

1 BEFORE THE ARIZONA POWER PLANT LSC-237

2 AND TRANSMISSION LINE SITING COMMITTEE

3

4 IN THE MATTER OF THE APPLICATION OF ) DOCKET NO.  
 5 SUNZIA TRANSMISSION LLC, IN ) L-00000YY-15-  
 6 CONFORMANCE WITH THE REQUIREMENTS ) 0318-00171  
 7 OF ARIZONA REVISED STATUTES 40-360, )  
 8 ET SEQ., FOR A CERTIFICATE OF ) LS CASE NO. 171  
 9 ENVIRONMENTAL COMPATIBILITY )  
 10 AUTHORIZING THE SUNZIA SOUTHWEST ) AMENDMENT TO  
 11 TRANSMISSION PROJECT, WHICH INCLUDES ) DECISION NO.  
 12 THE CONSTRUCTION OF TWO NEW 500KV ) 75464  
 13 TRANSMISSION LINES AND ASSOCIATED )  
 14 FACILITIES ORIGINATING AT A NEW )  
 15 SUBSTATION (SUNZIA EAST) IN LINCOLN )  
 16 COUNTY, NEW MEXICO, AND TERMINATING )  
 17 AT THE PINAL CENTRAL SUBSTATION IN )  
 18 PINAL COUNTY, ARIZONA. THE ARIZONA )  
 19 PORTION OF THE PROJECT IS LOCATED )  
 20 WITHIN GRAHAM, GREENLEE, COCHISE, ) PREHEARING  
 21 PINAL, AND PIMA COUNTIES. ) CONFERENCE  
 22 )

15 At: Phoenix, Arizona

16 Date: August 29, 2022

17 Filed: September 1, 2022

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19 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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21

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25 By: Carolyn T. Sullivan, RPR  
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INDEX TO EXHIBITS

NO.	DESCRIPTION	IDENTIFIED
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(No exhibits were marked.)

1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Power Plant and Transmission Line Siting  
4 Committee, commencing at 2:01 p.m. on the 29th day of  
5 August, 2022, with all participants appearing via  
6 videoconference.

7

8 BEFORE: PAUL A. KATZ, Chairman

9

10 APPEARANCES:

11 For the Applicant:

12 ACKEN LAW  
13 Mr. Albert H. Acken  
14 111 East Dunlap Avenue, Suite 1-172  
15 Phoenix, Arizona 85020

15

16 POTENTIAL INTERVENORS:

17 For Western Resource Advocates:

18 WESTERN RESOURCE ADVOCATES  
19 Mr. Adam Stafford  
20 1429 North 1st Street, Suite 100  
Phoenix, Arizona 85004

20

21 For Peter T. Else:

22 Mr. Peter T. Else  
23 In Propria Persona  
24 P.O. Box 576  
Mammoth, Arizona 85618

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25

1 ALSO PRESENT:

2 Mr. David Omick, In Propria Persona  
3 Ms. Cindy Freeman, Southwestern Power  
4 Ms. Danielle Osborn Mills, Pattern Energy  
5 Ms. Lisa Glennie, Glennie Reporting Services  
6 Ms. Marta Hetzer, Glennie Reporting Services  
7 Mr. Tod Brewer, Assistant to Chairman Katz

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1 CHMN. KATZ: It is now about a minute after  
2 2 p.m., and Carolyn is our court reporter.

3 And what I'm going to do is first, I will ask  
4 Mr. Acken, who represents the applicant, to formally  
5 identify himself for the record.

6 MR. ACKEN: Thank you, Mr. Chairman.

7 Bert Acken of Acken Law on behalf of the  
8 applicant, SunZia Transmission LLC. With me is Danielle  
9 Osborn Mills and Cindy Freeman on behalf of the  
10 applicant.

11 CHMN. KATZ: Thank you.

12 And I'll ask Adam Stafford or Mr. Stafford, who  
13 represents the potential intervenor Western Resource  
14 Advocates, if he would, to identify himself for the court  
15 record -- or for the -- not the court record, but the  
16 Committee record.

17 MR. STAFFORD: Thank you, Chairman.

18 Adam Stafford on behalf of Western Resource  
19 Advocates.

20 CHMN. KATZ: And I hope I don't mispronounce  
21 your last name, but I believe it's Mr. -- is it Else? Is  
22 that the correct pronunciation? And he's --

23 MR. ELSE: Yes.

24 CHMN. KATZ: -- a potential intervenor.

25 And I think I heard you say yes, I pronounced it

1 correctly.

2 MR. ELSE: Yes, you did. I'm Peter Else, and  
3 I'm a potential intervenor.

4 CHMN. KATZ: And I didn't see this Mr. Olmick,  
5 who, basically, is probably in a situation if the  
6 Committee were to grant him his requested status, he  
7 wouldn't be permitted to present any evidence or  
8 cross-examine witnesses as opposed to Mr. Stafford and  
9 Mr. Else would be entitled to call witnesses and to  
10 cross-examine those witnesses.

11 One thing I need to share with everyone is the  
12 fact that most of you, if not all of you, are aware of  
13 the fact that it was either in 2015 or 2016, and I don't  
14 have my file for this case sitting in front of me, but I  
15 researched it, and I know that the Committee unanimously  
16 approved the CEC. It went to the Corporation Commission,  
17 and they approved the original CEC.

18 It went on an appeal, I believe by Mr. Else, to  
19 both the Maricopa -- excuse me -- to the Superior Court  
20 as well as to the Arizona Court of Appeals. And the  
21 decision issuing a Certificate of Environmental  
22 Compatibility was approved by the Superior Court, the  
23 Court of Appeals.

24 And as far as I'm concerned, based upon my legal  
25 experience and 21 years on the Superior Court bench, I

1 believe that the current CEC is still valid. And any  
2 evidence that could have been presented that involved any  
3 of the I think nine criteria for environmental compliance  
4 that was presented or could have been presented at the  
5 time of the original hearing is where we are at.

6           The only new evidence that I am going to suggest  
7 that the Committee allows is not anything that could have  
8 been contested previously, but whether or not the three  
9 proposed changes, that is, the reconfiguration of the  
10 poles and the conductors -- and we are -- there is a rise  
11 in the height of those poles. And that obviously could  
12 potentially affect avian flight, and it might also  
13 present a visual issue.

14           I don't know if that particular situation,  
15 because it's in the same corridor as originally approved,  
16 with all of the cultural resource studies having been  
17 done, all of the biological resource studies having been  
18 done and all of the environment elements, we're not going  
19 to relitigate where we could have been before just  
20 because some members of a particular community or a  
21 particular party in this case didn't like the original  
22 decision.

23           As far as I'm concerned, it's the law of the  
24 case except to the extent that the modifications change  
25 the circumstance. And we have possibly avian flight,

1 visual, and there also is a request to issue two CECs,  
2 one for each of the two high-voltage lines, one AC, one  
3 DC, that may have some effect on reliability or the  
4 furnishing of energy to Arizona residents.

5 I'm not going to tell you what to present, but  
6 I'm going to tell you that I'm not going to allow  
7 anything that could have been presented before by  
8 somebody who has an interest in this; or if they had  
9 known about it previously, could have had an interest in  
10 this. And that goes for the applicant as well. I think  
11 that this should be a very focused hearing, and it's not  
12 an appeal of the original decision.

13 And having reviewed the putative witness  
14 statements, I just want to ask you to exercise caution in  
15 how you go forward and not try to litigate matters that  
16 could have been litigated six or seven years ago.

17 That all being said, I will confirm with the  
18 applicant that we have lodging confirmed for the  
19 Committee members and obviously for any necessary support  
20 staff.

21 MR. ACKEN: Mr. Chairman, we do, both onsite at  
22 Biosphere 2 for those who have selected that option as  
23 well as a hotel 15 miles away for those that prefer that  
24 option.

25 CHMN. KATZ: And I'm sure that both Mr. Stafford



1 and Mr. Else, having been before this Committee  
2 previously, are aware of the fact it's up to the  
3 Committee to decide whether or not intervention should be  
4 allowed. I'm inclined always to allow interested members  
5 of the community, whether they're pro se or represented  
6 by counsel, to participate in the proceedings. It's not  
7 my final choice to make, but I usually find that the  
8 Committee will follow that recommendation.

9           And we already have the requests for  
10 intervention received both by -- or both from Western  
11 Resource Advocates as well as from Mr. Else. And there  
12 was that request for a limited appearance by Mr. Omick,  
13 who doesn't appear to be present.

14           And I'm assuming -- first I'll ask you,  
15 Mr. Stafford, that you would intend to cross-examine any  
16 witnesses the applicant or Mr. Else might call, and you  
17 would be inclined to want to present your own witnesses  
18 in this proceeding to the extent appropriate or  
19 necessary?

20           MR. STAFFORD: Yes, Chairman, it is our intent  
21 to both provide our own testimony and to cross-examine  
22 the witnesses.

23           CHMN. KATZ: Mr. Else, you understand as well  
24 that you are going to be treated as if you were a lawyer?  
25 I don't expect you to be able to talk with a lot of

1 legalese, but, obviously, you are likely going to be  
2 allowed to intervene, which means you can cross-examine  
3 witnesses and call your own witnesses.

4 And I would consider, basically, that all of you  
5 will be given full access and we won't be dealing with  
6 limited appearances. And if Mr. Omick does join us, he's  
7 going to have to reserve his comments for the public  
8 comment session.

9 And we are scheduled to begin -- the 5th of  
10 September is a legal holiday. The 6th of September is  
11 when we will begin our hearing at 1 p.m. The reason we  
12 start it late on that first day is because we have folks  
13 that will be appearing from several different counties in  
14 the state, and we don't want to have them leave at 4 or 5  
15 in the morning to get there.

16 And our public comments will be for about --  
17 depending on how many we have, somewhere between three  
18 and five minutes will be allowed, probably three, per  
19 participant. But that will be at 5:30 in the evening on  
20 the first day. And if we don't finish it, the Committee  
21 will decide whether we'll do it 5:30 the following day or  
22 start out our morning session on Wednesday with that.

23 I also want you all to know, not that it should  
24 have any impact, but I am scheduled on -- it was supposed  
25 to be tomorrow, but on Wednesday, for a fusion of my SI

1 joint in my back. It's a minimally invasive procedure,  
2 and I am not going to be driving myself to the hearing,  
3 but one of the other Committee members will be taking me  
4 there. But I found out Friday that that wonderful  
5 insurance company Blue Cross Blue Shield, despite having  
6 about five or six years of terrible back pain and very  
7 intensive conservative treatment, found that it wasn't  
8 medically necessary. And my physician is having a debate  
9 with Blue Cross tomorrow, so I'm not sure whether I will  
10 or won't have the surgery.

11 If I do, I expect to be physically present on  
12 next Tuesday. But I'll probably be standing up  
13 frequently because they want me to keep moving. I don't  
14 think the pain will be overwhelmingly significant. And  
15 if by chance I'm in bad shape, which I don't think I will  
16 be in, I would appear likely virtually, which I've never  
17 done because I like to be there in person to meet and  
18 greet all of you and to listen attentively to what needs  
19 to be said.

20 We will begin, as I indicated, on September the  
21 6th. And time limits will be set by the Committee. I'm  
22 not setting any in advance time limits. I just want to  
23 make sure that everybody is focused on what the  
24 alterations to the current -- the proposed alterations to  
25 the current plan have on the environment, not what your

1 thoughts are as to whether or not the Committee should  
2 have previously allowed this.

3 And I'll ask you, Mr. Acken, has the applicant  
4 complied with all of the requirements of A.R.S.  
5 40-360.04(A) and notified all of the affected  
6 jurisdictions?

7 MR. ACKEN: We have, Mr. Chairman. We provided  
8 notice via newspaper publication both to The Republic as  
9 well as regional newspapers to get broad coverage.

10 CHMN. KATZ: And I know that this is a very  
11 lengthy transmission line from New Mexico to California  
12 or at least to the Arizona border. What are the affected  
13 jurisdictions?

14 MR. ACKEN: Mr. Chairman, you're going to put me  
15 on the spot. Let's see if I can remember. It is  
16 Greenlee County, Graham County, Cochise, Pima, Pinal  
17 County, State Land, and City of Coolidge. I believe  
18 that's the only municipal entity that's crossed by the  
19 transmission line.

20 CHMN. KATZ: Any of the other participants  
21 believe that there are any other jurisdictions that have  
22 been affected by this power line proposal?

23 (No response.)

24 CHMN. KATZ: Hearing nothing, that's fine.

25 And I do represent the State Land Department on

1 a number of different issues. I have absented myself  
2 from the approval of any rights-of-way for transmission  
3 lines. I would indicate that once they have granted a  
4 corridor on State Trust land, they usually don't play any  
5 role further because they're comfortable that all  
6 required state, federal, and local permits will be  
7 obtained prior to any construction beginning.

8 And you've indicated, Mr. Acken, that you've  
9 published in local papers. And what other notices have  
10 been given to the general public regarding the time frame  
11 of this upcoming hearing?

12 MR. ACKEN: In addition to the newspaper  
13 publications, we've posted 13 signs. This is a 200-mile  
14 route in Arizona, so 13 sign locations near public  
15 rights-of-way, consistent with what was done previously  
16 for the original process.

17 In accordance with Condition 24, that condition  
18 requires notice be provided to certain entities as well  
19 as nearby landowners when seeking an extension of a term  
20 of the CEC. And we are requesting a two-year extension.  
21 So notice was mailed to 444 recipients pursuant to that  
22 Condition 24 notice.

23 The application has been provided at three  
24 public libraries, and there were also two virtual public  
25 information sessions held earlier this month to provide

1 information about the project and the opportunities to  
2 participate in the upcoming hearing.

3 CHMN. KATZ: Okay. I don't know if all of you  
4 have seen the agenda. There's nothing real special or  
5 unusual about it. It's basically going to be my  
6 introduction of the actual or putative parties.

7 I might ask the potential intervenors up front  
8 why they wish to intervene just so that the other  
9 Committee members have an understanding of that, and then  
10 we'll probably take the vote on whether to allow  
11 intervention.

12 To the extent that parties are allowed to  
13 intervene, the applicant will go first in making any  
14 opening remarks and then Mr. Stafford, followed by  
15 Mr. Else. And you can either give your opening remarks  
16 immediately after the applicant; or once the applicant  
17 has rested, you can reserve your opening statement to  
18 when you're going to begin presenting your individual  
19 case.

20 As I said, we begin at 1:00 the first day, and  
21 we'll probably run to 4:30 or 5 with a break  
22 approximately every 90 minutes to save our sanity and our  
23 court reporter's hands.

24 Are there any other objections or additions that  
25 you would like to make to the agenda?

1 Yes, Mr. Else. Yes, sir. Unmute yourself.

2 MR. ELSE: Yes, Mr. Chairman, thank you.

3 I do have an objection to limiting the agenda to  
4 only the substantial changes in the original CEC that the  
5 applicant has identified.

6 In my summary of testimony, I've identified four  
7 additional substantial changes that have taken place  
8 since the original CEC was granted in 2016. And my  
9 testimony intends to present the case law and the Arizona  
10 Revised Statutes that have the criteria for identifying a  
11 substantial change. And I do intend to present those  
12 four substantial changes. I just needed to let you know  
13 that up front.

14 CHMN. KATZ: Okay. And I'll just have to see  
15 how you go forward. Because as far as I am concerned, I  
16 think as a matter of law, the prior rulings of the  
17 Committee, as affirmed by the -- actually, issued and  
18 supported by the Corporation Commission and two levels of  
19 the Court, I think make that original CEC the law of the  
20 case.

21 To the extent that the proposed changes create  
22 new environmental concerns or reliability, power  
23 reliability or affordability concerns, I will hear that.  
24 But I don't want to give any party the opportunity,  
25 including the applicant, to try to add stuff that isn't

1 relevant to their proposed changes.

2 And, obviously, if there is case law to be  
3 presented, I probably just need to ultimately have the  
4 citations on those cases.

5 But that all being said, I understand where  
6 you're coming from, but I'm just giving you the heads-up  
7 that we're not going to give you or any members of the  
8 affected communities along this 200-mile route an  
9 opportunity to relitigate what has already been presented  
10 and determined.

11 MR. ELSE: Mr. Chairman, I would just like to  
12 clarify one thing about the lawsuit that I was engaged  
13 in. It wasn't strictly about relitigating the decision.  
14 It also had to do with preventing initiation of  
15 construction in Arizona before the appropriate permits  
16 were obtained in New Mexico.

17 And the Court of Appeals ruled that that  
18 particular argument would not be ripe for review unless  
19 SunZia did initiate construction in Arizona before having  
20 the appropriate permits in New Mexico. And that was the  
21 main goal of my litigation.

22 CHMN. KATZ: I understand. And, clearly, I  
23 don't know what Mr. Acken's position is in that regard,  
24 but I think we're a ways away from commencement of  
25 construction. You might have requested additional time



1 frame that's been requested, but I might be wrong in that  
2 regard.

3 Mr. Acken.

4 MR. ACKEN: The project should be pretty close  
5 to construction, which is why there's an urgency to get  
6 this approved.

7 The reason for the two-year extension is simply  
8 because building a 200-mile transmission line in Arizona,  
9 a DC converter station, additional 300-plus miles in New  
10 Mexico, and another DC converter station hit time. And  
11 so the goal is to have this project operational within  
12 the original February 2026 CEC term for Line 1. But in  
13 order to provide flexibility, which we all know is  
14 necessary in today's world of supply chain issues and the  
15 like, we have requested a two-year extension. But  
16 construction will be commencing in the very near future.

17 We would object to any sort of condition that  
18 would tend to limit us or make Arizona's approval  
19 contingent on what New Mexico did. I think Mr. Else  
20 raised that in 2015, and the Committee rejected it at  
21 that time.

22 CHMN. KATZ: Let me just ask you a question,  
23 though. Assuming, hypothetically, that this line were to  
24 be constructed in whole or in part and New Mexico denies  
25 its section, would this line still have utility within

1 the state of Arizona and places such as, let's say,  
2 California?

3 MR. ACKEN: Certainly, Line 1, as currently  
4 contemplated, requires origination in New Mexico and  
5 terminus of the DC line in Pinal Central. Line 2 does  
6 not. And so that's also an important distinction.  
7 Nothing has changed about that. There's always been the  
8 possibility of one DC and one AC line.

9 And I would just -- you know, we're already  
10 getting far afield of what the requested amendments are  
11 when we talk about what New Mexico has or hasn't done.  
12 And I would just caution the Committee from entertaining  
13 too much discussion about that.

14 I will note, consistent with the Procedural  
15 Order, I have had discussions with Mr. Else, and we will  
16 continue to have discussions in an effort to narrow the  
17 issues of dispute, and I am -- we're trying to do that, I  
18 don't know that we'll make much progress, so that this  
19 can be an expedited process.

20 CHMN. KATZ: That's fine. And, again, right  
21 now, most of our line siting hearings -- and I've had  
22 about a dozen of them since last September -- all of our  
23 gen-tie cases have usually taken about between one and --  
24 well, probably two and four days. Except Randolph power  
25 plant expansion, which Mr. Stafford is well aware of,

1 took eight days. And Mr. Acken is aware of that as well.

2 We have Tuesday through Friday available. If we  
3 need to come back on the following Monday, we would  
4 probably do it at 1 p.m. because I notice that many of  
5 our out-of-town members that are coming from all over the  
6 place aren't going to spend the weekend in Oro Valley,  
7 but some of them may.

8 And, Mr. Acken, you will have sign-in forms  
9 available for public comments, and we'll have public  
10 comments that can be made in person or virtually. And  
11 that first one will be at 5:30 p.m. the first night  
12 probably for about an hour and a half or two hours. And  
13 then if we need to continue it, we'll have to make a  
14 decision based upon where we're at as to whether we do it  
15 first thing the next morning.

16 What is your feeling, Mr. Acken?

17 MR. ACKEN: Mr. Chairman, I don't know, you  
18 know, if the first night will be sufficient or not. I do  
19 think this project has a lot of interest. We will -- as  
20 you indicated, we'll have sign-in sheets. We'll be ready  
21 for the in-person and virtual public comment session the  
22 first night. We'll also have written comment forms if  
23 people want to submit written comments to you rather than  
24 speak.

25 And then I would suggest we play it by ear for

1 the remainder. Depending on if we're able to get through  
2 all the public comment that first night or there's a need  
3 for more, we can certainly have it at various times  
4 throughout the hearing.

5 CHMN. KATZ: Right.

6 And for the benefit of court reporters, and if  
7 anybody's going to want any daily transcripts, we're  
8 going to break every 90 minutes for the benefit of all of  
9 us and our court reporter.

10 I know that you're using one of the firms that  
11 is regularly involved in this, so we'll have robust WiFi  
12 communications. Is that correct, Mr. Acken?

13 MR. ACKEN: It is.

14 CHMN. KATZ: And in terms of attire, I have had  
15 a dress shirt and a tie on twice in the last two years  
16 when I've had a virtual court appearance. All of you can  
17 feel free to wear business casual clothing. You don't  
18 need shirts and ties or fancy female suits. Just  
19 something comfortable but respectful.

20 And let me just ask you, Mr. Acken, are there  
21 any other matters that are of concern to you? And then  
22 I'm going to ask Mr. Stafford the same thing in terms of  
23 whether he wants to make a record of anything or has any  
24 cares or concerns.

25 MR. ACKEN: I don't believe so. I would ask

1 Ms. Freeman and Ms. Mills to speak up if I've missed  
2 something that we should cover.

3 Other than that, the only thing I would note is  
4 Mr. Omick has joined this prehearing conference. So if  
5 you wanted to speak about his limited appearance request,  
6 I do believe he's on. I see him on, but I haven't heard  
7 him.

8 CHMN. KATZ: Mr. Omick, are you present?

9 MR. OMICK: Yes, I am, Chairman.

10 CHMN. KATZ: You didn't miss a heck of a lot,  
11 but I was just making clear to the parties that whoever's  
12 allowed to intervene in this matter, we're not going to  
13 relitigate everything that was or could have been  
14 litigated back in 2015 or 2016. The current CEC is the  
15 law of the case, but it will be changed if a new CEC is  
16 issued.

17 And I want to hear the effects that increased  
18 pole height or line configuration or the like has on the  
19 visual appearance of the project, on avian flight, and on  
20 any other issues that are reasonably related to the  
21 changes that are being made.

22 And with respect to whether the changes are  
23 substantial or not, I think the Corporation Commission,  
24 if they thought they were not substantial, could have  
25 made its own decision but wanted to pass the matter on to

1 the Committee.

2 It's up to the Committee to decide whether or  
3 not your limited appearance will be allowed, Mr. Omick.  
4 But if it's a limited appearance, you're not allowed to  
5 cross-examine witnesses or call your own. So,  
6 essentially, we could put you one of the first in line  
7 for public comment because you're more than free to  
8 participate in viewing this matter from its inception to  
9 its end. And we'll be starting 1:00 on Tuesday, the 6th.

10 But do you have any questions of me or the  
11 applicant or any of the other parties present?

12 MR. OMICK: I do not. Thank you, Mr. Chairman.

13 CHMN. KATZ: Right. And I would give you first  
14 out of the chute if you are with us for public comment  
15 with one exception. If we have any members of local  
16 government, such as a board of supervisors, a city or  
17 town council, they'll be given priority. I'm not  
18 expecting that that will occur, but I do not know one way  
19 or the other.

20 There's a few other things I need to go over,  
21 but let me ask you, Mr. Stafford, so far, do you have any  
22 comments, questions, or concerns that you'd like to put  
23 on the record or call to my attention?

24 MR. STAFFORD: Only one, Mr. Chair. The order  
25 of witnesses. I assume the applicant will go first,

1 followed by either Mr. Else or myself. I'm just trying  
2 to -- I want to kind of get a feel for how long -- when I  
3 should have my witness ready to take the stand, I guess,  
4 basically, what I'm asking.

5 CHMN. KATZ: Mr. Acken, I don't know whether or  
6 not -- in light of the fact that there's some issues  
7 already decided, I don't know how long you think your  
8 presentation is going to likely take. Ballpark, like a  
9 day and a half to three days or something like that?  
10 Four days?

11 MR. ACKEN: Our direct case is pretty  
12 straightforward tied to the three amendments. I  
13 anticipate our direct case will be done that first day.

14 CHMN. KATZ: And then, obviously, Mr. Stafford,  
15 you'll be able to cross-examine those witnesses, as will  
16 Mr. Else, and we'll see where it's at.

17 Then, Mr. Stafford, unless it presents a problem  
18 for your witnesses, I'd have you present your witnesses  
19 first. And then I'd have Mr. Else either testify or call  
20 any witnesses that he's identified.

21 MR. STAFFORD: All right. So then my witness  
22 should plan to take the stand Wednesday, the 7th, then?

23 CHMN. KATZ: I would think that that's correct.  
24 And I can't imagine with this being a 200-mile long line,  
25 we're not planning to take a tour because it impacts

1 different communities along this route differently. And  
2 it seems like it is primarily folks that are in Pinal  
3 County or in the Oro Valley area that seems to have the  
4 most interest. And I'm not putting that in the lap of  
5 Western Resources. That may be looking at the larger  
6 perspective of the 200-mile line, but I don't think that  
7 we've had a lot of community input or filings from  
8 anybody outside of Pima County, but I could be wrong in  
9 that regard.

10 Let me just do a few more things.

11 In my checklist, it talks about the applicant  
12 preparing a spreadsheet for each segment. I don't think  
13 we need that. But if you think it would be helpful in  
14 guiding the Committee as well as any of the participants  
15 through it, you're more than welcome to present us a  
16 spreadsheet. But I think everybody knows what each  
17 other's positions basically are. And I'm going to want  
18 to be liberal in applying my restrictions, but we're not  
19 going to start all over again.

20 And I did receive from Mr. Else as well as from  
21 Western Resources and the applicant a summary of  
22 witnesses and exhibits. And have you all received each  
23 other's lists of witnesses or witness statements and  
24 exhibits? Anybody missing anything?

25 (No response.)



1 CHMN. KATZ: Okay. And if new exhibits get  
2 filed, make sure you email them to all the other -- the  
3 two other participants other than yourself. And what I'd  
4 like to do is have Mr. Acken, he can use SunZia-1, 2, 3,  
5 4, 5, and 6. Western Resources can use, let's say,  
6 WRA-1, 2, 3, 4, 5, 6. I think as long as we have those  
7 initials up front, unless it's easier for the court  
8 reporter to go continuous numbering.

9 Carolyn, what do you recommend.

10 THE REPORTER: Could we go off the record?

11 CHMN. KATZ: Yes.

12 (Off the record.)

13 MR. ACKEN: My question is on SunZia. Because  
14 we had the prior hearing, like I thought about using  
15 SunZia Amendment-1, 2, and 3. I don't know that it makes  
16 that big a difference, but this docket has other  
17 exhibits.

18 CHMN. KATZ: As long -- you can do that. You  
19 can say SZ or you could say SunZia or SZ Amendment or  
20 however you want to put it. But they should be starting  
21 1 through 5, 10. I don't have all of the documents that  
22 I have in my office in front of me.

23 Similarly, Mr. Stafford, you can begin with WRA,  
24 or however you want to abbreviate your client's name, 1  
25 through 5, 6, 7, 8, 9, 10.

1           And, Mr. Else, you can just use your four-letter  
2 last name followed by Exhibit Else-1, 2, 3, 4, 5 and so  
3 forth.

4           Any questions regarding exhibit numbering?

5           (No response.)

6           CHMN. KATZ: And we still have about a week  
7 before we begin. If there's any way to narrow the  
8 issues, I'd urge you to talk amongst yourself because I'd  
9 like to have to make as few decisions and have the  
10 Committee make as few admissibility decisions as  
11 possible.

12           And if there are any legal memoranda to be  
13 filed, they probably ought to be filed immediately and  
14 responded to before we begin next week.

15           And I think that the intervenors have complied  
16 with the Procedural Order.

17           Do you see any problems from applicant's  
18 perspective with regard to compliance with the Procedural  
19 Order?

20           MR. ACKEN: I do not. I would say on the -- and  
21 I would thank the present intervenors for their  
22 compliance.

23           As far as legal standard or substantial change,  
24 there's no dispute, Mr. Else. That's the standard. And  
25 as the Chairman said, we're past that stage since we're

1 at the hearing, so I don't see a need for briefing on  
2 substantial change.

3 I think the real question presented is what is  
4 the scope of this hearing. Is it the amendments that the  
5 applicant has requested or, Mr. Else, he's raising other  
6 issues. Are those properly before this tribunal at this  
7 time, or is there another path for him, or are there  
8 issues that I'm hopeful he and I can resolve before  
9 getting to the hearing.

10 CHMN. KATZ: And I would agree that these would  
11 be considered a substantial change. That's not my  
12 opinion. That's basically the opinion of the Arizona  
13 Corporation Commission. Because if they felt the changes  
14 were minor, they would have made that decision on their  
15 own with the assistance of the ACC or Arizona Corporation  
16 Commission Staff.

17 So we really don't need to fight over whether  
18 they're substantial. It's just a question of whether  
19 those substantial changes have any significant  
20 environmental impact upon the citizens of the state of  
21 Arizona or the environmental of the state of Arizona.

22 I think I got today, I haven't fully read it, a  
23 letter from the Corporation Commission Staff.

24 Have you all seen that?

25 MR. ACKEN: Yes, Mr. Chairman.

1 CHMN. KATZ: And I'll let you review and digest  
2 that. I think you've already sent to Tod and myself,  
3 have you not, Mr. Acken, proposed CEC terms and  
4 conditions?

5 MR. ACKEN: Mr. Chairman, we have. It's a  
6 proposed form of order both for what would be for CEC 1  
7 and CEC 2. Obviously, it's a little different since  
8 we're not starting anew, so we're not seeking new CEC  
9 terms, we're not seeking to change any terms. So it's  
10 structured as more of a form of order that you would see  
11 in a Commission proceeding where they're amending a prior  
12 order. But we did file those Friday pursuant to the  
13 Procedural Order as a starting point for the Committee  
14 for their discussions.

15 CHMN. KATZ: And I'm not going to hear any  
16 objections right now. The way we usually handle this --  
17 and Mr. Acken and Mr. Stafford have been through this  
18 before. What I will end up doing is sending out, after  
19 Tod and I review and edit the proposed CECs, we will  
20 basically mark them -- are you starting with 1 this time  
21 around, or are you starting with 3 and 4? Mr. Acken?

22 MR. ACKEN: For the CECs?

23 CHMN. KATZ: Yes.

24 MR. ACKEN: We would be asking for CEC 1 and CEC  
25 2.

1 CHMN. KATZ: Okay.

2 MR. ACKEN: We didn't have two before, so we're  
3 asking for it to be split.

4 CHMN. KATZ: Right. And what we'll do is do one  
5 CEC at a time when we get there. And what I do is have  
6 one copy of it that's in PDF format so none of us can  
7 tinker with it, and that would end up being Chair Exhibit  
8 1 at the hearing, unless there's some other exhibits that  
9 I have marked, and I doubt there will be. And Chair  
10 Exhibit 2 will be the Word version of it that will be  
11 projected on the screen on the left.

12 The original will remain untouched on the left  
13 screen, if I misspoke. The one we modify and work with,  
14 the Word version, will be on the right screen. And we  
15 will hear from the applicant, the Committee members, and  
16 from all of the intervenors that are permitted to  
17 participate any objections to any particular terms and  
18 conditions, any requests for additional conditions.

19 And once it's in final form, the Committee will  
20 vote on each paragraph one at a time, but not whether or  
21 not to issue the CEC. We then will have a vote at the  
22 end as to whether the CEC should be issued, and that will  
23 be a roll call vote from every Committee member.

24 And then we'll have Chair Exhibit No. 3, which  
25 will be the second -- I think we'll make that the second

1 CEC that's being proposed and permanently Chair No. 3.  
2 And Chair 4 will be the one worked from. We can discuss  
3 it further in terms of how we number these things as we  
4 move forward.

5 But I have no problem if you want to -- we have  
6 not edited or finalized anything. But if you wanted to  
7 share those with the other parties, Mr. Acken, I'm not  
8 telling you you shouldn't.

9 MR. ACKEN: We did docket them, and I'm happy to  
10 discuss with any proposed intervenor.

11 CHMN. KATZ: And I'm sure that they're going to  
12 be substantially the same as before, but we might need  
13 some new Findings of Fact or Conclusions of Law or some  
14 new conditions. Or the intervenors might want some  
15 additional conditions to protect the respective  
16 communities that they are representing.

17 We don't have any NEPA issues here because it's  
18 not on federal land and it's not being federally  
19 financed, correct?

20 MR. ACKEN: Actually, there is federal land, but  
21 there is a federal process. There was a record of  
22 decision issued some time ago. There is an ongoing NEPA  
23 process concerning amendments in New Mexico.

24 CHMN. KATZ: Okay.

25 And in terms of notebooks, most of the Committee

1 members are happy -- and I know there will be tablets of  
2 some sort provided to the Committee members so that they  
3 can pull up the exhibits and the application online. I  
4 know that you also will be capable of projecting exhibits  
5 on the screen that you and the other parties might be  
6 discussing.

7 I don't know whether or not if they want -- if  
8 either Mr. Stafford or Mr. Else want their exhibits  
9 included, I don't know whether you would be putting them  
10 onto the iPads or how you want to handle that.

11 MR. ACKEN: Yeah. I have their exhibits, or at  
12 least their slides and some of their exhibits. So after  
13 this call, before the hearing, let me know what exhibits  
14 in addition to your hearing slides you want to be able to  
15 have projected, and we'll work with the AV team to make  
16 sure that that is done. And we'll have some time at the  
17 hearing as well.

18 CHMN. KATZ: And if the parties have anything  
19 that doesn't get included, just to make sure, I probably  
20 want to have hard copies of that available. I always  
21 want to keep a hard copy of the application and exhibits.  
22 So I usually want a notebook where -- notebook from each  
23 party just so we have that preserved. And we won't  
24 remove them from our archives without proper permission.

25 So that all being said, is there anything else,

1 Mr. Acken, you wanted to present?

2 MR. ACKEN: No, Mr. Chairman, thank you.

3 CHMN. KATZ: Mr. Stafford, any questions or  
4 concerns?

5 MR. STAFFORD: Yes, Chairman. So how many hard  
6 copies of our exhibits do you want us to bring to the  
7 hearing?

8 CHMN. KATZ: Well, if you can coordinate with  
9 Mr. Acken and get everything -- figure out how to get it  
10 on the iPad system that they're using and only the  
11 exhibits that are not there. Or if you choose not to  
12 share those with Mr. Acken to put on the web, I'd say you  
13 probably want to have about 11 copies of those exhibits,  
14 an extra copy and one for the ten members of the  
15 Committee.

16 And, obviously, you already have shared your  
17 exhibits one with another, but I just want to make sure  
18 we know what we're talking about as we move forward.  
19 And, also, you can always project an exhibit as your  
20 witnesses are testifying, Mr. Stafford.

21 MR. STAFFORD: I tend to get all my exhibits to  
22 Mr. Acken in a digital format so he can load them on  
23 there, but I still need to bring at least one hard copy  
24 to give the court reporter at the hearing, correct?

25 CHMN. KATZ: Right. You want to bring a copy



1 for me and a copy for the court reporter. And if there  
2 are things that haven't been digitized that come up the  
3 last minute from any of the parties that don't get  
4 digitized, give us 10 or 11 copies.

5 Mr. Else, anything from your perspective?

6 MR. ELSE: Yes, Mr. Chairman. On the exhibits,  
7 the last process that I was involved in, we voted on  
8 which exhibits would be admitted into evidence. And I  
9 assume a similar process will take place this time. Once  
10 that's done --

11 CHMN. KATZ: Go ahead.

12 MR. ELSE: Once that's done and once the  
13 exhibits are admitted into evidence, can I just docket  
14 one copy to Docket Control at that point, one hard copy  
15 to Docket Control, and skip the business about submitting  
16 25 extra copies?

17 CHMN. KATZ: Tod, you're our resident expert  
18 paralegal and have been doing this longer than me. What  
19 do you think?

20 MR. BREWER: I believe that would be acceptable,  
21 Mr. Chairman. As long as Mr. Else provides hard copies  
22 for the court reporter and yourself, I don't think that  
23 would be an issue.

24 CHMN. KATZ: And, normally, I will rule on the  
25 admissibility of exhibits. We don't usually put it to a

1 vote. And I have a tendency, as long as they relate to  
2 the issues that are before the Committee, I will admit  
3 them much more freely than I would have the years I spent  
4 on the court. We don't have formal rules of evidence,  
5 and I want to make sure what comes in is at least  
6 reasonably relevant to the issues we're debating. But  
7 most exhibits get admitted, even though some of them  
8 might not.

9 MR. ELSE: Thank you.

10 And second question I had had to do with  
11 proposed findings of facts. I'm going to assume that as  
12 long as I get those distributed to the other parties, to  
13 you, Mr. Chairman, so that you have copies for the  
14 Committee, and to Docket Control, that they would be  
15 considered if I bring them to your attention before the  
16 deliberations begin; is that correct?

17 CHMN. KATZ: That would be correct. And the  
18 thing is that, normally, when we get to the section that  
19 deals with Findings of Fact and Conclusions of Law, I  
20 would entertain any additional findings that you might be  
21 requesting and allow the Committee to decide whether or  
22 not to accept those additional findings. You'll also  
23 have or should already have -- you will have Mr. Acken's  
24 proposed CECs, and you can always object to them. But I  
25 would be inclined to accept anything that was previously

1 in the CEC unless there's a substantial change that  
2 affects that particular finding.

3 MR. ELSE: Thank you.

4 The next thing is I believe I'm probably the  
5 only intervenor who is living in this area and is  
6 connected with the affected communities. And they've had  
7 a concern. One of them said that they were told that  
8 their only opportunity to submit written comments would  
9 be before the hearing. And the question there was:  
10 Would they be able to submit written comments in response  
11 to whatever was presented during the hearings?

12 CHMN. KATZ: Well, when we get to the public  
13 comment stage that first day, we'd like to have as many  
14 of their concerns expressed either verbally or in writing  
15 at that time. But, you know, I don't -- I've never set a  
16 deadline for written comments.

17 Mr. Acken, what is your position regarding  
18 written comments from the members of the public?

19 MR. ACKEN: What I have always shared is that if  
20 the public -- and this is the message that I share with  
21 the public on every project -- is that if you want the  
22 Committee to consider them, they need to be submitted to  
23 the Committee at the time the Committee sits. If you  
24 submit them later on, they may not be considered by the  
25 Committee. And it puts the applicant at a real

1 disadvantage. The Commission looks to the Committee to  
2 vet the public's concerns. If the Commission is not made  
3 aware of those in a timely fashion, the Committee can't  
4 do its job. And then, again, I think the applicant is  
5 prejudiced if those concerns are raised later before the  
6 Commission.

7 So it is applicant's request that public  
8 comments be made during the public comment period,  
9 written comments be submitted by that time in order for  
10 the applicant and the Committee to address them.

11 The idea that somehow there's a rejoinder  
12 opportunity for public comments in response to what the  
13 applicant is saying, I take issue with that. It's like  
14 if you want to participate as a party, intervene.  
15 Otherwise, provide comments at the appropriate time.

16 CHMN. KATZ: Right. From my perspective, and I  
17 believe the Committee would join me in that, we would  
18 like to have all of the public comments submitted no --  
19 written comments submitted no later than the end of the  
20 public comment session, which could be on the first day,  
21 or it might get continued beyond that. But it's not an  
22 opportunity for everybody to become a litigant. It's for  
23 people to express their concerns about the impact this  
24 power line might have upon the grid or themselves or  
25 their individual community.

1 MR. ELSE: Okay. Thank you for that  
2 clarification.

3 And the last community concern had to do with  
4 the tour. And from what I've heard today, it is your  
5 belief, Mr. Chairman, and that of the applicant that a  
6 tour is not appropriate. The community members did have  
7 several stops that they wanted the Committee to see. And  
8 I told them that after the prehearing conference today, I  
9 would get back to them and let them know what the general  
10 feeling was about the tour.

11 So my question would be, is the tour just  
12 totally off the plans, or is there a possibility that the  
13 Committee may see the need for the tour?

14 CHMN. KATZ: The Committee may see the need for  
15 a tour. The difficulty is that the impact upon those  
16 organized citizens in the Tucson and Oro Valley area may  
17 not be any different than the feelings of people in any  
18 of the other affected counties. And there's no way that  
19 we're going to do a 200-mile tour.

20 So I just don't know the extent at this juncture  
21 that the community in Pima County or the surrounding  
22 areas is any more adversely affected than the communities  
23 by which the line will pass further to the east or  
24 further to the west.

25 MR. ELSE: The communities involved are from

1 Pinal County, the actual community of Oracle, and then  
2 also there's another community that's further upstream  
3 who will probably be attending the hearing from mostly  
4 Cochise County along the San Pedro.

5 Cochise County location in Cascabel was already  
6 toured during the first hearing, and conditions were put  
7 on the CEC based in part on that particular tour. And  
8 they understand that it would be too far for the tour to  
9 go all the way down those dirt roads to Cascabel.

10 However, the community of Oracle has been  
11 concerned about one substantial change that I plan to  
12 raise, and they would like to show the community the  
13 viewsheds that would be affected and the potential  
14 impacts on their International Dark Sky designation.

15 CHMN. KATZ: I understand where you're coming  
16 from. I'm going to leave it to the Committee to decide  
17 whether or not a tour is necessary. I don't know. It's  
18 something you might want to discuss further with  
19 Mr. Stafford and Mr. Acken and determine whether or not  
20 it makes sense to have a tour. But we're not going to  
21 spend a full day touring.

22 So, Mr. Acken, any thought or comment?

23 MR. ACKEN: Thank you, Mr. Chairman. I would  
24 like to address this. A couple thoughts:

25 One, recall that our hearing location was moved

1 at the request of Mr. Else and the community of Oracle so  
2 that they could be closer to the proceeding and  
3 participate in person. So that accommodation has already  
4 been made.

5 With respect to a tour, remember, this isn't a  
6 new line. We are requesting three amendments. And the  
7 question I got from my team is, What would we be touring?  
8 There's no change to the route. How can we have a tour  
9 to show power structures that aren't actually on the  
10 ground yet. So we're going to have good visual  
11 simulations to present to show the actual changes.

12 And I guess my final thing, I would encourage  
13 Mr. Else, you know, consistent meet and confer  
14 obligations we have, if you would like to discuss a tour  
15 further, by all means, reach out to me, and we can  
16 discuss. But those are my concerns and my questions  
17 about the appropriateness of a tour in this case.

18 CHMN. KATZ: And as I think was stated, I think  
19 there may be some visual concerns with lighting because  
20 of the height of the towers or avian flight or just  
21 scenic views. I don't know. But I think I need to wait  
22 and hear from -- at least see the visual presentation  
23 that shows what was originally planned in terms of the  
24 view. And usually the folks that do those virtual tours  
25 do an excellent job showing you what things would look

1 like under the original plan versus what they would look  
2 like under the amended plan.

3 But right now, I'm not planning a tour, but I am  
4 open to that occurring once the parties have met and  
5 conferred.

6 Is there anything further?

7 Yes, sir, Mr. Else. Yes.

8 MR. ELSE: Yes. Just to give you an idea about  
9 the scope that the community members had in mind, this  
10 would be from the Biosphere approximately two hours at  
11 the maximum because the main tour stop would be at Oracle  
12 State Park, where the International Dark Sky designation  
13 is located.

14 CHMN. KATZ: Understood. Get together with  
15 Mr. Acken. If you don't reach an agreement, the  
16 Committee will have to make a decision, and Mr. Acken  
17 should be prepared to conduct a short tour if needed.

18 Anything further?

19 MR. ELSE: Thank you, Mr. Chairman.

20 CHMN. KATZ: Thank you all very much. I'm  
21 hoping that my surgery with my terrible bad back takes  
22 place. It's a minimally invasive procedure. I hope it  
23 takes place on Wednesday and I should be fine by next  
24 Tuesday, even if you'll have to see me standing up  
25 regularly as opposed to remaining seated.



1           But that all being said, if it doesn't go  
2 forward, then I'll have to worry about it and maybe in  
3 the first of the year change insurance companies. What  
4 was interesting, and I won't bore you, is that the State  
5 has two carriers with identical plans. My doctor, who  
6 does these SI joint fusions, has been doing them for ten  
7 years, says Blue Cross has rejected every one of them and  
8 United HealthCare on the identical plan has allowed them  
9 all. And he said Medicare will allow it.

10           And I'm going to be with most of you through the  
11 end of this year. I am going to retire at the end of  
12 February, and I'm going to hope to start training  
13 somebody to fill my shoes that's a bit younger than the  
14 last three chairs have been. We keep appointing senior  
15 citizens to our chairmanship. And I'll be 72 in  
16 February, and I am getting tired of driving 50 miles a  
17 day round trip and having a regular schedule. On the  
18 other hand, I intend to stay busy irrespective of what  
19 trouble I could cause down the road.

20           We'll see you all next Tuesday. And if there's  
21 any emergency concerns, please get in touch with Tod, and  
22 he'll get in touch with me. I should be back in my  
23 office tomorrow and either on the operating table  
24 Wednesday or back at the office. Anyway, we'll see you  
25 all next week.

1                   We can go off the record.

2                   (The prehearing conference concluded at

3 2:58 p.m.)

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14 ACJA 7-206(J)(1)(g)(1) and (2).

15 Dated at Phoenix, Arizona, this 1st day of  
16 September, 2022.

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