

ORIGINAL



0000118851

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2010 OCT 15 P 4: 45

AZ CORP COMMISSION  
DOCKET CONTROL

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

Docket No. L-00000D-08-0330-00138  
Case No. 138

ARIZONA PUBLIC SERVICE  
COMPANY'S NOTICE OF  
INTERIOR BOARD OF LAND  
APPEALS DECISION

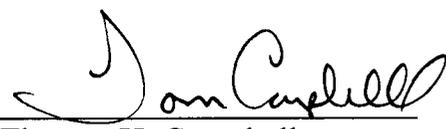
Arizona Public Service Co. ("APS") is filing for notice purposes the attached Decision of the Interior Board of Land Appeals (Decision No. 2010-151, dated October 6, 2010). The Decision sets aside the Bureau of Land Management's ("BLM") denial of the APS right-of-way application and remands the case to the BLM. The Board of Appeals concluded that the BLM decision, which it characterized as a summary rejection, was not sufficiently detailed and did not describe sufficiently the reasons and factual support for the BLM decision. Thus, the Board remanded the case to the BLM. The BLM must now issue a new decision describing in more detail the reasons for its decision. APS will have the right to appeal the new decision.

Arizona Corporation Commission  
DOCKETED  
OCT 15 2010  
DOCKETED BY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

RESPECTFULLY submitted this 15<sup>th</sup> day of October, 2010.

LEWIS AND ROCA LLP



Thomas H. Campbell  
Albert Acken  
40 N. Central Avenue  
Phoenix, Arizona 85007  
Attorneys for Arizona Public Service Company

**ORIGINAL** and thirteen (13) copies  
of the foregoing filed this 15<sup>th</sup> day  
of October, 2010, with:

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

**COPY** of the foregoing hand-delivered  
this 15<sup>th</sup> day of October, 2010, to:

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

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

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

1 Commissioner Paul Newman  
Arizona Corporation Commission  
2 1200 W. Washington Street  
Phoenix, Arizona 85007

3 Commissioner Sandra D. Kennedy  
4 Arizona Corporation Commission  
1200 W. Washington Street  
5 Phoenix, Arizona 85007

6 Commissioner Bob Stump  
Arizona Corporation Commission  
7 1200 W. Washington Street  
Phoenix, Arizona 85007

8 **COPY** of the foregoing  
9 served electronically via e-mail  
this 15<sup>th</sup> day of October, 2010 to:

10 John Foreman, Chairman  
11 Arizona Power Plant and Transmission Line Siting Committee  
Office of the Attorney General  
12 PAD/CPA  
1275 W. Washington Street  
13 Phoenix, Arizona 85007

14 Steve Olea, Director  
Arizona Corporation Commission  
15 1200 West Washington Street  
Phoenix, AZ 85007

16 Charles H. Hains, Legal Division  
17 Arizona Corporation Commission  
1200 W. Washington Street  
18 Phoenix, Arizona 85007

19 Mark A. Nadeau  
Shane D. Gosdis  
20 DLA Piper US LLP  
2415 E. Camelback Road, Suite 700  
21 Phoenix, Arizona 85016  
Attorneys for 10,000 West, L.L.C.

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

25  
26

- 1 Joseph A. Drazek  
Roger K. Ferland  
2 Quarles & Brady LLP  
Two North Central Avenue  
3 Phoenix, Arizona 85004-2391  
Attorneys for Vistancia, LLC  
4  
5 Michael D. Bailey  
City of Surprise Attorney's Office  
12425 W. Bell Road  
6 Surprise, Arizona 85374  
Attorneys for City of Surprise  
7  
8 Jay Moyes  
Steve Wene  
Moyes Sellers & Sims  
9 1850 N. Central Avenue, Suite 1100  
Phoenix, Arizona 85004  
10 Attorneys for Vistancia Associations  
11 Scott S. Wakefield  
201 N. Central Avenue, Suite 3300  
12 Phoenix, Arizona 85004-1052  
Attorneys for DLGC II, LLC and  
13 Lake Pleasant Group, LLP  
14 Court S. Rich  
Rose Law Group PC  
15 6613 N. Scottsdale Road, Suite 200  
Scottsdale, Arizona 85250  
16 Attorneys for Warrick 160, LLC and  
Lake Pleasant 5000,LLC  
17  
18 Lawrence V. Robertson, Jr.  
P.O. Box 1448  
Tubac, Arizona 85646  
19 Attorney for Diamond Ventures, Inc.  
20 Scott McCoy  
Earl Curley Lagarde, PC  
21 3101 N. Central Avenue, Suite 1000  
Phoenix, Arizona 85012-2654  
22 Attorneys for Elliott Homes, Inc.  
23 Andrew Moore  
Earl Curley Lagarde, PC  
24 3101 N. Central Avenue, Suite 1000  
Phoenix, Arizona 85012-2654  
25 Attorneys for Woodside Homes of Arizona, Inc.  
26

1 Garry D. Hays  
Law Offices of Garry D. Hays PC  
2 1702 E. Highland Avenue, Suite 400  
Phoenix, Arizona 85016  
3 Attorney for Arizona State Land Department

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

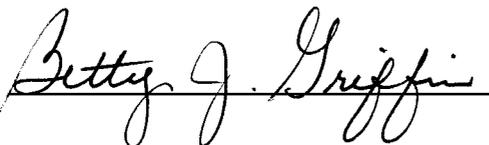
7 Christopher S. Welker  
8 Holm Wright Hyde & Hays PLC  
10201 S. 51st Street, Suite 285  
9 Phoenix, Arizona 85044  
Attorneys for LP 107, LLC

10 Dustin C. Jones  
11 John Paladini  
Tiffany & Bosco, P.A.  
12 2525 E. Camelback Road, Third Floor  
Phoenix, Arizona 85016  
13 Attorneys for Anderson Land Development, Inc.

14 Jeanine Guy, Town Manager  
Town of Buckeye  
15 1101 E. Ash Avenue  
Buckeye, Arizona 85326  
16 *Pro se* applicant

17 Frederick E. Davidson  
Chad R. Kaffer  
18 The Davidson Law Firm, P.C.  
8701 E. Vista Bonita Drive, Suite 220  
19 P.O. Box 27500  
Scottsdale, Arizona 85255  
20 Attorneys for Quintero

21 David F. Jacobs  
Assistant Attorney General  
22 State of Arizona  
177 N. Church Avenue, Suite 1105  
23 Tucson, AZ 85701  
Attorneys for ASLD

24  
25  
26 

# **ATTACHMENT**



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
Interior Board of Land Appeals  
801 N. Quincy Street, Suite 300  
Arlington, Virginia 22203

703-235-3750

703-235-8349 (fax)



October 6, 2010

OCT 11 2010

RECEIVED

IBLA 2010-151	)	AZA-035079
	)	
ARIZONA PUBLIC SERVICE COMPANY	)	Right-of-Way
	)	
	)	Motion for Expedited Consideration
	)	Granted; Decision Set Aside and
	)	Remanded

ORDER

Arizona Public Service Company (APS)<sup>1</sup> appeals from an April 28, 2010, Decision of the Field Manager, Hassayampa Field Office, Phoenix District, Bureau of Land Management (BLM), rejecting its Application for Transportation and Utility Systems and Facilities on Federal Lands (AZA-035079) (Application) submitted for the purpose of securing a right-of-way (ROW) across public land for electrical power lines and appurtenant facilities for 75 years.<sup>2</sup> The Decision rejected the Application

<sup>1</sup> APS timely filed a Notice of Appeal on May 26, 2010, followed by a Statement of Reasons for Appeal (SOR) on June 24, 2010. APS filed a motion for expedited consideration on Aug. 19, 2010. That motion is granted. Council for the City of Peoria, Arizona, on behalf of the City and Diamond Ventures, Inc., and Vistancia LLC ("Peoria Entities") filed a pleading, styled "Answer to APS' Notice of Appeal and Statement of Reasons for Appeal" in support of the appeal filed by APS and suggesting alternative relief. The Administrative Record (AR) includes correspondence more fully identifying those entities and their respective interests in the appeal. AR 10, 12, and 14. We grant the Peoria Entities' Motion to Intervene and have considered their arguments in reaching our decision herein.

<sup>2</sup> The 300-foot wide ROW to construct and operate a 500/230kV Transmission Line project would cross approximately 7 miles of BLM-administered lands lying north of Arizona Route 74 between 163rd Ave. and El Mirage Road alignments and south of State Route 74 between El Mirage Road and 115th Ave. alignments. AR 38, 39. The ROW would cover approximately 170 acres within the Castle Hot Springs Management Unit, all of which is designated as the Castle Hot Springs Special Recreation Management Area (SRMA). For the lengthy legal description of the

(continued...)

as “not in conformance with the objectives and decisions” of the April 22, 2010, Bradshaw-Harquahala (BH) Resource Management Plan (RMP). Decision at 2. For the reasons that follow, the Decision is set aside and remanded.

### I. Background

In its Answer, BLM provides a detailed chronology of the relevant history of the matter on appeal, supported by documents comprising the AR. Appellant does not dispute this factual recitation, and we will not endeavor to reproduce it here, focusing selectively as follows.

BLM manages the public land at issue under the guidance of the BHRMP and the RMP Amendments/Record of Decision (ROD) for the Designation of Energy Corridors on BLM-Administered Lands in the 11 Western States (West-Wide RMP/ROD), approved in January 2009.<sup>3</sup> BLM first notified the public of its intent to initiate development of the BHRMP to guide management of the 896,100 acres of public land in Maricopa, Yavapai, and La Paz Counties, Arizona, on April 23, 2002. BHRMP at 25. BLM analyzed the environmental impacts of the proposed RMP in a Draft EIS, inviting public comment on it and the Draft BHRMP on January 6, 2006. In June 2008, BLM issued a Proposed BHRMP and Final EIS for public review, comment, and a 30-day protest period.

APS began the process of obtaining State approval, and in August 2008, the Arizona Corporation Commission (ACC) Transmission Line Siting Committee conducted a public hearing to evaluate APS’ preferred route and three alternative routes. AR 30. On December 29, 2008, the ACC approved APS’ application for a

---

<sup>2</sup> (...continued)

proposed ROW, see Decision at 1; Answer, Attach. 5 (BLM Recordation (live) Serial Register Page, July 20, 2010).

<sup>3</sup> BLM began development of the West-Wide RMP/ROD in response to enactment of sec. 368 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 727 (2005) codified at 42 U.S.C. § 15926 (West Supp. 2005-2010), which requires, *inter alia*, certain Federal agencies to designate corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal lands in 11 western states, including Arizona.

See [http://corridoreis.anl.gov/documents/docs/Energy\\_Corridors\\_final-signed-ROD-1-14-2009.pdf](http://corridoreis.anl.gov/documents/docs/Energy_Corridors_final-signed-ROD-1-14-2009.pdf). BLM, in cooperation with the U.S. Department of Energy, and other agencies, prepared a Programmatic Environmental Impact Statement (EIS), pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(C) (2006). The West-Wide RMP/ROD designated 16 energy corridors in Arizona.

Certificate of Environmental Compatibility (CEC) for Alternative 3 of the proposed transmission line project, conditioned upon APS obtaining all required approvals and permits necessary and filing for an ROW across BLM-administered public land.<sup>4</sup> The ACC granted a CEC approving the project that would cross BLM-administered land on March 17, 2009.

On April 29, 2009, APS submitted its ROW Application to BLM. AR 39. BLM acknowledged receipt on May 12, 2009. In numerous correspondence over the next several months, BLM indicated that the Application had been pre-adjudicated and would determine whether it was in conformance with the August 2008 BHRMP, after approval of the ROD, anticipated to occur in September 2009. On April 22, 2010, BLM issued the BHRMP ROD. On April 28, 2010, BLM rejected the Application. The Decision states simply:

The BLM Hassayampa Field Office has reviewed the application filed by APS against the Lands and Realty Management decisions in the RMP/ROD. It is the BLM's position that the application filed by APS is not in conformance with the objectives and decisions of the approved [BHRMP]. **Thus the application is hereby rejected.**

## *II. Arguments of the Parties*

Appellant states that "BLM cited no statutory or regulatory authority for its decision to take no action on the Application for 364 days and then reject it without considering its merits. None exists." SOR at 2. It notes that the Decision does not cite any of the six factors enumerated in 43 C.F.R. § 2804.26(a) for rejection of an application. *Id.* It then argues that the proposed use (1) is consistent with the purpose for which BLM manages the public lands (as demonstrated in the recent state siting process); (2) is in the public interest because, in transmitting remote renewable energy to the Phoenix metropolitan area, the project would meet the Federal government's interest in promoting renewable energy development (citing Secretarial Order No. 3285 (Mar. 11, 2009)); and (3) is consistent with Section 102(c)(9) of the Federal Land Policy Management Act of 1976 (FLPMA),

---

<sup>4</sup> On Feb.13, 2009, BLM sent a letter to APS indicating that the portion of the plan that would cross public land is not within any of the designated energy corridors. AR 19. On Mar. 2, 2009, BLM sent a letter to the ACC stating that the proposed BHRMP does not identify a utility corridor along State Route 74 corresponding to the Line Siting Committee's recommended corridor, and that the BHRMP identified tortoise habitat and visual resource management concerns north of State Route 74, and allocated over 112,430 acres in the area as the Castle Hot Springs SRMA. AR 28.

43 U.S.C. § 1712(c)(9) (2006). *Id.* at 5-7. APS also contends that BLM had “a nondiscretionary duty to consider the Application through an RMP amendment. *Id.* at 7-8. APS asks the Board to reverse the Decision “to reject the Application without consideration of the merits,” and remand the matter to BLM “with instructions to initiate an RMP amendment process, consider the Application’s merits,” and either approve or deny the Application by June 30, 2011.

Intervenor Peoria Entities support APS’ Answer but, rather than requesting that the Board remand the Decision with instructions to BLM to initiate an RMP amendment, they suggest two “more appropriate” options. First, they request that the Board direct BLM to approve the Application on the basis that it is in conformance with the objectives and decision of the RMP. Peoria Entities Answer at 3. They assert that in denying the Application, BLM “failed to acknowledge that the RMP did not explicitly exclude consideration of utilities in the ‘transportation corridor’ created along State Route 74.” *Id.* For support, intervenors quote the BHRMP at LR-3, which states that “[t]he designated transportation corridor may be suitable to accommodate more than one type of [ROW] use or facility or one or more [ROW] uses or facilities which are similar, identical, or compatible.” *Id.* They also direct our attention to the BHRMP at LR-15: “All major utilities will be routed through designated corridors. Encourage new [ROWS] within designated corridors to promote the maximum use of existing routes. Encourage joint use wherever possible.” *Id.* at 3-4. Intervenors note that BLM provided “no explanation as to why the State Route 74 ‘transportation corridor’ cannot accommodate the utility lines identified in the Application.” *Id.* at 4. Further, they claim, BLM has failed to address a point they previously raised during the Application review period, that in the BHRMP, BLM did not specifically prohibit the area encompassing the public land from use as an ROW corridor, as authorized under 43 C.F.R. § 2802.11(d). “Because BLM did not expressly exclude consideration of utilities in the ‘transportation corridor’ along State Route 74, APS’ Application is in conformance with the RMP as a suitable, compatible use and should have been granted by BLM.” *Id.*

Intervenors next request the Board to direct BLM “to correct errata in the RMP that mistakenly identifies BLM lands along State Route 74 as a ‘Transportation Corridor’ when the proper term should be ‘Designated Corridor.’” The Peoria Entities assert that the terms “transportation corridor” and “utility corridor” may be used in general discussions, but, since they are not defined in the RMP Glossary or any Federal statute or BLM regulation, it is proper, instead, to use the term “Designated Corridor,” “consistent with BLM’s repeated statements in its RMP and elsewhere that it favors the co-location of utility and transportation [ROWS],” as “BLM laws and regulations all support this broad flexibility held by BLM to characterize and implement a transportation and utility corridor as a single term and concept.” *Id.* at 5-6 (citing section 503 of FLPMA, 43 U.S.C. § 1763 (2006); 43 C.F.R.

§ 2802.11(c); 43 C.F.R. § 2801.5).<sup>5</sup> Intervenor ask the Board to grant the relief requested by appellant, in the event the Board determines not to provide the intervenors' requested relief. *Id.* at 7.

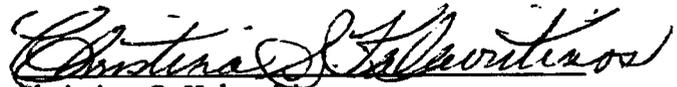
In its Answer to appellant's SOR, BLM provides a very detailed analysis of the Application, examining at length whether the Application is consistent with the BHRMP and whether granting it is in the public interest. BLM considers the Application in light of BLM's management goals for the Castle Hot Springs SRMA, its interest in protecting Category II and III desert tortoise habitat (and difficulty in mitigating impacts to such habitat), and its objective of managing the area around the proposed ROW (designated as Visual Resource Management Class II and III lands) "for retention or partial retention of the landscape character." Answer at 7-10. After each analysis, BLM states that it "rejected Appellant's [ROW] Application with due regard for the public interest" and that the Decision "is consistent with" the BLM management goal under discussion, *i.e.*, "managing this area as an SRMA," or "protect[ing] protected biological resources," or "BLM's [Visual Resource Management] program. *Id.* at 9. Next, BLM describes the environmental analysis it undertook in the BHRMP Final EIS, stating that "BLM fully analyzed the environmental impacts of authorizing a utility corridor within the Castle Hot Springs MU and decided not to designate any new utility corridor," and states that, "based on the environmental impact analysis, BLM also decided to limit placing major utility lines to designated utility corridors." *Id.* at 10. "Under the circumstances," BLM states, "Appellant's application was fully considered and found to be inconsistent with BLM's land use planning for the area. BLM rejected Appellant's application with due regard for the public interest and the rejection is consistent with the purposes for which BLM manages the relevant public lands." *Id.* at 10-11 (citing 43 C.F.R. § 2804.26(a)(1)).<sup>6</sup>

---

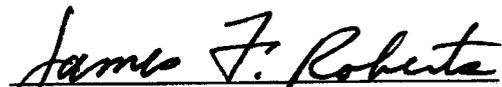
<sup>5</sup> Intervenor then identify several perceived "errors" in the BHRMP.

<sup>6</sup> In response to intervenors' claim that the ACC process determined that the Application is in the public interest, BLM rightly notes that the ACC administrative determination for the purposes of granting a State-issued CEC "does not supplant or substitute BLM's responsibility and discretionary authority to make its own determination regarding whether a[n] [ROW] application should be approved over BLM-administered lands." Answer at 7 (citing *Desert Survivors*, 96 IBLA 193, 196 (1987)). BLM also notes "that Appellant submitted a request to the Arizona State Director to amend the BHRMP. This request is under consideration." *Id.* at 11, n.4. We are without jurisdiction to consider any issue related to amendment of the RMP. See *Mona Sindelar*, 167 IBLA 185, 188, n.3 (2005).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is set aside and remanded.

  
Christina S. Kalavritinos  
Administrative Judge

I concur:

  
James F. Roberts  
Administrative Judge

APPEARANCES:

Thomas H. Campbell, Esq.  
Albert H. Acken, Esq.  
Lewis and Roca, LLP  
Counsel for Arizona Public Service  
40 North Central Avenue, Suite 1900  
Phoenix, Arizona 85004-4429

**FAX: 602-734-3771**

Stephen J. Burg, Esq.  
Chief Assistant City Attorney  
Office of the City Attorney  
For Intervenors  
8401 W. Monroe Street  
Peoria, Arizona 85345

**FAX: 623-773-7043**

Wonsook S. Sprague, Esq.  
Office of the Solicitor  
Phoenix Field Office  
U.S. Courthouse, Suite 404  
401 W. Washington Street, SPC 44  
Phoenix, Arizona 85003-2151

**FAX: 602-364-7885**

cc: State Director  
Bureau of Land Management  
Arizona State Office  
One North Central Avenue, Suite 800  
Phoenix, Arizona 85004

**FAX: 602-417-9556**

Hassayampa Field Office  
Bureau of Land Management  
21605 North 7th Avenue  
Phoenix, Arizona 85027-2929

**FAX: 928-505-1208**