BEFORE THE ARIZONA POWER PLANT LS-345
AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF UNS ELECTRIC, INC. IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. 40-360, ET SEQ., FOR A DISCLAIMER OF JURISDICTION, OR, IN THE ALTERNATIVE, A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE EXPANSION OF BLACK MOUNTAIN GENERATING STATION, A NATURAL GAS-FIRED, COMBUSTION TURBINE POWER PLANT NEAR KINGMAN, ARIZONA IN MOHAVE COUNTY.	) DOCKET NO. L-00000F-24-0056-00230) EVIDENTIARY HEARING

At: Phoenix, Arizona

Date: April 25, 2024

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Pages 260 through 465)

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BE IT REMEMBERED that the above-entitled and numbered matter came on regularly to be heard before the Arizona Power Plant and Transmission Line Siting Committee at 1200 West Washington Street, Phoenix, Arizona, commencing at 11:00 a.m. on April 25, 2024.

BEFORE: ADAM STAFFORD, Chairman

LEONARD C. DRAGO, Department of Environmental Quality
ROMAN FONTES, Counties
DAVID FRENCH, Arizona Department of Water Resources
JON H. GOLD, General Public
NICOLE HILL, Governor's Office of Energy Policy
R. DAVID KRYDER, Agriculture Interests (Via Videoconference)
MARGARET "TOBY" LITTLE, General Public
GABRIELA SAUCEDO MERCER, Arizona Corporation Commission
DAVE RICHINS, General Public
SCOTT SOMERS, Incorporated Cities and Towns (Via Videoconference)

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CHMN STAFFORD: Resuming the hearing for Line Siting Case 230. Let's start by taking appearances again to make sure we have all the parties here, starting with the applicant.

MS. GRABEL: Thank you, Mr. Chairman. Meghan Grabel, from the law firm Osborn Maledon, on behalf of UNS Electric. And with me at counsel table is the Company's regulatory attorney, Megan Hill.

CHMN STAFFORD: Sierra Club. I believe we have Mr. Woolsey virtually?

MR. WOOLSEY: Yes, good morning, Mr. Chairman. Can you hear me?

CHMN STAFFORD: Yes.

MR. WOOLSEY: Patrick Woolsey, appearing on behalf of the Sierra Club, and my colleague Nihal Shrinath will be joining me here today as well.

CHMN STAFFORD: Thank you.

AriSEIA?

MS. JOHNSON: Good morning, Chairman, Members, Autumn Johnson, on behalf of the Arizona Solar Energy Industries Association or AriSEIA.

CHMN STAFFORD: Western Resource Advocates.

MS. DOERFLER: Good morning. Emily Doerfler here for Western Resource Advocates or WRA.

CHMN STAFFORD: SWEEP.

MS. REYES: Good morning, Chanele Reyes, from the Arizona Center for Law in the Public Interest, on behalf of the Southwest Energy Efficiency Project or SWEEP.

CHMN STAFFORD: And Commission Staff.

MS. SCOTT: Good morning, Chairman, Committee Members, Maureen Scott and Samantha Egan, on behalf of the Utilities Division Staff.

CHMN STAFFORD: Thank you.

Now, when we left off I believe we were on AriSEIA's cross-examination of the applicant's witnesses.

MS. JOHNSON: We have concluded our cross-examination, Chairman. Thank you.

CHMN STAFFORD: All right. Well, before we move on to WRA's cross-examination, we have a number of new exhibits being introduced by both the applicant and Sierra Club.

Ms. Grabel, would you please describe the new exhibit from the applicant?

MS. GRABEL: Certainly. Thank you, Mr. Chairman. The exhibit that we have put forward is the former WRA exhibit that responds to Member Fontes's request for information about the different production capabilities of the two existing generating units at Black Mountain Generating Station.

CHMN STAFFORD: All right. Any opposition to the admission of UNSE-18?

(No response.)

CHMN STAFFORD: All right. Hearing none, it is admitted.

(Exhibits UNSE-18 was admitted into evidence.)

CHMN STAFFORD: We also have two new exhibits from Sierra Club. Mr. Woolsey, would you please identify these for us?

MR. WOOLSEY: Yes, Mr. Chairman, thank you. So yesterday the Sierra Club identified two additional exhibits that we believe are material to the case, which we shared with the other parties last night and filed in the docket this morning. Those are Sierra Club Exhibits SC-33 and SC-34. SC-33 is a Commission CEC Decision, Decision 70108 regarding Northern Arizona Energy's Expansion of the Griffith Gas Plant. And SC-34 is a Staff filing in that same case, regarding the issue of Commission jurisdiction, which addresses the same question that the Committee is considering here today. And I believe Ms. Bahr has handed out hard copies for the Committee members in the room, correct?

CHMN STAFFORD: Yes. Do all the parties have copies of all these -- both these exhibits?

MS. GRABEL: We do.

CHMN STAFFORD: As do the Committee members. The applicant and Sierra Club will need to e-mail those to Tod to get to Members Somers and Little, who are appearing virtually today.

MR. WOOLSEY: Thank you, Mr. Chairman. We'd be happy to -- happy to do that. And -- and I would add, when -- when we did share these exhibits with the parties last night, we did ask if the parties would be willing to stipulate to these exhibits, and as of now we've heard from SWEEP and AriSEIA have agreed to stipulate, but we haven't received responses from the other parties, but we would respectfully ask that SC-33 and 34 be admitted.

CHMN STAFFORD: Any objections from the applicant?

MS. GRABEL: No, we will stipulate to their admission.

CHMN STAFFORD: Excellent. SC-33 and 34 are admitted.

(Exhibits SC-33 through SC-34 were admitted into evidence.)

CHMN STAFFORD: On to WRA. It is now your opportunity to cross-examine the applicant's witnesses. Please proceed.

MS. DOERFLER: Thank you. Can you hear me all right?

(No response.)

C R O S S - E X A M I N A T I O N

BY MS. DOERFLER:

Q. Mr. Bryner, you stated yesterday that existing units at Black Mountain are not connected to a cooling tower and that said cooling tower is also unnecessary.

Is that an accurate representation of your statement?

A. (MR. BRYNER) Yes. So I would -- I would say that the first part of the statement when I mentioned that the cooling towers are not connected, they do not connect the units -- the two units, but the second part of your statement I would say is uncorrect [sic] -- or incorrect, it's not that they're unnecessary, it's that they make the units more efficient.

Q. Okay. Fair enough.

So how would you define what is necessary to a plant?

A. (MR. BRYNER) If I could defer to Mr. Bearce on that, he's more of an expert on the plants.

A. (MR. BEARCE) So I will -- I will define necessary as the components needed to convert the

chemical energy through the cycle to electrical energy, and so for the project at hand the primary components are the starting motor, compressor, power turbine, low pressure turbine, coupling, genset, would be the primary components of the generation of electricity for this technology.

Q. Would you find the transmission of that energy or the ability to transmit said energy to your customers necessary to its -- the functioning of a generation -- generating station?

A. (MR. BEARCE) I would say that it's not necessary to generate electricity, but to get it to the end user, it is necessary.

Q. So the purpose of the generating station is served by equipment that is used to transmit that energy to your customers; is that correct?

A. (MR. BEARCE) That's correct.

Q. Okay. Are station service transformers and generator step-up transformers, are they necessary for the efficient and safe transmission and distribution of electricity to the customers that you serve?

A. (MR. BEARCE) Yeah. I would say yes.

Q. You had stated in, I believe, UNSE-11 that the station service transformer and generator step-up transformer are shared equipment through the existing

units and the new -- four new units that are to be installed at Black Mountain; is that correct?

A. (MR. BEARCE) The GSUs are not shared on the existing units.

Q. Are they shared on the proposed units?

A. (MR. BEARCE) The proposed units, the four units that -- there would be two GSUs for the four units, so there would be a GSU shared by two units. So in that context, yes.

Q. Are you familiar -- I can direct this to both of you, are either of you familiar with ARS 40-360.06?

A. (MR. BRYNER) If you wouldn't mind reading it, that would be helpful.

Q. Absolutely.

I can kind of move on to the next question, so subject to tech -- to check, would you agree that ARS 40.360.06(5) states that the Committee is to take into consideration existing scenic areas, historic sites, and structures of archaeological sites at or in the vicinity of the proposed site?

MS. HILL: I'm sorry, Mr. Chairman, may we have a moment to put the statute in front of the witnesses?

CHMN STAFFORD: Hold on a second. You don't need to ask him what the statute says.

MS. DOERFLER: Fair enough.

Q. Mr. Bearce, you had stated yesterday that beyond aspects of public outreach, that there is very little regulatory oversight over the construction of generating stations that is not redundant to the Certificate of Environmental Compatibility process; is that an accurate representation of your statement?

MS. GRABEL: Mr. Chairman, I think I -- I object to that. I don't think that was directed to the correct witness. I think Mr. Bryner was testifying regarding --

MS. DOERFLER: Fair enough.

MS. GRABEL: -- the -- the factors at issue in the CEC proceedings.

CHMN STAFFORD: Well, they are on a panel, so whomever -- whoever is qualified and able to answer the question maybe do so from the panel.

MR. BRYNER: I feel comfortable answering that question. So I'll go ahead and answer that one. So yes, that's correct, as to what I said yesterday regarding the -- the overlap of different permits, but I did kind of qualify that by it depends on the site.

BY MS. DOERFLER:

Q. Sure.

Arizona has 22 federally recognized tribes who

have been here for 12,000 years, would you say that there's a risk of the construction or expansion of the generating station may affect historic sites and structures or archaeological sites?

A. (MR. BRYNER) So I know, looking at the past site, there was an archaeological study that was done, so we have that information. And it's included in our, I can't remember, UNSE-4 -- no, UNSE-1 in our application.

Q. Can you name any regulations that would require you to proactively find and protect archaeological and historic sites if a CEC process is not conducted?

A. (MR. BRYNER) There's all sorts of different permits that have different triggers that require cultural review.

MS. DOERFLER: That is all my questions.

CHMN STAFFORD: Thank you.

Next up is SWEEP.

MS. REYES: Good morning. I just have a couple questions, and I believe they're directed to Mr. Bryner. I apologize, I can't see your face very well.

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C R O S S - E X A M I N A T I O N

BY MS. REYES:

Q. I believe yesterday you stated that the Arizona Corporation Commission can disallow prior major investments if it later finds those investments to not be prudent; is that correct?

A. (MR. BRYNER) That's correct.

Q. To your knowledge, how many times has the Commission disallowed major investments by UNS or TEP as imprudent?

A. (MR. BRYNER) I'm not the person to answer that. I've really not been involved in that in depth with our rate cases.

Q. Okay. So I guess may not be able to answer this, but is it your experience working with the utilities that the Corporation Commission often disallows major investments because they were later found imprudent?

A. (MR. BRYNER) Again, I really have no experience on that.

Q. And, Mr. Bearce, would you have any experience in that?

A. (MR. BEARCE) I do not.

MS. REYES: Okay. Thank you so much. Those are all my questions.

CHMN STAFFORD: All right. Thank you.

Commission Staff?

C R O S S - E X A M I N A T I O N

BY MS. SCOTT:

Q. Good morning. And I apologize if my questions are a little bit repetitive at times, when you go last, that's a risk. I've tried to weed out that, but you may find some to be repetitive. And I would ask whoever feels most qualified to answer the questions do so. I divided this into subject areas and the first area I wanted to address with you were what you had stated in response to Commissioner Tovar regarding the existing units and the fact that there was no CEC for those.

Can you explain, first of all, why UNSE filed this application.

A. (MR. BRYNER) I think if you're okay, I'd like our legal counsel to answer that one.

Q. That's fine. Thank you.

MS. GRABEL: So yes, so thank you, Mr. Chairman, Maureen, the Company filed this application because it has its own interpretation of the law. We think it's a plain meaning, when looked in the context of what we're building, but we believe that there have been incidences where other parties have filed for CEC

applications under similar circumstances, even though they may not have had to. And there has never been a Committee CEC Decision or Commission Decision or a Court Decision, for that matter, that actually addresses the issue of whether individual units under 100 megawatts is a plant under ARS 40-360.09.

MS. SCOTT: Okay. Thank you, Megan, that was very helpful.

Q. I think, in response to Commissioner Tovar, again -- and I'm trying to flesh out things for the commissioners in -- that were raised in her letter -- you acknowledge that there's no CEC for the existing plant and wasn't when UNSE acquired the existing units, correct?

A. (MR. BRYNER) That's correct.

Q. And you also indicate in response that you felt this was important precedent for this case?

A. (MR. BRYNER) I'm not really sure, I guess, what you're asking about referring to on the precedent.

Q. Okay. I'm just more or less saying, I think, is it correct that you believe the fact that no CEC was issued in that case may indicate to you that there shouldn't be one issued in this case or one is not necessary?

A. (MR. BRYNER) Thank you for clarifying that. I

would say no, we're not looking to that as precedent.

Q. Okay. Thank you.

Do you know if there was ever an application filed with the Commission for a CEC for those two units?

A. (MR. BRYNER) I'm not aware of one. I don't believe there was a docket that was ever opened.

CHMN STAFFORD: I believe the parties stipulated to that fact already, that there was never a CEC application for the existing plant and that no disclaimer of jurisdiction was requested for that plant either. I believe those are both stipulated to in the joint stipulation of facts. Please correct me if I'm wrong, but that is my recollection of it.

Yes, it's stipulation of fact number 10, "No CEC nor disclaimer of jurisdiction has ever been obtained from BMGS."

MS. SCOTT: Okay. Thank you, Chairman. I -- I forgot that.

Q. Okay. I'd -- I'd also like to ask you, in the letter you state that you -- you are aware of facilities in similar situations that have obtained a CEC, can you identify those facilities and cases and how they are similar?

A. (MR. BRYNER) So I don't know if I can identify the case numbers specifically, but I know we

referenced -- so with the Company, well, with our affiliate, TEP, we had the RICE units, again, not sure what the case number was on that. So that was 10, roughly, 20-megawatt RICE units, and so that totaled 200 megawatts, and we did obtain a CEC for that.

I guess other cases would have been with other utilities, so I'd rather not, kind of, I guess, provide much information there, because I'm not that familiar with them.

Q. Okay. So you are aware of other situations, though, involving other utilities where a CEC has been obtained in similar circumstances?

A. (MR. BRYNER) Correct. I believe we spoke about the SRP Coolidge plant and a couple others.

Q. Okay. Now, UNSE chose to utilize four separate units with a nameplate rating of 50 megawatts each, correct?

A. (MR. BRYNER) Approximately 50 megawatts. We're not 100 percent on that.

Q. Okay.

A. (MR. BRYNER) But definitely less than 100 megawatts.

Q. Okay. And was that need identified in both your recent IRP and rate case?

A. (MR. BRYNER) I know it was identified in the

IRP, I'll have to defer to maybe our legal counsel knows if it was identified in the rate case.

Q. That's okay. I don't -- I'll move on from that. How were the facilities chosen for this project?

A. (MR. BRYNER) Maybe Mr. Bearce can take that one.

Q. Thank you.

A. (MR. BEARCE) So when we do a siting of a generation asset, there are a number of factors that come in play. And so proximity to transmission, proximity to fuel, where the load is needed, where the weaknesses of the system may or may not be, where the growth profile may exist, things of that nature are all special considerations, and there's a lot of assumptions as well in play, because the development of these projects take many, many years.

So there's a lot of things that we, you know, you hear about growth, customer base, large industrial customers, there's a lot of factors that come in that all kind of aggregate in what makes the most sense. And given the import requirements for that Black Mountain/Mohave County area, it made sense that local generation was the most sensible solution. And using what we classify as a brownfield actually creates a cost savings, and so that's another economic portion of the decision. And that's where this was the most favorable

location for the project.

Q. Okay. And you determined, too, that four individual units with nameplate capacities of 50 megawatts would be the best choice for this project?

A. (MR. BEARCE) That is correct.

Q. And why was that?

A. (MR. BEARCE) Sorry, I wanted to put it on mute to move it, so I don't make a bunch of noise.

So for this particular load profile for -- for UNS Electric in the Mohave County area, the peaking units we've used, they're very quick on, so we call them 5- to 10-minute machines, which means that they can be dead stop, parade rest we call it, and in five minutes, we're producing energy, which is really good for fast responding.

There's a lot of intermittency on the system. There's a lot of variable resources. And so when you have four separate machines, they can all be operated, and they will be operated separately, which means you end up with four times the ramp rate, you end up with larger fluctuations, but you can only run one unit to meet very low load demand requirements, but you can start four, and you get that rapid response.

A larger-frame machine doesn't meet those needs. You have, you know, minimum off times of over four hours,

things of that nature, that don't give the flexibility for the requirements, based on the load profile and the seasonal variation in that area. So this is the best technology for that.

Q. So is my understanding correct, then, that two 100-megawatt facilities or one 200-megawatt facilities just would not have worked as well?

A. (MR. BEARCE) Not as well, that is correct.

Q. Okay. And you spoke also about using these facilities either alone, depending upon what's needed, or together to address a particular situation; is that correct?

A. (MR. BEARCE) I wouldn't use those exact words, but I would say we would dispatch them to the need, and so the balancing authority has the ability to start, you know, one, you know, one right after another, if so needed. For a contingency, for example, let's say that there's another loss of a large generator somewhere and they need to make up that per NERC requirements, you know, they could push start on several, but the idea is to be able to dispatch them independently, which is what we do now, and what we would do down the road to meet whatever, you know, whatever reliability considerations are at hand at the moment's time.

Q. Okay. That did sound better than what I said.

A. (MR. BEARCE) You did fine.
Q. So you could push-start two units together, correct?
A. (MR. BEARCE) They have individual faceplates, and that's if you just kind of picture a separate remote control, if you will, digitally. You have to start them independently, you can't just push start and start multiple, but they can push start on one, get that sequence, initiate it, and then go right to the next unit.
Q. Okay.
A. (MR. BEARCE) So yes, but you can't push start and have multiple engines start, it's --
Q. Okay.
A. (MR. BEARCE) They're controlled independent of one another.
Q. Understood. Thank you.
So at some point, if you needed it, you could have all four of those units operating at once?
A. (MR. BEARCE) That's correct.
Q. Okay. And how -- how does that interrelate or interact with the two existing units?
A. (MR. BEARCE) So we have what we call a generator stack and we have an economic dispatch model, so based on economics, load profile, load demand, we will start, you

know, one, two, three, four, whatever is needed. And so it really does vary even, you know, morning to afternoon can have a different load shape so that's what drives it.

Q. Okay. So potentially all six of those units could be operating at one time?

A. (MR. BEARCE) That is correct.

Q. Okay. Does UNSE intend to site future units at the Black Mountain, if necessary?

A. (MR. BEARCE) We have no known plans of that. This is really what the system needs and that's what we're proposing today.

Q. Okay. Have you ever studied how many additional units you could site at Black Mountain, if necessary?

A. (MR. BEARCE) I've actually not looked at the total volume of units, just what -- we just sized what was appropriate for the current needs.

Q. Okay. Thank you.

And yesterday there was a lot of discussion about the 100-megawatt nameplate rating, would you agree with that?

A. (MR. BEARCE) I would agree.

Q. Okay. Would you agree with Staff's position that the 100-megawatt nameplate rating most likely reflects a balance on the need for a CEC, in that it exempts, it appears, smaller plants from the process?

A. (MR. BEARCE) Are you asking for my opinion on this matter? I'd rather defer that.

Q. I was asking for your opinion, if you have one.

A. (MR. BEARCE) So please ask the question one more time, I'm sorry.

Q. Sure. In Staff's letter we talked about the 100-megawatt nameplate rating, and the fact that it may have represented a balance that was struck to exempt small facilities from the CEC process and include larger facilities in that process only.

A. (MR. BEARCE) I would say it was -- I mean, I don't -- I don't know, I wasn't part of those conversations, but I think that this was to draw a definitive line, and I feel that's at least what it appears to be.

Q. Okay. One more question on that. Does it make sense, in your opinion, that two 60-megawatt units versus one 120-megawatt unit should be treated differently?

A. (MR. BEARCE) I think every installation should be carefully evaluated, and -- and then refer back to the statutes and the requirements for each -- each unique circumstance.

Q. Okay. And just to follow up on that quickly, with respect to some of your responses to me today, and also with respect to the meaning of the term "separate"

in the statute, which has been a significant area of discussion here, you would agree that there were -- are a lot of factual issues that enter into that, correct?

A. (MR. BEARCE) I would agree.

Q. Okay. Thank you.

I have another question for you, as far as the CEC itself. Are there benefits, in your opinion, to having a CEC, particular benefits to that?

CHMN STAFFORD: You mean in addition to complying with the law.

MS. SCOTT: Yes.

A. (MR. BRYNER) So, yes, that would be the primary benefit. We want to make sure we're following the law. I would say, in reference to some of the prior cases that got CECs that didn't meet the nameplate capacity of each of the individual generating units, it would provide some certainty as far as what might be included in rates or other things like that going forward or maybe for financing, other reasons like that.

Q. Would it be important for insurance or that type of --

A. (MR. BRYNER) I'm not really an expert on that, so I'm not sure.

Q. But it does -- you acknowledge that it does have some benefits, or would have, to the Company?

A. (MR. BRYNER) I would say, depending on the situation, it could.

Q. Okay. And would you agree with me, based upon the cases, prior Decisions of the Commission that have been referred to, that an entity can always obtain a CEC where the circumstances are questionable?

A. (MR. BRYNER) Sorry, did you say an entity can always obtain a CEC?

Q. A utility could obtain a CEC where -- where it's questionable, whether they need it or not?

A. (MR. BRYNER) I would say that's really not up to the utility. The utility can apply for the CEC, but I'm not sure that they can obtain it. I think the Committee could say, hey, we're not going to hear this, the Commission could, you know, likewise, say the same thing, but I would say the utility could always apply.

Q. Okay. Thank you.

Okay. I think -- I think that leaves me with just one area I wanted to follow up on. Yesterday there was quite a bit of discussion about overlap between, for instance, ADEQ's notice about water, impacts from a CEC -- or not a CEC, but siting of facilities, same with air quality control, I believe you -- it was indicated there are some notice requirements there. Would you agree with me that -- I don't want to get into the

legislative intent, because I know you're -- you're not a lawyer -- but would you agree with me that part of the Line Siting Statute or process, let me say, part of the Line Siting process was to bring all elements involving Line Siting into this forum?

A. (MR. BRYNER) So I guess when you say "Line Siting," we can probably be a little more generic and go along with the Power Plant and Line Siting, and I believe that's pretty well stated in the statute, correct?

Q. Yes. Okay. Thank you.

So that, in this process, there are many, many issues addressed or dealt with beyond the particulars of ADEQ's function, air quality function, this forum brings them all together and invites participation by consumers, if they so choose?

A. (MR. BRYNER) I would say with, you know, respect to going back to the statute and looking at the makeup of the Committee, you know, we've got representatives from each of those state agencies, along with representatives or -- or members who represent the general public and different things like that, so in that sense, bringing everybody to one -- one place, I would say that's correct.

Q. And do you believe that's important?

A. (MR. BRYNER) I believe that, you know, following

whatever the laws are is very important.

Q. Okay. Thank you.

Chairman, that's all I have. Thank you.

CHMN STAFFORD: All right. Thank you.

Ms. Grabel, do you have any redirect?

MS. GRABEL: Just briefly, Mr. Chairman, yes. Thank you.

R E D I R E C T E X A M I N A T I O N

BY MS. GRABEL:

Q. And I think, let me turn this on -- I think I'm going to direct most of the questions to Mr. Bearce, because I think you talked most yesterday.

So the Sierra Club and AriSEIA asked a lot of questions about the connections of various equipment through wires and pipes.

Do you recall that line of questioning?

A. (MR. BEARCE) I do.

Q. So let's talk about those shared components. Would you agree that each shared component could be separately constructed for each individual generating unit?

A. (MR. BEARCE) Absolutely.

Q. Would you agree that each shared component will be needed for support services, whether we build one unit

or four units?
A. (MR. BEARCE) That's correct.
Q. Would you agree that sharing these various facilities allows for economies of scale and cost savings?
A. (MR. BEARCE) Yes.
Q. Is there any way that the nameplate rating of a generating unit can be impacted by shared facilities?
A. (MR. BEARCE) No, the nameplate rating doesn't change.
Q. So the shared facilities may increase the actual output, but the nameplate rating will always be consistent?
A. (MR. BEARCE) The nameplate is fixed regardless of what you do at the site.
Q. And that's true with the cooling tower, as much as anything else, correct?
A. (MR. BEARCE) That is correct.
Q. While we're on the subject of the cooling tower, do Units 1 or 2 at the existing Black Mountain Generating Station have separate cooling loops?
A. (MR. BEARCE) That's correct.
Q. So loop 1 is used for Unit 1, and loop 2 is used for Unit 2, correct?
A. (MR. BEARCE) That's correct.

Q. But they're housed in the same big box, which is what we see between the two; is that correct?

A. (MR. BEARCE) Yes.

Q. That's a layman's term.

There was some line of questioning yesterday from the Sierra Club about how a generator and a turbine might have different nameplate capacities; is that correct?

A. (MR. BEARCE) Yes.

Q. Would you agree that the manufacturer sets the nameplate that's attached to each generating unit?

A. (MR. BEARCE) Yes.

Q. And would you agree that the manufacturer of the generating set knows the ratings of both the generator and the turbine?

A. (MR. BEARCE) Yes.

Q. So then would you agree that the nameplate rating placed on the generator is the nameplate rating of that generating unit?

A. (MR. BEARCE) Absolutely.

Q. There were also some questions from the Committee, I think, about the last-built combined-cycle plant, and I think there was some reference to the Gila Power Station and the Harquahala Power Station.

Do you recall that?

A. (MR. BEARCE) I do.
Q. If the capacity of the Gila and Harquahala generating units had been available -- had not, excuse me, been available to TEP or UNSE to buy, would TEP and UNSE have constructed them?
A. (MR. BEARCE) Very highly likely.
Q. And that was in 2015?
A. (MR. BEARCE) That's correct.
Q. Thank you.
I know that you were shown the current air permit application that the Company has filed, as well as the air permits that have been granted to the Company for the Black Mountain Generating Station, correct?
A. (MR. BEARCE) That's correct.
Q. And I'm not going to take the time to pull up those exhibits. I think they were Sierra Club 22 and 21, but do you recall whether, even if we file one permit, are the individual units separately identified within that permit?
A. (MR. BEARCE) They are.
Q. And within that permit application as well?
A. (MR. BEARCE) That's correct.
Q. Thank you.
And I know that you were also directed to the UNSE -- to the EIA-360 form, which is also a Sierra Club

exhibit, and they noted that that applies to the entire generating station, not just the generating units; is that correct?

A. (MR. BEARCE) That's correct.

Q. Is that because of the design of the EIA-360 form?

A. (MR. BEARCE) Yeah, I feel like that's a product of the form.

Q. Right. And are the units separately reported on that form?

A. (MR. BEARCE) Yes.

Q. Okay. Thank you.

And just to clarify, a generating station does not have a nameplate rating, correct?

A. (MR. BEARCE) That's correct.

Q. All right. Thank you.

And I think my final question is you were asked, again by Member Fontes, whether demineralized -- the demineralized tanks could cross-feed to each unit. Were you able to determine that information?

A. (MR. BEARCE) Yeah. And if you don't mind, I've got to read it, because the details of it are -- I'm not there every day.

So the demineralized tanks are interconnected to the common header. The demineralized pumps pump water

from the tanks to a common header, but the SPRINT and NOx water injection pumps take suction off the headers and go to the individual units, and they have their own set of filtration skids and piping that go to each separate unit. So from that point they are completely separate and independent, but they can -- yeah, I think that answers the question.

MS. GRABEL: I have no further questions.

CHMN STAFFORD: Thank you.

Now, up next we have, I believe, Sierra Club and WRA had witnesses to present jointly in a panel?

MR. WOOLSEY: Yes, Mr. Chairman. And after the -- after the hearing yesterday we conferred with our witness, Ms. Fogler, and she was able to reschedule some commitments so that she would be able to testify today. So we are prepared to proceed with Ms. Fogler on a panel with WRA's witness, as planned.

CHMN STAFFORD: Excellent.

MR. WOOLSEY: So, Mr. Chairman, Sierra Club calls Cara Fogler.

CHMN STAFFORD: All right. And would WRA like to call Dr. Routhier?

MS. DOERFLER: We would. Thank you.

CHMN STAFFORD: All right. Well, let's swear them in.

Dr. Routhier, would you prefer an oath or an affirmation?

DR. ROUTHIER: An affirmation, please.

(Alexander Routhier, Ph.D., was duly affirmed by the Chairman.)

CHMN STAFFORD: Your witness's name is not displaying in the frame.

MR. WOOLSEY: Mr. Chairman, you're referring to Ms. Fogler's name on the --

CHMN STAFFORD: Yes. Yes. It makes it easier if the name appears on the screen.

MR. WOOLSEY: So I can see -- I can see Ms. Fogler's name on my end on the screen, but maybe it's appearing differently to you all.

CHMN STAFFORD: It is, apparently.

All right. Well, Ms. Fogler, do you prefer an oath or affirmation?

MS. FOGLER: Affirmation, please.

(Cara Fogler was duly affirmed by the Chairman.)

CHMN STAFFORD: Mr. Woolsey, please begin.

MR. WOOLSEY: Thank you, Mr. Chairman.

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called as witnesses as a panel on behalf of Applicant,

CARA FOGLER,

having been previously affirmed or sworn by the Chairman to speak the truth and nothing but the truth, were examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. WOOLSEY:

Q. And, good morning, Ms. Fogler, or I guess afternoon to you.

Ms. Fogler, would you please state and spell your name?

A. (MS. FOGLER) My name is Cara Fogler, spelled C-a-r-a, last name Fogler, F-o-g-l-e-r.

Q. And would you please state your occupation and business address.

A. (MS. FOGLER) I'm a managing senior analyst at the Sierra Club. My business address is 50 F Street Northwest, 8th Floor, Washington, D.C. 20001.

Q. And would you please summarize your professional and educational background?

A. (MS. FOGLER) Sure. I am the senior analyst for Sierra Club's work assessing gas-fired power plants and their role in the electric sector. I have worked on electric sector and gas development issues for nearly a decade, with the focus on the climate, environmental,

economic, and equity impacts of gas generation resources, pipelines and, as needed, the infrastructure.

Prior to working at Sierra Club, I worked at Key-Log Economics as a co-owner and policy analyst. There I provided ecologic and economic analysis on gas pipeline development impacts for submission to the Federal Energy Regulatory Commission. I have a master's degree in public policy and leadership from the University of Virginia.

Q. And, Ms. Fogler, have you ever testified before this Committee before?

A. (MS. FOGLER) Yes, I have. I provided testimony in the Siting Committee proceedings for the expansion of SRP's gas-fired Coolidge Generating Station.

Q. Have you ever testified before other bodies?

A. (MS. FOGLER) Yes, I have. I've testified in Maricopa County Superior Court regarding the Coolidge Expansion Project, and I've also provided testimony in California Public Utility Commission dockets.

Q. Ms. Fogler, are you generally familiar with gas power plants, then, based on your work?

A. (MS. FOGLER) Yes. Through my work at Sierra Club, I'm deeply involved in issues related to gas power plants. I track the characteristics of all plant new gas capacity proposals in the U.S., including the technology

types. I also evaluate the existing gas power plant fleet to understand the breakdown of generator types and their services.

Q. And what is the purpose of your testimony here today?

A. (MS. FOGLER) In this testimony, I will discuss factual evidence pertaining to UNS's application for disclaimer of jurisdiction from the proposed expansion of Black Mountain Generating Station. My testimony reviews the physical configuration of the BMGS proposal, examples of similar situations at other plants, and how federal agencies classify generating facilities like BMGS.

MEMBER KRYDER: Mr. Chairman?

CHMN STAFFORD: Yes, Member Kryder.

MEMBER KRYDER: It may be my hearing aids but I'm having a great deal of difficulty hearing the witness, because her voice is garbled when it comes to me. I don't know if anyone else has a problem, but if she can do something to adjust that. The gentleman I can hear him quite distinctly, but I cannot -- I can get about one word out of three from the young lady.

Thank you, Mr. Chairman.

CHMN STAFFORD: Are you able to adjust your audio settings, Ms. Fogler?

MS. FOGLER: I can try talking more loudly.

Is that better, Commission Member?

MEMBER KRYDER: That is --

CHMN STAFFORD: Member Kryder?

MEMBER KRYDER: Yes.

CHMN STAFFORD: That sounds better to me.

MS. FOGLER: I will make sure I speak louder. Thank you for letting me know.

CHMN STAFFORD: Thank you.

BY MR. WOOLSEY:

Q. So, Ms. Fogler, what are your main conclusions in your testimony today?

A. (MS. FOGLER) I conclude that the four proposed new BMGS units are physically interconnected and would rely extensively on shared equipment and facilities. I conclude that the proposed units are not physically separate, but rather, make up a single integrated generating facility.

Q. And, Ms. Fogler, were you able to listen to the testimony of the Company witnesses yesterday and this morning?

A. (MS. FOGLER) Yes.

Q. Have you reviewed the Company's application for a disclaimer of jurisdiction for the proposed Black Mountain expansion, as well as the documents provided by the Company showing the planned configuration of the

proposed new units and the other elements of the plant?

A. (MS. FOGLER) Yes.

Q. So you've reviewed the site plan of the proposed Black Mountain units in Exhibit SC-3 and the list of shared equipment and facilities proposed for the project in Exhibit SC-2 and Exhibit UNSE-11, correct?

A. (MS. FOGLER) Correct.

Q. So based on your review of those site plans and equipment lists, you understand that the new generating turbines at Black Mountain would rely on 16 items of shared equipment and facilities, correct?

A. (MS. FOGLER) Yes. The four new turbines would share 16 items of equipment and facilities critical to operation, including 12 items shared among all four of the turbines, and four items shared among two turbines each.

Q. And what are those items of shared equipment that the Company identified?

A. (MS. FOGLER) The 12 items shared among all four turbines are the ammonia tank, the air cooler skid, the fuel gas coalescing skid, the station service transformer, the storage building, the raw water tank, the RO building, or reverse osmosis, the demineralized water tank, the air compressor, the raw water forwarding pump, the evaporation pond, and the well. And that's all

the language that was used specifically in the exhibit. The four items that were shared among two turbines are the LM6000 power control module, the chiller and cooling tower, the generator step-up transformer, and the power distribution center. I understand that the plant would have one generation tie line to serve the entire expansion project and one main gas pipeline to supply all of the turbines.

Q. And, Ms. Fogler, in your opinion, based on your review of the documents by the Company and what you heard of the Company witnesses' testimony, would most of those items of shared equipment be physically connected to two or more of the units?

A. (MS. FOGLER) Yes, that is my understanding.

Q. And given the shared equipment and connections that you've just described, would you characterize the four proposed new units at Black Mountain as physically separate?

A. (MS. FOGLER) No, I would not. In my opinion, the extensive shared equipment and facilities demonstrates that the four proposed new units would be interconnected and would effectively form a single integrated generating facility.

Q. So, Ms. Fogler, changing topics, you mentioned that you testified in the Siting Committee proceeding for

SRP's gas-fired Coolidge Expansion Project, correct?

A. (MS. FOGLER) Yes.

Q. And do you recall how many gas units the Commission ultimately approved for the Coolidge Expansion Project and roughly what their capacities were?

A. (MS. FOGLER) Yes, I believe the Commission ultimately approved 12 units each with a nameplate capacity of about 51 megawatts.

Q. So similar to Black Mountain, the Coolidge Expansion Project included multiple gas units that have individual nameplate capacities of less than a 100 megawatts, but collectively those units had a total generating capacity over 100 megawatts, correct?

A. (MS. FOGLER) Yes, that's correct.

Q. And SRP applied for a CEC for the Coolidge Expansion Project and the Commission ultimately issued a CEC for that project, correct?

A. (MS. FOGLER) Yes, the Commission issued a CEC for the Coolidge Expansion Project, that Decision was 79020.

MR. WOOLSEY: So, Mr. Chairman, Sierra Club provided an exhibit which included an excerpt of that Decision which has already been admitted into the record. But we'd like to move for the Committee to take official notice of Decision 79020 in full under Arizona

Administrative Code R14-31-09.

CHMN STAFFORD: We take administrative notice.

MR. WOOLSEY: Thank you.

Q. Ms. Fogler, aside from the Coolidge Expansion Project, are you aware of other examples where an Arizona utility has obtained a CEC for a project with multiple gas units that have individual nameplate capacities of less than 100 megawatts?

A. (MS. FOGLER) Yes, and some of these have been discussed earlier, but briefly covering these, to my knowledge, the Commission has issued CECs for the original Coolidge Generating Station, which was also 12 generating turbines that were 48 megawatts each, so 575 megawatts total. APS's Sundance Expansion Project, which was two generating units, each with a nameplate capacity of 45 megawatts, for 90 megawatts combined. And, of special note there, APS did apply for that CEC, even though the total capacity was under 100 megawatts. And there was also the original Sundance Generating Station, which was 10, 45-megawatt gas turbines for 450 megawatts of total capacity, and then TEP's Sundt Irvington RICE units, which we heard about yesterday and briefly again this morning.

And, lastly, I'll name Northern Arizona Energy's

2007 Northern Arizona Energy Project at the Griffith Plant, which included four gas turbines with nameplate ratings of about 45 megawatts each, with total capacity of 175 megawatts.

Q. And, Ms. -- Ms. Fogler, there's five Commission CEC Decisions that you just referenced, those are Decision Numbers 70636 for Coolidge; 79189 for Sundance; 63863 for the other Sundance project you mentioned; 76638 for the Sundt RICE units; and 70108 for the Northern Arizona Energy Project at Griffith, correct?

A. (MS. FOGLER) Correct.

MR. WOOLSEY: And, Mr. Chairman, similarly, we provided excerpts of those Decisions as exhibits that have been admitted, but we would -- we would similarly ask that the Committee take administrative notice of those Commission -- those five Commission Decisions in full.

CHMN STAFFORD: Yes, the Committee will take official or administrative notice of those five Commission Decisions that you mentioned.

MR. WOOLSEY: Thank you.

Q. So changing topics here, Ms. Fogler, are you familiar with the power plant data that utilities report to the U.S. Energy Information Administration and how the EIA classifies power plants?

A. (MS. FOGLER) Yes, I am.
Q. And have you reviewed the annual -- the form EIA-860s that UNS has filed with the EIA regarding the Black Mountain Generating Station, which were provided in Sierra Club Exhibits SC-9 and SC-10?
A. (MS. FOGLER) Yes, I have. I've reviewed Form EIA-860s that UNS filed with the EIA between 2018 and 2023 for BMGS.
Q. And in your understanding, under what circumstances must utilities submit a Form EIA-860 to the agency?
A. (MS. FOGLER) My understanding is that utilities must submit a Form EIA-860 for each of their electric power plants with one megawatt or greater of combined nameplate capacity.
Q. And would you explain how the U.S. EIA defines a power plant?
A. (MS. FOGLER) Yes. The EIA defines an electric power plant as a station containing prime movers, electric generators and auxiliary equipment for converting mechanical, chemical, and/or fission energy into electric energy.
Q. Based on the Company's testimony and discovery responses, is it your understanding that UNS plans to report all four of the proposed new generating turbines

at Black Mountain on one Form EIA-860?

A. (MS. FOGLER) Yes. UNS stated in its response to a discovery request that it plans to submit information for all four of the proposed new generating turbines on a single EIA-860 form.

Q. And you've reviewed the EIA's instructions for completing the Form EIA-860, which are provided for in Sierra Club Exhibit SC-14, correct?

A. (MS. FOGLER) Yes.

Q. Would you please turn to page 5 in -- in that exhibit, Sierra Club Exhibit SC-14, in those EIA instructions and read the first two sentences under "Schedule 2, power plant data"?

A. (MS. FOGLER) Yes, that reads, "Complete one section for each power plant. A plant can consist of a single generator or of multiple generators on a single location."

Q. So, Ms. Fogler, if UNS plans to report all of the new generators at BMGS on a single EIA-860 form using a single plant code, does that mean the Black Mountain expansion will be reported to the EIA as a single power plant, as the EIA uses that term?

A. (MS. FOGLER) Yes, it does. In the EIA-860 forms that UNS has historically submitted for BMGS, the two existing units have been given the same single plant

code, that's 56482 for their EIA plant code. If UNS does plan to report all of the new BMGS generators on a single form and if UNS plans to use a single plant code to report all Black Mountain units as it has done in the past, that means UNS will continue to report all Black Mountain units as a single plant.

Q. Ms. Fogler, are you aware of examples where power plant projects with multiple generating unit turbines similar to the proposed Black Mountain addition or expansion have been reported as separate plants to EIA instead of as a single plant?

A. (MS. FOGLER) So to look at that, I looked at the most recent EIA-860 full annual data, so this is data on all of the units in the U.S., the latest full available data is available for 2022. I looked specifically at all operable gas turbines that were not part of a combined cycle setup that burn natural gas as the primary fuel type. So that subset, that's the same type of subset as this specific proposal. That subset of the 2022 data for operable gas turbines is shown in the document marked as Sierra Club Exhibit SC-32.

I reviewed the plant codes which show if generators are labeled as their own plant or as part of the same plant. I did this for all of the generators in the subset that were in the same location, and I defined

the same location as sharing a latitude and longitude. I have not found any cases where the same owner owns multiple gas-burning gas turbines at the same location and reports those to EIA as separate plants. There is, in fact, only one example in the entire country where generators in this subset at the same location were labeled as different plants, and that was a case in Georgia, where the generators at the same location had different owners, which would create a clear reason for those to be described as separate plants.

Q. Ms. Fogler, are there examples of multi-turbine power plant projects similar to the proposed Black Mountain expansion that are reported as the same plant to the EIA?

A. (Ms FOGLER) There are many. So in all other cases, in the 2022 EIA data set that I reviewed, all operable gas turbines in the country that were not part of a combined cycle setup that burn natural gas as the primary fuel type at the same location like this proposal, were reported to EIA as a single plant.

One example of this is SRP's Coolidge Generating Station, which we've talked a bit about earlier. This plant is reported as 12 turbines, but together all 12 of those are categorized in EIA as a single plant. Similar to the BMGS proposal, each of those units are under

100 megawatts. Another example that we discussed earlier are the two existing units at the BMGS site, which are reported as a single plant to EIA. There are 12 other gas-fired plants in Arizona that have multiple turbines at the same location, which are all reported as a single plant in EIA-860 forms.

Q. So, Ms. Fogler, based on your work reviewing new gas plant proposals around the country, would you say that most new gas-fired power plants being built today are peaker plants?

A. (MS. FOGLER) Yes, most of the new gas plants that are currently proposed are peakers.

Q. And, Ms. Fogler, does this conclude your direct testimony?

A. (MS. FOGLER) Yes. Thank you.

MR. WOOLSEY: Thank you, Mr. Chairman. Those are all my questions for Ms. Fogler at the moment, and I would turn it over to WRA for the other part of the panel.

CHMN STAFFORD: Ms. Doerfler, do you have questions for Dr. Routhier?

MS. DOERFLER: I do. Thank you. Can everyone hear me okay or do I need to sit closer?

CHMN STAFFORD: You need to get closer to the microphone.

MS. DOERFLER: Okay. That's what I thought. We stole the mic from over there, so getting situated.

ALEXANDER ROUTHIER, Ph.D.,
having been previously affirmed or sworn by the Chairman to speak the truth and nothing but the truth, were examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MS. DOERFLER:

Q. Could you state your full name and business address for the record, Dr. Routhier?

A. (DR. ROUTHIER) Sure. And is the Committee able to hear me as well?

CHMN STAFFORD: I think you both need to get a little closer to the microphone.

DR. ROUTHIER: Okay. My name is Alexander Francis Routhier. I work at Western Resource Advocates, at 1429 North First Street, Suite 100, Phoenix, Arizona 85004.

BY MS. DOERFLER:

Q. And what is your title at WRA?

A. (DR. ROUTHIER) I am the Arizona Clean Energy manager and senior policy advisor.

Q. What is your professional and educational background?

A. (DR. ROUTHIER) I have a master's and Ph.D., both from Arizona State University, in electrical engineering, both focused in electric power systems. I've worked at WRA for about three years, where I interact with the utilities here in Arizona, mostly on planning and procurement, also have appeared at the Arizona Corporation Commission.

Before I was at WRA, during my time in grad school, I worked at Salt River Project as an advanced-degree intern, and during my time there, in 2019, when Salt River Project purchased the Coolidge Generating Station, I was the point person tasked with ensuring that the modeling data for Coolidge that was received from the existing owner, TransCanada, was validated properly. And when we found inconsistencies in their modeling data, worked with WECC, TransCanada, and Salt River Project, to make sure those inconsistencies were resolved.

Q. Which model of turbine does Coolidge Generating Station use?

A. (DR. ROUTHIER) It is a LM6000 turbine. A GE LM6000 turbine.

Q. Is that the same turbine that's in question

here?

A. (DR. ROUTHIER) Yes.

Q. Have you ever testified before this Committee?

A. (DR. ROUTHIER) I have. As Ms. Fogler said, I also had testified in the Coolidge Generating Station expansion, and also for the SunZia Line Siting hearing as well.

Q. How does your professional and educational background give you insight in this proceeding?

A. (DR. ROUTHIER) So my background and experience, education in engineering, gives me specific knowledge into technical details about building operation, utilization of these gas power plants, as well as specific understanding of technical language associated with -- with this process.

Q. What is the purpose of your testimony?

A. (DR. ROUTHIER) The purpose of my testimony is to talk about, as I just mentioned, some of that specific technical language that I think we are -- we are using common terms that we understand colloquially, but may not be using in a technically correct way. And so I want to make sure that we are using correct terms for correct things. And also talk about how -- the interconnectedness of these turbines -- or of these units.

Q. What conclusions have you reached in your study of this case?

A. (DR. ROUTHIER) It seems that through the testimony that's been given, the words "unit" and "generating unit" are being used interchangeably, and those things do not have the same meaning. And so the statute has the word "generating unit" in there, so making sure that we are using the correct term for generating unit. Also, these units are significantly connected and, yeah, I think that's it.

Q. Dr. Routhier -- I'll give you a chance to drink. I don't want to rush.

Dr. Routhier, have you reviewed UNSE's application or any alternative disclaimer of jurisdiction?

A. (DR. ROUTHIER) I have.

Q. Were you in attendance at the hearing yesterday and able to hear the statements made by UNSE and its attorneys?

A. (DR. ROUTHIER) I was, yes.

Q. And do you feel equipped to answer questions about the design and utilization of the proposed generation equipment at Black Mountain Generating Station?

A. (DR. ROUTHIER) I do.

Q. ARS 40-360.09 says, "A plant is defined as each separate thermal, nuclear, or hydroelectric generating unit with a nameplate rating of 100 megawatts." I know we've all heard this multiple times, I appreciate you hanging in there with me. So do you agree that under this definition, UNSE is proposing to build four different plants at Black Mountain Generating Station?

A. (DR. ROUTHIER) I do not.

Q. Why don't you agree with UNSE's assertion here?

A. (DR. ROUTHIER) I agree that they are planning to build four new units, but they are planning to build one generating unit. And that one generating unit is interconnected and the -- and the way that the statute is worded seems that one unit that's more than 100 megawatts, this generating unit would be a 200-megawatt generating unit.

Q. Dr. Routhier, let's break this down a little bit to get a better understanding of how you've reached your conclusion. A term of art is a reference to terminology with a meaning that is specific to a particular profession, art, science, technology, or other field.

Do you agree that the term "generating unit" is a term specifically relevant to the field of engineering?

A. (DR. ROUTHIER) Yes.

Q. So the dictionary definition of the term "unit,"

say, would not be the same as the term "generating unit" used in the context of electrical engineering?

A. (DR. ROUTHIER) Correct.

Q. Dr. Routhier, can I direct your attention and the Committee's attention to WRA-1? Can you briefly describe what WRA-1 is?

A. (DR. ROUTHIER) WRA Exhibit 1 is an IEEE Standard. It's the definitions for use and reporting electric generating unit reliability, availability, and productivity.

Q. And can you describe the purpose of the -- of the IEEE Standard definitions for use?

A. (DR. ROUTHIER) Sure.

So IEEE, the Institute for Electronics and Electrical Engineers, designs these standards through a working group process in order to provide common language and common understanding throughout the industry on a variety of topics.

Q. What is the Institute of Electrical and Electronic Engineers? And feel free to use the word "IEEE," because it is quite a mouthful to get out.

A. (DR. ROUTHIER) Sure. IEEE is the largest technical and professional organization in the world. They're made up of engineers, primarily of engineers, who work in a variety of different spaces. Electrical

engineering is a pretty expansive profession, but they maintain a robust collection of peer-reviewed journals, they put on annual conferences for a variety of topic-specific items. And one of the big things they do is they create these standards.

Q. Dr. Routhier --

A. (DR. ROUTHIER) I should -- sorry, I'll just clarify. They create and also maintain the standards. They're updated periodically.

Q. Dr. Routhier, can I direct you and the Committee to turn to the passage on page 19 that defines what a unit is, I believe it is 3.23.

MEMBER HILL: Can you just give us a second to get there?

MS. DOERFLER: Absolutely.

Q. Can you -- how is this definition of unit here relevant to this case?

A. (DR. ROUTHIER) So this is the definition of unit. And I think the words that we have been using so far we -- throughout what's been happening through the testimony yesterday we've been talking about "unit" and "generating unit" and I think both of those terms that are being used are specifically describing a unit, which you can read here.

Q. Alex, could you read the relevant passage,

please.

A. (DR. ROUTHIER) Sure.

"One or more generators, collectors, or other devices converting another form of energy to electrical energy, including but not limited to, any thermodynamic devices, such as boilers, reactors, reciprocating engines, or turbines performing an intermediate conversion to mechanical energy." And it goes on to say, "A unit is the lowest reportable entity for reliability indexes."

Q. In your professional and expert opinion, would you describe a plant as the lowest reportable entity for reliability indexes?

A. (DR. ROUTHIER) I would not.

Q. So the definition for "unit" and the definition for "plant" located in ARS 40-360.09 seem to be incongruent with one another?

A. (DR. ROUTHIER) I would agree. They are different things.

Q. On the next page, page 20, there is a list of examples, do any of these examples seem to fit the four units at Black Mountain Generating Station?

A. (DR. ROUTHIER) Yes, if you look at letter E it says a generator and combustion turbine.

MS. DOERFLER: Can I next direct you all to

page 13? So we're taking a slight step backwards. And we are looking at the first --

MS. HILL: I'm sorry.

MS. DOERFLER: Go ahead.

MS. HILL: Could you state the page number again?

MS. DOERFLER: Yes, page 13.

MS. HILL: Thank you.

MS. DOERFLER: And we are looking at the first paragraph here. Exhibit 1, WRA Exhibit 1.

DR. ROUTHIER: We just have one exhibit.

MS. DOERFLER: Yeah, it seems like it's more than one, but it is one large -- very large document.

Q. Can you please describe for me what this Committee should understand from the definition of the term "generating unit" here?

A. (DR. ROUTHIER) Sure. And I think this is where the difference is between "unit" and "generating unit," and in the first sentence here you'll notice that it specifically indicates that it includes the resource supply system up to the high-voltage terminals of the generator step-up transformer and the station service transformers.

Q. So how is a generating unit different from a

unit?

A. (DR. ROUTHIER) So a unit is, as I said before, just a combustion turbine and a generator, and here it's saying that a generating unit includes the station service transformers, the -- the fuel supply, as well as the generator step-up transformers and the equipment in between.

MS. DOERFLER: And one last foray for us all. Can we please turn to page 106. That's 106.

Q. The sentence that starts with "Historically individual unit performance," Alex, could you -- or, Dr. Routhier, could you read the sentence for the Committee?

A. (DR. ROUTHIER) Sure.

"Historically, individual unit performance indexes have been used to assess electric generating unit reliability, availability, and productivity."

Q. And how do the definitions of "unit" and "generating unit," how are those differences eliminated here?

A. (DR. ROUTHIER) I mean, if -- we have been using those terms interchangeably through this process, but I think if you're using those interchangeably here and you try and substitute just "unit" for "electric generating unit," this sentence doesn't make any sense. So it's

clear that there is a distinction between "unit" and "generating unit."

Q. So if Black Mountain Generating Station has four units, how many generating units does it have?

A. (DR. ROUTHIER) It has one generating unit.

Q. Is the term "generating unit" used in ARS 40-360.09?

A. (DR. ROUTHIER) Yes.

Q. Is the term "unit" used in 40-360.09 by itself?

A. (DR. ROUTHIER) Not without the word "generating" in front of it.

Q. So the definition of "generating unit" -- so using the definition of "generating unit," how would you describe a plant in Arizona?

A. (DR. ROUTHIER) A plant is a -- a thermal electric device capable of providing 100 megawatts or more, that includes everything from the supply system for fuel up to and including the high-voltage terminal of the generation -- of the step-up generator, as well as the auxiliary transformers in the -- and the equipment in between. Sorry, I think I just misspoke there. I think I said the high terminal of the step-up generator, I meant step-up transformer, I apologize.

Q. Dr. Routhier, UNSE cites an Administrative Code to define the term "generating unit." That definition

states that a generating unit is a specific device or set of devices that converts one form of energy, such as heat or solar energy, into electric energy, such as a turbine and generator or set of photovoltaic cells.

Are you familiar with Article 7 of the Administrative Code from which that definition is pulled?

A. (DR. ROUTHIER) Yes.

Q. Is there any part of Article 7 that discusses or even mentions the Line Siting Committee, ARS 40-360, or Certificates of Environmental Compatibility?

A. (DR. ROUTHIER) Not that I'm aware of.

Q. Does the definition of -- I didn't think I had pressed that, I guess I did. Apologies, hang on one second. Doing all sorts of things.

Does the statute's definition specify that a set of devices can only mean a generator and a turbine?

A. (DR. ROUTHIER) Not to my knowledge.

Q. Does the definition located in the Arizona Administrative Codes contradict the definition in the IEEE standards?

A. (DR. ROUTHIER) I don't believe so. I think they can exist together.

Q. But the IEEE standard -- or the IEEE standard could provide clarity in what the administrative code may represent or mean?

A. (DR. ROUTHIER) Yeah, I think it's a more complete definition.

MEMBER GOLD: Mr. Chairman?

CHMN STAFFORD: Yes, Member Gold.

MEMBER GOLD: Now I'm confused.

MEMBER KRYDER: Use your microphone.

CHMN STAFFORD: Microphone, Member Gold.

MEMBER GOLD: Now I'm confused. I'm reading 40-360.09 and it says, "Plant," and I'll go specific, "means generating unit with a nameplate rating." Generating units don't appear to have a nameplate rating, generators do.

MS. DOERFLER: If you would allow us to continue our question, I promise that we do actually address that point.

MEMBER GOLD: Thank you.

MS. DOERFLER: But I completely agree that it's very confusing, so I completely understand.

CHMN STAFFORD: Member Fontes, do you have a question?

MEMBER FONTES: I do. And as you get to it, I don't mean to interrupt, can you educate and inform if there's any power plants that you know constructed, natural gas, that do not follow IEEE standards that are operating in WECC under NERC standards?

DR. ROUTHIER: I don't know of any. I think, insurancewise, it would be a huge risk to operate outside of an IEEE Standard.

MEMBER FONTES: Thank you.

CHMN STAFFORD: Please proceed, Ms. Doerfler.

MS. DOERFLER: Thank you.

Q. Would you say the term "separate" is a term of art that has a specific meaning within the profession of electrical engineering?

A. (DR. ROUTHIER) No, I don't think so.

Q. Would you agree with the dictionary definition from Black's Law Dictionary, which provides that the term "separate" means individual, distinct, particular, or disconnected?

A. (DR. ROUTHIER) Yeah, I would agree with that.

Q. Would you describe the four new units, not generating unit, remember, units at Black Mountain as separate or otherwise individual, distinct, particular, or disconnected?

A. (DR. ROUTHIER) I would not. And I would say that if you look at, I believe it was Sierra Club's Exhibits 2 and 3, I believe Exhibit 3 is the schematic that was provided by UNSE of the plant, and you can see between the supply and the high-voltage terminal of the

step-up transformer there is quite a bit of shared equipment that we've talked about extensively. And one additional thing that I don't think we have mentioned, because it's not actually in the list, I don't think, on -- in Exhibit 2 is the cabling that is attaching the different units together within the generating unit. I would refer to that cabling as a bus, generally, and but that is a shared bus that then connects up to the two step-up transformers.

Q. So would you describe the generating unit at Black Mountain as separate from itself?

A. (DR. ROUTHIER) I don't think that's possible, no.

Q. Dr. Routhier, the definition of "nameplate rating" adopted by all parties in this case is, "The maximum rated output of a generator or other electric power production equipment under specific conditions designated by the manufacturer"; is that correct?

A. (DR. ROUTHIER) That is correct, yes.

Q. And in your expert professional opinion, what is an installed generator nameplate capacity?

A. (DR. ROUTHIER) I think it's what we have been talking about so far through this process, it's the -- the -- the plate that is physically attached to the generator and gives the maximum capabilities of the

generator. I think in the -- in the images that we've seen, they -- it is provided in kilovolt amperes or kVA and then it's been converted into megawatts.

Q. Can a piece of equipment or set of equipment have a nameplate rating even without a plaque stating its rating?

A. (DR. ROUTHIER) Yes.

Q. Can any other -- do any other kinds of equipment have generator nameplate ratings, otherwise known as "plaques," that are stamped upon them, beyond just the generator?

A. (DR. ROUTHIER) Sure. The way -- the way it's worded in the stipulation is that I believe, yes, that it -- yes, they can.

Q. Is a generator nameplate rating different than a generating unit nameplate rating?

A. (DR. ROUTHIER) Yes, with the generator nameplate capacity we're talking about one single piece of equipment, but if we're talking about the generating unit nameplate rating, we need to look at multiple pieces of equipment, to see what the nameplate rating is of the entire collection of devices that we're talking about.

Q. Can you explain further how that all works?

A. (DR. ROUTHIER) Sure.

So in this case, we have four units, and each

unit has a generator nameplate capacity of approximately 50 megawatts. But because there are four of them and they can all be operating at the same time, I would say the nameplate capacity for the plant would be 200 megawatts. If all four of those were operating simultaneously, the plant could output 200 megawatts.

Q. Is the nameplate rating of the proposed generating unit at Black Mountain Generating Station over 100 megawatts?

A. (DR. ROUTHIER) Yes.

MS. DOERFLER: That concludes my questions.

CHMN STAFFORD: I have a quick question. We've talked about the EIA reporting and they consider the nameplate capacity. What is it called -- and all those nameplates, it's the cumulative capacity of both the units there, the current ones, correct?

DR. ROUTHIER: I'm not as familiar with the EIA data, maybe Ms. Fogler could answer that question.

CHMN STAFFORD: Yes, Ms. Fogler --

MS. FOGLER: Yeah, I'm happy --

CHMN STAFFORD: What was -- what is it called -- they are tracking the -- the name -- it has a nameplate rating, but what do they refer to it as?

MS. FOGLER: They call it, in EIA-860, they call it "nameplate capacity." They also use the term

"nameplate capacity" when they're aggregating. So they'll aggregate at the plant level and say the nameplate capacity of these units at this plant. Here's now the nameplate capacity at the plant. They also actually aggregate much higher than that. They'll say, here's the nameplate capacity of all gas generation in the U.S. Here's the nameplate capacity of all combined cycles, so it is very common to add up the nameplate capacities of various units to a larger plant or even larger unit. And that is still called the nameplate capacity.

CHMN STAFFORD: Okay. So the EIA adds up the generator nameplates to come one up with the plant nameplate; is that correct?

MS. FOGLER: That is correct.

CHMN STAFFORD: Okay. All right. Thank you.

Now, do you have any questions from members or are the witnesses available for cross-examination?

MS. DOERFLER: If there are no questions from the Committee, we are open for cross-examination.

CHMN STAFFORD: All right. Ms. Grabel?

MR. WOOLSEY: And, likewise, for Sierra Club.

CHMN STAFFORD: Thank you.

MS. GRABEL: Thank you, Mr. Chairman. Because we didn't have the benefit of pre-filed PowerPoint presentations, we wondered if we could maybe take a short lunch break so we could kind of get our thoughts together before doing cross-examination?

CHMN STAFFORD: Okay. All right. So -- so we'll have -- what the rest of this proceeding will look like is we have cross-examination first by the applicant and then do AriSEIA, SWEEP, or Staff wish to cross-examine these -- this panel of witnesses?

MS. JOHNSON: AriSEIA will have a small number of questions. That number may increase, depending on the Company's amount of questions.

CHMN STAFFORD: And about how much -- how long of a cross-examination do you anticipate, Ms. Grabel?

MS. GRABEL: Well, it was pretty short before we heard what they just said, so I would say maybe 30 minutes, something like that.

CHMN STAFFORD: And do SWEEP and Staff have cross-examination questions for this panel?

MS. REYES: SWEEP does not anticipate any questions.

MS. EGAN: Staff probably has about 10 to 15.

CHMN STAFFORD: Okay. All right. Well, we are -- we've been going for approximately 90 minutes. It's time for the court reporter to get her break. I think we are ready for lunch. Let's take a recess until 1:30 and come back.

At that point we'll have the cross-examination of this panel by the applicant, and then followed by AriSEIA and Staff. At the conclusion of the cross-examination it will be -- the parties need to be ready to make their closings, oral arguments, addressing legal issues, and how the facts -- the facts that we've established how the law applies to the facts presented and the interpretation of the statute definition of the plant.

With that -- oh, anything further before we go into recess?

(No response.)

CHMN STAFFORD: Hearing nothing, we stand in recess. We'll be back at 1:30.

(Recessed from 12:28 p.m. until 1:33 p.m.)

CHMN STAFFORD: Let's go back on the record. We are about to start with the applicant's cross-examination of the Sierra Club and WRA panel.

Please proceed, Ms. Grabel.

MS. GRABEL: Thank you, Mr. Chairman.

Actually, Ms. Hill and I are going to tag-team this, and so Ms. Hill will first cross-examine the Sierra Club witness.

MS. HILL: Thank you, Mr. Chairman, Committee Members and so I'm going to apologize, because due to the unexpected nature of it going into a second day, I did not have a second set of contacts, so I'm wearing -- switching glasses on and off, so I can't actually see anything except for when it's right in front of me. And if I put my other glasses on, I wouldn't be able to see that. So forgive me if I appear to be looking dazed.

C R O S S - E X A M I N A T I O N

BY MS. HILL:

Q. And so I'm just going to direct my questions briefly to you, Ms. -- is it "Fogler," is that how you pronounce your last name?

A. (MS. FOGLER) Yes, that's correct.

Q. Okay. Thank you.

And so I'm going to ask you, could you, please, do you have Sierra Club Exhibit 10 in front of you or access to it?

A. (MS. FOGLER) Yup, I have it up.

Q. Okay. And also, could you -- do you have access

to UNSE Exhibit 16?

A. (MS. FOGLER) Yes, I'm there.

Q. Okay. Thank you.

All right. So I just want to talk just a brief bit. So your undergraduate major is foreign affairs with a minor in economics and global sustainability?

A. (MS. FOGLER) That's correct.

Q. And you have a master's in public policy; is that correct?

A. (MS. FOGLER) That's also correct.

Q. And in your undergraduate work you didn't take any electrical engineering courses?

A. (MS. FOGLER) I did not.

Q. And you have not ever worked as an operator at a power plant; is that correct?

A. (MS. FOGLER) That is correct.

Q. And you don't have any certifications related to the practical operations of a power plant, such as a power plant maintenance mechanic or a power plant maintenance electrician; is that correct?

A. (MS. FOGLER) That is correct.

Q. And you have physically inspected a GE LM6000 turbine how many times?

A. (MS. FOGLER) I have never done that.

Q. Okay. And you have worked on high-voltage

equipment in an industrial or commercial setting in terms of maintaining them to operate properly how many times?

A. (MS. FOGLER) I have never done that.

Q. And you have been in the control room of how many power plants?

A. (MS. FOGLER) I have never done that.

Q. So you testified quite a bit about definitions for -- that are in the EIA documents.

Do you recall that?

A. (MS. FOGLER) Yes.

Q. Okay. And so if you could take a look at UNSE-16 first.

A. (MS. FOGLER) I'm there.

Q. Okay. And so -- and this has been stipulated into admission for the record.

So do you agree that those two definitions that are in UNSE-16 are, in fact, the EIA definitions of "generating station" and "generating unit"?

A. (MS. FOGLER) Yes.

Q. Okay. And that EIA definition of generating station, is that a station that consists of electric generators and auxiliary equipment for converting mechanical, chemical, or nuclear energy into electric energy; is that correct?

A. (MS. FOGLER) Yes.

Q. And the -- the definition of generating unit is, "Any combination of physically connected generators, reactors, boilers, combustion turbines, and other prime movers operated together to produce electric power."

Do you agree that's correct?

A. (MS. FOGLER) That is what I'm reading as well.

Q. Okay. And so you believe these definitions, though, of the EIA, to be something that this Committee should rely on; is that correct?

A. (MS. FOGLER) I have presented information from EIA, so that the Committee has those facts.

Q. Okay. But you consider that to be a credible resource in terms of defining things; is that right?

A. (MS. FOGLER) Yes, I think EIA is a commonly used resource for definitions.

Q. Okay. And so these -- EIA also defines the term "plant"; isn't that correct?

A. (MS. FOGLER) Yes, the term of "plant" that I read during my testimony, is that what you're referring to?

Q. So -- well, I don't have it as an exhibit in front of me, could you -- could you please repeat the plant -- the definition of "plant" that you used during your testimony?

A. (MS. FOGLER) Yes. EIA defines an electric power

plant as, "A station containing prime movers, electric generators, and auxiliary equipment for converting mechanical, chemical, and/or fission energy into electric energy."

Q. Okay. And so that is an electric power plant; is that right?

A. (MS. FOGLER) Yes.

Q. Okay. And can you give me the page from which the -- from the EIA documents that you get that from?

A. (MS. FOGLER) This comes from the EIA glossary.

Q. Okay. And so since you have access to the EIA glossary, do you have access to the whole thing?

A. (MS. FOGLER) I am reading this from our prepared materials. I can get the website up, but I would rather not search new terms, if that's what you're hoping I will do. I have your exhibit that also has EIA glossary terms, I believe, so I have that.

Q. So you have -- you have UNSE-16, correct?

A. (MS. FOGLER) Yes.

Q. Okay. So -- but the EIA glossary also defines the actual word "plant," doesn't it?

A. (MS. FOGLER) I do not have that in front of me.

Q. Okay. So subject to check, then, are you saying -- well, let me just put it this way, are you saying that you cannot at this time agree that the EIA

glossary defines the term or the word "plant" as a term commonly used either as a synonym for an industrial establishment or a generating facility to -- or to refer to a particular process within an establishment?

MR. WOOLSEY: Mr. Chairman, I'm going to object. The witness has already stated that she doesn't have a copy of that definition in front of her.

CHMN STAFFORD: Do you -- do you have a copy of that that you can provide to the witness?

MS. HILL: Your Honor -- I'm sorry, Mr. Chairman, what I have is the EIA glossary, because this came up during the -- during her direct testimony. And so since she referred to an EIA glossary term, I just pulled up the glossary. I can easily give the website so that everyone can go to it, and then we can print it and file 25 copies, but because we couldn't e-file an exhibit over the lunch hour, it wasn't really possible.

CHMN STAFFORD: Okay. Can you read the definition of "plant" that you're referring to, please?

MS. HILL: I can.

So this comes from www.EIA.gov/tools/glossary/index.php?id=P. And this is a live website, and it says, "Plant: A term commonly used, either as a synonym for an industrial establishment or a generating facility or to refer to a particular process

within an establishment."

MR. WOOLSEY: Mr. Chairman, I would just like to object that Sierra Club did not make the entire glossary an exhibit, and neither has the Company. So this, you know, this is -- we're referring here to something that's not in evidence, and this is outside the scope of Ms. Fogler's testimony.

MS. HILL: I'm going to -- may I respond?

CHMN STAFFORD: Certainly, please.

MS. HILL: I think Ms. Fogler used the term "plant" regularly and also discussed a definition of "plant" in her testimony. And so this is not only appropriate cross-examination, but it is not even close to outside the scope of her testimony. And as a matter of fact, it's fairly common in these proceedings for Mr. Woolsey and all -- everyone, really, to say "Do you agree that this is here" and people can just say "I don't know."

CHMN STAFFORD: Yeah, I'm curious as to why the definition isn't included in UNSE-16. It's from the same source, correct?

MS. HILL: It is from the same source, we -- and the -- would you like me to provide a response to that or --

CHMN STAFFORD: Yes, please.

MS. HILL: Well, so Ms. Fogler's testimony, because she concentrated so much on EIA definitions and talked about plant in EIA, you know, cross-examination sometimes it's things that you didn't anticipate when you were putting together your initial exhibits, and frankly, my next question points out that the term "plant" as used by EIA is different than the definition of "plant" in ARS 40-360.09. And so that's the purpose of that.

And, you know, as you know, Mr. Chairman, and all of us here, sometimes on cross-examination, things come up that you didn't anticipate when you were putting your direct examination exhibits together.

CHMN STAFFORD: That is true. But, again, the definition of "plant" isn't in the exhibits currently admitted?

MS. HILL: That's correct.

CHMN STAFFORD: I guess the remedy is you've asked her what the definition of "plant" is, and she doesn't have the definition.

MS. HILL: That's correct.

CHMN STAFFORD: It's not an exhibit, so I guess she -- her answer to the question is she doesn't have it. It's not in the record, so --

MS. HILL: Her answer is she doesn't know.

CHMN STAFFORD: Okay. Then please proceed.

MS. HILL: I will move on.

Q. Okay. So can you please turn to Sierra Club Exhibit 10.

A. (MS. FOGLER) Yes, I'm there.

Q. All right. And so when you look at Sierra Club Exhibit 10, and I believe we've looked at this before, do you recall having a conversation with the Chairman during your testimony about what Sierra Club Exhibit 10 is?

A. (MS. FOGLER) I do not recall myself having a conversation with the Chairman about Sierra Club Exhibit 10 during my testimony.

Q. All right. Well, let me just give you a little bit of a better question, then. These are, in fact, EIA-860 forms, correct?

A. (MS. FOGLER) Correct.

Q. And they're the EIA-860 forms for Black Mountain?

A. (MS. FOGLER) Correct.

Q. And they're the EIA-860 forms for -- from 2018 through 2023, correct?

MR. WOOLSEY: I'm going to object that that -- I'm sorry, I'll withdraw that.

Go ahead, please answer.

MS. FOGLER: This is the form that was submitted to us as a response to some of our discovery.

I believe Sierra Club Exhibit 10 is only 2023, and Sierra Club Exhibit 9 includes other years.

BY MS. HILL:

Q. Oh, you are correct about that. So just let's take a look at Sierra Club Exhibit 10, because that is the one that you have up in front of you.

Okay. Do you agree that this is, then, the EIA-860 form for 2023 for Black Mountain?

A. (MS. FOGLER) This is the EIA-860 form for 2023 that UNS provided us as their submission.

Q. Okay. And let's just turn to, it's the third page of the exhibit, it's labeled as page 14 of 73 for the form.

Do you see that?

A. (MS. FOGLER) I do.

Q. And there are two columns on that, correct?

A. (MS. FOGLER) Correct.

Q. And could you please explain to the Committee what -- what the column on the left shows?

A. (MS. FOGLER) The column on the left is demonstrating information for the first generator at the plant, the column on the right is showing information for the second generator, these are both labeled under EIA Plant Code 56482 as part of a single plant.

Q. Okay. Correct. And that single plant, then, is

where it says "EIA Plant Code," right, that would be "plant" as EIA defines it; is that right?

A. (MS. FOGLER) This would be a plant as EIA defines it. EIA-860 is for electric power plants, so I believe they're using the shorthand "plant" for their definition of "electric power plant," given that those other responders to this form.

Q. Okay. Thank you.

And you said you believe they're using shorthand "plant" as an electric power plant shorthand; is that what you said?

A. (MS. FOGLER) The shorthand for -- yes, their definition of an electric power plant in the instructions. They also layout further definition of power plant, which is aligned with their electric power plant definition for this specific form. That's another exhibit that Sierra Club has submitted.

Q. Yes. And could you please, just for everyone's recollection, refresh that exhibit number?

A. (MS. FOGLER) Yes. That is Exhibit SC-14.

Q. Okay. Thank you.

But you -- it is your belief that the use of the term "plant" on this form refers back to the plant that you talk about in Exhibit -- the definition of electric power plant that you read about in Exhibit 14, correct?

A. (MS. FOGLER) I believe that those are aligned, yes.

Q. Okay. So I don't think that quite answers my question, but I'll take that. And then just to be very clear, that definition of "electric power plant" in EIA Sierra Club Exhibit 14, that doesn't refer to ARS 360.09 anywhere -- ARS 40-360.09 anywhere, does it?

A. (MS. FOGLER) It does not.

Q. And nowhere in the Arizona Revised Statutes does it refer back to the EIA definition of "plant"?

A. (MS. FOGLER) It does not.

MS. HILL: Okay. Thank you. No further questions.

Q. Oh, I'm sorry -- I'm sorry, I guess there is one further question. Thank you. My -- my technical expert pointed out to me, I'm very sorry.

So, Ms. Fogler, if you could take a look at Sierra Club Exhibit 10, again.

A. (MS. FOGLER) I'm there.

Q. Okay. And if you could take a look at, again, just page 14 of 73 or the third page of the exhibit.

A. (MS. FOGLER) I'm there.

Q. Okay. Look at question 3.

Do you see that?

A. (MS. FOGLER) I do.

Q. Okay. And if you go, in question 3, if you go down and you see the instructions there?

A. (MS. FOGLER) Yes, I see them.

Q. Okay. And do you see at the very bottom where it says, "Leave blank if this generator does not operate as a single unit with another generator."

Do you see that?

A. (MS. FOGLER) I do.

Q. Okay. And that -- that was left blank, wasn't it?

A. (MS. FOGLER) It appears that was left blank.

MS. HILL: Okay. Thank you. Now I have no further questions.

MS. FOGLER: I have one more further answer to that, which is that I believe the purpose of this is for combined-cycle units, so multi-generator unit is when there are two things that work together, just common and combined cycle. That's often how EIA uses this term, but yes, it is blank here, which would make sense for a simple-cycle turbine.

CHMN STAFFORD: And, Ms. Grabel, you had no other questions?

MS. GRABEL: I have no questions for Ms. Fogler. I do have questions for Mr. Routhier.

CHMN STAFFORD: Okay.

MS. GRABEL: Thank you.

C R O S S - E X A M I N A T I O N

BY MS. GRABEL:

Q. Good afternoon, Mr. Routhier.

A. (DR. ROUTHIER) Good afternoon.

Q. I have before me a copy of a dissertation that you provided in partial fulfillment of the requirements for the degree of doctor of philosophy. It's entitled "Technical and Policy Barriers to Terawatt Scale Implementation of Solar Photovoltaics."

Is that the title of your dissertation?

A. (DR. ROUTHIER) Yes.

Q. And that was in pursuit of a doctorate in philosophy?

A. (DR. ROUTHIER) Yes, my Ph.D. in electrical engineering.

Q. Thank you.

And you wrote this in May of 2022, correct?

A. (DR. ROUTHIER) That's when it was finalized. It was written substantially before this, but yes, that's when the final draft was submitted.

Q. Thank you.

How many papers on engineering or operations of natural gas thermal power plants have you published in

peer review journals?

A. (DR. ROUTHIER) None.

Q. And how many certifications -- do you have any practical operations of a power plant, such as a power plant maintenance mechanic, power plant maintenance electrician, or a power plant operator?

A. (DR. ROUTHIER) I do not.

Q. And you have not worked on any GE LM6000 turbines, have you?

A. (DR. ROUTHIER) I've worked on modeling data specifically related to LM6000s, but not physically on a LM6000.

Q. And you don't have any experience actually physically working with high-voltage equipment either, correct?

A. (DR. ROUTHIER) That's correct.

Q. And you have not operated any thermal power plants, correct?

A. (DR. ROUTHIER) I have not physically operated them, no.

Q. Okay. Thank you.

And I'd like to turn to the IEEE. The IEEE -- it's a new acronym to me -- document. So that's in WRA-1.

A. (DR. ROUTHIER) Okay.

Q. And, specifically, I'd like to focus your attention on page 16 --
A. (DR. ROUTHIER) Okay.
Q. -- which are the definitions.
A. (DR. ROUTHIER) Sure. Just give me one moment, please.
Q. All right.
A. (DR. ROUTHIER) Okay.
Q. And you would agree, would you not, that in these definitions when the IEEE defines a term, it does so by capitalizing the first letter, correct?
A. (DR. ROUTHIER) Generally, but in this case it seems that they have specifically pulled out "generating unit" and used that in a way that means something different than "unit." So --
Q. Well, is the phrase --
A. (DR. ROUTHIER) The word -- the word "generating" is not capitalized in here, if that's what you're asking.
Q. Is the term "generating unit" contained anywhere within the diction- -- within the definition section of this IEEE manual?
A. (DR. ROUTHIER) Within the definition section?
Q. Correct.
A. (DR. ROUTHIER) No, I don't believe it is.
Q. And the introduction actually anticipates that

for the purposes of this document, the following terms and definitions apply for general terms in the document; is that correct?

A. (DR. ROUTHIER) That sounds correct, yes.

Q. And looking at what you referenced earlier in the scope, which I believe is copied, if I can find it.

A. (DR. ROUTHIER) I believe it's page 13.

Q. Page 13, correct. The term "generating" is not actually capitalized at all, is it, correct?

A. (DR. ROUTHIER) That's correct.

Q. It's only a "unit" that is capitalized.

A. (DR. ROUTHIER) Correct.

Q. And that is because "unit" is a defined term, correct?

A. (DR. ROUTHIER) Correct. But as I pointed out in my testimony, the way that it's used, they use both terms in the same sentence in the document and if you interchange one of those terms from the other, it wouldn't make sense, so it's clear that they mean different things by the two different terms.

Q. You agree, do you not, that a turbine and generator is a unit?

A. (DR. ROUTHIER) A turbine and a generator is a unit.

Q. And the unit generates electricity, correct?

A. (DR. ROUTHIER) The generator generates electricity.

Q. You disagree that a turbine and generator together generate electricity?

A. (DR. ROUTHIER) That is one way to generate electricity, yes.

Q. Thank you.

The word "plant" is defined by the IEEE document, correct?

A. (DR. ROUTHIER) Yes, I believe so, towards the back.

Q. Yes, it's defined on page 19. Will you please read that definition into the record?

A. (DR. ROUTHIER) Sorry, just give me one moment. Under Section 3.18 it says, "An energy generating facility consists of one or more units."

Q. And that definition is different than the definition of "plant" contained in Arizona Revised Statutes 40-360.09, correct?

A. (DR. ROUTHIER) Yes, I agree.

Q. And if you can turn, and this is -- it's not a numbered page, but it's the third page of this document, so if you look at, the title page is number 1, then flip the second page is number 2, and there's a third page that starts at the top with the heading, "Translations."

A. (DR. ROUTHIER) The third page I see has "Abstract" at the top.

Q. Well, I'm actually looking at the physical page, so -- if you can turn to the page that says "Translations" at the top.

A. (DR. ROUTHIER) Oh, I see. I found it.

Q. You see that?

A. (DR. ROUTHIER) Yeah.

Q. And if you'll actually jump down to the bottom, where it says "Laws and regulations."

A. (DR. ROUTHIER) Okay.

Q. Will you please read into the record the last sentence of that paragraph?

A. "Users of IEEE" --

Q. No, excuse me, Mr. Routhier, the last sentence, not the whole paragraph.

A. (DR. ROUTHIER) Oh, I apologize.

Q. Sure.

A. (DR. ROUTHIER) Let me just make sure I'm getting the right sentence. "IEEE does not, by the publication of this standard, intend to urge action that is not in compliance with applicable laws, and these documents may not be construed as doing so."

Q. So IEEE does not intend for its definitions to construe applicable laws, correct?

A. (DR. ROUTHIER) Correct.
Q. Are you aware that UNSE's Electric 2023 -- UNSE Electric's 2023 Integrated Resource Plan calls for the construction of 350 megawatts of solar and wind resources?
A. (DR. ROUTHIER) Yes.
Q. Are you also aware that UNS Electric's 2023 Integrated Resource Plans calls for the construction of 225 megawatts of energy storage resources?
A. (DR. ROUTHIER) Yes.
Q. And are you aware that none of these nonthermal resource -- or excuse me -- none of these nonthermal resources require a CEC prior to construction?
A. (DR. ROUTHIER) Yes, I'm aware of that.
Q. And do you object to the fact that these resources will be constructed without having been subject to CEC proceedings?
MS. DOERFLER: Objection; I just don't think this is relevant to this proceeding, which is specifically concerning whether a CEC is to be granted to a plant that -- and what that definition of "plant" is.
CHMN STAFFORD: Yeah, sustained. Sustained. The issue before us is does the Black Mountain Generating Station, the existing unit and the proposed unit today, require a CEC, not whether other

things, not including the statute, should or should not include a -- require a CEC.

MS. GRABEL: Well, I would respond that these parties have made a big deal about the fact that we are not providing transparency or public outreach, et cetera, associated with the construction of a plant, and that would apply equally to a nonthermal plant.

CHMN STAFFORD: Well, we can all agree that the definition of "plant" doesn't include solar facilities.

MS. GRABEL: Okay.

CHMN STAFFORD: Whether it should or not is an issue for a different day.

MS. GRABEL: I won't force the issue.

MEMBER FONTES: Mr. Chairman?

CHMN STAFFORD: Yes, Member Fontes.

MEMBER FONTES: I'm also wondering if the -- when was the statute passed, what year?

CHMN STAFFORD: 1971.

MEMBER FONTES: Shouldn't we be using the 1971 version of the IEEE to continue this cross-examination? Because that was the appropriate reference that I would think --

MS. GRABEL: Member Fontes, there was not an IEEE existing in 1971. It didn't come about until

1980.

MEMBER FONTES: Okay. And just for clarity, and this power plant is going to be built in this decade, right? So this IEEE standard would be the one that would be based on this specification?

CHMN STAFFORD: Right. Well, the IEEE standard, I think, is -- it could be informative about what the Arizona Statute is, but it's not dispositive of it. The Arizona Statute stands alone as its definition for the jurisdiction of this Committee and the Commission over siting plants. Whether that definition is the same or different than what the E -- is it IEEE -- does, I don't think it's -- it's not completely relevant.

I guess they are used -- we should view the State definition in light of the IEEE, but we are not obligated or bound to do so. It's -- they're suggestions, I would say, based on their arguments, but they are two -- two entirely different things.

MEMBER FONTES: Thank you.

MEMBER RICHINS: So, Mr. Chairman, are we suggesting that the IEEE definitions can inform our decision, but they're not the stand-alone reason for what we decide?

CHMN STAFFORD: (No audible response.)

MEMBER RICHINS: Okay. Thank you.

CHMN STAFFORD: Yes, I mean, it's persuasive authority, not binding authority. It's, oh, this is happening over here, we should -- that should color how we look at this. It's not, oh, this is what the Arizona Statute means, because they -- obviously, the Arizona Statute was passed long before this came about.

MS. GRABEL: Mr. Chairman, I would suggest it's not persuasive authority either. It's perhaps providing context for how it's used in certain situations, but it certainly has no binding legal precedent in Arizona.

CHMN STAFFORD: It's -- that's what I mean by "persuasive." It's, oh, yeah, you should look at it in this light based on these people's definition over here, somehow that's applicable to this situation where we are here today. That's a decision the Committee will have to weigh, and decide whether that influences their decision or not, but I guess it's not --

MEMBER LITTLE: Mr. Chairman?

CHMN STAFFORD: -- it's not -- we're not bound to that.

Is that Member Little?

MEMBER LITTLE: Mr. Chairman?

CHMN STAFFORD: Yes, Member Little.

MEMBER LITTLE: I would beg to differ about

when the IEEE was established, because I was a member of the IEEE as an undergraduate, and it was prior to 1971.

DR. ROUTHIER: The IEEE standard that we're talking about, Standard 762 was created in 1980. It was then updated in 1987. In 2006 it was --

(Cross-talk.)

MEMBER LITTLE: Okay. My apologies --

DR. ROUTHIER: -- it was reaffirmed in --

THE REPORTER: Hold on.

CHMN STAFFORD: One at a time.

DR. ROUTHIER: It was this Standard 76 --

(Cross-talk.)

MEMBER LITTLE: My apologies, I thought you were --

CHMN STAFFORD: Thank you, Member Little, so I think we've cleared that up. The standard we're talking about was established in 1980, correct, Ms. Grabel?

MS. GRABEL: Correct, yes.

MEMBER LITTLE: Got it.

CHMN STAFFORD: Member Little's point is that the entity existed prior to 1980. That seems to be the disconnect we were having here.

DR. ROUTHIER: That's correct.

CHMN STAFFORD: Ms. Johnson?

MS. JOHNSON: Chairman, yes, I'd like to object to counsel for UNSE's continued use of the word "precedent," and they have continued to use it incorrectly. And I think we agreed yesterday that it is an inappropriate usage. And I would ask them to please stop using it. Thank you.

CHMN STAFFORD: I don't recall "precedent" being used. I remember --

MS. GRABEL: Plant.

CHMN STAFFORD: -- "plant" and "persuasive," but I don't remember -- right, we all agree that, you know, technically, Commission Decisions are not precedential.

MS. HILL: We agree there's no STAR indecisives.

CHMN STAFFORD: Right. Right. Please proceed.

MS. GRABEL: That's all the cross-examination the Company has, your Honor -- I mean, Mr. Chairman.

CHMN STAFFORD: All right. Thank you.

Now, AriSEIA, you're up next.

MS. JOHNSON: Yup. Thank you, Chairman, Members, I do have a few brief questions for Mr. Routhier -- Dr. Routhier, excuse me.

C R O S S - E X A M I N A T I O N.

BY MS. JOHNSON:

Q. Dr. Routhier, you were in attendance for all of the witnesses in this matter; is that correct?

A. (DR. ROUTHIER) Yes.

Q. And are you the only engineer to testify in this entire proceeding?

A. (DR. ROUTHIER) I believe so.

Q. Are you the only witness to testify in this entire proceeding that has a Ph.D.?

A. (DR. ROUTHIER) To my knowledge, yes.

Q. Is it required to obtain a Ph.D. to write a dissertation?

A. (DR. ROUTHIER) I -- I don't know. Sorry, I don't know.

Q. Is that typically what is required to obtain a Ph.D.?

A. (DR. ROUTHIER) It is one of the requirements to obtain a Ph.D., yes.

Q. And to write a dissertation, you have to choose a topic; is that correct?

A. (DR. ROUTHIER) Correct.

Q. And the topic that you choose to write your dissertation does not, then, preclude you from working in any other areas as an engineer after you write such

dissertation, is it?

A. (DR. ROUTHIER) Correct.

Q. And is the dissertation one of many components to obtain a degree of a Ph.D.?

A. (DR. ROUTHIER) Yes.

Q. Did you also have to complete coursework in electrical engineering in your Ph.D. program?

A. (DR. ROUTHIER) I did. And as a matter of fact, I took utility law as part of my classes, and Ms. Grabel was my professor for that course.

CHMN STAFFORD: It appears you've come full circle now.

BY MS. JOHNSON:

Q. All right. I'll move on.

So, in your professional opinion, as the only engineer in this proceeding, are the units at Black Mountain Generating Station separate?

A. (DR. ROUTHIER) They are not.

Q. And is Black Mountain Generating Station one generating unit?

A. (DR. ROUTHIER) Yes.

Q. And is the nameplate rating for the generating unit, with the addition of the new expansion units and the existing units, in excess of 100 megawatts?

A. (DR. ROUTHIER) Yes.

MS. JOHNSON: Thank you. That's all.
CHMN STAFFORD: Commission Staff?
MS. EGAN: Thank you, Mr. Chairman.
Can you hear me?
CHMN STAFFORD: Yes, we can.
MS. EGAN: Okay.

C R O S S - E X A M I N A T I O N

BY MS. EGAN:

Q. Ms. Fogler, can you hear me?
A. (MS. FOGLER) Yes, I can.
Q. My name's Samantha Egan, and I'm with the Commission Staff.
How are you today?
A. (MS. FOGLER) I'm good. How are you?
Q. Great. Thanks for asking. Thanks for your time. Just a few questions.
So it seems today we are discussing what the word "separate" means in the context of the statute, or excuse me, the -- yes, the statute in question. What does that word mean to you? How would you define it?
MR. WOOLSEY: I would object to the extent that that's calling for a legal conclusion, because the question references the statute.
MS. EGAN: Okay.

CHMN STAFFORD: Wait, let me understand the question. The -- you're asking the witness what she considers to be a generating unit; is that what the question is?

MS. EGAN: No, Mr. Chairman. I'm just asking what she believes the word "separate" means.

CHMN STAFFORD: I guess that's not really a factual question. That would be part of the legal argument that her attorney would make as to what factual components we've established, the configuration of the plants would lead to the conclusion, the legal conclusion, that they're separate or not, because that is really kind of the crux of the issue that we're -- of the statute that the legal argument will address.

MS. HILL: Mr. Chairman, may the -- may the applicant weigh in on -- and respond to the objection?

CHMN STAFFORD: Certainly.

MS. HILL: The applicant has presented Ms. Fogler as an expert to testify -- I'm sorry, not the applicant, thank you, sorry. I'm going to blame it on the glasses versus the contacts and my vanity for not being willing to wear bifocals. But the -- Sierra Club has presented Ms. Fogler as an expert, and she has plainly offered an opinion that these are not separate plants, and the factors that went into that. So I'm

going to respectfully say that I think that she's already answered the question about what -- that these are not separate plants, and that was allowed. And to the extent that Ms. Egan's question is an expansion of that, I disagree with Mr. Woolsey's characterization.

CHMN STAFFORD: What was your question again, Ms. Egan?

MS. EGAN: Mr. Chair, my question was how she defines the word "separate." If I may elaborate. I've heard it appear that there -- where she's used "separate" and then not or is integrate- -- is an integrated system interchangeably. So I was just wondering if "separate" is integrated to her. Are those synonymous? Is that what she defines as not separate?

CHMN STAFFORD: So if you're asking is the word -- does she consider "separate" and "integrated" to be synonymous?

MS. EGAN: Correct. I'm just trying to understand how she's determined they are not separate. What is separate?

CHMN STAFFORD: Okay. Answer the question, please.

MS. FOGLER: Yeah, so I think when I talk about separate or not separate, being not separate is because you are integrated or you are connected in some

way, making you non-separate, that is how I'm thinking about separate. If you are connected, you are not separate.

BY MS. EGAN:

Q. Thank you.

A. (MS. FOGLER) "Integrated" is another word for "connected."

Q. Okay. So connected is the opposite of separate?

A. (MS. FOGLER) I'm not sure in a specific -- if that's the best opposite word, but in this case, I'm -- I would say if something is connected, it is not separate. I don't know that I would say that those are the exact opposites, but I do think that it works as a defining characteristic.

Q. Thank you.

If the units didn't share or weren't connected to certain facilities within the overall facility, would you consider them to be separate?

MR. WOOLSEY: Could Ms. Egan perhaps clarify what -- what facilities she's referring to?

MS. EGAN: Sure.

I think we've heard testimony that the units share certain facilities, for instance, the cooling or the evaporating area, so I think Sierra Club has made the point that because they are connected to those shared

facilities, that they are overall connected to one another.

Q. So my question being, if they weren't connected to those shared facilities, would you, in your professional opinion, consider them to be connected or integrated?

A. (MS. FOGLER) Thank you for the clarification.

And I do think that this is a very important question, because if each unit had all of its own individual equipment that was not connected to anything else, that would be a separate unit. However, that is not what has been presented here. There are multitudes of connections between all of the units, which makes them not separate.

Does that answer your question?

Q. It does. Thank you.

Do you think that there would be a greater impact to the environment if each unit had their own separate facilities?

A. (MS. FOGLER) This is a bit beyond my testimony that I gave here, but in general, and again, it depends on a number of characteristics, so I guess, honestly, I don't know that I can say specifically, because it would depend on so many different characteristics of how that was built.

Q. Dr. Routhier, do you have an opinion?
A. (DR. ROUTHIER) I think Mr. Bearce, it was yesterday, answered a similar question, and his response was that without the full technical schematics and details of their plant, build it's impossible to know that, and I would agree with his evaluation. It's -- it's impossible to know the impact of whether -- whether it's more environmentally impactful to have it connected or disconnected without seeing full detailed engineering drawings and schematics. There are too many assumptions that would go into that decision.
Q. So your opinion is if each of the units have their own facility, cooling, evaporating, all of the other ones mentioned, that there wouldn't be a larger impact to the surrounding land?
A. (DR. ROUTHIER) I'm saying I can't make that distinction without more detailed information than what was provided in the application.
Q. Thank you.
Mrs. Fogler, what harm, if any, do you see, if any, if the disclaimer is granted?
A. (MS. FOGLER) I think that this is getting beyond my testimony and others have spoken to this, but I did not provide testimony on the specific harms that would be granted if the disclaimer or what would occur if the

disclaimer were granted. I think others are probably more suited, maybe not on this panel, but in the room, to speak about that.

Q. Do you have an opinion of the potential for excluding smaller megawatt plans?

A. (MS. FOGLER) I also did not provide testimony on that, and do not have an opinion to share now.

Q. Okay. Dr. Routhier, do you have one?

A. (DR. ROUTHIER) Similar to Ms. Fogler, I don't think my testimony was on this topic, and so I do not have an opinion.

Q. Thank you.

Not to belabor the point, we did mention that IEEE guideline or definition already, the statute did have two revisions in 2001 and 2003, I believe.

Dr. Routhier, do you believe that that would afford an opportunity to site to that definition if it was intended that it be used?

A. (DR. ROUTHIER) I don't know how the legal statute revision process works, so I'm not sure I can answer that question.

MS. EGAN: Okay. Thank you, Mr Chair. No further questions.

CHMN STAFFORD: All right. Sierra Club and WRA, any redirect?

MR. WOOLSEY: Yes, Mr. Chairman, I do have a few redirect questions for Ms. Fogler.

CHMN STAFFORD: Please proceed.

R E D I R E C T E X A M I N A T I O N

BY MR. WOOLSEY:

Q. Ms. Fogler, would you please talk a bit more about how you've analyzed gas-fired power plants through your work at Sierra Club, and the types of knowledge that you've acquired about gas-fired power plants?

A. (MS. FOGLER) Sure. I'd be happy to.

So I've been focused on tracking, evaluating, and analyzing gas power plants for years now. In my current role, I track every single plant gas unit in the U.S. Also track which of those units are part of a plant and which is a single unit at a single plant. I do this through reviews of major -- major data sources that track this information, along with our own internal review of public information, like IRPs and other planning documents, to supplement with the latest information that sometimes isn't in those public sources. I also analyze the different plans based on their differing technology types and create estimates of how they will be used in terms of how much they will generate, their water use, their emissions, et cetera.

I do that based on historical use of similar plants, so looking at how did CT plants operate in the past? What does that mean for proposed plants in the future? I also look at the functions that gas plants would provide and compare those functions. Functions like their capacity value, their generation, and various reliability services to other types of generation.

Q. Can an entire power plant have a nameplate capacity?

A. (MS. FOGLER) Yes, it absolutely can. You simply add up the nameplate ratings to the units to get the plant capacity. This is common practice as multi-unit plants aren't the norm in many places.

Q. Does the EIA add up nameplate capacities from various units and also label that as nameplate capacity?

A. (MS. FOGLER) Yes. EIA does this at the plant level and they do this even up to creating summaries for the total nameplate capacity available by technology type or by fuel type.

Q. And the EIA definition of "electric power plant" that you referenced during your testimony and that the Company asked you about, that's from the EIA's glossary, correct?

A. (MS. FOGLER) Yes.

Q. And that definition of "electric power plant"

from the EIA glossary is provided as Sierra Club Exhibit 25, correct?

A. (MS. FOGLER) That's correct.

MR. WOOLSEY: Thank you. I have no further questions for Ms. Fogler.

CHMN STAFFORD: Ms. Doerfler, any redirect?

MS. DOERFLER: Thank you. Yes, I have just a few, I promise.

R E D I R E C T E X A M I N A T I O N

BY MS. DOERFLER:

Q. Dr. Routhier, I'm going to direct you to UNS-16, which is the EIA definition of "generating unit." That definition reads, "A combination of physically connected generators, reactors, boilers, combustion" --

THE REPORTER: Okay. I'm sorry, you have to slow down.

MS. DOERFLER: Sorry, I will slow down. I'll start over again.

Q. -- which is the EIA definition of "generating unit." That definition reads, "The combination of physically connected generators, reactors, boilers, combustion turbines, and other prime movers that operate together."

Is that -- is that definition at odds with the

definition presented in the IEEE standard?

A. (DR. ROUTHIER) No, I don't believe so.

Q. Can you describe why these definitions are not at odds?

A. (DR. ROUTHIER) In the -- in the definition you read, sorry, I don't have the definition here in front of me to look at, but based on what you just read to me, all of the things that you -- all of the physical components you said were plural, and it talked about them being physically connected. These -- these four units are connected through a common bus and through step-up transformers that make them physically connected. If there was a fault on the bus that connects these units to the transformer, none of the four units could operate. They are not separate.

If -- if there is a fault in one of the transformers, even if the other transformer is -- is still functional, it would severely limit the operation of the turbines that are being operated if only one step-up is -- is -- if only one step-up transformer is -- is in service, you cannot operate all four of them. If there is a fault on the bus, you cannot operate any of the units.

And so to -- to say that these are not connected and that their -- their operation is not inter-related to

each other I think is just a factual inaccuracy.

Q. So can a generating unit be separate even under this definition?

A. (DR. ROUTHIER) No.

Q. Dr. Routhier, do you feel you need to write papers on a topic to be educated on it?

A. (DR. ROUTHIER) No.

Q. Do you feel you need to physically operate or handle a turbine or any other piece of equipment to understand how it works?

A. (DR. ROUTHIER) No.

Q. This is a bit of an odd one, but stay with me here, is the term "smartphone" the same as the term "phone"?

A. (DR. ROUTHIER) No.

Q. What if the term "smart" wasn't capitalized?

A. (DR. ROUTHIER) I think it would still be different.

Q. Would -- okay. You just answered my last question. So he beat me to it.

That is all. Thank you.

CHMN STAFFORD: Thank you. I think we have finally concluded the factual portion of this hearing and are prepared to move on to closing arguments, oral arguments on the application for disclaimer of

jurisdiction.

Do any of the -- yeah, do any of the members have any questions, factual questions, before we proceed to the legal argument?

Member Gold?

MEMBER GOLD: I have a question, if I can direct it -- if I can direct it to Ms. Scott.

CHMN STAFFORD: Wait, Staff didn't have any witnesses. When Ms. Scott presents her oral argument on the statute, you can ask her questions about --

MEMBER GOLD: Understood.

CHMN STAFFORD: -- but right now this is -- we're closing the factual portion of the record and now moving on to the legal argument section.

Do all the parties understand? Do you have a question?

MEMBER RICHINS: I just have one.

CHMN STAFFORD: Okay.

MEMBER RICHINS: I, Ms. Doerfler -- Emily.

DR. ROUTHIER: Doerfler.

MEMBER RICHINS: Thank you.

Earlier in your presentation, you talked about what effect the lack of a proceeding for a CEC might have on archaeological resources. And are you familiar with the site with which -- where this plant is

proposed or where this generating facility is proposed?

MS. DOERFLER: Can you clarify by what you mean by "familiar with the site"? Are you talking about the area or --

MEMBER RICHINS: The actual property where the generating facility will be constructed. So the construction site.

MS. DOERFLER: Sure.

MEMBER RICHINS: Not the surrounding desert, but the construction site, specifically.

MS. DOERFLER: Sure. I'm aware of its general location, but I've never physically walked on the grounds, so to speak.

MEMBER RICHINS: Have you seen an aerial photo?

MS. DOERFLER: Yes.

MEMBER RICHINS: Okay. So what I wanted to understand is your view on -- if we're lacking something here in this proceeding about that, what kind of scrutiny should be placed on an already-disturbed site? Because by an aerial photograph you can see that it appears to be a lay-down yard, would that be correct? What -- what would we be missing if we didn't scrutinize where that construction was to take place?

MS. DOERFLER: I mean, to be fair, I'm not

an archaeologist, so I'm not entirely certain what could be disturbed or left alone or have already been disturbed and, therefore, you know, doesn't really need to be -- have any concern around it.

I would say that my concerns go beyond the build-out of -- or just the expansion of plants. If a plant is a generating unit under 100 megawatts, and this Committee adopts the interpretation that single units count as plants, then -- or doesn't count as a plant, then, feasibly, a new generating station could be built with a single or with multiple units and still not count.

I may have gotten that slightly wrong. But I would say that my concern is more breaking new ground than it is about ground that has already been disturbed. I do get your point.

MEMBER RICHINS: Okay. Yeah, I just wanted to make sure.

You also made a factually incorrect statement about the Native American tribes. I just want to make sure it gets corrected for the record. You said 22 Native American tribes here in Arizona have been here for 12,000 years. That is factually incorrect. There's migration periods that have happened. They have not all been here for 12,000 years. I just want to make sure that gets corrected.

MS. DOERFLER: That is fair. I apologize.

MEMBER RICHINS: The -- no, that's all I have. Thank you.

CHMN STAFFORD: Thank you. All right. Ms. Grabel or Ms. Hill, who will be delivering your oral argument?

MS. GRABEL: I will, Mr. Chair.

CHMN STAFFORD: Please proceed.

MS. GRABEL: All right. Thank you. I do have a PowerPoint presentation, if we could put that up on the screen.

All right. Thank you. So we've heard the facts over the past day and a half and now it's time to talk about the law. So we'll start with the basics. Who needs to file for a CEC? The answer is found in the Statute 40-360.03, and that is every utility planning to construct a plant, that's the relevant portion for this proceeding. So the next question is, what is a plant? The statute tells us, again, in relevant part, "A plant means each separate thermal, electric, nuclear, or hydroelectric generating unit with a nameplate rating of 100 megawatts or more." The law also has rules about how to construe a statute. They are as follows: First, when interpreting statutes, we begin with the text, what does it actually say? A cardinal principle of statutory

interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.

Second, we are unambiguous, which means patently clear. We apply the express terms of a constitutional or statutory provision without resorting to secondary methods of construction. Further, and again, we give meaning to each word, phrase, and clause and sentence, so that no part will be void, inert, redundant, or trivial. Every word has to have meaning, and to effectuate that clause, courts look to dictionary definitions.

So let's take the word -- let's look at the word "each." "Each," according to the American Heritage Dictionary, means one or two of more considered individually. Let's look at the word "separate." Again, according to the American Heritage Dictionary, "separate" means not touching or adjoined, detached, considered as an independent entity. Let's look at the term "generating unit." Here, "generating unit" in the singular, not the plural, is defined by Corporation Commission regulations as a device or set of devices that convert one form of energy into electricity, such as, and it specifically states, "a turbine and generator." These are the facilities actually involved in the conversion of

energy to electricity.

I was a participant in the proceedings underlying these resource planning rules, as were many utilities, solar advocates, energy efficiency advocates, and several other Arizona Corporation Commission stakeholders. So although these rules were enacted after the Siting Act, it represents the Arizona Energy Industries' consensus as to the meaning of the term "generating unit." How is "nameplate rating" defined? This is undisputed. It is the maximum output associated with a single unit, as displayed on the nameplate that is physically affixed to the generator.

So looking at all of these words in context, the legislature could not have been more clear in its intent to focus on the individual rating at an individual unit, and not the capacity of the entire generating station. A generating unit has a nameplate. A generating station as a whole does not. If the legislature had wanted to aggregate the cumulative capacity of the individual ratings, they could have done so; other states have.

For example, Iowa; Iowa requires a permit to construct, quote, a facility. A facility means, in relevant part, "Any electric power generating plant or combination of plants at a single site owned by any

person with a total capacity of 25 megawatts of electricity or more." This is the kind of language used when the intent is to look at the total cumulative capacity of all generating units at a site. Arizona did not use such language.

Let's take another example, Minnesota; Minnesota requires a permit before constructing, quote, a large energy facility. Large energy facility means "Any electric power-generating plant or combination of plants at a single site, with a combined capacity of 50,000 kilowatts or more." Again, when the legislature intends that the trigger for a permit requirement be achieved by combining the total capacity of all units at a site, they say so. Arizona chose not to do that.

Federal law gives another contrasting example. In the Federal Power Act, the U.S. Congress decided to exempt certain power production facilities from permitting and regulatory requirements when they fall below a certain threshold. To be exempt, the utility must demonstrate, among other things, that its power production capacity, which together with any other facilities located at the same site, does not exceed 80 megawatts. These jurisdictions use words that make it patently clear that the capacity of all of the units on the site be combined to determine whether the capacity

threshold has been met. They use words like "combined," "combination," "together with other facilities," "with a total capacity," et cetera. Arizona did not.

Instead, the Arizona legislature did exactly the opposite and used words that require us to focus on the individual unit, exclusive of others, "each," "separate," "generating unit," in the singular, "with a nameplate capacity," referring to a plate that is physically affixed to that single unit. The legislature's intention to focus the examination on the capacity of that single generating unit couldn't be more clear.

So let's apply the claim to the facts. The first undisputed fact is that the nameplate is a physical object attached to a generating unit that sets the maximum output. It will never go higher. What is on the nameplate is the nameplate rating of that unit. We saw these pictures previously. The nameplates on the existing BMGS Unit 2. These are exemplar of what will be on the new unit. As stipulated, they are physically affixed to each generator, and we went through the math, the nameplate rating of each is 61 megawatts, less than 100 megawatts, and that's what it's anticipated to be on the new units.

Indeed, that's another undisputed fact, the

nameplate rating for each new generator will be less than 100 megawatts. No one disagrees. The layout of the new generating units at the site is also undisputed, as is the nature of the components of the units, which are individual to the generating unit, and which are anticipated to be shared.

We heard testimony that in a single-cycle natural gas plant, electricity is produced by using a turbine to drive an electricity generator. Each of the four units will have its own turbine and its own generator. Each has its own monitor, its own set of controls, its own auxiliary skids, containing instrumentation needed to run that singular unit. Each will have its exhaust stack and emissions monitoring equipment, and each will have its own set of switch gear and cable to deliver the energy produced by that unit to the grid. There is no dispute that the units will be individually dispatched and do not depend on one another to generate electricity. They are run separately and they will, like the existing two units, deliver electricity to the grid at different times and in different amounts.

They will share certain facilities, such as the evaporation pond, water tanks, and cooling tower, because it is economically sensible to do so. Those

shared facilities do not render the units any less separate. They do not physically adjoin the units in any way, and the use of the shared equipment does not make one unit dependent upon the other. Each unit continues to exist as an independent producer of power. We could build separate shared -- separate supporting facilities for each unit, but it's better to take advantage of economies of scale and save ratepayers money.

The argument that the shared equipment turns four units into one unit is as disingenuous as saying that two cars housed in the same garage, washed with the same hose, fueled at the same gas station, and serviced by the same mechanic, are no longer separate cars, even though they can be driven at different times and at different speeds.

Simply put, the four generating units operate independently of one another, notwithstanding the use of shared facilities, and remain technically and operationally distinct. Legally, the statute provides a clear way to determine whether a generating unit is separate. Does it have its own nameplate? The undisputed answer here is yes.

UNSE's interpretation also adheres to the Corporation Commission's definition of "generating unit," which focuses on the devices that convert one form of

energy into electric energy, and specifically uses the turbine and generator as an example of such a set of devices. The shared equipment is not involved in the conversion process. The cooling towers, for example, are not required to generate electricity and are only used seasonally. Their purpose is to make the units run more efficiently, but they are not actually involved in the conversion process itself. Neither is the generation tie line that brings the electricity to the grid, nor the evaporation pond that collects the byproduct from the generation process. These facilities are needed for the unit to comply with regulatory requirements and transmit electricity to the grid, certainly, but they are not devices that convert one form of energy into electric energy, like the turbine and generator are. They are simply not part of the generating unit.

The intervenors' interpretation of the generating unit refers to the total capacity of the generating station is not only inconsistent with the Corporation Commission's regulation, but it renders the reference to the, quote, nameplate rating entirely meaningless. The statute is unambiguous in this regard. Ironically, intervenors have no problem with this definition, to the extent it exempts nonthermal generation, such as solar projects, from having to go

through the CEC process.

As this Committee knows well, most of the generation being built today is solar or storage or some combination of both. Of the resource needs identified in UNSE's most recent IRP, 575 megawatts of the 775 megawatts are expected to be met with solar and energy storage. We don't hear any protest about the lack of process, oversight, transparency, or regulatory review that will be attending these nonthermal projects, which clearly have an environmental impact. Look at the land use they have.

It is only when UNSE seeks to apply the plain meaning of the statute to natural gas generation that they protest. Their position is, respectfully, hypocritical. The plain language of the statute is clear and it should be applied appropriately. Solar projects do not require a CEC, but neither do thermal generating units with a nameplate capacity of under 100 megawatts, which will be the case of the four proposed units at Black Mountain. If there is a concern about this exemption in today's energy environment, the solution lies with the legislature.

I'd now like to provide an initial response to the intervenors' arguments, but would reserve the right to rebut any new arguments that they make later.

First, the intervenors characterize our interpretation as novel or unprecedented. But there are no binding precedents on this issue at the Commission or in any court for that matter. This is simply a legal issue of first impression, which is why we filed this application to begin with. Voluntary filings made by utilities inconsistent with this application do not change the plain language of the statute. And although we're not going to use it as precedent, I'll use the chairman's language, there have been instances in the past, such as with the Black Mountain units, that the units have been constructed without a CEC. And that is as much of a precedent as the ones that have been built with a CEC.

The intervenors argue that common facilities make the units not separate, therefore, requiring the aggregation of capacity. As I've said previously, the statute provides a clear answer to determine how a unit is separate. Does it have a nameplate? Each of the four generating units will have a separate nameplate of under 100 megawatts; that's a stipulated fact. The overall generation station does not have a nameplate. This alone undermines their arguments.

Moreover, as we saw, jurisdictions that combine the capacity of individual units have specific statutory language to require that outcome: Iowa,

Minnesota, FERC. Arizona does not. It focuses on the individual unit using four words, all of which are defined with the word "individual," each separate generating unit, in the singular, with a nameplate rating that's physically attached to the plant.

The Corporation Commission rules define "generating unit" as a device or set of devices that convert one form of energy into another, such as a generator and turbine. Shared facilities are not involved in that process and, therefore, are not part of the unit. I think it's clear that each existing and new generating unit will operate independently. They are physically detached and do not rely on one another to generate electricity. And, again, sharing common facilities does not change each separate unit into one combined unit. It's just sound economic practice.

One intervenor argues that "Single-cycle combustion turbines are the only kind of plant anyone is building today so that granting a company's request for disclaimer would render the entire statute void." That is simply false. Combined-cycle plants -- or single-cycle combustion turbines are not the only type of plant being built today. Most plants being built are solar, wind, and energy storage. And those who construct them rely on the definition of "plant" to deny

jurisdiction. When enacted, nuclear, coal, oil, and combined-cycle gas were all possibilities, and the fact that some are no longer economical does not render the statute itself void.

Moreover, this statement is based on gross speculation. There is no evidence that larger combined-cycle natural gas plants will not be required to be constructed in the future. In fact, we heard Mr. Bryner specifically testify that if a larger base load plant is what is needed to fit the Company's resource needs, that is what will be built, and the Company will seek a CEC to do so. As a practical matter, too, some combustion turbines are larger than 100 megawatts. That was established during the hearing, so the statute would clearly apply to them as well.

AriSEIA also argues that under the Federal Public Utilities Regulatory Policies Act, any facilities within one mile of each other are presumed to be the same site for the purposes of the 80-megawatt threshold. However, ARS 40-360.09, does not incorporate the PURPA definition. It is legally irrelevant. Moreover, the Arizona legislature could not have had PURPA on its mind, since PURPA was enacted seven years after the Siting Act. The one-mile rule is expressly in the definition of a PURPA-qualifying facility and is, therefore, more similar

to the aggregating statutes that I referred to earlier from Iowa and Minnesota. Arizona, by contrast, did not include aggregating in the definition. There simply is no one-mile rule in Arizona.

Finally, the intervenors point to the legislative history underpinning the Siting Act as evidence that the legislature intended that the 100-megawatt trigger be applied to the entire generation station and not the individual units. I've reproduced on the screen the declaration of policy. I put the whole thing on there so you could read it. It simply does not say that that was what was intended. What it does say is that the legislature recognized the need to construct, "major new facilities," to meet a growing need for electricity, and that impacted stakeholders should have the ability to participate to locate the "major facility at a specific site," and thus, declare a purpose to provide a single forum before this Committee here to resolve matters concerning the location of a generating plant.

Importantly, the legislature also then defined the plant that it determined to be a major new facility. And that definition is, "Each separate thermal electric generating unit with a nameplate rating of 100 megawatts or more." Nothing in this declaration of

policy undermines UNSE's interpretation of the statute. To the contrary, it supports it. The definition of "plant" never changed as the bill passed to the House and the Senate. Other things did, there was some back and forth. The definition of "plant" never did. This was a widely supported package deal, which utilities supported as well.

We firmly believe that the Corporation Commission Staff got it right in this matter. The 100-megawatt threshold struck a balance between the environmental impact and electric reliability. And that balance was the intent of the legislature, and is exactly what was written in the statute. However, as a legal matter, the purpose of a statute is only considered if the statute is unambiguous. This is the law, when the statute's plain language is clear, will not resort to other methods of statutory interpretation, such as the context of the statute, its historic background, its effects and consequences, and the spirt and purpose of the law.

Again, we're unambiguous. We apply the express terms of the Constitutional or statutory provision without resorting to secondary methods of construction. We give meaning to each word, phrase, clause, and sentence. And, finally, it is a basic

principle that courts will not read into the statute something which is not within the manifest intention of the legislature, as indicated by the statute itself. A court will not inflate, expand, stretch, or extend a statute to matters not falling within its express provisions.

The intervenors' arguments violate each and every law of statutory construction. First, there is no ambiguity in the statute. Each separate generating unit with a nameplate rating. The intention to look at each individual unit could not be more clear, especially when juxtaposed against those jurisdictions that do require aggregation. Their interpretation reads the phrase "nameplate rating" right out of the statute, which is legally impermissible, and shows that their interpretation was not what the legislature intended.

Their interpretation inflates the statute to achieve a policy objective, which is siting units with a cumulative rating of 100 megawatts or more. But that's not what the statute requires. The law requires us to apply the statute's plain meaning, and if a change should be made for policy reasons, that fix is with the legislature.

The intervenors make a lot of policy arguments. They suggest that Arizona will be overrun

with new gas plants for small nuclear reactors without regulatory oversight. However, as we've discussed, new gas plants are subject to other things, like air permits and zoning. They don't fully escape regulatory oversight. And that's probably even more true for nuclear reactors, which could include NRC regulations. Public service corporations file Integrated Resource Plans and issue All-Source RFPs for resources, even when a CEC is not needed. The Arizona Corporation Commission is, thus, still very much involved in a public resource corporation's resource planning decisions.

If a plant requires a CEC, UNS is going to seek one. We don't -- we come before you guys all the time. I think we're before you, like, 12 times in the next two years. We're not afraid of getting a CEC, if we need to. Public service corporations will not build a series of small units if the resource needs did not require it. Subject to prudency review in future rate proceedings, it's simply not worth the risk of disallowance to build something that doesn't fit the specific needs simply to avoid getting a CEC.

And, again, even assuming the intervenors are correct that the current language is inadequate, the remedy is with the legislature. These policy arguments, by law, cannot override the statutory definition.

So, in conclusion, Arizona Revised Statute 40-360.09 defines "plant" to mean, "Each separate thermal electric generating unit with a nameplate rating of 100 megawatts or more." The Commission's resource planning rules define a generating unit as a specific device or set of devices that converts one form of energy, such as heat or solar energy, into electric energy, such as a turbine and generator. Each new generating set, the turbine and generator, is a separate generating unit pursuant to the Commission's resource planning rules. And each, it is undisputed, will have a nameplate rating of less than 100 megawatts.

The shared use of facilities does not make these generating units any less separate, are not involved in the energy conversion process, and are, therefore, not part of the generating unit. They do not physically connect the generating units or cause them to operationally rely on one another to generate electricity. And it violates basic rules of statutory construction to interpret the word "separate" in a manner that renders the reference to the nameplate capacity of the generating unit meaningless.

Because each new unit will have a nameplate rating below 100 megawatts, it is not a plant, as defined by the Siting Act, and does not require a CEC prior to

construction. Thank you very much.

CHMN STAFFORD: I have a question for you, Ms. Grabel. So based on your interpretation of the statute, if someone wanted to build a thousand megawatts of small modular reactors and each small modular reactor was 50 megawatts nameplate capacity, they could build that in a residential neighborhood and not have to go through the CEC process? And that's -- it's a yes-or-no question. It's not -- I know they have other processes they have to follow, but under your interpretation of the statute, it would be possible to build a thousand megawatts of new nuclear, small modular reactors, 50 megawatts or less, without going through the CEC process?

MS. GRABEL: Thank you, Mr. Chairman, I had the same reaction you did when this question came before me, and looking at this from a legal perspective, the answer is yes.

CHMN STAFFORD: All right. Thank you.

Any questions from members?

MEMBER GOLD: Mr. Chairman?

CHMN STAFFORD: Member Gold.

MEMBER GOLD: Mr. Chairman, question for Ms. Grabel. Personally, I think gas plants are necessary, and I have no objection to your gas plants, but you did bring up something about specific written law

taking it as it is written. And I'm not sure if this is pertinent, so I would like a clarification of this. ARS 40-360.03, and I'm going to quote from Ms. Scott's document, Exhibit S-1, "Small plants," plural, with "nameplate ratings," plural, "less than 100 megawatts are exempt."

"Ratings" that implies more than one nameplate. Nameplate ratings. You have four nameplates, and the ratings, if you add them together, do exceed 100 megawatts. So I am not sure of the interpretation of the law and, as a lawyer, would you interpret that for me, please?

MS. GRABEL: Yes. Thank you, Mr. Chairman, Member Gold.

I can't tell you what Staff intended to mean when it wrote its letter, and I'm sure Ms. Scott will answer for you, but my reading of the statute is you look at the nameplate rating on an individual generating unit, and that's one unit. There are four units being built, each have a nameplate rating of under 100 megawatts, and therefore, they are not required to come before the Committee to receive a CEC before construction.

MEMBER GOLD: And I understood that. So now I'm going to have to direct my question to Ms. Scott.

CHMN STAFFORD: If you can wait until she gives her closing, then you can question her. Now's the time to question the applicant on its position.

MEMBER GOLD: Yes, Mr. Chairman.

CHMN STAFFORD: Thank you. Any other questions from members to Ms. Grabel?

(No response.)

CHMN STAFFORD: All right. Moving on. Sierra Club, you are next. Please present your oral argument.

MR. SHRINATH: Can you hear me, Mr. Chairman?

CHMN STAFFORD: Yes, we can.

MR. SHRINATH: Good afternoon, Mr. Chairman and Committee members. This is Nihal Shrinath on behalf of Sierra Club.

The Committee should deny UNS's application for a disclaimer of jurisdiction for the proposed expansion at Black Mountain Generating Station for three independent reasons, each of which shows that four 50-megawatt gas-fired turbines for a single expansion amount to a 200-megawatt plant, in exceedance of the 100-megawatt threshold, requiring a Certificate of Environmental Compatibility, or CEC.

First, the units cannot be considered

separate generating units under the plain meaning of the Arizona Line Siting Statute. Second, the units must be part of the same plant, based on industry, Commission, and other standard uses of "plant." Third, the units should not be regulated as separate plants, based on Commission precedent and Power Siting precedent nationwide.

Turning to the first writing, interconnected turbines are not separate generating units under the plain meaning of the Arizona Line Siting Statute. ARS 40-360.03 requires that, quote-unquote, plants obtain a CEC. And ARS 40-360.09 defines "plant" as, "Each separate thermal electric generating unit with a nameplate rating of 100 megawatts or more."

To understand what "separate" means, Arizona courts instruct us to look to the plain meaning. State v. Slaten [phonetic] says, we look first to the plain language of the statute, then to its context in history. State v. Taylor finds that in order to determine that ordinary meaning, we may refer to established and widely used dictionaries. We do not consider dictionary definitions in isolation, as State v. Gray finds, because context gives meaning.

So to illustrate the plain meaning of "separate," we apply a dictionary definition to the

context of thermal generating units. And in this case, the four proposed units at BMGS. Black's Law Dictionary defines separate as individual, distinct, particular, disconnected. Stepping through, the proposed BMGS units are not distinct, they're part of a group of four. And the proposed units are certainly not disconnected. As was shown yesterday and today, the four generators and turbines are interconnected, not disconnected, through multiple systems of pipes and wires, including generation tie lines, power lines, wires, water pipes, and gas pipelines, all housed at the same site. By this definition, the BMGS units cannot be interpreted to be separate.

UNS points to a different definition of separate, but is equally unhelpful. The American Heritage Dictionary defines "separate" as not touching or adjoined, detached," and "existing or considered as an independent entity," applying this definition does UNS no favors. The four proposed units are adjoined, as you saw in diagrams this morning, by connections to various shared equipment. And the units are certainly not detached. In fact, the proposed generators and turbines are attached by at least 16 different connections, as you also saw this morning and yesterday. As far as being considered as an independent entity, the proposed units

are actually each dependent on a set of facilities that they share with the other units.

Testimony from Mr. Bryner, Mr. Bearce, Ms. Fogler, and Dr. Routhier, documents produced in discovery, and the filed stipulation of facts all confirm that the four new units would rely extensively on shared facilities. This is undisputed. For example, all four turbines would rely on the same water pumps, air compressors, evaporation pond, and cooling towers.

UNS's external representations regarding the existing units at BMGS also illustrate a lack of independence. The BMGS units are covered under one Arizona air permit, one federal EIA form, one description to UNS's IRP, and one fuel purchase contract. Commission Decision 70186 and 71914 also do not treat the units as independent, referring to BMGS as a single plant or facility.

In asserting that the BMGS units are independent and, therefore, separate, UNS attempts to conflate "individual" with "independent." But such a conflation is improper. A solar farm may include 2,000 individual solar panels, which can each be turned on and off. That does not mean each of the 2,000 solar panels are independent, nor does it mean the solar farm with 2,000 solar panels is, in fact, 2,000 solar farms.

Assessing the plain meaning of "separate" within the context of gas-fired power generation leads to a common sense conclusion. The proposed BMGS units are not separate units, but instead, part of one plant -- or one larger thermal generating unit. UNS has tried to convince the Committee today that since the Line Siting Statute equates "plant" with a separate generating unit, in the singular, that the statute is then inapplicable to four units. This ignores the simple fact that multiple units can make up a larger generation unit.

In fact, the Commission's own regulations define generation -- "generating unit" as, "Any combination of physically connected generators, reactors, boilers, combustion turbines, and other prime movers operated together to produce electric power." It does not say one generator, one prime mover, and ancillary equipment specific to them, it says many.

UNS further attempts to distract from the plain meaning of the Line Siting Statute by equating "turbine generator sets" with "plant." The language of the statute plainly contradicts that interpretation. Under the statute, only separate thermal generating units are plants. Multiple units that are part of a larger generating unit that are integrated, connected, and rely on shared equipment are not separate generating units,

and would not be considered separate plants by any reasonable person, whether a layperson or an engineer.

Moving from the plain language to the legislative history, Arizona courts, like in State v. Reginald instruct us to look at legislative intent to further instruct -- to further illustrate the meaning of statutory language. Arizona courts use declarations of policy from bills as evidence of legislative intent, like in State v. Hussein. For the Line Siting Statute, the legislature's declaration of policy is conclusive. It recognized that construction of, quote-unquote, major new facilities for electric generation has adverse environmental impacts, and found it, quote, essential in the public interest to minimize any adverse effect upon the environment, which such new facilities might cause.

The legislature then declared that the purpose of the Line Siting Statute is to, quote, provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding. With that context, the 100-megawatt threshold in the statute's definition of "plant" serves as a proxy for, quote-unquote, major new facilities, which are, of course, likely to have greater environmental impacts than the smaller new facilities.

The legislature's use of "major new facility" makes it clear that the purpose of the Line Siting Statute was to evaluate the environmental impacts of the entire major new facilities, not just the impacts of individual components within those facilities, as UNS claims. This makes sense, since the focus of the statute was environmental impacts, which are necessarily contiguous and cumulative, rather than particular to one turbine or generator.

And as we heard yesterday and today from the Committee members themselves, the CEC process serves a unique process for public notice, stakeholder engagement, and environmental justice considerations by providing a single proceeding, as envisioned by the legislature. This process does not exist anywhere else. Viewed through this lens, BMGS's proposed new units are together a major new facility exceeding 100 megawatts. UNS should have to apply for a CEC, based on the new facility's -- the new facility's capacity, not some individual component's capacity.

As the last point on statutory interpretation, Arizona courts instruct us to avoid interpretations that lead to absurd outcomes. UNS's interpretation will lead to such outcomes. If an applicant can evade CEC review by characterizing a major

generation project as a collection of individual projects, each under the CEC threshold, it would defeat the legislative intent to evaluate environmental impacts of major new facilities in a single proceeding.

Under UNS's interpretation, no CEC would ever be required for any thermal power plant, as long as each individual turbine had a nameplate rating of less than 100 megawatts. This is particularly concerning in the age of peakers. Certain consequences would follow. Where a new power plant, one 100-megawatt turbine would be subject to CEC review, while a new 500-megawatt power plant with 10, 50-megawatt turbines would get no CEC review at all. Such consequences would jeopardize the Siting Committee's ability to review nearly all new gas peaking plants.

Turning to argument two, industry definitions, better reporting, Commission text, and state air permitting all indicate that multiple units built as part of a single build are part of one plant, as defined in the Line Siting Statute. Industry definitions illustrate the plain common sense meaning of "plant." The U.S. Energy Information Administration, or the EIA, supplies two helpful definitions: EIA defines an electric power plant as a station containing prime movers, electric generators, and auxiliary equipment for

converting mechanical, chemical, and/or fission energy into electric energy. The word "station" is illustrative here. UNS attempts to create a distinction between "station" and "plant," but industry terms of art treat them as one and the same. This definition also makes clear the plant is comprised of various interconnected parts, including multiple electric generators and prime movers.

EIA has another definition of "power production plant," which is all the land and land rights, structures, and improvements, boiler reactor vessel equipment, engines, and engine-driven generators, turbo generator units, accessory electric equipment, and miscellaneous power plant equipment that are grouped together for each individual facility. This definition makes it even more clear that plants are locationally comprehensive. That they typically include generators, turbines, and ancillary equipment, as well as property and land use permits at one site.

The Arizona Corporation Commission's own usage of the word "plant" to refer to an entire facility that includes multiple gas-fired turbines, illustrate plant's common sense meaning. Decision 63552, the Gila River CEC, declares, "Gila Bend Power Partners is authorized to construct a natural gas-fired

combined-cycle generating plant consisting of three combustion gas turbines and one steam turbine, producing a nominal 845 megawatts. This languages makes clear that multiple turbines and ancillary facilities, together, make up a plant for the purpose of the CEC.

The Commission uses similarly inclusive language in Decisions referencing BMGS itself. Decision 70186 describes BMGS as a, "90-megawatt simple-cycle gas-fired electric generating station." The description is singular, with no language suggesting that BMGS is actually two plants. Evidence from this morning -- from yesterday's hearing further illustrates that BMGS is one plant, and that the proposed expansion would be as well.

In its 2023 IRP, UNS describes BMGS as a single plant, consisting of two units that are 90 megawatts in total. In another regulatory and permitting setting, UNS describes BMGS as one plant. UNS's air permit application covers both existing units and the Arizona Department of Environmental Quality issued a single air permit for the entire BMGS plant.

As to the proposed expansion, UNS says it plans to submit a single air permit to cover the four new turbines. For final reporting requirements, as we've heard, UNS submits a single Form EIA-860. That covers both turbines at BMGS as a single plant with one plant

code. As to their proposed expansion, UNS plans to report all four new turbines, again, on one Form EIA-860 as a single plant.

Turning, finally, to argument three, Committee precedent and plant siting precedent from other states shows that individual units part of a larger build are not regulated as separate plants, but rather, as part of a single thermal generating unit or plant. After the Line Siting Statute's passage in 1971, Arizona -- Arizona utilities have routinely obtained CECs for projects that include multiple units that cumulatively surpass 100 megawatts of nameplate capacity.

In 2008, a CEC was obtained for the Coolidge Generating Station, a project consisting of 12, 48-megawatt units. In 2023, SRP again obtained a CEC for an expansion in Coolidge that included 12, 51-megawatt units. BMGS is a directly analogous situation to the Coolidge expansion, as it is a 100-megawatt-plus expansion, consisting of multiple about 50-megawatt units.

In fact, as we've heard today, the Coolidge expansion includes the exact same brand of gas-fired turbines as UNS proposes to use in BMGS, the LM6000. And there are other examples. In 2001, APS obtained a CEC to construct the Sundance Generating Station, a project with

10, 45-megawatt units. And in 2018, TEP obtained a CEC to construct 10, 20-megawatt RICE units. UNS asserts that the cumulative nameplate capacity of the two existing units at BMGS is 121 megawatts, and argues that because a CEC was not obtained during initial construction, no CEC should be obtained here, where project capacity would be 200 megawatts.

There are two major issues with UNS's argument: First, UNS's assertion that BMGS was constructed with the nameplate capacity of more than 100 megawatts and without a CEC is not evidence that no CEC is required. Rather, it is evidence that BMGS was constructed in violation of the Siting Statute, and it has been operating illegally ever since. Indeed, no disclaimer of jurisdiction was obtained for the construction of BMGS in 2008, nor has the Line Siting Committee said anything about BMGS being exempt from the CEC requirement.

Second, UNS's assertion is based on unsupported claims. UNS submitted evidence that the generators at BMGS had nameplate ratings of 61 megawatts, but as illustrated through testimony yesterday and today, generators are distinct from units. A unit's nameplate capacity depends on a combination of the turbine, the generator, and ancillary equipment. UNS submitted no

evidence regarding the nameplate capacity of the existing turbines. And UNS itself has made confusing statements in its application, IRP, and air permit applications that BMGS has a combined capacity of 90 megawatts, less than the 100-megawatt threshold.

UNS then points to three Commission Decisions that acknowledge the existence of BMGS, and then argues that those Decisions mean that the Commission implicitly recognized the plant to not need a CEC. But two of those Decisions, 70186 and 71914, as the Chairman said earlier, described BMGS as a 90-megawatt plant, below the CEC threshold, and none of the Decisions described BMGS as a 121-megawatt plant.

So why would the Commission have asked UNS to apply for a CEC, when UNS was representing to the Commission that BMGS was a 90-megawatt plant, and indicating nowhere in front of the Commission that 90 megawatts was, in fact, the operating capacity, and that 121 megawatts was the nameplate capacity of BMGS? While no utility has ever requested disclaimer of jurisdiction for the construction of a greater than 100-megawatt plant made up of multiple sub-100-megawatt units, Staff, curiously, has weighed in on this question before, directly contradicting their letter moved into evidence yesterday.

In 2007, Northern Arizona Energy, LLC, applied for a CEC for its Griffith Plant, because of a business transaction, they stated that they're applying for a CEC, quote, because of future ownership financing regs. Staff took issue with this, as they believed that Northern Arizona Energy also had to apply for a CEC because they're proposing to build 45 -- four 45-megawatt units as part of a 175-megawatt expansion, a directly analogous situation to the BMGS expansion.

Maureen Scott, Staff attorney, wrote in a 2007 filing regarding the Griffith expansion, which is Sierra Club Exhibit SC-34, quote, at first impression the definition of plant that refers to each separate unit taken out of the context of the circumstances of this case may appear to preclude siting jurisdiction, because each generating unit, considered separately, is less than 100 megawatts. The problem with that interpretation, it ignores the facts in the evidentiary record that demonstrate that the four simple-cycle gas-fired generating units, as a whole, provide more than 100 megawatts of electric power to wholesale load. This interpretation also ignores the unique facts of this case. The four simple-cycle gas-fired generating units considered together could be viewed as an addition to the existing Griffith plant.

Staff goes on, quote, in light of the purpose of the siting statute, it appears that the circumstance of this matter compelled jurisdiction to consider the application under ARS 40-360. To do otherwise would not appropriately recognize the public interest at stake in these proceedings and the close nexus to the Griffith Plant.

And Staff spoke specifically to the importance of environmental review over expansions larger than 100 megawatts. Quote, the addition of 175-megawatt facilities may well change that balance and an applicant should not be in the position to unilaterally make the decision to alter an existing CEC without Committee consideration and Commission review and approval.

Decision Number 70108, which is Exhibit SC-33 followed Staff's position, granting a CEC, quote, authorizing construction of a nominal 175-megawatt natural gas-fired simple-cycle generating facility that, quote, shall comprise no more than four individual simple-cycle and natural gas combustion turbine generator units, each having nominal capacity of approximately 45 megawatts. Notably, the Arizona Line Siting Statute remains unchanged since Staff proffered this opinion in 2007.

Leaving Arizona for a second, a review of

plant siting statutes in other states reveals that megawatt thresholds are typically applied to the collective megawatt capacity of gas-fired turbines part of one build. New Jersey, for example, requires environmental certification for electric facilities over 100 megawatts. Courts find New Jersey's statute applies to, quote, to the construction of new plant producing 100 megawatts or more. And a review of New Jersey certifications reveals that projects with turbines less than 100 megawatts, or a total project size greater than 100 megawatts, apply for and receive environmental certification. The same as the case in Florida, which requires environmental certification for projects that generate over 75 megawatts.

Iowa, Ohio, Montana, Minnesota, North Dakota, and Wisconsin, among other states, have 25- to 100-megawatt thresholds for power plant siting, and in each of these states, those consisting of units that are below the threshold, but that together exceed the threshold, are subject to environmental review and they obtain certifications.

In the face of this evidence, as you just heard, UNS attempts to contrast Arizona's Line Siting Statute with Minnesota and Iowa's siting statutes, claiming that Arizona's law is unique, because it does

not explicitly include language about combining units to meet the megawatt threshold, while Minnesota and Iowa statutes do.

There are two major flaws with UNS's argument: First, the Arizona Line Siting Statute expresses the same principle as the Minnesota and Iowa statutes, but in the negative rather than in the affirmative. While Minnesota and Iowa say that a combination of units at one site are plants, Arizona says that a plant must be a separate generating unit. This language has the exact same effect, only generating units that are detached and disconnected from other units are plants under Arizona statute. The same is true for Minnesota and Iowa's.

Second, many other state statutes that treat connected generating units as one plant or facility are also silent on combination, like Arizona. Wisconsin is one such example, where the siting statute applies to, quote, electric generating equipment and associated facilities designed for nominal operation at a capacity of 100 megawatts or more.

In conclusion, the plain language of the Line Site Statute and the legislature's express declaration of policy, demonstrate that power plant expansions with a total capacity of over 100 megawatts,

like BMGS, are subject to the Committee's jurisdiction and require a CEC. Other relevant factors, including CEC precedent, CEC descriptions of BMGS, and UNS's own admissions regarding the expansion, also require treating the four proposed units at BMGS as one plant. Adopting UNS's interpretation of the Line Siting Statute would defeat the legislature's intent and eliminate the Committee's power to assess environmental impacts of new thermal power plants, gutting the CEC review process in the age of gas peakers.

We ask the Committee to reject UNS's interpretation of the Line Siting Statute, to reject UNS's application for disclaimer of jurisdiction, and to require that UNS apply for a CEC for this project. Thank you for your time.

CHMN STAFFORD: Thank you, Mr. Shrinath. We've been going for about 90 minutes. I believe the court reporter needs a break. Let's take a 10- to 15-minute recess, and then we'll come back with Committee questions for Mr. Shrinath.

We stand in recess.

(Recessed from 3:11 p.m. until 3:31 p.m.)

CHMN STAFFORD: All right. Let's go back on the record. We had stopped with Sierra Club's oral argument. Are there any questions from Committee

members?

(No response.)

CHMN STAFFORD: Hearing none, we'll move on to AriSEIA. I'd like to remind everyone that it's later in the day, and it's -- the court reporter's been going all day, so if you can make an effort to speak more slowly to help her take down an accurate record, that would be very much appreciated.

With that, AriSEIA, please proceed.

MS. JOHNSON: Chairman and Members, Autumn Johnson on behalf of AriSEIA. Before I begin my pre-prepared remarks, I would just like to make sure that everyone has seen that we did file a response to Commissioner Tovar's letter that was filed last Thursday, on April 18th. UNSE's counsel referenced some components of that letter, I think inaccurately, and so I'll address those briefly.

First, we have never asserted and do not assert that PURPA was enacted before the Line Siting Statutes. We also do not -- we also do not -- I'm getting hand signals over there, okay, noted. We do not assert that PURPA supersedes state law is simply persuasive, not controlling evidence.

Additionally, the IRP rulemaking Administrative Code has been mentioned several times. I

would just like to point out that that R14-27-01 was not enacted prior to the Line Siting Statutes. You will not find reference to that in UNSE's application, in any of their exhibits, or in their response to Commissioner Tovar. It's also important to note that the Corporation Commission Staff is currently undergoing five-year rule reviews, and the IRP rules are one of those. And that is moving into a new rulemaking, because everyone agrees it is outdated and it needs to be updated.

I also would like to point out that they testified yesterday that the Administrative Code does not trump statutes in Arizona, or anywhere else, for that matter. And I would also just like to point out that, again, we know what ARS 40-360 subsection 9 says, it does not say "solar," it does not say "wind," they testified to that yesterday. I am unclear why they continue to bring that up. They also testified to the fact that we are not at the legislature, and no one is arguing for a change in the statute.

Finally, I'd like to point out that the novel interpretation of the statute that they are asking for would have been more appropriately asked for 16 years ago, when they began operating a plant in violation of the law. With that, I'll move into my remarks, and I will make every effort to slow down.

When interpreting statutes, Arizona courts will interpret the relevant language in view of the entire text. When a statute is clear and unambiguous, courts apply its plain language in interpreting its provisions. Arizona courts primarily rely on the language of the statute and interpret the terms according to their common meaning. They apply a "practical and commonsensical construction, and will avoid an interpretation that makes any language superfluous or redundant." Hence, words and phrases in a statute are given their ordinary meaning, "unless it appears from the context of the statute that a different meaning is intended."

When a statute fails to define a statutory term or when a provision is susceptible to more than one interpretation "courts will consider legislative intent and policy, the common law understanding of the statute's terms, technical meanings, and prior judicial Decisions." The Court will adopt the "interpretation that is most harmonious with the statutory scheme and legislative purpose." Ultimately, the Court may consider "factors such as the statute's context, subject matter, historical background, effects and consequences, and the spirit and purpose," to determine legislative intent of a statute of which the language is unclear.

ARS 40-360 was added to Arizona's legal framework in 1971. The session laws for this statute recognize the "growing need for electric service, which will require the construction of major new facilities." The legislature asserted that it was in the "public interest to minimize any adverse effect upon the environment and upon the quality of life of the people of the state which such new facilities might cause." The purpose of this statute is to "provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding to which access will be open to interested and affected individual groups, to enable them to participate in these decisions." It is extremely unlikely that the legislature meant to exclude large expansion projects from the meaning of major new facilities.

Under the original statute "plant" means, "Each separate thermal electric, nuclear, or hydroelectric generating unit with a nameplate rating of 100 megawatts or more." To Member Gold's point yesterday, it does not matter when the plant is constructed, so long as it is constructed after 1971. You cannot lawfully build a 99-megawatt plant this year, and add 99 megawatts next year, escaping Line Siting

jurisdiction. ARS 40-360 was amended in 2001 with House Bill 2040. The statute now requires an entity planning construction of a power plant in Arizona, to submit a plan to the ACC detailing certain information and provide compensation to certain members of the Power Plant and Transmission Line Siting Committee. It also requires utility companies to "submit a plan outlining the proposed power facilities 90 days prior to filing an application for a Certificate of Environmental Compatibility." It did not affect the definition of plant, other than to establish an effective date of August 13th, 1971.

In its Fifth Biennial Transmission Assessment, the ACC Utilities Division said, "Every entity considering construction of a new power plant or generation project of 100 megawatts or greater within Arizona is required to file a plan with the Commission 90 days before filing an application for Certificate of Environmental Compatibility." On page 7, the Utilities Division used "power plant" in the sentence, but they used "generation project," with the same language on page 43. This suggests a power plant and generation project are interchangeable and, therefore, the 100-megawatt threshold was intended to apply to entire projects, not individual units.

Additionally, the bulk of my work involves interacting with elected policymakers. They have hard jobs that cover many subject matters. I think what we've seen at the legislature just yesterday is indicative of that. This session I found myself explaining the difference between a substation and a switchyard for HB 2002. It is wildly improbable that the legislature was making a subtle distinction that differentiated between generators, turbines, and plants when they enacted ARS 40-360. The most logical conclusion is that the legislature meant "plant" to mean exactly that. But even if they did, Sierra Club and WRA have demonstrated that Black Mountain's units are one integrated generating unit, and they are not separate units.

In Decision Number 76638, the ACC reviewed TEP's RICE project, which consisted of 10 natural gas-powered units producing 20 megawatts each, for 200 megawatts total. TEP performed a CEC for this project due to its size. In Decision Number 79020, the ACC approved and amended the Certificate of Environmental Compatibility for SRP's Coolidge Expansion Plan. The project originally consisted of 16 new, quote, individual simple-cycle combustion turbine generator units, each producing up to 51.25 megawatts, for a total of 820 megawatts. That was approved for 12 units. This

represents two recent cases where the ACC entertained CEC applications from applicants seeking to build a project with a cumulative capacity in excess of 100 megawatts, even though each individual turbine included as part of the project was under 100 megawatts.

In their Line Siting application, UNSE mentions several ACC Decisions to say that the Commission had many chances to suggest that a CEC should be performed in similar circumstances; however, in Decision 70186, the Commission was approving the sale of a generation station between two utilities. At the time, the generation station had not been built, but was described in the Decision as two units, each producing 45 megawatts. As such, ARS 40-360, would not have applied.

Decisions 71914 and 72213 were rate cases, in which UNSE did not suggest their plan to expand the plant to be above the 100-megawatt threshold. In none of the Decisions presented by UNSE did the Commission determine that a CEC is not required for separate units generating under 100 megawatts. And, in fact, UNSE never disclosed that the plant was actually 122 megawatts.

In Staff Exhibit 1, the ACC Staff's response to Commissioner Tovar's letter, they agree with UNSE's novel interpretation of the law. This is in

direct contradiction to their brief in Docket Number L-00000FF-07013-00133, which is the Northern Arizona Energy, LLC, CEC docket. In that brief, docketed October 3rd, 2007, Ms. Scott argued that a plant with four simple-cycle gas-fired generating units, 45 megawatts each, for a total capacity in excess of 100 megawatts, needed a CEC because the plant, quote, as a whole, provided more than 100 megawatts of electric power to the wholesale load. In SRP's Coolidge CEC, Staff specifically suggested CEC requirements the Commission should impose, despite the fact that those are the exact same turbines at issue today. The statutory language has not changed. And I include that letter with my response to Commissioner Tovar, on April 18th, as Attachment A.

On its website UNSE says, quote, under Arizona law individual generating units under 100 megawatts do not require a Certificate of Environmental Compatibility. The two existing natural -- 45-megawatt natural gas units at Black Mountain were constructed without a CEC, because the capacity of each is below the 100-megawatt threshold. However, two 45-megawatt units results in a 90-megawatt power plant and not 100.

SWCA consultants published a primer in 2020

which said that the Line Siting Committee provides a forum to build "thermal generating facilities of 100 megawatts or more." The use of the word "facilities" suggests that projects which include multiple units are included in the definition of "plant," or that facilities, as a whole, exceeding 100 megawatts are included under the statute. Indeed, any other interpretation would violate the rules of statutory interpretation I mentioned earlier.

You must employ a practical and commonsensical construction that will avoid an interpretation that makes any language superfluous or redundant, and that is most harmonious with the statutory scheme and legislative purpose. Interpreting the statute in a way that renders half your work obsolete and would require review of a plant with one turbine at 100 megawatts, but not review of a plant with 10, 99-megawatt turbines, would violate both of those rules.

UNSE could barely answer questions yesterday, because they were competing in the semantic Olympics and had trouble responding to anything, because the plain meaning of words like "connected," threatened their argument. Additionally, AEPCO, who gave public comment yesterday, is evidence of the point that disclaiming jurisdiction here will open the floodgates to

other utilities to do the same thing. And then there will no longer be state-level review of the total environment of other thermal power plants going forward. And I'd also like to note that Ms. Grabel also represents many cooperatives.

Finally, the burden should be on the applicant to substantiate their claim as to the interpretation of ARS 40-360, subsection 9, and they have provided no evidence that the legislature intended what they claim, based on the policy statement or that this Committee has ever interpreted it similarly. They cannot even substantiate that the Company itself ever interpreted it similarly. What they have proven is that they are knowingly violating Arizona law by running a 122-megawatt thermal plant with no CEC and no disclaimer, in violation of ARS 40-360.07(A), and they've been doing that for nearly two decades.

The Company's letter to Commissioner Tovar also confirms this. In that letter, filed just this Tuesday, they say, "Notably the current station never requested nor received a Certificate of Environmental Compatibility, providing an important precedent for this disclaimer application." And then they sat here yesterday with a straight face and they said that they have never said there was a precedent; they're simply

asking a question. A question that couldn't be bothered to ask for the last 16 years, and that their sister company couldn't be bothered to ask when they built the plant.

UniSource Energy is wholly owned by Fortis, and it owns 100 percent of TEP, UNSE, and the Company discussed yesterday, UniSource Energy Development, UED, the company that built Black Mountain Generating Station. UED is a registered corporation with the ACC. Its entity number is 09784078. It has the same business office as TEP. And Susan Gray, the CEO of TEP, is its president. It is bad faith to argue that UNSE doesn't know why UED built the plant and never got a CEC or disclaimed jurisdiction. And this is the same company that says, without a hint of irony, that we should take their word for the fact that they will do the right thing, even if they aren't required to.

Therefore, AriSEIA has filed a written complaint in this docket under ARS 40-246(A), and if we need to file a separate complaint, we will do that, if so directed. UNSE is a public service corporation, and they are in violation of the law. AriSEIA notes that not only should the Company deny -- or should the Committee deny the disclaimer of jurisdiction, but UNSE must be required to obtain a CEC for the existing plant. And UNSE must be

held accountable for knowingly breaking the law for the last two decades.

Thank you.

CHMN STAFFORD: Any questions for AriSEIA from the Committee?

(No response.)

CHMN STAFFORD: All right. WRA.

MS. DOERFLER: Thank you. I will get this real close, and I promise to speak extremely slowly -- well, maybe not extremely slowly, because we would all like to leave at some point today.

Good afternoon, ladies and gentlemen of the Committee. Others before me have already provided you with the background of why we are all here today. The decision this Committee will make in this matter will be one that has far-reaching and, arguably, as yet unforeseen consequences for the people of Arizona and the environment that sustains them. I hope that you have kept these very real consequences in mind during this proceeding, and continue to do so while you make your decision.

If this Committee were to disclaim jurisdiction over Black Mountain Generating Station and facilities like it, the decision will have a detrimental effect on Arizona's people, environment, and its

utilities. Certificates of Environmental Compatibility, or CECs, are purposed with balancing the need for additional transmission and generation with the damage that these projects inevitably incur to the surrounding community and wildlife. CECs address a community's concerns with land use conflicts, noise levels, and the possible damage to historic and scenic sites, which can affect local economies. Further, CECs address technical and practical aspects of a utility's plan and the cost of that plan to customers.

A CEC even provides protections to a utility's investment. Contrary to statements recently made in an op-ed published by UNSE's management, getting rid of the CEC process for peaker plants will not eliminate inefficiency in the process of building large-scale utility projects. Projects like the one in debate here are easily disrupted when community members affected by the installation of a large project are prevented from having their voices heard and compromises are, as a result, never discussed, discovered, or explored. Problem-solving before a project starts is not only not a waste of time, as this op-ed seems to imply, but it is actually necessary to avoid issues with the public down the line, when problems can no longer be remediated before damage is actually done.

It is also of vital importance that utilities have the opportunity to hear from the perspectives of those on this Committee. You all represent diverse and consequential interests that can be affected by the build-out of large energy projects. And those interests should be represented in a utilities plan. UNSE has accused the intervenors involved in this case of hyperbole for their claims that the Committee's adoption of this novel interpretation of 40-360.09 would strip these protections from all peaker plants in Arizona moving forward.

To highlight the breadth of this issue, one need only look to the proposed expansion of Redhawk Generating Station. If UNSE's petition is granted here today, then APS may legally be permitted to build eight new turbines, 379 megawatts of new generation at its facility without ever having to engage with the surrounding community to balance its proposal with public health and environmental concerns in a proceeding like this. Under this interpretation, a utility in Arizona could potentially build a brand-new 12-turbine facility without ever having to balance the need of that plan with the Committee -- communities that will no doubt be affected.

At the heart of this matter is Arizona's

definition of the term "plant." As you have heard many times today, ARS 40-360.09 defines "plant" as "Each separate thermal electric, nuclear, or hydroelectric generating unit with a nameplate rating of 100 megawatts or more." UNSE's petition asks this Committee to make a drastic departure from historic application of the term "plant," and reach a conclusion that is inconsistent with the rules of statutory interpretation. It should be rejected. The Power Plant and Line Siting Committee has used this ordinary and common understanding of the term "plant" for decades to fulfill its duties. It is implausible that Committee members in the last five decades have not looked at, read, or understood the meaning of the words in these statutes. This is exactly what UNSE has implied over the course of this case.

UNSE's legal argument suffers from two insurmountable flaws: First, UNSE has misunderstood and misapplied the meaning of the term "generating unit"; Second, UNSE has incorrectly claimed that the four proposed units at Black Mountain Generating Station will be separate from one another and from the generating unit which encompasses most of the equipment at the facility.

If UNSE has failed to convince you today that the term "generating unit" and "unit" are the same, then you must reject UNSE's attempt to disclaim

jurisdiction here today. If UNSE has failed to -- sorry, lost my spot -- if UNSE has failed to prove that the generating unit at Black Mountain is separate, then you must reject UNSE's attempt to disclaim jurisdiction. This Committee must be convinced of both of these assertions by UNSE in order to disclaim jurisdiction for this facility. This is a high burden that UNSE has not met.

First, I will discuss why this Committee cannot be certain that a generating unit is the same as a generator turbine set or unit after today's proceeding. In its application, UNSE directs this Committee to apply plain language of the statute of its interpretation. Arizona statute states that words and phrases shall be construed according to the common and approved use of the language. The words in this statute should be interpreted using their ordinary meaning. That ordinary meaning of a word is not, however, always what is located in a dictionary. The term "generating unit" is a term of art, meaning its definition is one that should be commonly understood in the relevant industry, which uses the term. This is supported in Arizona law by the Supreme Court case DBT Yuma, LLC v. Yuma County Airport Authority, which states that terms of art cannot be defined using a dictionary definition. And, further,

that statutory words should be viewed -- should not be viewed in isolation. Instead, the meaning of statutory words should be drawn from the context in which they are used.

In the case of the term "generating unit," the relevant industry and context here is electrical engineering. The standard definitions of terminology adopted by the Institute of Electrical and Electronics Engineers, an undisputed and reliable source of knowledge on electrical engineering, is explicit that a generating unit is generally all equipment from the resource supply system up to the high-voltage terminals of the generator step-up transformer and the station service transformers.

UNSE has not offered sufficient evidence to contradict this definition. It has also been demonstrated that the definition for the term "generating unit" is distinct from the term "unit," another term of art that UNSE has cited a largely irrelevant dictionary definition for in its application.

UNSE has offered two definitions here today and yesterday that it claims contradicts the definition of "generating unit" provided by IEEE and Dr. Routhier. As Dr. Routhier has stated at multiple points, neither the EIA definition, which speaks to physically connected equipment, or the definition provided in Arizona's

Administrative Code, which includes sets of devices, would preclude you from using the IEEE Standard in understanding the terms of this statute.

Now, even if UNSE has convinced you that the definition of "generating station" -- the definition of "generating unit" in an Administrative Code article completely unrelated to the Certificate of Environmental Compatibility process contradicts the definition adopted by IEEE, UNSE has not proven that the equipment at Black Mountain Generating Station is separate. The word "separate," in contrast to the term "generating unit," is not a term of art in the electric utility industry, and therefore, a dictionary definition should apply.

According to Black Law's Dictionary, the term "separate," for example, should be clearly to be -- it should be clearly understood to mean individual, distinct, particular, or disconnected. To be successful in its claims, UNSE must assert that the generating unit, a term which encompasses all equipment at Black Mountain Generating Station, including its four units or generating pairs, its resource supply, and its generator step-up transformers, and station services transformers, is somehow separate from itself. This is clearly a logical impossibility. It has also been demonstrated by testimony and exhibits that this is a factually incorrect

assertion. Regardless of whether one is referring to a generating unit or a unit at Black Mountain, this equipment is connected to auxiliary equipment which, in turn, connects the generator sets or units to one another.

The units at Black Mountain have been demonstrated to be connected via power control modules, generator step-up transformers, and power distribution centers. All four units have been demonstrated to be connected to one single cooling tower, one ammonia tank, one fuel gas coalescing skid, one raw water tank, one reverse osmosis building, one demineralized water tank, one air compressor, one raw forwarding pipe, one evaporation pond, and one well. With the detailed schematics exhibited in the current proceeding, which show exactly how the infrastructure of this unit -- these units are connected, UNSE has failed to contradict this fact, which is demonstrated by its witnesses' responses to Sierra Club's cross-examination. This is further evidence that you -- further evidence, when you consider that without this shared equipment Black Mountain Generating Station could not generate power to provide to the grid. And what other purpose does a generating station have?

UNSE has repeatedly asserted that its

interpretation of ARS 40-360 is not novel to this state, as the original 90-megawatt facility at Black Mountain does not currently have a CEC. And while this is indeed an interesting conundrum that this Committee should possibly investigate further, this case concerns the four proposed new units, not the existing equipment.

UNSE has also attempted to assert that the intervenors' inclusion in this case necessarily means that we are hypocrites. At no point in this proceeding has WRA stated our organization's policy regarding the inclusion of renewable energy plants or lack thereof in ARS 40-360.09. I would return UNSE's suggestion back to them, if they find this process unfair or the statute not comprehensive enough, the utility should speak to the legislature, not make the issue a legal argument in a proceeding wholly unrelated to a solar or wind farm.

In conclusion, UNSE's assertion must fail for two reasons: First, the term "generating unit" is distinct from the word "unit"; second, a generating unit is necessarily one that is connected to other pieces of equipment, according to multiple definitions, and therefore, is not separate. There is one single plant at Black Mountain, which will encompass all equipment at the facility, including its generating unit, its four generating turbine sets, and any other piece of connected

equipment. UNSE has failed today to prove anything to the contrary, or yesterday, I should say -- I wrote this when this was going to be a single proceeding.

As a result, this Committee can only rightfully conclude that it should not disclaim jurisdiction over Black Mountain or any similar peaker plant facility, therefore, WRA respectfully requests that this Committee keep the "power plant" in Arizona's Power Plant and Line Siting Committee by rejecting UNSE's petition.

CHMN STAFFORD: Thank you.

Any questions from members?

(No response.)

CHMN STAFFORD: All right. Thank you.

MEMBER MERCER: Mr. Chairman?

CHMN STAFFORD: Yes, Member Mercer.

MEMBER MERCER: I have some questions, just been thinking about some of the closing arguments. There has been a claim that UNSE has been breaking the law for more than two decades. Where -- my question is, where have you been in the last two decades? How come you haven't brought this up?

CHMN STAFFORD: I think I can answer that. I think -- I recall testimony earlier, because I think the first time that many people noticed that the

nameplate capacity of the existing plant was actually 61 was when they filed this application. I think we talked about the prior Decisions where they address the purchase of this and the rate case for the rate basing of the existing plant. And they didn't talk about the nameplate, they talked about the net operating capacity, which is what they can actually produce as being 45 to 48.

So I don't think it occurred to anyone that it was a bigger than 90-megawatt plant, which even under the intervenors' definition of the -- interpretation of the statute would not require a CEC. I think it was the -- there was the lack of distinction between nameplate capacity and net operating capacity, which is typically what they focus on and not the nameplate. I think we've ran -- I think the record established that the nameplate capacity's relevant for this -- these proceedings for the jurisdiction of the Committee initially and to the EIA in this overall reporting.

MS. JOHNSON: Chairman, may I also briefly respond?

CHMN STAFFORD: No, at this time, this is a time for member questions.

Does that answer your question? Or do you want to hear from them?

MEMBER MERCER: Kinda, sorta. I mean, it's semantics. You know, English is my second language, and I fully understand what the statute says. So that's all my comments.

MS. HILL: I'm sorry, Chairman Stafford, I just have to go on the record here. I appreciate what you said and I can understand why you might be theorizing that, but the Company has to at this point step in and say there are two things that I think are not in the record. And one of those is that we don't know what Staff knew or what the Commission knew. We know what they wrote about, but we don't know that they didn't know what the nameplate capacity was.

And I would actually suggest the facts and circumstances of them being all over that plant, as was evidenced in the engineering, indicates that they probably looked at the actual nameplate capacity. It just wasn't their big concern. But we don't know that. And so I don't want to have a record that says that they didn't know, because I don't think that's been established.

CHMN STAFFORD: Right. We don't know if they knew or not. What we do know and we did see in the record is that the nameplate capacity is not mentioned --

MS. HILL: That is correct.

CHMN STAFFORD: -- in any of those Decisions and in the report that was docketed December 12th --

MS. HILL: We agree with that -- I just want to --

(Cross-talk.)

THE REPORTER: Hold on.

CHMN STAFFORD: I'm not saying we know when we knew what. What we do know is that the references in those Decisions were not due to the nameplate capacity.

MS. HILL: So that's the first thing. And then the second thing is as a Company, I'm sorry, but I'm going to object to the "we failed to disclose" statement in Ms. Johnson's argument. It is dangerously close to accusing us of fraud, and there is zero evidence in the record of that.

CHMN STAFFORD: Noted.

All right. Any further questions from members?

(No response.)

CHMN STAFFORD: All right. Moving on to SWEEP.

MS. REYES: Good afternoon. Can you hear me all right? That sounds a little better.

Having heard the arguments throughout this

hearing, SWEEP supports the statutory interpretations presented by my fellow intervenor colleagues, and we will not offer repetitive arguments. I do have a few brief comments to consider, and I will keep them short, because I respect your time.

The legislature created the Line Siting Statutes, including the Certificate of Environmental Compatibility process, to ensure governmental oversight of major investments for power generation in the state. If jurisdiction is disclaimed, as UNS asks here, we run the risk of tying the hands of Arizona regulatory bodies, including this Committee, to perform their duty to the public to consider critical factors associated with the CEC, as required by state law.

In short, we would be left to accept that corporations are acting in the best interests of the state and its consumers. This is dangerous ground. While much of the focus here has been on environmental impact or land use concerns, the Line Siting Statutes actually require even more.

In particular, SWEEP is concerned with the potential for unnecessary cost to customers if companies can regularly get around the CEC process by disclaiming jurisdiction. Under ARS 40-360.06, subsection (A)(8), the estimated cost of facilities and site, must be

weighed with specific recognition that any significant increase in costs represents the potential of an increase in the cost of electric energy, including costs to the customers. This requires the Line Siting Committee to perform a thorough investigation of potential cost to customers, that it will not be able to do so if jurisdiction is disclaimed. Failure of the State to consider this important aspect of power plant construction or expansion has the potential to harm families by increasing energy bills and to slow economic development in the state, which relies on access to low cost and clean energy.

As we heard during this hearing, construction of new sources for power generation are very expensive -- is very expensive, and if jurisdiction is disclaimed, we are left to take the Company's word that their chosen method is the most cost-effective method to meet energy needs, all without the benefit of regulatory oversight. The Line Siting Committee's CEC process is one of the very few legal and regulatory proceedings an Arizona energy provider must obtain before a project is built.

In rate cases, the Arizona Corporation Commission can either allow or disallow historic costs made by the utility, including investments in electric

generation; however, determining prudency has significant challenges. Prudency is presumed, and to overcome this presumption there must be clear and convincing evidence. This is a high standard of evidence that is highly and substantially more likely to be true than untrue.

With such a high burden, it is common sense that a disallowance of historic costs is rarely done by the Commission. In Integrated Resource Plans, Commission rules only allow the Commission to acknowledge or not acknowledge a resource plan without requiring the utility to follow it. As such, if the Line Siting Committee's oversight authority is eroded, the door will be open to all but eliminate a regulatory oversight of numerous factors, including the cost to customers before a project is built.

Finally, as my other colleagues have mentioned, this is an issue that has implications reaching far beyond this particular proposal by UNS and could affect power plant construction throughout or expansion throughout our state.

Even if UNS does try to do its best by local customers, as UNS witness Mr. Bryner stated is a concern for the company, a finding to disclaim jurisdiction would have statewide significance. Will UNS always do its best by local communities? What about TEP?

APS? SRP?

For these reasons, as well as the legal arguments presented by my intervenor colleagues, SWEEP respectfully requests the Committee reject UNS's request for a disclaimer of jurisdiction and require the Company to proceed with a formal CEC proceeding. Thank you.

CHMN STAFFORD: Any questions from the members?

(No response.)

CHMN STAFFORD: Thank you.

Up next, Commission Staff.

MS. SCOTT: Good afternoon, Chairman and Committee members. I want to start out by commending the applicant, UNSE, and its team, as well as the other parties for the excellent job they have all done in developing a thorough and comprehensive record on the issues raised in this application.

Our legal analysis, as you know, is set forth in Staff Exhibit 1, so I'm not going to repeat all the rules of statutory construction. This will be a short presentation. The Staff continues to believe that the four units individually and their separate nameplate capacities are to be looked at separately as to whether the threshold of the 100 megawatts is needed or met for Committee and Commission jurisdiction. There was a lot

of discussion, however, over the last two days as to whether the term "separate," as used in the statute, what that meant in this context, and whether the units were actually separate units and were operating as separate units.

As one of the UNSE witnesses testified, this issue can be very fact-dependent and is. I think we all found that out over the course of these two days. We had the opportunity to consult our subject matter expert, who is the chief engineer here, he has been listening to the testimony in this proceeding. He did not hear anything over the course of the last two days that would indicate that these should not be considered as separate units or that the megawatt nameplate capacity for each unit should be aggregated for purposes of determining whether the threshold has been met. It's his opinion that these are separate units and operating as such. And again, this is a very fact-intensive determination. So I, myself, don't feel it would create a loophole that other companies could utilize in evading the statute, because their facts may be much different than this -- the facts in this case.

In the end, after consideration of the testimony presented, Staff stands by its original conclusion, as contained in its April 16th, 2024, letter.

Staff also does not believe the Company in any way in utilizing four 50-megawatt-capacity generating units did that in an effort to subvert the statute. We believe that if a larger plant was called for, the Company would have proposed that. And I agree with those others who have stated much of what is being debated here is a policy issue and is in the hands of the Arizona legislature.

Thank you.

MS. REYES: Mr. Chairman, we would like to object to the issue of statements by a person who was not able to be cross-examined. She mentioned the chief engineer for the Staff. We weren't even aware that he was a member to this proceeding, and no one was able to have any cross-examination of him. Also, we already concluded our factual portion of this case.

CHMN STAFFORD: So noted. You've preserved the issue for appeal.

MS. REYES. Thank you, Mr. Chairman.

CHMN STAFFORD: Members, I believe that Member Gold had questions for this -- for this party.

MEMBER GOLD: Yes.

Ms. Scott, are you there?

MS. SCOTT: Yes.

MEMBER GOLD: Can you hear me? I have two

documents here, your Exhibit Number 1 and Exhibit SC Number 34, dated October 3rd, 2007. Both have your signature on them.

Are you familiar with both documents?

MS. SCOTT: I am. I'm more familiar with the more recent one. I have to say the other one was 17 years ago, so I don't --

THE REPORTER: Please don't touch the microphone.

MEMBER GOLD: Oh, sorry about that.

Please continue.

MS. SCOTT: So I don't recollect offhand all of the underlying facts in the older document.

MEMBER GOLD: Well, here's my question: In the older document, it says, at the request of the sitting Commission, the legal division submits this brief to address two questions raised in the course of these proceedings. Does ARS 40-360, et sequence, provide jurisdiction over the above-captioned application? And, number two, does the sitting Committee have authority to make recommendations and findings as to a need for a project? The answer, "the short answer," and I quote, "to both is yes."

But in the document that's 1, dated April 24, 2024, you come up with a different conclusion, and

say the answer is basically no, pending what we hear at this Committee hearing. I'm not a lawyer. I don't really understand legalese. What's the difference?

MS. SCOTT: There are several differences. First, the brief is a brief. It's a document where we're putting forward legal argument about something. It's a long time ago. It's not clear when you read that document what some of the underlying facts were in that case. I think in this case, and that's why I commended everybody, the record is developed to such an extent that I, unlike many cases, I have to say, where the record is good, it's sufficient, but this one, I think the parties just went to such an extent and brought out so -- so much of the underlying facts in this case that I could not discern that from the older document, the extent to which the facts had all been brought out. But -- so it's different in that regard.

The other difference that I saw is that this older document and what we were talking about there, I believe, was already a CEC, and there was modifications being proposed. So those had to come back before the Committee. That's -- that's my understanding right now. But if you wanted a more thorough comparison of the two, I would have to actually go back and look at the record of the older proceeding and try to set those out for you.

But I think there are some important differences between the two proceedings.

MEMBER GOLD: So you're saying that, and I thought I read that somewhere, that there was a related CEC for the documents that was dated 2007, whereas, there was no CEC for what's going on today?

MS. SCOTT: That is my understanding in looking at that document, and that we were modifying the CEC there with this addition.

MEMBER GOLD: And I also understand that 2007 is many years ago.

MS. SCOTT: Yes.

MEMBER GOLD: And the statute that we're reading is even older than that. And if I remember correctly back in 1971, and I can remember 1971, when they talked about solar energy, they were talking about coils you would put on your roof that heated water. And solar panels that produce electricity were in their infancy, and you are -- I agree with you that the legislature should really be revising this statute. And we're in a situation where there are great arguments on the side of the attorneys and the organizations who are represented here.

But the letter of the law is, what you're stating in your 2024 letter, that says since the letter

of the law has not changed since 1971 -- it reminds me of a case in New York where a fellow was arrested for walking down Broadway with a sign that said, "A car is following me," and the law said that all automobiles riding on the streets of New York had to be preceded by a person walking to warn the horses, so they wouldn't be frightened by the sound of a car. The end result, the Court decided that, yes, the law is still in the books; he had every right to do so. But the flag should have been 20 inches by 20 inches and it was only 14 by 14, so they said he broke the law by doing that.

Hence, they came up with judicial argument that I think we have to come up with today on this Committee about the letter of the law, the spirit of the law, and the fairness of the law that says power plants with solar panels or wind can be as many megawatts as they need to be, but only the gas-fired plants are penalized or put under a different structure than the other electricity-generating plants. So I believe that's something that we have to consider here today.

And, Mr. Chairman, I just wanted to make that statement, because I don't have an answer yet.

CHMN STAFFORD: Member Richins, do you have a question?

(No response.)

CHMN STAFFORD: No? Okay.

All right. Does the applicant have rebuttal argument?

MS. GRABEL: I do, yes, Mr. Chairman, but I'll try to make it brief.

CHMN STAFFORD: Thank you.

MS. GRABEL: First, the intervenors continue to argue that the wires and pipes that run from the shared facilities to other units render the units not separate; however, the fact that these wires and pipes are connected to the individual units and then to each other does not make them less individual as generating units with separate nameplate ratings. I think taken to its extreme, the intervenors' argument would mean that a transmission line that connects one generating station to another generating station located miles and miles and miles apart would be one station, and that's clearly not the right result.

We could build separate facilities, but we don't, for economic reasons, not operational ones. Notably, the intervenors did not discuss at all the fact that the units will generate separately, operate separately, be monitored separately, and be dispatched separately. They simply avoid facts that are inconvenient to their argument.

The Sierra Club argued that the focus of the statute is the environmental impact, and that these units will have environmental impact. That is true, but the statute sets for a trigger for when a CEC is required. One of them is it has to be thermal and another is that the nameplate rating of that generating unit needs to be 100 megawatts or higher. They cannot read that out of the statute and be consistent with the principles of statutory construction.

The Sierra Club also noted the fact that public outreach is needed for these natural gas plants and, therefore, all applicants should be required to get a CEC. I would note that in the actual law not a lot of public outreach is legally required associated with CEC proceedings. Under the statute and the regulations, all we really need to do is publish in a newspaper of general circulation and mail a notice of hearing to affected jurisdictions. We do a lot more because that's what the Committee expects of us, but it's not legally required. And, therefore, that's really not a reason to have a CEC hearing. I'd also note that that is a policy argument that's irrelevant to the legal interpretation before you.

Several of the intervenors referred to the industry definitions of "plant," that is legally irrelevant to these proceedings. The only legally

relevant definition of "plant," is that found in ARS 40-360.09. And "generating unit," as referred to by WRA in the IEEE publication is not a defined term in that IEEE manual, and is also not relevant to the interpretation of the Arizona law.

None of the intervenors addressed their violation of the principles of statutory construction, which is that their interpretation of the word "separate" completely renders the phrase "nameplate rating," as used in the statute, meaningless. Several of them referred to the spirit and purpose of the law, that is, again, as I referenced in my initial argument, that -- that spirit and purpose is only to be considered if the language of the statute itself is unambiguous, and in this case it is not.

In comparing Arizona statutes to other jurisdictions, the Sierra Club argues that they're the same intention and somehow, I didn't fully understand, Arizona's is a negative requirement, as opposed to an affirmative. I would respectfully submit that that argument does not make a lot of sense. What the comparison shows is that Arizona focuses on the individual aspects of the units, as opposed to looking at the cumulative or combination of the units. And trying to say that the Arizona statute is the same as those

requiring aggregation, again, violently undermines established principles of statutory construction, which again, the intervenors don't address.

AriSEIA continues to state that UNS never disclosed that the Black Mountain Generating Station was 122 megawatts. That is patently false. You will see it in our EIA-360 reports that are contained in Sierra Club's evidence. You'll see them back through 2017, we consistently report -- I mean, starting in 2017, which is all that's in evidence, but we clearly did it before that. We consistently report each unit as 61 megawatts. Inflammatory statements like these really need to be disregarded.

Similarly, I think it's inflammatory for AriSEIA to suggest that UNSE was trying to hide its affiliation with UED. Ms. Hill very transparently, on the record yesterday, disclosed that affiliation. There's nothing that we were trying to hide there. AriSEIA also kind of villainizes UNSE for not having a -- or for not disclosing the lack of CEC, but I would respectfully submit we are not here to litigate whether or not a CEC was required for those first units, but whether or not it's required for the four new units that are going to be built.

Most of the arguments that we have heard

today are based on policy that UNSE's interpretation will, quote, open the floodgates to the construction of natural gas. This is a policy argument that cannot defeat the legal requirement that a statute must be interpreted, according to its plain language. And we've heard nothing that undermines the clear meaning of the statute that's consistent with the rules of statutory construction. If a change is needed, as Ms. Scott just referenced, that change should be addressed with the legislature, but the Commission and this Committee should apply the statute as written today.

Thank you very much.

CHMN STAFFORD: Any additional questions from --

MEMBER LITTLE: Mr. Chairman?

CHMN STAFFORD: Is that Member Little?

MEMBER LITTLE: Mr. Chairman?

CHMN STAFFORD: Yes, Member Little.

MEMBER LITTLE: I apologize, I didn't -- wasn't able to get in right after Maureen's presentation, but I do have one question for Staff, and perhaps I'm looking for a comment from them.

In their letter of April 16th it says, "This makes it clear that the legislature was striking a balance. Large electric generation projects,

100 megawatts or more, would need an environmental review, which has not been required prior to this law, but smaller projects would not be required to undergo," blah, blah, blah.

This -- when I read this, this reminded me that when I was on Staff at the Commission, we tended to look at the applications as projects, not as individual how many units were in there. If this -- and the applicant is not applying for one, 50-megawatt generator turbine combination, they are applying -- the project includes all four.

And I'm curious, perhaps, how Staff differentiates between the project, as applied for, which includes all of the units, and the individual unit?

CHMN STAFFORD: And your question is directed at Maureen?

MEMBER LITTLE: Yes.

CHMN STAFFORD: Ms. Scott?

MS. SCOTT: Yes. I -- I think the project itself would consist of the four separate generating units, as you mentioned; however, when you look at the statute and what you're to base that threshold on for determining whether the Committee and the Commission have jurisdiction, that is based on ARS 40-360.09, and that says small plants with nameplate ratings less than

100 megawatts are exempt from the CEC process, and then it goes on to define a plant, meaning each --

MEMBER LITTLE: I understand all of that.

MS. SCOTT: Okay. So that is --

MEMBER LITTLE: I guess I -- I guess -- I guess this just illustrates another point of confusion that has occurred over the years with respect to which projects qualify for CECs and which are exempt.

Thank you.

CHMN STAFFORD: Any additional questions from members?

(No response.)

CHMN STAFFORD: All right. I think a number of parties have requested briefs on this prior to our vote. Do any -- is there any desire by the Committee to seek a briefing on this or are you prepared to deliberate and vote today?

MEMBER GOLD: No objection.

CHMN STAFFORD: The Committee is not interested in a briefing schedule.

All right. Well, I'd like to give my two cents on this to the Committee, if you would. We talk about statutory construction. The Supreme Court said that we first look at a statute's language in attempting to discern legislative intent, but when the statute --

when the language is susceptible to differing reasonable interpretations, we interpret the statute as a whole and consider the statute's context, subject matter, and historical background, effects and consequences, and spirit and purpose.

Now, I think the definition in ARS 40-360, subsection 9, the definition of "plant," I think it's obviously susceptible to different interpretations, as evidenced by the Commission's issuance of CECs in Line Siting Cases 197, 177, 141, 107, and 133, and the applicant's proposed interpretation in its request for disclaimer of jurisdiction, as well as the fact that the existing BMGS was constructed without a CEC or a disclaimer from the Commission. If the language is clear, the Court must apply it without resorting to other methods of statutory interpretation, unless application of the plain meaning would lead to impossible or absurd results.

Now, let's look at the declaration of policy from the legislature when it passed this statute in 1971. "The legislator hereby finds and declares that there is, at present and will continue to be, a growing need for electric service, which will require the construction of major new facilities." It seems apparent that the definition of "major new facilities" was -- the

line was drawn at 100 megawatts or more.

They recognized that the facilities couldn't be built without in some way affecting the physical environment where the facilities are located. And they found that it's essential in the public interest to minimize any adverse effects upon the environment and upon the quality of life of the people of the state, which such facilities might cause. And they found the present practices prior to the enactment of the Committee and the Commission's authority over Line Siting and Plant Siting, they were inadequate, the proceedings before they adopted these types of proceedings, to protect environmental values and take into account the total effect on society of such facilities.

They went on to determine that, they said, "The legislature finds that existing law does not provide adequate opportunity for individuals, groups interested in conservation and in protection of the environment, local governments, and other public bodies to participate in a timely fashion in the decision to locate a specific major facility at a specific site." I'll say that again, "a specific major facility at a specific site."

The legislature declared that the purpose of this article is to provide a single forum for the expeditious resolution of all matters concerning the

location of electric generating plants and transmission lines in a single proceeding to which access will be open to interested and affected individuals, groups, county and municipal governments, and other public bodies to enable them to participate in these decisions. It is -- and it looks to me that the line they drew was 100 megawatts or more.

If you look at the definition of "plant," it says it means each separate. It doesn't say "each individual," it says, "each separate." I think the logical interpretation of this statute is that if they share the same site, they are not separate, period. So whether you have -- if you have 100 megawatts, whether it's 10, 20-megawatt plants, one 100-megawatt plant, they all need to get a CEC.

If you start with a facility that has less than 100 megawatts, that doesn't require a CEC. If you add to that site additional plant that raises the total output or the nameplate -- the total cumulative nameplate rating to over 100 megawatts, you need a CEC. The nameplate rating was the -- they didn't say effective load-capable-carrying capability or the effective net output. The terms that we typically talk about in terms of these things, they said, "nameplate rating." Why would they pick the nameplate rating, when that's applied

the least relevant characteristic of its output to what the Commission and the utility was concerned about? I think it's because it's clear that it's obvious the nameplate rating doesn't change, depending on where you put the plant. It's a constant. That's how they select the nameplate rating.

The Supreme Court tells us that "a result is absurd if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been the intention of persons with ordinary intelligence and discretion." You heard the applicant tell us that under their interpretation of the statute, someone could build a thousand megawatts of small modular reactors in a residential neighborhood and not have to go through this process. That is a transparently absurd result.

So I would like -- I'm asking the Committee for what -- how would you like to vote on this. You can either make a motion to accept or deny the applicant's request for a disclaimer of jurisdiction. And then if we don't have an order before us, I'm not going to move either of the -- neither the applicant's nor the intervenors' proposed orders.

I would ask the Committee to do a motion to -- either to deny -- to deny their application and then have me author a Decision that reflects the vote,

based on the reasoning that I just laid out.

MEMBER KRYDER: Mr. Chairman?

CHMN STAFFORD: Yes, Member Kryder.

MEMBER KRYDER: I propose that the Committee accept the request by the applicant for a disclaimer of jurisdiction.

CHMN STAFFORD: Are you recommending -- are you asking that we grant the disclaimer or deny it?

MEMBER KRYDER: I'm sorry, I couldn't hear you.

CHMN STAFFORD: Are you -- I didn't understand your motion. Are you moving to grant the applicant's request for disclaimer?

MEMBER KRYDER: That is correct.

CHMN STAFFORD: Okay.

MEMBER MERCER: Second.

CHMN STAFFORD: The motion is to grant the disclaimer.

Let's call the role. Member Fontes?

MEMBER KRYDER: Wait for him to vote.

CHMN STAFFORD: Okay. So an affirmative vote disclaims jurisdiction. A "yes" vote says they don't need a CEC. A "no" vote says, yes, they -- a no vote would require a CEC.

MEMBER RICHINS: No, a "no" vote would --

CHMN STAFFORD: Right. So it's -- the motion is to grant the disclaimer. So a "yes" vote grants the disclaimer. A "no" vote doesn't grant the disclaimer, and then we would have to entertain another motion to deny the disclaimer.

Is that clear, everyone?

(No response.)

CHMN STAFFORD: Member Fontes?

MEMBER FONTES: No.

CHMN STAFFORD: Member Drago?

MEMBER DRAGO: No.

CHMN STAFFORD: Member French?

MEMBER FRENCH: No.

CHMN STAFFORD: Member Richins?

MEMBER RICHINS: No.

CHMN STAFFORD: Member Gold?

MEMBER GOLD: No.

CHMN STAFFORD: Member Mercer.

MEMBER MERCER: Yes.

CHMN STAFFORD: Member Kryder?

MEMBER KRYDER: Yes.

CHMN STAFFORD: And online we have Member Somers?

MEMBER SOMERS: No.

CHMN STAFFORD: Member Little?

You're muted. Member Little, you're muted, we can't hear you. You're still muted.

MEMBER LITTLE: I did not hear the last few votes of the Committee. I did not hear the last few votes of the Committee.

CHMN STAFFORD: Members Mercer and Kryder voted in favor of granting the disclaimer of jurisdiction.

MEMBER LITTLE: Well, I would like to explain my vote just briefly, if I may. You know, I have a lot -- many years of experience as an electrical utilities planning engineer and things were very, very different back in 1971. And I believe that were the language of this to be written today, it would be written differently. And, you know, generators between 50 and 100 megawatts are routinely grouped into larger plants in today's planning environment to fulfill peaking needs that support for renewables and to meet reliability requirements. And that is, you know, regardless of the fact that, yes, anything is possible, we could build large gas plants. That's not the way the industry is going right now.

And I believe that, as a representative of the public, I have a responsibility to assure that the public has the right to -- to express their voice in the

siting of environmental impact for generation and transmission, and I think that clumping a bunch of smaller -- or installing a bunch of smaller units all in one place, does that. And I vote no.

CHMN STAFFORD: Member Hill?

MEMBER HILL: No.

CHMN STAFFORD: And I also vote no.

By a vote of 2 to 9, the motion fails.

MEMBER RICHINS: Chairman, I make a motion to deny the disclaimer of jurisdiction for the applicant.

CHMN STAFFORD: Is there a second?

MEMBER FONTES: Second.

CHMN STAFFORD: Member Fontes?

MEMBER FONTES: Yes.

CHMN STAFFORD: Member Drago?

MEMBER DRAGO: Yes.

CHMN STAFFORD: Member French?

MEMBER FRENCH: Yes.

CHMN STAFFORD: Member Richins?

MEMBER RICHINS: Yes.

CHMN STAFFORD: Member Gold?

MEMBER GOLD: I'd like to make a comment. I, too, represent the people of the state of Arizona, and while I believe you should build this plant, I believe a CEC in this case is necessary. And I also believe that

in the earlier case where our counsel stated in 2007 that it was not needed, it was also stated because a CEC was done.

I also appreciate the fact that you have done pretty much everything that a CEC would require and I don't foresee you not getting one. But I have to say, this Committee is here for a reason. And, therefore, I have to vote yes, I require the CEC. And I look forward to granting it when you're ready.

CHMN STAFFORD: Member Mercer?

MEMBER MERCER: I would like to make a comment.

CHMN STAFFORD: Please.

MEMBER MERCER: I'm voting according to the present statute, which I agree that in 1971, the statute needs changes. And, unfortunately, as a member of this Committee, I have no power to change the law. I have spoken to several legislators about it and they agree that the statute is outdated, and it does not fit with the new technology we have, with renewable and sustainable energy as what is solar and wind. So I have to vote no, because that's what the statute says.

CHMN STAFFORD: Member Kryder?

MEMBER KRYDER: No.

CHMN STAFFORD: Member Somers?

MEMBER SOMERS: Yes.
CHMN STAFFORD: Member Little?
MEMBER LITTLE: Yes.
CHMN STAFFORD: Member Hill?
MEMBER HILL: Yes.
CHMN STAFFORD: And I vote yes.
By a vote of 9 ayes, 2 noes, the Commission votes to deny applicant's request for a disclaimer of jurisdiction.
Are we entertaining a motion to have me draft an order with the reasoning that I laid out?
MEMBER FONTES: I so move.
MEMBER RICHINS: Second.
CHMN STAFFORD: Seconded by Member Richins.
CHMN STAFFORD: All in favor say "aye."
(A chorus of "ayes.")
CHMN STAFFORD: Opposed?
(No response.)
CHMN STAFFORD: Hearing none, the motion passes. I will issue an order reflecting the Decision of the Committee.
Anything further from members?
(No response.)
CHMN STAFFORD: With that we are adjourned. Thank you.

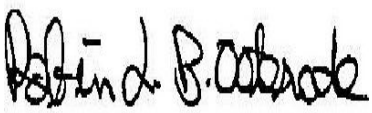
(The hearing concluded at 4:44 p.m.)

STATE OF ARIZONA)
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing proceedings were taken before me; that the foregoing pages are a full, true, and accurate record of the proceedings all done to the best of my skill and ability; that the proceedings were taken down by me in shorthand and thereafter reduced to print under my direction.

I CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

I CERTIFY that I have complied with the ethical obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206 (J)(1)(g)(1) and (2). Dated at Phoenix, Arizona, this 30th day of April, 2024.



ROBIN L. B. OSTERODE, RPR
CA CSR No. 7750
AZ CR No. 50695

* * * * *

I CERTIFY that Glennie Reporting Services, LLC, has complied with the ethical obligations set forth in ACJA 7-206(J)(1)(g)(1) through (6).

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