC made the following findings and conclusions that were substantively identical to the ones made by the State Siting Committee:

1. the Project is in the public interest because it aids the state in meeting the need for an adequate, economical and reliable supply of electric power;
2. in balancing the need for the Project with its effect on the environment and ecology of the state, the determinations and conditions placed on the CEC by the Committee as modified by the Commission effectively minimize its impact on the environment and ecology of the state;
3. the determinations and conditions placed on the CEC by the Committee as modified by the Commission 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. the balancing in the broad public interest results in favor of granting the CEC as modified by the Commission.

Decision No. 70850. The findings and conclusions of both the ACC and the State Siting Committee (which includes designees from the Arizona Department of Environmental Quality and the Arizona Department of Water Resources) demonstrate that the approved state plan considers the environmental impacts and federal laws applicable to these public lands. Therefore, the requested RMP amendment should be considered to incorporate this state plan.

III. The utility corridor designation is necessary to meet the metropolitan area's infrastructure needs.

Section 2.1.10 of the RMP, "Mission and Goals", states that one of the management goals for the Bradshaw-Harquahala planning area is to "[w]ork with communities and other interests to meet the need for resources and infrastructure for growing populations." Similarly, Section 1.5 acknowledges that "the new RMP must address the challenges of increasing demands for ... energy ... associated with the continuing rapid growth of the Phoenix metropolitan area."

Both the State Siting Committee and the ACC concluded the TS-5 to TS-9 Project was needed. See Decision No. 70850; see also, State Siting Committee Hearing Transcript at 3418:4-5 ("By a vote of 9 to zero, the Committee finds that there is need for the project") (transcript excerpt attached as **Exhibit 2**).

The DOE also recognized the need for this Project to help reduce transmission congestion previously identified by the DOE. The Energy Policy Act of 2005 requires the DOE to conduct a study every three years on electric transmission congestion and constraints within the Eastern

and Western Interconnections. The DOE's 2006 National Electric Transmission Congestion Study identified the Phoenix-Tucson region as a Congestion Area of Concern. August 2006 Study, pg 40. In the recently released 2009 DOE Study, the DOE concluded:

The Department ... no longer identifies the Phoenix-Tucson area as a Congestion Area of Concern. Although not all of the transmission and demand-side projects that will resolve current congestion problems have been completed, several factors support this decision:

...

- The recent history of transmission development in Arizona indicates that projects developed through the BTA are approved by the ACC and built on schedule with limited complications or uncertainty due to permitting, routing or cost recovery. It is likely that most of these projects will become operational by their scheduled dates. [pg 96]

The TS-5 to TS-9 Project is one of the projects on which the DOE's revised conclusion was based. See Table 5-6, pg 98.

In order to meet the need for electric transmission infrastructure identified by the DOE, the ACC, and the State Siting Committee, the RMP should be amended to designate a Multi-Use Corridor along SR 74.

IV. The RMP should conform to the ACC's utility regulations.

Section 2.3.5.1 of the RMP, LR-2, states that the corridors designated in the RMP "conform to the utility regulations of the Arizona Corporation Commission." As a result of ACC Decision No. 70850, this statement is no longer accurate.

The laws that govern utility infrastructure siting in Arizona are found in A.R.S. §40-360, *et seq.* and AAC R14-3-201, *et seq.* In accordance with this statutory and regulatory framework, both the State Siting Committee and the ACC approved a corridor for the Project that is located on BLM-administered land along SR 74.

In order for the RMP to be consistent with the ACC's utility regulations, an RMP amendment should be considered to authorize utility infrastructure along SR 74.

V. The RMP amendment should be considered to meet the objectives of management action LR-15.

In the current RMP, Section 2.3.5.2.2, "Utility and Transportation Corridors," identifies management actions that are applicable to the entire Bradshaw-Harquahala area. LR-15 states that BLM should "[e]ncourage joint use whenever possible." See also, BLM's Standard Operating Procedures for Utility and Transportation Corridors, A.6.2, ("[t]ransportation routes

...should be co-located with utilities in designated corridors to the maximum degree possible...”). In this RMP, BLM designated a Transportation Corridor along SR 74. RMP 2.5.2.1. To encourage joint use of this corridor for both transportation and utility infrastructure, BLM should now consider changing the designation of the corridor to Multi-Use.

VI. *The RMP amendment should be considered to meet the Federal government's objective to promote renewable energy development.*

In his first Secretarial Order, Secretary Salazar established the following policy:

Encouraging the production, development, and delivery of renewable energy is one of the Department's highest priorities. [Sec. Order No. 3285].

In October 2009, nine federal agencies entered into a Memorandum of Understanding to expedite the siting and construction of electric transmission infrastructure on federal land. October 28, 2009 MOU Regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land. As stated in the MOU:

The President has stated that the country that harnesses the power of clean, renewable energy will lead the 21st century. Expanding and modernizing the transmission grid by siting proposed electric transmission facilities will help to accommodate additional electricity generation capacity over the next several decades, including new renewable generation as well as improve reliability and reduce congestion. The Participating Agencies have significant roles to play in siting these facilities.

Similarly, in testimony before the U.S. Senate Environment and Public Works Committee on January 28, 2010, Secretary Salazar stated:

Renewable energy development is one of President Obama's highest priorities....

we must recognize that the development of transmission capacity for this new energy production is a crucial element. Developing solar and other renewable energy resources, which are often located in remote areas, will require new transmission capacity to bring this clean energy to the population centers where it is needed.

Management action LR-17 of the RMP is consistent with these pronouncements, and states that BLM should “[w]henver possible, promote energy transfer efficiency and support alternative energy sources.”

The TS-5 to TS-9 Project will promote energy transfer efficiency and support alternative energy sources. As ACC Staff stated during the CEC proceedings:

The Project is needed and will contribute to the delivery of power in an adequate, economical and reliable manner. First, the Project, if authorized, will complete a continuous 500 kV path from the Palo Verde Hub to the Pinnacle Peak substation. Also, the Project will improve the Palo Verde Hub's transfer capability into the Metropolitan Phoenix area by 600 MW. **Coincidentally, the additional transfer capability will contribute to APS' ability to access renewable generation that is anticipated to interconnect through the Palo Verde Hub, thereby facilitating APS' ability to comply with its Renewable Energy Standard Requirements.** As a final point, the Project will strengthen the Metropolitan Phoenix area extra high voltage transmission system, thereby improving the reliable delivery of power. ACC Staff Brief (emphasis added) [excerpt attached as **Exhibit 3.**]

Because the TS-5 to TS-9 Project will help transmit remote renewable energy to the Phoenix metropolitan area, the BLM should designate a Multi-Use Corridor along SR 74 to implement the federal government's objective to encourage renewable energy development.

VII. The RMP should be amended to comply with BLM's Standard Operating Procedures.

Under SOP A.6.2, a utility corridor must be established if "it contains or is planned for" electric transmission facilities that have a capacity of 115 kV lines or greater voltage.

When the draft RMP/EIS was developed, there was no final, effective plan for an electric transmission line along SR 74 on BLM-administered land. Because that has now changed, the RMP should be amended to define the SR 74 corridor as a Multi-Use Corridor.

VIII. The RMP should be amended so that the SR 74 corridor designation is consistent with other corridor designations.

With the notable exception of SR 74, it is our understanding that, in accordance with SOP A.6.2., BLM designated Multi-Use Corridors along *all* other state or federal highways in the Bradshaw-Harquahala Planning Area that have utility rights-of-way. These designated Multi-Use Corridors include U.S. 60 between Wickenburg and Phoenix, U.S. 89 between Wickenburg and Yarnell, and S.R. 69.

The fact that other utility rights-of-way may contain existing utilities rather than planned ones does not justify disparate treatment. First, SOP A.6.2. does not distinguish between existing and planned rights-of-way. Second, BLM did consider other planned facilities. For example, BLM established two alternative Transportation Corridors for the Wickenburg Bypass, a long-term project that is not currently scheduled for construction. In contrast to the uncertain timing for the Wickenburg Bypass, the TS-5 to TS-9 Project has an in-service date of 2016.

To be consistent and lawful with the approach taken in the RMP for other existing and planned facilities, SR 74 should be designated a Multi-Use Corridor.

Conclusion

For the foregoing reasons, we respectfully request that the BLM initiate a process to amend the RMP pursuant to 43 CFR §1610.5-5 to change the designation for the SR 74 Transportation Corridor to a Multi-Use Corridor.

Thank you for your consideration of this request.

RESPECTFULLY SUBMITTED this 4th day of June, 2010.

LEWIS AND ROCA LLP



Thomas H. Campbell
Albert H. Acken
40 North Central Avenue
Phoenix, Arizona 85004-4429
Attorneys for Arizona Public Service Company

cc: Mr. John Gaudio, Office of the Field Solicitor, U.S. Dept. of Interior
Mr. Stephen J. Burg, Attorney for the City of Peoria
Mr. Lawrence V. Robertson, Jr., Attorney for Diamond Ventures
Mr. Joseph A. Drazek, Attorney for Vistancia
Ms. Laura Ziff, Statutory Agent for Trilogy at Vistancia Community Association
Capital Consultants Management, Statutory Agent for Vistancia Village, a Community Association
Mr. Paul Herndon, Arizona Public Service Company

EXHIBIT 1

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
Kristin K. Mayes, Chairman
Gary Pierce
Sandra D. Kennedy
Paul Newman
Bob Stump

Arizona Corporation Commission

DOCKETED

MAR 17 2009

DOCKETED BY nr

21
05

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

CASE NO. 138

DOCKET NO. L-00000D-08-0330-00138

DECISION NO. 70850

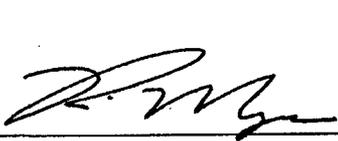
Open Meeting
March 4, 2009
Phoenix, Arizona

BY THE COMMISSION:

The Arizona Corporation Commission ("Commission") has conducted its review, pursuant to A.R.S. § 40-360.07. The Commission finds and concludes that the Certificate of Environmental Compatibility ("CEC") issued by the Arizona Power Plant and Transmission Line Siting Committee ("Committee") is hereby granted as modified by this Order.

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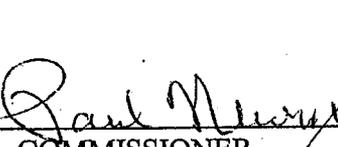
1 THE CEC ISSUED BY THE SITING COMMITTEE IS
2 INCORPORATED HEREIN AND IS APPROVED AS MODIFIED BY THE
3 COMMISSION BY ORDER OF THE
4 ARIZONA CORPORATION COMMISSION
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7

8 

9 CHAIRMAN



COMMISSIONER

10
11 

12 COMMISSIONER



COMMISSIONER



COMMISSIONER

13
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15 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
16 Interim Executive Director of the Arizona Corporation
17 Commission, have hereunto, set my hand and caused the
18 official seal of this Commission to be affixed at the Capitol,
19 in the City of Phoenix, this 12 day of March, 2009.

20 

MICHAEL P. KEARNS
Interim Executive Director

21
22 DISSENT: 

23
24 DISSENT: _____

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
SANDRA D. KENNEDY
PAUL NEWMAN
BOB STUMP



ARIZONA CORPORATION COMMISSION

SANDRA D. KENNEDY
COMMISSIONER

Direct Line: (602) 542-3625
Fax: (602) 542-3669
E-mail: skennedy@azcc.gov

April 1, 2009

Subject: Kennedy dissent Docket No. L-00000D-08-0330-00138
Case No. 138

To support and explain my nay vote:

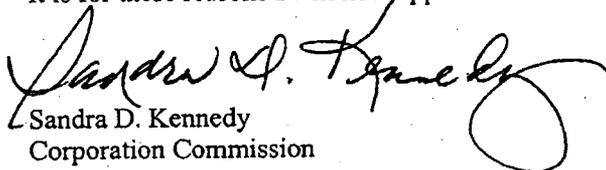
The ACC's duties are in part quasi-judicial; if this had been a court case the application would have been denied in summary judgment on this issue alone. The applicant, Arizona Public Service (*APS*) *never proved the need for this transmission line*. The expert testimony for 10,000 West LLC did successfully challenge the assertion of need. Based on the briefs and testimony, APS never cross examined the expert witness for 10,000 West LLC nor offered rebuttal testimony. The "need" based on reliability and avoiding an extreme contingency was only offered after the application had been filed. N-2 and N-2-1 contingencies are not normally something utility companies plan in advance for, and the ACC has already determined they are **not for planning reinforcements**.

I frankly doubt the transmission line route will successfully complete the required Bureau of Land Management's NEPA environmental reviews, which means the issue will eventually comeback before the Commission. The State Land Department (ASLD) also opposed the line and pointed out the project will not comply with ARS 40-360.06. (It is not disputed that that the majority of the line route in state land.) ASLD claims that line renders large swaths of State Land "unusable due to the location of the lines and Highway 74," which interferes with its fiduciary duties to the Trust. I do not believe that the applicant provided sufficient evidence nor made the case on the need of the proposed transmission line.

As a Commissioner, I have a duty and an interest in these related issues, and my duty is to the citizens of Arizona and protecting our state assets, as well as the environment.

Finally, I am extremely concerned that the Open Meeting Law and ex-parte violations tainted this entire process at the level of the Line Siting Committee portion of the process. APS and LSC Chairman must be aware of proper procedures for the process, and to ignore and ratify the results of the Open Meeting Law noncompliance is to reward this inappropriate activity. I believe if we do not hold entities accountable to laws and rules that govern all ACC proceedings; we are setting a very dangerous precedent.

It is for these reasons I will not support the decision of my colleagues.


Sandra D. Kennedy
Corporation Commission

Commissioner Newman Concur:

I concur with this order. The issues raised about procedural irregularities regarding a bus tour and e-mails transmitted between Line Siting Committee members pose no substantive issues in terms of the record. Corporation Commission staff and the Chair of the Line Siting Committee acted appropriately and quickly in addressing these issues.

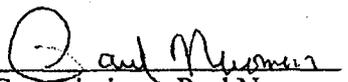
Regarding the bus tour, a few members of the committee, far short of a majority, attended in what apparently has been long standing practice, to see the proposed route first hand. Those members on the bus tour, were reminded by the Chair, not to discuss the merits of the issue. There is no evidence that any improper behavior occurred on the tour.

All e-mails between members were filed as part of the docket by the Commission staff. These e-mails became part of the record before the conclusion of Line Siting Committee deliberations and were able to be accessed by other parties and members of the public. Most of the e-mails were procedural in nature. Several e-mails particularly those involving the CEC environmental conditions did go beyond procedural and were substantive in nature, and needed to be entered as part of the record.

I acknowledge the diligent efforts of our Commission staff and their timely actions, filing the e-mails remedied what may have been an inadvertent violation of the open meetings statute.

Again in my judgment, the timely filing of the e-mails as part of the record before the conclusion of the Committee's deliberations, provided proper notice of the aforementioned e-mails and therefore preserved the public and the other parties' right to know.

Moreover I cannot see how the public's interest is served after the expenditure of thousands of taxpayer dollars, to throw out the decision and start a lengthy and costly administrative process once again. In looking at the totality of the evidence in this administrative proceeding, especially the unanimous decision by the Line Siting Commission, it argues for approving their recommendation.


Commissioner Paul Newman

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

3 IN THE MATTER OF THE APPLICATION)
4 OF ARIZONA PUBLIC SERVICE COMPANY,) Arizona Corporation Commission
5 IN CONFORMANCE WITH THE REQUIREMENTS)
6 OF ARIZONA REVISED STATUTES §§ 40-360,) Docket No. L-00000 D-08-0330-00138
7 *et seq.*, FOR A CERTIFICATE OF ENVIRONMENTAL)
8 COMPATIBILITY AUTHORIZING THE TS-5 TO TS-9) Case No. 138
9 500/230kV TRANSMISSION LINE PROJECT, WHICH)
10 ORIGINATES AT THE FUTURE TS-5 SUBSTATION,)
11 LOCATED IN THE WEST HALF OF SECTION 29,)
12 TOWNSHIP 4 NORTH, RANGE 4 WEST AND)
13 TERMINATES AT THE FUTURE TS-9 SUBSTATION,)
14 LOCATED IN SECTION 33, TOWNSHIP 6 NORTH,)
15 RANGE 1 EAST, IN MARICOPA COUNTY, ARIZONA)

16 **PROCEDURAL ORDER AND NOTICE OF FILING**

17 The Applicant filed on December 16, 2008, a Notice of Filing that incorporates a
18 proposed Certificate of Environmental Compatibility ("CEC") intended to reflect the decision
19 of the Arizona Power Plant and Transmission Line Siting Committee of December 2, 2008,
20 in this matter. The Notice indicates the proposed form of CEC was filed for the review of the
21 intervenors and to provide the opportunity for the submission of any suggested revisions.
22 John Foreman, designee of the Attorney General of Arizona, Terry Goddard, as Chairman
23 and Presiding Officer of the Arizona Power Plant and Transmission Line Siting Committee
24 as authorized by A.R.S. §§ 40-360.01(C) and (D), 40-360.04 and A.A.C. R14-3-201(E),
25 issued a procedural order soliciting responses and proposed revisions to the proposed
26 form of CEC filed by the Applicant on or before December 26, 2008.

Diamond Ventures, Inc., timely filed a response with proposed revisions. No
response or proposed revision was filed by the Staff of the Arizona Corporation
Commission or any other intervening party. The Chairman has reviewed the Applicant's
proposed CEC, the response and the proposed revisions of Diamond Ventures, and the
record. Today, December 29, 2008, is the last day for filing the CEC within the time limits.

The Committee during its deliberations delegated to the Chairman the responsibility
of working with the attorneys to conform the final language of the CEC with the results of
the deliberations of the Committee. Reporter's Transcript of December 2, 2008 ("RT"), page
3462, lines 4-16.

The Applicant's proposed language of the CEC appears to conform to the results of
the deliberations of the Committee with the limited additional language noted below.

The Chairman has modified the language of the proposed CEC in three places. The
parties will received an e-mailed copy of this filing with a highlighted copy of the final CEC
showing the revisions.

The first revision adds the words: "from the half section line north of the Lone
Mountain Road alignment" to the description of the path of the corridor north of the Lone

1 Mountain Road alignment along the 235th Avenue alignment. Final CEC, page 5, lines 10-
2 11. Without the revision it is unclear where the change in corridor width and location
3 begins. The added language locates a starting point for the expanded width and location of
4 the corridor as it goes north. South of the starting point the corridor width is 1500 feet and it
5 is located west of the 235th Avenue alignment. North of the starting point the width is 2500
6 feet, 1500 feet west of the 235th Avenue alignment and 1000 feet east of the 235th Avenue
7 alignment. RT, page 3503, lines 22-25, page 3504, lines 1-7, page 3512, lines 18-25, and
8 page 3513, lines 1-6.

9 The second and third revisions deal with the corridor location and width near State
10 Route ("SR") 74 and the 163rd Avenue alignment. The second revision adds the following
11 sentence: "The corridor excludes the property designated Village 'E' in the record (Exhibit
12 DV-13, slide 7L) owned by Diamond Ventures west of the 163rd Avenue alignment and
13 south of SR 74." Final CEC, page 6, lines 2-4. The third revision adds the following
14 sentence: "The corridor excludes the properties designated Village 'A' and Village 'E' in the
15 record (Exhibit DV-13, slide 7L) owned by Diamond Ventures east and west of the 163rd
16 Avenue alignment and south of SR 74."

17 An extensive discussion of the attempt by the Committee to avoid the entrance to
18 Quintero properties north of SR 74 and the properties of Diamond Ventures south of SR 74
19 west of the 163rd Avenue alignment can be found on the record. See, RT, pages 3451,
20 3463, and 3466 through 3487. The revised language is similar to language offered by
21 Diamond Ventures and intended to address their concerns. Although the Committee
22 discussed at length the east-west alignment of the corridor south of SR 74 and west of
23 163rd Avenue, it did not discuss explicitly the north-south corridor along 163rd Avenue
24 needed for the transmission line to travel from south of SR 74 to north of SR 74 at 163rd
25 Avenue. It did discuss avoiding directly impacting the Diamond Ventures properties
26 generally and it discussed avoiding directly impacting specifically the Diamond Ventures
property designated as Village 'E'. The Committee assumed based upon the discussions
on the record the corridor south of SR 74 and west of the 163rd Avenue alignment could be
connected with the corridor north of SR 74 and east of the 163rd Avenue alignment with a
crossing at the intersection of SR 74 and the 163rd Avenue alignment. It appears from
Exhibit DV-13, slide 7L the Village 'E' property lies south of SR 74, but north of the Village
'A' property, and west of 163rd Avenue. It is not clear the Village 'E' property actually goes
all the way to 163rd Avenue. Exhibit DV-13, slide 7L. However, the Village 'A' property
appears to lie directly east of the 163rd Avenue alignment, south of SR 74, but also south of
the Village 'E' property. Exhibit DV-13, slide 7L.

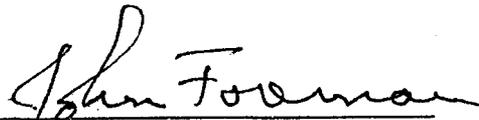
The Committee assumed it would be physically possible to thread the transmission
line in the corridor south of SR 74 around the south side of the Diamond Ventures Village
'E' as the line approached the 163rd Avenue alignment from the west. It also assumed it
would be physically possible to thread the line from south of SR 74 approaching the 163rd
Avenue alignment from the west to north of SR 74 heading on east of the 163rd Avenue
alignment without directly impacting the Diamond Ventures properties designated Village
'E' or Village 'A'. The Committee did not vote explicitly upon the language in the Applicant's
proposed CEC for a 1000 foot wide corridor north and south centered along the 163rd
Avenue alignment. Final CEC, page 6, lines 5-10. However, such a corridor with the
exceptions of the Village 'A' and Village 'E' Diamond Ventures properties would be

1 necessary to give effect to the language that was discussed and approved by the
2 Committee. See, RT, page 3486, lines 14-25.

3 THEREFORE, IT IS ORDERED:

- 4 1. Approving the proposed Certificate of Environmental Compatibility with the revisions
5 discussed above in the form attached to this Order and Notice.
- 6 2. Providing notice of the filing of the Certificate of Environmental Compatibility with
7 docket control of the Arizona Corporation Commission in the above numbered
8 matter this date, December 29, 2008.

9 DATED: December 29, 2008

10
11 

12 John Foreman, Chairman
13 Arizona Power Plant and Transmission
14 Line Siting Committee
15 Assistant Attorney General
16 john.foreman@azag.gov

17 Pursuant to A.A.C. R14-3-204,
18 The Original and 25 copies were
19 filed December 29, 2008 with:

20 Docket Control
21 Arizona Corporation Commission
22 1200 W. Washington St.
23 Phoenix, AZ 85007

24 Copy of the above was e-mailed and mailed
25 December 29, 2008 to:
26

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

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

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

- 11
- 12 Thomas H. Campbell, Esq.
Albert Acken, Esq.
- 13 Lewis & Roca, LLP
Two Renaissance Square
- 14 40 North Central Avenue
Phoenix, AZ 85004
- 15 Counsel for Applicant APS

- 16 Michael D. Bailey
Sintra Hoffman
Office of the City Attorney
12425 West Bell Road, Suite D100
- 18 Surprise, AZ 85374-9002
Counsel for City of Surprise

- 20 Stephen J. Burg
Office of the City Attorney
8401 West Monroe Street, Room 280
- 22 Peoria AZ 85345
Counsel for City of Peoria

- 24 Garry D. Hays
The Law Offices of Garry D. Hays, PC
1702 East Highland Avenue, Suite 400
- 25 Phoenix, AZ 85016
Counsel for Arizona State Land Department
- 26

- 1 Joseph A. Drazek
- 2 Roger K. Ferland
- 3 Quarles & Brady, LLP
- 4 Two North Central Avenue
- 5 Phoenix, AZ 85004-2391
- 6 Counsel for Vistancia, LLC

- 7 Frederick E. Davidson
- 8 Chad R. Kaffer
- 9 The Davidson Law Firm
- 10 8701 East Vista Bonita Drive, Suite 220
- 11 P. O. Box 27500
- 12 Scottsdale, AZ 85255
- 13 Counsel for Quintero Community Assoc. & Quintero Golf & Country Club

- 14 Dustin C. Jones
- 15 Jon M. Paladini
- 16 Tiffany & Bosco, PA
- 17 2525 E. Camelback Road – 3rd Floor
- 18 Phoenix, AZ 85016
- 19 Counsel for Anderson Land and Development, Inc.

- 20 Scott McCoy
- 21 Earl, Curley & LaGarde, P.C.
- 22 3101 N. Central Avenue, Suite 1000
- 23 Phoenix, AZ 85012
- 24 Counsel for Elliott Homes, Inc.

- 25 Andrew E. Moore
- 26 Earl, Curley & LaGarde, P.C.
- 3101 N. Central Avenue, Suite 1000
- Phoenix, AZ 85012
- Counsel for Woodside Homes of Arizona

- Jay Moyes
- Steve Wene
- Moyes, Sellers & Sims
- 1850 N. Central Avenue – Suite 1100
- Phoenix, AZ 85004
- Counsel for Vistancia Village – Homeowners

1 James T. Braselton
Gary L. Birnbaum
2 Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue
3 Phoenix, AZ 85012
4 Counsel for Surprise Grand Vista JV No. 1, LLC and Sunhaven

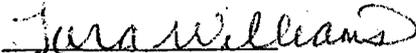
5 Mark A. Nadeau
Shane D. Gosdis
6 Susan T. Watson
DLA PIPER US LLP
7 2415 East Camelback Road, Suite 700
8 Phoenix, AZ 85016
Counsel for 10,000 West, L.L.C.

9 Court S. Rich
10 Ryan Hurley
Rose Law Group, PC
11 6613 N. Scottsdale Road, Suite 200
12 Scottsdale, AZ 85250
Counsel for Warrick 160, LLC and Lake Pleasant 5000, LLC

13 Lawrence V. Robertson, Jr.
14 P. O. Box 1448
15 Tubac, AZ 85646-0001 USA
Counsel for Diamond Ventures, Inc.

16 Scott S. Wakefield
17 Ridenour, Hinton, Helhoffer & Lewis
201 N. Central Avenue, Suite 3300
18 Phoenix, AZ 85004
19 Counsel for DLGC, II LLC, and Lake Pleasant Group, LLP

20 Marta T. Hetzer
Arizona Reporting Service, Inc.
21 2200 North Central Avenue
22 Phoenix, Arizona 85004-1481

23 By: 
24 Tara Williams

25
26

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

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

COUNSEL:	INTERVENING PARTY:
20 Charles H. Hains 21 Ayesha Vohra	Arizona Corporation Commission Staff ("Staff")
22 Garry D. Hays	Arizona State Land Department
23 Mark A. Nadeau Shane D. Gosdis	10,000 West, L.L.C.
24 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.

25 _____
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

1 Avenue alignment. The corridor width includes 1,500 feet south of the existing SR
2 74 centerline. The corridor excludes the property designated Village 'E' in the
3 record (Exhibit DV-13, slide 7L) owned by Diamond Ventures west of the 163rd
4 Avenue alignment and south of SR 74.

- 5 • A 1,000 foot-wide corridor, centered on the 163rd Avenue alignment, which crosses
6 SR 74 from south to north and connects that portion of the corridor south of SR 74
7 with that portion of the corridor north of SR 74. The corridor excludes the
8 properties designated Village 'A' and Village 'E' in the record (Exhibit DV-13,
9 slide 7L) owned by Diamond Ventures east and west of the 163rd Avenue alignment
10 and south of SR 74.
- 11 • A 1,500 foot-wide corridor, on the north side of SR 74, that extends east along SR
12 74 for approximately 4.9 miles from the 163rd Avenue alignment to approximately
13 0.3 mile west of the section line between Sections 25 and 26 of Township 6 North,
14 Range 1 West. The southern boundary of the corridor begins 500 feet north of the
15 centerline for SR 74.
- 16 • A 1,000 foot-wide corridor, centered on a north-south line 0.3 mile west of the
17 section line between Sections 25 and 26 of Township 6 North, Range 1 West,
18 which crosses SR 74 from north to south and connects that portion of the corridor
19 north of SR 74 with that portion of the corridor south of SR 74.
- 20 • A 1,000 foot-wide corridor, on the south side of SR 74, that extends east along SR
21 74 for approximately 1.3 miles to the eastern boundary of Township 6 North Range
22 1 West (the 115th Avenue alignment). The northern boundary of the corridor begins
23 500 feet south of the centerline of SR 74.
- 24 • A 1,500 foot-wide corridor, on the south side of SR 74, that extends east along SR
25 74 for approximately 2.1 miles from the 115th Avenue Alignment to the 99th
26

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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- 1 3. This authorization to construct the 500 kV circuit of the Project shall expire
2 seven (7) years from the date the Certificate is approved by the Commission and
3 this authorization to construct the 230 kV circuit of the Project shall expire ten
4 (10) years from the date the Certificate is approved by the Commission, unless
5 the specified circuit is capable of operation within the respective time frame;
6 provided, however, that prior to either such expiration the Applicant or its
7 assignees may request that the Commission extend this time limitation.
- 8 4. In the event that the Project requires an extension of the term of this Certificate
9 prior to completion of construction, Applicant shall use commercially
10 reasonable means to directly notify all landowners and residents within one mile
11 of the Project corridor for which the extension is sought. Such landowners and
12 residents shall be notified of the time and place of the proceeding in which the
13 Commission shall consider such request for extension.
- 14 5. The Applicant shall make every reasonable effort to identify and correct, on a
15 case-specific basis, all complaints of interference with radio or television signals
16 from operation of the transmission lines and related facilities addressed in this
17 Certificate. The Applicant shall maintain written records for a period of five
18 years of all complaints of radio or television interference attributable to
19 operation, together with the corrective action taken in response to each
20 complaint. All complaints shall be recorded to include notations on the
21 corrective action taken. Complaints not leading to a specific action or for which
22 there was no resolution shall be noted and explained.
- 23 6. To the extent applicable, the Applicant shall comply with the notice and salvage
24 requirements of the Arizona Native Plant Law and shall, to the extent feasible,
25 minimize the destruction of native plants during Project construction.
26

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:

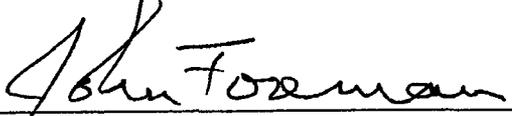
- 25 1. The Project is in the public interest because it aids the state in meeting the need
26 for an adequate, economical and reliable supply of electric power.

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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

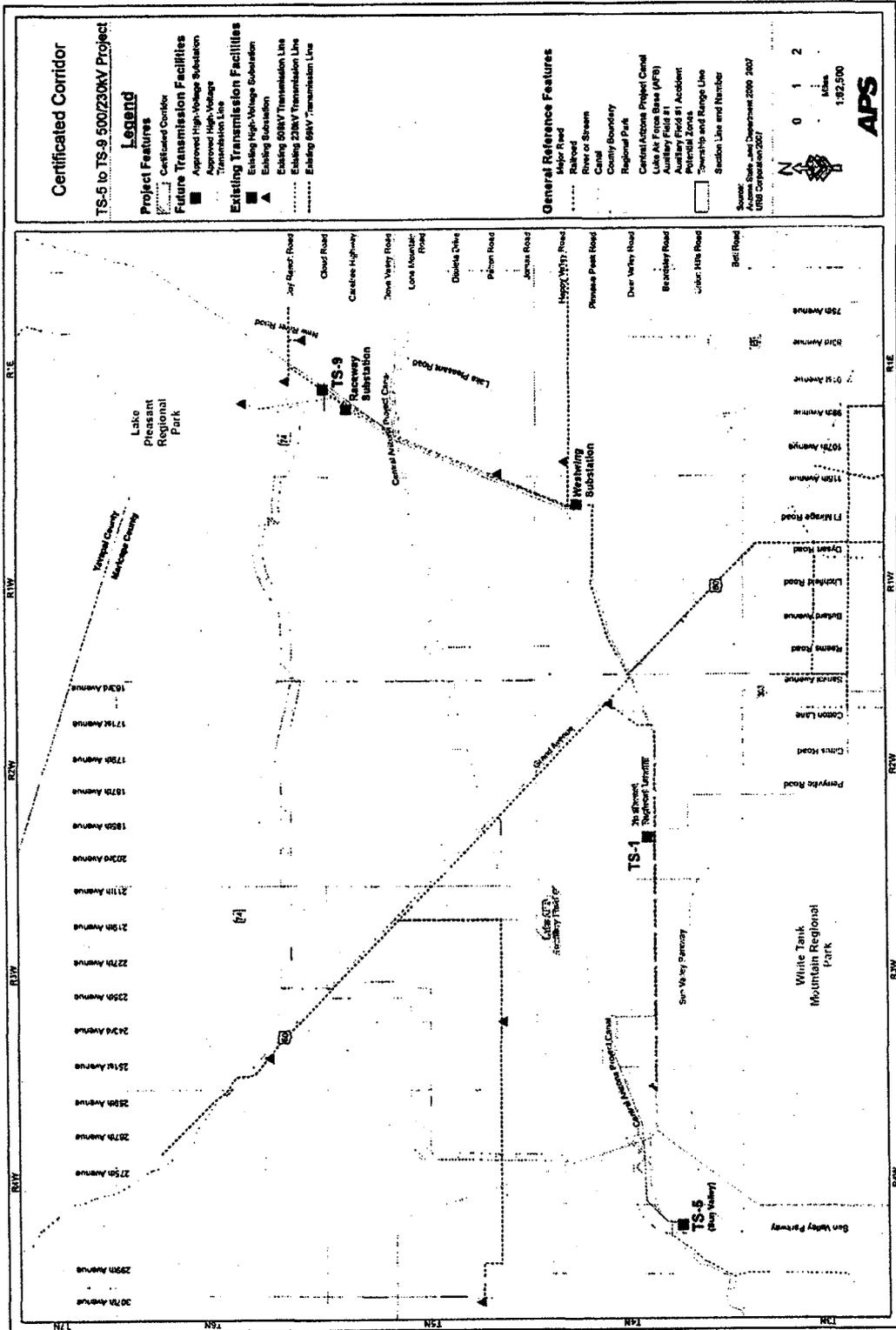


EXHIBIT 2

1 Committee finds that -- oh, 9. Well, I add myself to the
2 list of those with law degrees who are computationally
3 challenged.

4 By a vote of 9 to zero, the Committee finds that
5 there is need for the project.

6 Now let's move on to the issue of placement. And
7 it seems to me that there are a number of issues that
8 relate to placement. The first, I think, is whether or
9 not the Committee wants to be limited to the preferred or
10 alternative routes that have been articulated during the
11 hearing. And if it doesn't, obviously there's a statutory
12 provision that we've spoken of before, 40-360.04.A that
13 would allow us to proceed in that fashion.

14 Member Noland, you had a proposal that you wanted
15 to present.

16 MEMBER NOLAND: I do, Mr. Chairman. And I have
17 to preface this by saying I don't have all of the
18 information on all of the development, all of the existing
19 homes and all of that. I can't, because I can't talk to
20 anybody, and it's a little difficult. One of the maps up
21 yesterday helped with some information.

22 But as I thought very hard on this and have
23 thought very hard on the routes, I really think that the
24 selected routes, some of them, not all of them, are
25 particularly onerous. And I couldn't get past

EXHIBIT 3

ORIGINAL

cell

BEFORE THE ARIZONA POWER PLANT
AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES §§ 40-360, *et seq.*, FOR A 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

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STAFF BRIEF

I. INTRODUCTION

A formal evidentiary hearing for the above-captioned matter was held over the course of 16 days between August 18, 2008, and December 2, 2008, before the Arizona Power Plant and Line Siting Committee ("Committee"). On December 29, 2008, Committee Chairman John Foreman filed with the Arizona Corporation Commission ("Commission") the Committee's decision and order approving Arizona Public Service Company's ("Applicant" or "APS") request for a Certificate of Environmental Compatibility ("CEC") for a double circuit 500/230 kV power line ("Project").

On January 13, 2009, Commission Utilities Division Staff ("Staff") filed a request for review of the CEC. Likewise, APS, and interveners 10,000 West, LLC ("10,000 West"), Arizona State Land Department ("ASLD"), and DLGC II, LLC and the Lake Pleasant Group LLP ("DLGC") filed requests for review. 10,000 West's filing takes issue with the claimed need for the Project as well as certain alleged procedural irregularities. In APS's request for review, it requests three changes to the CEC that reflect a potential inability or difficulty in constructing the Project subject to the existing CEC conditions. Staff will respond to these issues in turn.

II. DISCUSSION

A. Need and Reliability Benefits.

Arizona Corporation Commission
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1 10,000 West has expressed substantial concerns with the showing of need offered by APS.
2 For the most part, 10,000 West argues that APS has not made a sufficient showing of need to justify
3 approval of the application. In particular, 10,000 West argues that the Project is unnecessary to
4 improve reliability; that it is unnecessary to increase import capability into the Phoenix metropolitan
5 area; that it is unnecessary to increase export capability out of the Palo Verde Hub; that it is not
6 necessary to the completion of the 500 kV loop connecting Pinnacle Peak substation to the Browning
7 substation; and that the under-slung 230 kV component is not necessary to serve load growth in the
8 area.¹ Additionally, 10,000 West notes APS' reduction to capital expenditures and the resulting
9 adjustment of the anticipated construction dates for the Project.² Further, 10,000 West alleges that
10 Staff's evaluation contributed to the perceived failure of the applicant to meet its burden by not
11 performing an independent analysis.³

12 Staff performed an analysis of the materials submitted by APS in its application and
13 documents provided by APS during the course of the hearing. Staff also reviewed information
14 provided in the Biennial Transmission Assessment ("BTA"). Additionally, Staff participated in
15 informal prehearing technical meetings with APS to review extreme contingency related issues.⁴
16 These are the precise same materials and information relied upon by 10,000 West in developing its
17 conclusions.⁵ However, Staff's evaluation was further informed by participation in regional planning
18 forums, including those that developed the BTA.

19 Based on Staff's evaluation of the application, Staff concluded that there is a need for the
20 Project. Staff's analysis focused on exploring the public need for adequate, economical and reliable
21 power. Based on that analysis, Staff ultimately concluded that, on the basis of the available
22 information the Project is needed and will contribute to the delivery of power in an adequate,
23 economical and reliable manner.

24 Staff identified several points that support this conclusion. First, the Project, if authorized,
25

26

27 1 10,000 West's Request for Review at 2:10-16.

28 2 *Id.* at 3:8-14.

 3 *Id.* at 4:9-10.

 4 Tr. at 1159:25-1160:22.

 5 *See e.g.* Exhibits 10W-3, 10W-26.

1 will complete a continuous 500 kV path from the Palo Verde Hub to the Pinnacle Peak substation.⁶
2 Also, the Project will improve the Palo Verde Hub's transfer capability into the Metropolitan
3 Phoenix area by 600 MW.⁷ Coincidentally, the additional transfer capability will contribute to APS'
4 ability to access renewable generation that is anticipated to interconnect through the Palo Verde Hub,
5 thereby facilitating APS' ability to comply with its Renewable Energy Standard requirements.⁸ As a
6 final point, the Project will strengthen the Metropolitan Phoenix area extra high voltage transmission
7 system, thereby improving the reliable delivery of power.⁹ All of these factors support approval of
8 the requested CEC.

9 **1. The Project Closes The Last Gap In The Valley 500kV Loop.**

10 Completion of a continuous extra high voltage transmission path from the Palo Verde Hub to
11 the Pinnacle Peak substation has been contemplated by several CEC applications. It will bridge the
12 segment between the Pinnacle Peak to TS-9 transmission line approved in case 131 (Decision No.
13 69343 (Feb. 20, 2007)) to the Palo Verde to TS-5 line approved in case 128 (Decision No. 68063
14 (Aug. 17, 2005)). This set of lines will complete the northwestern arc of a 500 kV loop around the
15 Phoenix metropolitan area. From Palo Verde, that arc travels southeast along the Palo Verde to Pinal
16 West transmission line approved in case 124 (Decision No. 67012 (May 24, 2004)). The remaining
17 segment of the loop is the Pinal West to the Browning substation line approved in case 126
18 (Decision No. 68291 (Nov. 14, 2005)). These projects connect to form a 500 kV loop around the
19 Phoenix area that is closed on the east by seven 230 kV lines.¹⁰

20 10,000 West argues that the Project is unnecessary to close the loop as it will "merely add a
21 third line to a section of the loop that already has two lines."¹¹ Additionally, 10,000 West offers the
22 proposition that the loop does not actually exist, principally because components approved in other
23

24 ⁶ Exhibit CC-1 at 10; Tr. at 973-76, 1143:4-7.

⁷ Exhibit CC-1 at 10, Tr. at 1143:7-11.

⁸ Tr. at 1146:12-22.

⁹ Tr. at 1147:12-18.

¹⁰ Tr. at 146:12-21; 193:5-7. Cumulatively, these separate transmission lines connect the interests of APS, Salt River Project ("SRP"), Tucson Electric Power Company, and various Electrical Districts as well as other interested parties. Tr. at 973:13-17; *See also* Docket No. L-00000D-08-0330-00138, Letter from Larry Dozier on behalf of Central Arizona Project dated November 17, 2008 filed in support of the Project; Letter from Gary Harper on behalf of SRP dated November 18, 2008 filed in support of the Project.

¹¹ 10,000 West Request for Review at 10:15-16.