

INTERVENTION



0000159971

1 courtdocs@dickinsonwright.com

2 James T. Braselton, SBN 010788

3 jbraselton@dickinsonwright.com

4 Gary L. Birnbaum – SBN 004386

5 gbirnbaum@dickinsonwright.com

6 **DICKINSON WRIGHT PLLC**

7 1850 North Central Avenue, Suite 1400

8 Phoenix, Arizona 85004

9 Phone: (602) 285-5000

10 Fax: (602) 285-5100

11 *Attorneys for West Cloud Private Property Owners' Association*

RECEIVED

2015 FEB 10 P 4: 01

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

FEB 10 2015

DOCKETED BY

8

9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

10 COMMISSIONERS

11 BOB STUMP - Chairman GARY PIERCE

12 BRENDA BURNS

13 BOB BURNS

14 SUSAN BITTER SMITH

ORIGINAL

15 IN THE MATTER OF THE

16 APPLICATION OF ARIZONA PUBLIC

17 SERVICE COMPANY, IN

18 CONFORMANCE WITH THE

19 REQUIREMENTS OF ARIZONA

20 REVISED STATUTES §§ 40-360, et

21 seq., FOR A CERTIFICATE OF

22 ENVIRONMENTAL COMPATIBILITY

23 AUTHORIZING THE TS-5 TO TS-9

24 500/230 kV TRANSMISSION LINE

25 PROJECT, WHICH ORIGINATES AT

26 THE FUTURE TS-5 SUBSTATION,

27 LOCATED IN THE WEST HALF OF

28 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 # L-00000D-08-~~0~~^D0330-0138

CASE NO. 138

**WEST CLOUD ROAD PRIVATE
PROPERTY OWNERS'
ASSOCIATION'S
MOTION TO INTERVENE**

1 Pursuant to R14-3-105, the West Cloud Road Private Property Owners'
2 Association ("Association"), by and through undersigned counsel, respectfully requests
3 that it be permitted to intervene as a party to the remaining proceedings with regard to
4 the above-captioned matter. In making this request, the Association affirms that it will
5 not seek to re-open the previously-concluded evidentiary portion of the proceedings,
6 nor will it seek to delay the ongoing post-hearing briefing process. Rather, the
7 Association seeks only to join in the balance of the proceedings (including, without
8 limitation, the post-hearing briefs, oral arguments (if any), appear before the Arizona
9 Corporation Commission ("ACC")) and retain a right to appeal in the event an adverse
10 decision is entered by the ACC. Further, the Association confirms that its interest in
11 participating with regard to these proceedings will be limited to asserting its objection
12 only to the Applicant's efforts to re-align the proposed high voltage transmission lines
13 ("HVTLs") planned for construction between 235th Avenue on the west and 211th
14 Avenue on the east.
15
16
17
18

19 **I. Introduction.**

20 The West Cloud Road Property Owners' Association is an organization
21 comprised of more than 60 owners of existing residences and residential real property
22 located on the south side of Cloud Road, from 211th Avenue on the east, to
23 approximately 219th Avenue on the west. Many of the properties owned by the
24 Association's members have frontage on Cloud Road, and are located less than 300 feet
25 from the revised (Cloud Road) alignment of the 500/230 kV HVTLs now proposed by
26
27
28

1 APS and the Arizona State Land Department. Every one of those properties is located
2 closer to the proposed revised alignment than any existing residence is located in
3 relation to the previously approved alignment. All of the Association's members own
4 properties located within a 2500 foot radius of the proposed revised alignment.
5

6
7 At the outset of the evidentiary hearing on January 20, 2015, many of the
8 Association's members presented individual verbal and written statements of
9 opposition to the proposed route. In addition to their individual statements, the
10 property owners presented (and offered for the record) a written petition in opposition
11 to the proposed route that contained the signatures of 147 impacted property owners.
12 Previously, on December 16, 2014, a substantial number of the Association's members
13 spoke in opposition to the APS/State Land proposal at the initially-noticed hearing in
14 this matter.
15

16
17 Subsequent to the conclusion of the evidentiary hearing on January 21, 2015, the
18 impacted property owners realized that, without intervening as parties (or, if as a group,
19 a "party") in the proceeding, they would not have an opportunity to join in the post-
20 hearing briefing process. Because many of them do not have the resources to
21 participate individually; because many of their concerns can be addressed jointly (and
22 thus minimize the potential for undue repetition); and because their individual
23 participation would likely be an administrative burden on the Arizona Corporation
24 Commission staff and the Administrative Law Judge, they determined that a single
25
26
27
28

1 motion to intervene on behalf of all the area residents who would become members of a
2 yet-to-be-formed Association, was the optimal approach.
3

4 Within the past two (2) weeks, the impacted property owners have coalesced,
5 formed an organization, elected officers, and raised sufficient funds to retain counsel to
6 prepare this Motion to Intervene. Collectively, the leaders of the Association have
7 spent innumerable hours working to ensure that their voices will be heard. For the
8 reasons explained below, they should be permitted to intervene.
9

10 **II. Arizona Law Allows – and Justice Requires – that the Association be**
11 **Permitted to Intervene for the Limited Purposes Specified Herein.**

12 Title 14, Article 1 of the Arizona Administrative Code (the “Code”) sets forth
13 the Rules of Practice and Procedure before the Arizona Corporation Commission.
14 Those rules provide that a party seeking leave to intervene prior to an administrative
15 hearing must serve and file a written application for leave to intervene “at least five
16 days before the proceeding is called for hearing.” R14-3-105(B). That rule should not
17 be applied here, however, where the Association seeks leave to intervene not as a party
18 in the hearing, but as a party to the post-hearing briefing and for purposes of the
19 anticipated subsequent hearing/proceeding before the ACC.
20
21

22 Under these circumstances, the proper rule to be applied is found in
23 R14-3-101(B). That rule provides as follows:
24

25 Liberal construction – waiver. These rules shall be liberally construed to
26 secure just and speedy determination of all matters presented to the
27 Commission. If good cause appears, the Commission or the presiding
28 officer may waive application of these rules when not in conflict with law
and does not affect the substantial interests of the parties.

1
2 If ever “good cause” appeared for waiver or modification of the rules, it does
3 here. The members of the Association are indisputably and substantially impacted by
4 the route APS proposed in its Application to Amend Arizona Corporation Commission
5 Decision No. 70850 RE CEC 138 (“Application to Amend” or “Application”). In its
6 Motion to Intervene, the Association is not asking for the opportunity to offer new
7 evidence, nor is it seeking to delay the established briefing schedule. Instead, the
8 Association asks only that it be permitted to present arguments in support of its position
9 based on the established record.
10

11
12 As noted above, many of the members of the Association participated
13 individually in the evidentiary hearing. At that time, they presented oral and written
14 statements describing their objections to and concerns with regard to the proposed APS
15 Application to Amend. As a result, both APS and its “partner” (the State Land
16 Department) with regard to the subject portion (235th Avenue to 211th Avenue) of its
17 Application are well aware of the nature and scope of – and bases for – the
18 Association’s concerns.
19

20 Under the circumstances of this matter, it would be manifestly unfair to deny the
21 Association the opportunity to participate as an intervenor in the remaining
22 proceedings. In light of the members’ prior participation on the record, the
23 Administrative Law Judge is bound to consider their comments. Their joinder as a
24 party merely ensures that they will be permitted to be represented by counsel. All of
25
26
27
28

1 the other real parties in interest are represented by legal counsel. The Association
2 should be afforded the same opportunity.
3

4 **III. Conclusion.**

5 Fundamental fairness and due process require that the Association be permitted
6 to intervene. Its interest is "substantial" and there is no discernable prejudice to APS
7 or the State Land Department that will arise from granting the Association's motion.
8 Intervention under these circumstances is wholly consistent with the purpose and intent
9 of the applicable procedural rules. The Association respectfully requests that its
10 Motion to Intervene be granted.
11

12
13 RESPECTFULLY SUBMITTED this 10th day of February, 2015.

14 **DICKINSON WRIGHT PLLC**

15
16
17 By: 

18 James T. Braselton
19 Gary L. Birnbaum
20 1850 North Central Avenue, Suite 1400
21 Phoenix, Arizona 85004
22 *Attorneys for West Cloud Road Private
23 Property Owners' Association*

24
25 **ORIGINAL** and 13 copies of the
26 foregoing filed this 10th day of February,
27 2015, with:

28
Arizona Corporation Commission
1200 West Washington Street
Docket Control, Room No. 108
Phoenix, AZ 85007

1
2 **COPY** of the foregoing mailed this 10th
3 day of February, 2015, to:

4 Sarah N. Harpring
5 Administrative Law Judge
6 Arizona Corporation Commission
7 1200 W. Washington
8 Phoenix, AZ 85007

Frederick E. Davidson
Chad R. Kaffer
The Davidson Law Firm
8701 East Vista Bonita Drive, Suite 220
P.O. Box 27500
Scottsdale, AZ 85255

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

Megan Grabel
Thomas L. Mumaw
Pinnacle West Capital Corporation
P.O. Box 53999, Station 8695
Phoenix, AZ 85072-3999

13 Scott Wakefield
14 Ridenour Hienton & Lewis PLLC
15 201 North Central Avenue, Suite 3300
16 Phoenix, AZ 85004

Thomas H. Campbell
Lewis Roca Rothgerber, LLP
201 East Washington Street, Suite 1200
Phoenix, AZ 85004

16 Scott McCoy
17 Earl, Curley & Lagarde, PC
18 3101 North Central Avenue, Suite 1000
19 Phoenix, AZ 85012

Andrew E. Moore
Andrew E. Moore Law Firm, P.C.
207 N. Gilbert Road, Suite 1
Gilbert, AZ 84234

19 David F. Jacobs
20 Assistant Attorney General
21 Attorney General's Office
22 177 N. Church Avenue, Suite 1105
23 Tucson, AZ 85701
24 *Attorneys for Arizona State Land*

Court Rich
Ryan Hurley
Rose Law Group PC
7144 East Stetson Drive, Suite 300
Scottsdale, AZ 85251

23 Melissa M. Krueger
24 Linda J. Benally
25 Pinnacle West Capital Corporation
26 400 North 5th Street, MS 8695
27 Phoenix, AZ 85004

Dustin Jones
Jon M. Paladini
Tiffany & Bosco P.A.
2525 E. Camelback Road, 3rd Floor
Phoenix, AZ 85016

DOCKET NO. L-00000D-08-00330-0138

1 Garry D. Hays
2 The Law Office of Garry D. Hays PC
3 1702 East Highland Avenue, Suite 204
4 Phoenix, AZ 85016

Lawrence Robertson, Jr.
2247 East Frontage Road, Suite 1
P.O. Box 1448
Tubac, AZ 85646

5 Stephen J. Burg
6 Office of the City Attorney City of
7 Peoria
8 8401 West Monroe Street
9 Peoria, AZ 85345

Robert N. Pizorno
The Pizorno Law Firm PLC
P.O. Box 51683
Phoenix, AZ 85076-1683

10 Michael D. Bailey
11 City Attorney
12 City of Surprise
13 16000 North Civic Center Plaza
14 Surprise, AZ 85374

Ruben Ojeda
Manager, Rights of Way Section
Arizona State Land Development
1616 W. Adams Street
Phoenix, AZ 85007

15 Jeanine Guy
16 Town Manager
17 Town of Buckeye
18 1101 East Ash Avenue
19 Buckeye, AZ 85326

Christopher Welker
Holm Wright Hyde & Hays PLC
10429 South 51st Street, Suite 285
Phoenix, AZ 85044

20 Art Othon
21 8401 West Monroe Street
22 Peoria, AZ 85345

Charles W. and Sharie Civer
42265 North Old Mine Road
Cave Creek, AZ 85331-2806

23 Janice Alward
24 Chief Counsel Legal Division
25 Arizona Corporation Commission
26 1200 West Washington Street
27 Phoenix, AZ 85007

Steven M. Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

28 Coash & Coash, Inc.
1802 N. 7th Street
Phoenix, AZ 85006

Bill Mundell
3838 N. Central Avenue, Suite 400
Phoenix, AZ 85012

Jack Haenichen
P.O. Box 2287
Overgaard, AZ 85933

David Eberhart
6801 W. Astor
Peoria, AZ 85361

DOCKET NO. L-00000D-08-00330-0138

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
27
28

Jay Moyes
Steve Wene
Moyes Sellers & Sims LTD
1850 North Central Avenue, Suite 1100
Phoenix, AZ 85004

Edward Dietrich
Real Estate Division Planning Section
Arizona State Land Department
1616 West Adams Street
Phoenix, AZ 85007

Charles Hains
Legal Division
1200 W. Washington
Phoenix, AZ 85007



PHOENIX 63932-1 199247v1