

1 BEFORE THE ARIZONA POWER PLANT LS-342

2 AND TRANSMISSION LINE SITING COMMITTEE

3

4 IN THE MATTER OF THE APPLICATION) DOCKET NO.
 5 OF UNS ELECTRIC, INC. IN) L-00000F-24-0056-00230
 6 CONFORMANCE WITH THE REQUIREMENTS)
 7 OF A.R.S. 40-360, ET SEQ. FOR A)
 8 DISCLAIMER OF JURISDICTION, OR,)
 9 IN THE ALTERNATIVE, A CERTIFICATE)
 10 OF ENVIRONMENTAL COMPATIBILITY)
 AUTHORIZING THE EXPANSION OF)
 11 BLACK MOUNTAIN GENERATING) PROCEDURAL CONFERENCE
 STATION, A NATURAL GAS-FIRED,)
 12 COMBUSTION TURBINE POWER PLANT)
 13 NEAR KINGMAN, ARIZONA IN MOHAVE)
 14 COUNTY.)
 _____)

12 At: Phoenix, Arizona

13 Date: April 8, 2024

14 Filed: April 11, 2024

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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 (Pages 1 through 42)

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INDEX TO EXHIBITS

NO EXHIBITS MARKED

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Power Plant and Transmission Line Siting
4 Committee, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 1:02 p.m. on April 8, 2024. All parties
6 attended via teleconference.

7

8 BEFORE: ADAM STAFFORD, Chairman

9 David French, Designee of the Department of
10 Water Resources
11 R. David Kryder, Represents Agricultural Interests
12 Margaret "Toby" Little, Represents General Public

13 APPEARANCES:

14 For the Applicant:

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1 APPEARANCES (Continued)

2 For Sierra Club:

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21 For SWEEP:

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Also Present:

Clark Bryner, Manager, Transmission Line Siting
Teresa Bravo, Government Relations Representative
Dylan Bearce, Director of Energy Services
Scott Tillighast, Intern with Attorney General
Gwen Farnsworth, WRA
Dave Daily
Tod Brewer, Assistant to Chairman Stafford
Lisa Glennie, Glennie Reporting Services

1 CHMN STAFFORD: Now is the time set for the
2 procedural conference in Docket No.

3 L-00000F-24-0056-00230 or line siting Case 230. Let's
4 take appearances starting with the Applicant.

5 MS. GRABEL: Thank you, Mr. Chairman.
6 Meghan Grabel from the law firm Osborn Maledon on behalf
7 of the Applicant UNS Electric Company. Also from the
8 Company we have three individuals. We have Mr. Clark
9 Bryner, who is the manager of transmission line siting.
10 We have Mr. Dylan Bearce who is the director of energy
11 services, and we have Mr. Teresa Bravo who is with our
12 government relations department.

13 CHMN STAFFORD: Thank you. Next up Sierra
14 Club.

15 MR. WOOLSEY: Good afternoon, Mr. Chairman.
16 Patrick Woolsey appearing on behalf of Sierra Club and
17 with me is my colleague Nihal Shrinath.

18 CHMN STAFFORD: ArISEIA.

19 MS. JOHNSON: Good afternoon. Autumn
20 Johnson on behalf of the Arizona Solar Energy Industries
21 Association or ArISEIA.

22 CHMN STAFFORD: All right. Western
23 Resource Advocates.

24 MS. DOERFLER: Good afternoon. Emily
25 Doerfler on behalf of Western Resource Advocates or WRA.

1 CHMN STAFFORD: All right. And for SWEEP?

2 MS. REYES: Good afternoon. Chanel Reyes
3 for the Arizona Center for Public Interest -- for Law in
4 the Public Interest on behalf of SWEEP.

5 CHMN STAFFORD: And from the Commission
6 Staff.

7 MS. EGAN: Samantha Egan on behalf of the
8 ACC and joining me shortly will be Maureen Scott.

9 CHMN STAFFORD: All right. We have
10 additional parties coming into the meeting. We have
11 Member French, Member Kryder, who is -- oh, yes, Scott
12 Tillighast is the intern at the Attorney General's office
13 and Gwen Farnsworth. I believe she's with WRA.

14 MS. DOERFLER: Correct.

15 CHMN STAFFORD: All right. Well, let's
16 start. Does any party disagree that September 4, 2024,
17 is the time limit for the Committee to act in compliance
18 with the statute? No one, okay.

19 MS. GRABEL: Mr. Chairman, if I may speak
20 on that. I do not disagree that that is the timeline
21 under the statute. I would note, however, for disclaimer
22 of jurisdiction purposes if the Applicant does need to
23 proceed with getting a CEC for this project, it will need
24 to start retaining analysts and beginning the basically
25 fact-finding to underlie the CEC by July -- late July.

1 So to the extent possible we would like
2 this process to be expedited.

3 CHMN STAFFORD: All right. Now, has the
4 Applicant complied with providing notice to the effective
5 jurisdictions as required by the statute in the
6 procedural order.

7 MS. GRABEL: It has, yes, sir,
8 Mr. Chairman.

9 CHMN STAFFORD: And the effective
10 jurisdictions are --

11 MS. GRABEL: The effective jurisdictions
12 are -- frankly, Mr. Chairman, I can't quite remember what
13 they are, but I thought this was going to be focused less
14 on the prehearing conference side of things, which we
15 normally talk about these areas, and more on the various
16 motions that have been made by the parties to date.

17 However, I'll tell you I believe that we
18 sent to the affected jurisdictions where -- let me. It
19 was Mohave County, I believe it was Havasu -- Lake Havasu
20 City, it was Bullhead City and Kingman, Arizona.

21 CHMN STAFFORD: They all have received
22 notice then.

23 MS. GRABEL: Correct.

24 CHMN STAFFORD: And has the Applicant
25 complied with the posting and publishing requirements of

1 the Procedural Order of the Statute.

2 MS. GRABEL: I believe we have. If not,
3 we're well on track to and will have by the time the
4 prehearing conference is held in this case.

5 CHMN STAFFORD: Well, the publishings would
6 have had to happen by now.

7 MS. GRABEL: Well, then the answer is yes.
8 I just haven't verified those facts because I didn't
9 realize we were going to be going through this at today's
10 hearing.

11 CHMN STAFFORD: Well, it seems kind of
12 appropriate to establish that notice has been provided if
13 we're going to rule on a request for continuance.

14 MS. GRABEL: Certainly.

15 CHMN STAFFORD: It seems relevant.

16 MS. GRABEL: Of course. Mr. Bryner, do you
17 want to chime in.

18 MR. BRYNER: Yeah, Mr. Chairman, we have
19 provided the public notice in the newspapers as we
20 discussed in the prefiling conference.

21 CHMN STAFFORD: And what were the
22 submission dates?

23 MR. BRYNER: Just give me one second. All
24 right. We published in the Daily Miner on March 13th and
25 March 20th and in the News Herald on March 15th and

1 March 17th.

2 CHMN STAFFORD: All right. Excellent. All
3 right. So notice has been provided then in compliance
4 with the statute and the rule.

5 All right. Now, the scope of the hearing
6 is going to be limited to the Applicant's request for
7 disclaimer of jurisdiction over the project and that it
8 doesn't meet the definition of plant in the statute.

9 Now, the Applicant is correct that the
10 questions of statutory interpretation are questions of
11 law and not fact; however, the facts alleged in the
12 application have to be established at the hearing. The
13 Committee must determine the facts and then apply the law
14 to the facts.

15 With that being said, the Applicant will
16 have to produce witnesses for the hearing. They will
17 need a witness to testify about the notice and public
18 outreach in order to comply with paragraphs 3 to 16 of
19 the procedural order, and they will need a witness to
20 provide the foundation for the application to any
21 exhibits, and those witnesses would then be subject to
22 cross-examination.

23 The configuration of the proposed plant,
24 you know, mainly the size of the generators and the
25 layout of plant and the actual capacity of the existing

1 plant are factual issues that need to be addressed prior
2 to the legal question of the disclaimer of jurisdiction.

3 Ms. Grabel, how many witnesses would the
4 Applicant need to put on? Could you do one witness?
5 Could you do a panel of two witnesses? What is your take
6 on that?

7 MS. GRABEL: Thank you, Mr. Chairman. Yes,
8 we will have at least one witness who will be Mr. Clark
9 Bryner. We may have two witnesses, which would be
10 Mr. Bearce, both of whom are present today and they would
11 be presented as a panel if we decide we need two
12 witnesses.

13 CHMN STAFFORD: Then Sierra Club, what
14 specific factual issues would you need to testify about
15 that can't be established by cross-examination of the
16 Applicant's witnesses.

17 MR. WOOLSEY: Thank you, Mr. Chair. So as
18 we noted in our Motion for Continuance, we do believe
19 that there is a factual issue about whether or not the
20 four separate -- excuse me, whether or not the four
21 generating turbines that UNS is proposing as part of the
22 expansion process are, in fact, separate.

23 We think that depends in part on the extent
24 to which they rely on shared equipment, and we would
25 intend to call a witness who would be able to testify

1 about that specific issue, and we have exhibits that we
2 intend to offer regarding that issue as well.

3 CHMN STAFFORD: Okay. So one witness to
4 testify about the layout of plant and how it -- I'm not
5 quite sure what you are saying.

6 MR. WOOLSEY: The witness would testify
7 about whether the four generating turbines proposed by
8 UNS should be considered separate under -- yes, I'll stop
9 there.

10 CHMN STAFFORD: Sure thing. So you
11 anticipate calling one witness?

12 MR. WOOLSEY: That's correct, Mr. Chairman.

13 CHMN STAFFORD: And then how many exhibits
14 did you think you want to have admitted.

15 MR. WOOLSEY: So we're still putting
16 together our exhibit list, and I should say we've been
17 engaged in several rounds of discovery with the Company,
18 and we expect that some of our exhibits will be drawing
19 on materials obtained through discovery.

20 So I can't tell you, Mr. Chairman, at this
21 point exactly how many exhibits we intend to offer, but
22 we do plan to exchange those with the party by next
23 Monday which I believe is -- excuse me, with all the
24 parties and the Applicant by next Monday, which I believe
25 is the deadline that was set in the procedural order.

1 CHMN STAFFORD: Okay. So more than a dozen
2 exhibits? Less than a dozen?

3 MR. WOOLSEY: Truthfully, Mr. Chairman, I
4 couldn't -- I couldn't tell you for certain at this
5 point, but I would say certainly less than two dozen
6 would be my guess.

7 CHMN STAFFORD: That looks like Member
8 Little has joined us as well to observe. Welcome Member
9 Little.

10 All right. Now, let's see for ArISEIA, how
11 many witnesses do you anticipate needing to call?

12 MS. JOHNSON: Chairman, ArISEIA at this
13 time does not anticipate calling additional witnesses.

14 We do anticipate having exhibits and I
15 would anticipate those being less than one dozen if
16 that's the metric that we're using.

17 CHMN STAFFORD: All right. All right.
18 WRA, how many witnesses do you intend to call.

19 MS. DOERFLER: WRA is planning on calling
20 one witness.

21 CHMN STAFFORD: And what would they be
22 testifying about.

23 MS. DOERFLER: The witness would be an
24 engineer who would testify on the technical capabilities,
25 realities of the turbines at Black Mountain.

1 CHMN STAFFORD: And how many exhibits do
2 you plan on producing.

3 MS. DOERFLER: We are unfortunately in
4 Sierra Club's boat as well. We are still developing that
5 number, but I would say it's likely under one dozen.

6 CHMN STAFFORD: All right. And SWEEP?

7 MS. REYES: Yes, Mr. Chairman, SWEEP does
8 not intend to call any witnesses, and exhibits would be
9 under one dozen if any.

10 CHMN STAFFORD: All right. And Commission
11 Staff.

12 MS. EGAN: Mr. Chairman, I'm not aware of
13 Staff's intention to call witnesses at this time nor am I
14 aware of any intention to use any exhibits. That being
15 said, I would reserve the right to do both. I know they
16 do have the intention to engage in additional discovery
17 with the company.

18 CHMN STAFFORD: Are they -- is Staff
19 actively pursuing -- issuing data requests to the
20 Applicant?

21 MS. EGAN: Yes, Mr. Chairman.

22 CHMN STAFFORD: About approximately how
23 many have you sent out?

24 MS. EGAN: To my knowledge it's only been
25 one so far, but I know that there have been discussions,

1 and there is an intention to engage further.

2 CHMN STAFFORD: Okay.

3 MS. GRABEL: And Mr. Chairman, before you
4 move on, I just want to state for the record that the
5 Company would likely object to the proffer of additional
6 witnesses from Sierra Club and from WRA is immaterial to
7 the legal question presented and would suggest that the
8 only entity that has knowledge relevant to what UNS
9 intends to do at this plant is UNS, and that their cases
10 could be well-established through cross-examination.

11 CHMN STAFFORD: That segues nicely into my
12 next question. Is it possible for the intervenors to not
13 have direct witnesses, but merely pull them reserved for
14 potentially as a rebuttal witness if, for example, if
15 they can't get to the information from the Applicant from
16 their witness or the Applicant's witness makes a
17 statement that they wish to contradict?

18 So I guess let's go ahead and start with
19 Sierra Club.

20 MR. WOOLSEY: So Mr. Chairman --

21 CHMN STAFFORD: Are you prepared to do that
22 or are you planning on putting on a witness for a direct
23 case?

24 MR. WOOLSEY: So Mr. Chairman, we do
25 believe that our witness has unique experience and

1 knowledge of gas plant operations that would be helpful
2 to the Committee, and we would like to have the ability
3 to call our witness to offer direct testimony not only
4 rebuttal testimony, and as I mentioned, we do plan to
5 offer exhibits on direct.

6 So we would prefer not to be limited to
7 only offering exhibits for purposes of cross-examination.

8 CHMN STAFFORD: Okay. What about ArISEIA?
9 I think you just indicated you don't intend to call a
10 witness.

11 MS. JOHNSON: I don't -- ArISEIA does not
12 intend to call a witness; however, I would say for
13 purposes of expediency based on the engagement with the
14 Company to date regarding discovery and data requests,
15 it's hard to imagine that rebuttal witnesses would not be
16 necessary in which case would probably be more efficient
17 to just -- for us all to just plan on which witnesses
18 we're going to have on which day and proceed that way.

19 CHMN STAFFORD: Okay. And what about WRA,
20 are you depending on having a direct case, or would you
21 be able to just hold your witness in reserve as a
22 potential rebuttal witness.

23 MS. DOERFLER: WRA opposes the limitation
24 to just a rebuttal witness; however, we understand that
25 there are limitations of time, and so if that is

1 necessary, we would obviously prefer to have a rebuttal
2 witness than not being able to present that witness at
3 all.

4 CHMN STAFFORD: Okay. All right. And
5 SWEEP and the Commission Staff, you don't intend to put
6 on a direct case, all right.

7 Looking at the Procedural Order, I want to
8 remind everybody that paragraphs 13 and 14 are in effect.
9 You'll need to have the -- any exhibits you intend to
10 offer and binders or tablets for the Committee members.

11 You've already designated what the
12 Applicant's exhibits will be nominated as. Sierra Club
13 you just use the prefix SC. ArISEIA could use ASEIA.
14 WRA would use WRA and then SWEEP would just use SWEEP.

15 What steps have the parties -- the
16 potential parties taken to comply with paragraph 7 and 8
17 of the Procedural Order regarding jointly presented
18 testimony in exhibits? Let's start with Sierra Club.

19 MR. WOOLSEY: So Mr. Chairman, I'll say
20 that we've had -- we've had two meet and confers to date
21 with the company, but those have not yet focused on
22 exhibits. Those have been on the Motion for Continuance
23 and on discovery. We have also had a conferral with the
24 other intervenors where we've discussed at a very high
25 level respective plans and I think I won't speak for

1 other intervenors but from our perspective, we do not see
2 overlap between the witnesses that the different parties
3 intend to call. We think they'll be complimentary rather
4 than overlapping.

5 CHMN STAFFORD: Okay. All right. ArISEIA
6 same question.

7 MS. JOHNSON: Well, I guess I would say a
8 couple of things. We also have had I think two meet and
9 confers with the Company. Those have been -- well, I
10 guess, one was sort of around notice of intent to be a
11 party, and one of them was around discovery. We have not
12 had one related to exhibits.

13 I will say as far as the response that they
14 filed on Friday, that response was filed one hour after
15 they asked for a meet and confer. So I have some
16 concerns about the sincerity with which the company is
17 trying to engage in that process.

18 And as far as -- I don't know if we're
19 going to talk about the consolidation separately, but
20 ArISEIA would oppose that and would be prepared to
21 discuss the reasons for opposition at the appropriate
22 time.

23 CHMN STAFFORD: All right. What about WRA?

24 MS. DOERFLER: WRA has not met and
25 conferred with the Company, but has conferred with Sierra

1 Club, ArISEIA and other intervenors, and we, I believe,
2 have established that our witnesses have differing
3 perspectives and therefore do not need to be
4 consolidated. WRA is a separate party with its own legal
5 representation and would oppose having that removed from
6 us in this proceeding.

7 CHMN STAFFORD: All right. And SWEEP?

8 MS. REYES: Yes, Mr. Chairman, we've had a
9 brief meet and confer with the Company on Friday and have
10 had a meet and confer with all of the other intervenors
11 except for Staff. We believe that our position as Sierra
12 Club stated is complimentary, but not overlapping, and as
13 such we would oppose consolidation.

14 CHMN STAFFORD: All right. Okay. I
15 haven't gotten to consolidation yet. I'm just talking
16 about like -- I'm looking to see if there is, like,
17 overlap to avoid the pit of evidence. That's what I'm
18 looking at now. Everything okay.

19 MS. REYES: Yes.

20 CHMN STAFFORD: Yes.

21 MS. REYES: Excuse me, sorry. Yes, I don't
22 believe that there is any overlap from the issues that
23 SWEEP intends to present.

24 CHMN STAFFORD: Okay. All right. We have
25 someone who has joined. It says UA 51920. Could you

1 please identify yourself. Caller UA 51920.

2 Tod, you can't tell who that is?

3 MR. BREWER: I cannot, Mr. Chairman. I'm
4 messaging them directly right now.

5 CHMN STAFFORD: All right. They left the
6 meeting. All right.

7 Well, next up I think I'd like to discuss
8 what is to be done to stipulate to get the evidence in to
9 avoid having to have the witness identified and then
10 admit the exhibits. What can be stipulated to.

11 It seems like everyone is still putting
12 their stuff together, but it seems that the parties have
13 their work cut out for them between now and the
14 prehearing conference that is scheduled for, I believe,
15 it's the 16th. Yes.

16 Ms. Grabel, have you talked to the parties
17 about stipulating to the facts of the application such as
18 they are I guess pages 5 and 6 of the -- 5, 6 and 7 of
19 the file? Has anyone -- I don't think anybody is
20 disputing those facts certainly.

21 MS. GRABEL: Mr. Chairman, we have not had
22 any conversations with the other parties to date about
23 stipulations, but would be happy to have those
24 conversations.

25 CHMN STAFFORD: Okay. Well, I think that's

1 where the heavy lifting is going to take place, so to
2 speak, because I think it's up to the parties to sit down
3 and establish what is really contested and what is really
4 not contested and like the nameplate capacities are the
5 key factual issues.

6 So, I guess, Ms. Grabel, is there an actual
7 physical nameplate that is attached to these units
8 that --

9 MS. GRABEL: Thank you, Mr. Chairman. So
10 obviously the four units that we're talking about have
11 not yet been constructed, but using the existing Black
12 Mountain generating station units as an example, yes,
13 there is a physical nameplate that is attached to the
14 generating units, and that does have the capacity
15 expressed.

16 CHMN STAFFORD: Okay. Now, is that -- I
17 looked at your facts on that. There is an actual
18 nameplate that can be introduced into evidence then.

19 MS. GRABEL: Correct. We have a photograph
20 and that has been provided to the parties who are
21 engaging in discovery during responses.

22 CHMN STAFFORD: Well, let's discuss Sierra
23 Club's motion for continuance. Mr. Woolsey.

24 MR. WOOLSEY: Thank you, Mr. Chair. So
25 Sierra Club did request in our March 21st motion that the

1 hearing be continued by fifteen days from April 24th to
2 May 9th, and the reason for that is we think that this
3 case presents important intertwined legal and factual
4 issues that have important implications for future siting
5 cases, and we think it's critical that intervenors have
6 sufficient time to be able to participate meaningfully
7 and to adequately develop a robust record to prepare for
8 the hearing, and we're concerned that the currently
9 scheduled April 24th hearing date doesn't allow us enough
10 time to fully develop our case and to obtain all of the
11 evidence that we need.

12 As I mentioned before, discovery is still
13 ongoing. We've served three rounds of discovery requests
14 on UNS. We're still waiting for responses on the third
15 round of discovery requests, which will be due this week,
16 and we've had a meet and confer with UNS about one of
17 our -- or excuse me, our first set of discovery requests
18 because the company objected to many of those requests,
19 so we've been sort of having a back and forth there and
20 trying to obtain the additional information we need, but
21 I wouldn't say that we've resolved all of those issues
22 yet.

23 So I think that's part of our concern about
24 the April 24th hearing date is that working backwards,
25 you know, the procedural order sets a deadline of next

1 Monday for the parties to have finalized exhibits and
2 testimony summaries, and it's going to be very
3 challenging for us to have all of that finalized by next
4 Monday given that we're still in the thick of discovery
5 and trying to resolve discovery disputes, and yeah, so I
6 think the key point that I want to make is that we think
7 continuing the hearing to May 9th would result in a more
8 robust record and more complete testimony and would
9 ensure that due process is satisfied, and we think that
10 would benefit all parties and the Committee.

11 And just briefly I would add that if -- say
12 UNS has raised a concern that because the company has
13 already, you know, expended resources noticing the
14 April 24th date, you know, they've expressed concern
15 about -- about the cost of renoticing. So I just wanted
16 to note if the Committee for whatever reason did not want
17 to continue the April 24th hearing in full, we would
18 propose in the alternative that April 24th be reserved
19 exclusively for public comment and that the legal
20 argument and the evidentiary hearing be continued to a
21 later date, and I would note that the date that we
22 requested is still within the 60-day statutory deadline
23 based on the date that -- that the application was filed
24 and the date that the hearing was noticed. So I will
25 stop there, Mr. Chairman.

1 CHMN STAFFORD: All right. Before I allow
2 you to respond, Ms. Grabel, is there any other
3 intervenors that want to speak on behalf of the motion to
4 continue?

5 MS. JOHNSON: ArISEIA would, Chairman.

6 CHMN STAFFORD: Please proceed.

7 MS. JOHNSON: I would just note that there
8 have been -- well, the lack of there being any, as far as
9 I can tell, discovery timelines or rules within the
10 Procedural Order has presented additional challenges.

11 I would just echo the fact that we have
12 had, I would say, pretty significant problems with data
13 requests. The Company took the initial stance of
14 objecting to everything essentially which has required
15 requesting supplementals and numerous rounds of discovery
16 at least for us all of which we did get, but not until
17 the very end of the workweek last week, and so I do think
18 it's reasonable to provide more time given those
19 concerns.

20 I will say I don't have a position on the
21 specific day. I do think that the factual issues that
22 you've already articulated need to be resolved before the
23 legal arguments are heard. I don't have an objection to
24 doing public comment on the 24th if that alleviates the
25 Company's concern about the fact that they already have

1 noticed that for the public, and so I'm fine with using
2 that for the public commentary, but am not -- I'm in
3 support of moving the factual and legal hearing to a
4 different day, if possible.

5 CHMN STAFFORD: All right. Ms. Grabel your
6 response.

7 MS. GRABEL: Thank you, Mr. Chairman.

8 MS. EGAN: Mr. Chairman, sir, is it okay if
9 I --

10 CHMN STAFFORD: Oh, Ms. Egan. Staff, did
11 you want to speak in favor of continuance.

12 MS. EGAN: Yes, Mr. Chairman, Staff would
13 appreciate additional time for discovery and therefore
14 would support the continuance. I'm not aware of a
15 specific date, but we are in favor of additional time.

16 CHMN STAFFORD: Thank you.

17 MS. DOERFLER: WRA is also in favor --
18 sorry, I didn't mean to interrupt you there.

19 WRA is also in favor of the continuance.
20 Whether or not it's May 9th or a date around that time is
21 obviously there may be some conflicts there with the
22 last-minute change. We also do not object to using April
23 24th as a public comment hearing. I think that's
24 helpful.

25 CHMN STAFFORD: Thank you. Ms. Grabel.

1 MS. REYES: Also, Mr. Chairman --

2 CHMN STAFFORD: Ms. Reyes, I've called on
3 Ms. Grabel to go. You can go after Ms. Grabel. Thank
4 you. Please proceed, Ms. Grabel.

5 MS. GRABEL: Thank you, Mr. Chairman. So I
6 mean, as you have noted, the proceedings for April 24th
7 have already been noticed. We've spent money on that
8 notice, not just on newspapers, but we've also erected
9 signage in the area erected in places where people are
10 likely to go and pass.

11 I mean, we would appreciate obviously
12 public comment can take place that day, but we will also
13 be offering a witness, as we've already discussed, at
14 that April hearing to at least avow to the facts on which
15 the disclaimer request is made, and then obviously that
16 witness can be open to cross-examination at that time,
17 and we think that if the Committee believes additional
18 evidence is necessary after that initial April hearing
19 date, then they can elect at the time to take additional
20 evidence of another day. I don't think that's something
21 that we need to determine today.

22 Our disclaimer application presents a
23 straightforward issue of statutory interpretation, and
24 our position is that the intervenor proposals for expert
25 testimony are not relevant because the expert cannot

1 establish facts that will change the meaning of the
2 statute which focuses specifically on the nameplate
3 rating of each separate generating unit.

4 With respect to the data requests, I
5 candidly but honestly believe that many of the requests
6 were objectionable; however, notwithstanding our initial
7 objections we did present facts to them and quickly
8 turned around supplements so that within -- we've
9 received three sets of data requests from Sierra Club.
10 We have responded to two, supplemented one, given that
11 essentially what they asked for, we believe, in our meet
12 and confer. We've responded to four of AriseIA's data
13 requests turned around within five days, which is pretty
14 much unprecedented. You don't see -- that's half the
15 time that you would do in a rate case.

16 And so we believe that the statutes and the
17 rules and regs set forth the due process required in line
18 siting proceedings. We have been following those.
19 Nothing has deviated from historical CEC proceedings. So
20 we don't believe that we should continue -- it's
21 premature to determine whether or not a continuance is
22 necessary at this time.

23 CHMN STAFFORD: Okay. Thank you.

24 Ms. Reyes, you have something to add.

25 MS. REYES: Yes, I apologize. Being on the

1 telephone, I couldn't tell what was going on. Yes, I
2 just wanted to say SWEEP doesn't have an opinion on the
3 hearing date. However, the proposed date of May 9th is
4 unavailable. SWEEP is unavailable May 8th through 10th
5 so we cannot agree to the May 9th date.

6 CHMN STAFFORD: Well, I'm going to deny the
7 motion to continue. The Applicant's notice is in the
8 newspaper. We will proceed on that day. Whether we
9 finish that day is an entirely different question. We
10 won't know until we get closer to it, but we are going to
11 keep the hearing date as it is.

12 Sierra Club, you've also had a -- your
13 motion to request post-hearing briefs.

14 MR. WOOLSEY: Yes, Mr. Chairman. So as we
15 set out in that motion, we do think that post-hearing
16 briefing from the parties could be helpful to the
17 Committee on these issues both the legal and factual
18 issues at stake here regarding the application of the
19 siting statute and regarding the factual issues as to
20 whether the proposed turbines in this project are
21 separate.

22 So we do think there are material disputed
23 factual issues here, not only legal issues at stake, and
24 we think that briefing on those issues could be helpful,
25 and again as we discussed at the beginning of the

1 conference, given that the deadline for the committee's
2 decision on the application for disclaimer is not until
3 September, we believe that if briefs were to be due, for
4 instance, if parties were to concurrently file opening
5 briefs within 30 days after hearing, for example, and
6 replies within 15 days after that, it would not unduly
7 delay the committee's decision-making, but we would be
8 glad to accept whatever -- if the Committee did chose to
9 order briefs, we'd be glad to accept whatever schedule is
10 ordered.

11 CHMN STAFFORD: Well, whether to have
12 post-hearing briefs would be up to the Committee. They
13 have to vote on that. So I guess at the conclusion of
14 the presentation of evidence and the legal argument it
15 would be up to the Committee to decide whether they're
16 prepared to proceed with a vote or would require
17 additional briefing before they're able to do so.

18 A few other things. Sierra Club asked to
19 grant intervenor status before the hearing. Do you have
20 comment about that Mr. Woolsey?

21 MR. WOOLSEY: Thank you, Mr. Chairman. I
22 would just note that for all of the -- well, I'll speak
23 only for Sierra Club, but having invested a considerable
24 amount of time and working on discovery and trying to
25 develop evidence and conduct research and try to prepare

1 for this hearing, it puts a considerable burden on
2 potential intervenors to not know until the beginning of
3 the hearing itself whether we are, in fact, granted party
4 status.

5 So we'd respectfully ask that if the notice
6 is intent to be a party here or motions to intervene be
7 granted before the hearing.

8 CHMN STAFFORD: Well, the Committee is not
9 going to meet before the hearing. I mean, to my
10 recollection, the Committee hasn't denied intervention to
11 Sierra Club ever.

12 MR. WOOLSEY: Mr. Chairman, I'm not aware
13 of Sierra Club having been denied intervention either.

14 CHMN STAFFORD: Well, I think you'll just
15 have to take your chances and trust in faith that you
16 will not be denied in this case as you were not in any
17 other. I think proceed as if you're going to be granted
18 intervention -- or proceed on that assumption.

19 You've also issued -- we will have time for
20 public comment at the hearing. I haven't decided when
21 exactly I'm going to do it at the beginning or after the
22 presentation of evidence or when exactly, but we will
23 have -- we will have that. We will have public comment.

24 Typically there is not more than 30 minutes
25 of public comment at these things. Do you have reason to

1 believe that they'll be significantly more for this case,
2 Mr. Woolsey?

3 MR. WOOLSEY: Mr. Chairman, I don't have
4 knowledge of, you know, what members of the public may
5 plan to come one way or the other, but I do believe in
6 talking to colleagues that there will be interest in
7 commenting by members of the public.

8 CHMN STAFFORD: Okay. And the other issue
9 was is that the procedure to give UNS thirty minutes for
10 opening statements and five to the intervenors. You
11 would like to have -- you think each intervenor should
12 have the same amount of time?

13 MR. WOOLSEY: Mr. Chairman, I would amend
14 that, I guess, and say I wouldn't necessarily ask that
15 Sierra Club be granted equal time, but I would ask that
16 we be granted additional time beyond five minutes.
17 Whether that's ten minutes or whatever the -- whatever
18 the Committee decides, but I would ask that we be granted
19 additional time beyond five minutes.

20 CHMN STAFFORD: All right. Ms. Grabel, do
21 you think you'll need a whole 30 minutes for the opening?
22 It's not going to be your entire legal argument. It
23 would just be to set the stage of the facts you're going
24 to establish to ground the disclaimer requested; right?

25 MS. GRABEL: That is correct, Mr. Chairman.

1 I sincerely doubt I'll go more than 15 minutes.

2 CHMN STAFFORD: All right. Ms. Johnson,
3 you have your hand raised.

4 MS. JOHNSON: Yes. Chairman, could you
5 clarify that is one question that I had if the opening --
6 I assume that the opening statements were going to be
7 different than our time to make essentially what is an
8 oral argument on the legal proceeding -- and I realize
9 I'm using air quotes that you can't see.

10 But could you clarify how exactly it will
11 work given that there will be factual witnesses. And
12 then I am assuming there will be an oral argument
13 opportunity to argue about the interpretation of the
14 statute.

15 CHMN STAFFORD: Yes, how I am envisioning
16 the process unfolding would be the Applicant would go --
17 the applicant and then the intervenors would give a brief
18 opening statement framing the issue and the facts that
19 they are establishing as the basis for the request.

20 So after the opening statements, the
21 Applicant would be -- put on their witness, establish the
22 facts and then the other parties would do likewise, and
23 after conclusion of the presentation of evidence, we
24 would move to the oral arguments on the application.

25 So we'd have to establish the facts, you

1 know, the plant is X, Y, Z this is how it's configured,
2 and then the Applicant would argue why these are -- the
3 statute doesn't apply to them, and then the intervenors
4 would argue that, I guess, would be they're not separate
5 would be the argument.

6 Is that consistent with everybody's
7 understanding to establish the facts first at the hearing
8 and then instead of giving a closing argument on the
9 application that would be your time for the legal
10 argument whether the statute applies to the plant as
11 proposed? Ms. Grabel?

12 MS. GRABEL: Yes, Mr. Chairman, that makes
13 logical sense to me.

14 CHMN STAFFORD: Okay. Any other parties on
15 that issue?

16 MS. JOHNSON: That makes sense to me. If
17 that's the case, I don't know if there is going to be
18 specific time limits for the oral argument or not, but I
19 don't know that I would need significantly more time for
20 just the opening statements since those are going to be
21 separate time periods. I would suggest that the public
22 comment come before the evidentiary witnesses and the
23 oral argument because if there are people that show up,
24 that's a long time for them to wait.

25 CHMN STAFFORD: Right. Well, we'll see how

1 many people are there ready to make public comment. If
2 you start public comment immediately at 10, and there is
3 no one there, but they all show up around 11:30, then
4 it's going to be -- we're going to have to kind of play
5 it by ear, but I see us typically starting out as hearing
6 the facts, and then instead of a closing, saying that
7 you've met the burden, that would be the time for the
8 oral argument, what the law means to those facts.

9 Now, the Applicant has requested
10 consolidation. Ms. Grabel, would you like to expound on
11 that?

12 MS. GRABEL: Certainly. Thank you very
13 much, Mr. Chairman. Both the statute and the
14 Commission's rules of policy and procedure provide for
15 the consolidation of parties' arguments when it looks
16 like there will be repetitive evidence presented, and
17 when all of the parties represent similar interests, not
18 even identical interests but similar interests, and we
19 believe that through both the appearances of the four
20 parties or the four potential intervenors and the data
21 requests we have seen, there will be two types of
22 arguments made. One is as I've alluded to already is
23 whether or not the interests -- I mean the units are
24 separate from one another given the potential for shared
25 facilities, and the other sort of a policy argument about

1 what happens if our interpretation is correct in terms of
2 the siting of thermal resources in Arizona.

3 We believe that all four of these parties
4 have alleged similar interests, and in order to avoid the
5 taking of repetitive evidence, it makes sense to -- for
6 you or for the Committee to designate one representative
7 from among them to basically put on the case that the
8 four of them appear to be intending to present.

9 CHMN STAFFORD: All right. Mr. Woolsey,
10 would you like to respond to that.

11 MR. WOOLSEY: Thank you, Mr. Chairman.
12 Sierra Club, WRA, SWEEP and ArISEIA are all separate
13 organizations with separate missions, and each
14 organization routinely intervenes separately in
15 Commission proceedings including rate cases to advance
16 our respective goals, and we don't believe that UNS has
17 any basis to argue at this point that Sierra Club's
18 witness testimony would be repetitive or overlap with the
19 testimony offered by other parties because we have not
20 yet exchanged exhibits or witness testimony summaries.
21 So that seems premature at this point.

22 As I noted before, we did confer with the
23 other intervening parties, and we do plan to call a
24 witness, and it sounds like at least one other intervenor
25 plans to call a witness as well, but based on the

1 conversations that we've had to date, again we believe
2 that that testimony would be complimentary, but not
3 overlapping. So we don't think it would lead to
4 repetitive or cumulative presentation of evidence, but if
5 the Committee did become concerned that at some point
6 that there was repetitive testimony being offered, we
7 would submit that the Committee could always take action
8 to address that issue at the hearing, but at this point
9 we don't expect there to be repetitive testimony.

10 CHMN STAFFORD: ArISEIA?

11 MS. JOHNSON: Thank you, Chairman. ArISEIA
12 opposes the Company's -- it's not a motion I don't think.
13 It's not legal as such -- but their response in which
14 they request for consolidation.

15 As we've already established over the
16 course of this procedural conference, the Company has not
17 engaged in any meet and confers with any of the
18 interested parties, it sounds like, regarding either
19 exhibits or witnesses.

20 So I would agree they have no basis on
21 which to make that assertion. In fact, they ask for a
22 meet and confer on their response and then they filed it
23 an hour later before any meet and confers had happened,
24 and so I think there is a really significant concern
25 regarding their -- whether or not they're acting in good

1 faith on this issue.

2 Their response to me reads that they
3 essentially say that anyone that interprets the statute
4 different than their's is basically should be
5 consolidated for being similar.

6 I have participated in numerous proceedings
7 before the Corporation Commission both as the agency as a
8 whole and in line siting, and I have never seen the
9 utility move to do that. They did not move to do that in
10 Coolidge, which had an equivalent number, I would say, of
11 parties, and so I don't think it's appropriate in this
12 case as well. I think it would undermine the process,
13 and I think it would impede the due process rights of the
14 intervening parties.

15 We are all separate organizations. We
16 represent separate constituencies. We are funded
17 separately, and ArISEIA specifically is a 501(c)(6) trade
18 organization that represents industries. We do not
19 represent sort of a policy position as far as the
20 environment and those kinds of things and so certainly
21 think that their motion is inappropriate.

22 CHMN STAFFORD: All right. One key
23 difference between this case and the Coolidge case you
24 mentioned is that the Coolidge hearing was on the actual
25 CEC application for the plan. It wasn't a request for a

1 disclaimer. So that's one of the key differences between
2 I think that proceeding and this one. WRA.

3 MS. DOERFLER: WRA opposes the
4 consolidation of parties in this case. As stated
5 previously, we are separate parties with separate ideals,
6 separate mission statements, separate funding and
7 separate legal representation.

8 WRA has not consented to be represented by
9 another attorney in this case, and frankly we find it
10 highly problematic that that would be required especially
11 at this point in time when no witness summaries have been
12 provided and there is very little established as to what
13 the parties will even be presenting in the hearing.

14 CHMN STAFFORD: All right. And SWEEP.

15 MS. REYES: Yes, Mr. Chairman. I actually
16 did have a meet and confer briefly with the Company on
17 Friday on this issue. I did explain that SWEEP is coming
18 from a different perspective related to policy.

19 My understanding is -- I also had a meet
20 and confer with Sierra Club on Friday afternoon. My
21 understanding is the position that SWEEP is taking is
22 unique from any of the other parties, and so for that
23 reason SWEEP would oppose consolidation.

24 CHMN STAFFORD: All right. Well, I'm not
25 going to rule on the consolidation just yet. I think I

1 can do that at the hearing if I think it's appropriate,
2 but I think that it is a little premature because we
3 haven't seen the exhibit list and witness summaries.

4 With that between now and the prehearing
5 conference, I'm directing all the parties the Applicant
6 and all the intervenors to meet and try to come up with
7 as many factual -- facts that you can stipulate to to
8 narrow the scope of the hearing.

9 The hearing we have to establish the facts
10 so we can apply the law to the facts, but it's not --
11 this is not the hearing on the application for a CEC.
12 There is a significant difference between that and this.

13 So I think the parties need to get together
14 and come up with as much things that you can stipulate
15 without having to put on testimony to verify it. For
16 example, I think at the configuration of the proposed
17 plant, I mean, it's going to be what the Applicant says
18 it is. It needs to have some kind of where the plant is
19 going to be. The map just shows the general location.
20 I'm talking about where the existing plant is in relation
21 to the proposed plant and how they're going to tie into
22 the grid. Physical things like that that are going to
23 be -- it's not going to be like -- it shouldn't be a
24 disputed fact. If that's the Applicant's plans, that's
25 what the Applicant's plans are. I guess other parties

1 could use evidence to show -- extra tests would show, oh,
2 that's not how it should be laid out. There is something
3 wrong with it, but that's not really -- that's of limited
4 relevance to the inquiry before us, I think, unless it
5 goes to show that, oh, they would cluster it together,
6 and they're only doing it this way, I guess, to create
7 artificial separation. I guess that would be a potential
8 line of questioning, but I think the focus is you need to
9 establish as many facts as you can -- establish as many
10 facts that are not disputed as possible.

11 Does that make sense to everyone? Is that
12 clear? Like the nameplate rating. I mean, if it's a
13 physical nameplate on the side of the machine, that
14 should be pretty simple to establish. That shouldn't
15 require cross-examination and debate about what the
16 actual nameplate is.

17 I think that at the very least the
18 Company's witness should be able to give compelling
19 definition of what the nameplate capacity is compared to
20 other definitions of capacity, and I'm sure the Committee
21 members will have questions about that. So that needs to
22 be addressed.

23 And as for exhibits, I think that the
24 parties and Applicant should try to get together on the
25 same page and stipulate to the exhibits they are going to

1 want to introduce to get admitted.

2 For example, like responses to data
3 requests, I mean, those should just be allowed to be
4 stipulated. We shouldn't have to have, you know, lay a
5 foundation, you know, have a debate about what those
6 responses are. What they mean would be part of your oral
7 argument, but I don't think that's -- we don't need to
8 waste a lot of hearing time establishing facts that
9 really aren't in dispute.

10 I know other documents that ArISEIA says
11 needs to be incorporated in there. There is Commissioner
12 Tovar's letter. I think I can take official notice of
13 that. If there is other things in the record of other
14 cases, compile those certainly the relevant portions for
15 the Committee members to look at, but we should be able
16 to get those stipulated to and in the record.

17 Is there anything else that we haven't
18 covered yet? Any questions?

19 MS. GRABEL: Not from the Company,
20 Mr. Chairman.

21 CHMN STAFFORD: Okay. Thank you. Tod, is
22 there anything else we need to cover.

23 MR. BREWER: I don't believe so,
24 Mr. Chairman. Thank you.

25 CHMN STAFFORD: Okay. All right. Nothing

1 further from any parties? Commission Staff, nothing
2 else?

3 MS. EGAN: No. Thank you, Mr. Chairman.

4 CHMN STAFFORD: Do you anticipate being at
5 the hearing?

6 MS. EGAN: Yes, Mr. Chairman.

7 CHMN STAFFORD: Or file a response?

8 MS. EGAN: I'm sorry. Can you repeat that
9 please.

10 CHMN STAFFORD: Is Staff going to file a
11 written response to the letter that I sent them earlier.

12 MS. EGAN: Yes, Mr. Chairman.

13 CHMN STAFFORD: Okay. And when can we
14 expect that.

15 MS. EGAN: I'm not aware of when we intend
16 to respond, but I can definitely follow up with that
17 information.

18 CHMN STAFFORD: Okay. And if you change
19 your mind about exhibits and witnesses, please make sure
20 you exchange the witness summary and exhibits with the
21 parties the day before the prehearing conference.

22 MS. EGAN: Yes, Mr. Chairman.

23 CHMN STAFFORD: Anything further? All
24 right. With that let's go off the record.

25 (Proceedings concluded at 1:51 p.m.)

1 STATE OF ARIZONA)
)
2 COUNTY OF MARICOPA)

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