

1 BEFORE THE ARIZONA POWER PLANT
2 AND TRANSMISSION LINE SITING COMMITTEE

3 IN THE MATTER OF THE APPLICATION) Docket No.
4 OF SALT RIVER PROJECT) L-00000B-21-0393-00197
5 AGRICULTURAL IMPROVEMENT AND)
6 POWER DISTRICT, IN CONFORMANCE) LS CASE NO. 197
7 WITH THE REQUIREMENTS OF ARIZONA)
8 REVISED STATUTES, SECTIONS)
9 40-360, et seq., FOR A)
CERTIFICATE OF ENVIRONMENTAL)
COMPATIBILITY AUTHORIZING THE)
EXPANSION OF THE COOLIDGE)
GENERATING STATION, ALL WITHIN) SECOND
THE CITY OF COOLIDGE, PINAL) PREHEARING CONFERENCE
COUNTY, ARIZONA.)
_____)

10

11 At: Phoenix, Arizona

12 Date: February 3, 2022

13 Filed: February 4, 2022

14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16

17

18

19

20

21

22

23

24

25

COASH & COASH, INC.
Court Reporting, Video & Videoconferencing
1802 North 7th Street, Phoenix, AZ 85006
602-258-1440 staff@coashandcoash.com

By: Carolyn T. Sullivan
Arizona CR No. 50528

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Power Plant and Transmission Line Siting
4 Committee, commencing at 2:03 p.m. on the 3rd day of
5 February, 2022, with all participants appearing via
6 videoconference.

7

8 BEFORE: PAUL A. KATZ: Chairman

9

10 APPEARANCES:

11 For the Applicant:

12 JENNINGS, STROUSS & SALMON, P.L.C.
13 Mr. Albert Acken
14 One East Washington Street
Suite 1900
Phoenix, Arizona 85004

15 and

16 SALT RIVER PROJECT
17 Ms. Karilee Ramaley
Senior Principal Attorney
18 P.O. Box 52025
Legal Services PAB381
Phoenix, Arizona 85072-2025

19

20 POTENTIAL INTERVENORS:

21 For the Sierra Club:

22 ROSE LAW GROUP PC
23 Mr. Court Rich
Mr. Eric Hill
7144 East Stetson Drive
24 Suite 300
Scottsdale, Arizona 85251

25

1 POTENTIAL INTERVENORS: (Cont.)

2 For Western Resource Advocates:

3 WESTERN RESOURCE ADVOCATES
4 Mr. Adam Stafford
5 1429 North 1st Street
6 Suite 100
7 Phoenix, Arizona 85004

8 For the Randolph Residents:

9 Ms. Dianne Post
10 1826 East Willetta Street
11 Phoenix, Arizona 85006

12 and

13 Ms. Autumn T. Johnson, pro hac vice
14 autumn@tierrastrategy.com

15 For the Arizona Corporation Commission:

16 Mr. Stephen J. Emedi
17 Ms. Kathryn Ust
18 Staff Attorneys
19 Legal Division
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 ALSO PRESENT:

23 Mr. William McClellan, SRP, Project Co-manager
24 Mr. Josh Robertson, SRP
25 Director, Regulatory Policy & Public Involvement
26 Ms. Michele Maser, SRP, Senior Legal Specialist
27 Mr. Tod Brewer, Assistant to Chairman Katz

1 CHMN. KATZ: This is the time set for the
2 prehearing conference in the CEC No. 197, Coolidge
3 Expansion Project, prehearing conference. I may have
4 already said that.

5 And I will, I guess in the order that I went a
6 moment ago -- we have everybody that we need here. But I
7 will first ask SRP's counsel to please identify himself
8 for the court record.

9 MR. ACKEN: Thank you, Mr. Chairman. Bert Acken
10 of Jennings, Strouss & Salmon and Karilee Ramaley, Senior
11 Principal Attorney, on behalf of the applicant, Salt
12 River Project Agricultural Improvement and Power
13 District.

14 CHMN. KATZ: And I would ask one or both of the
15 attorneys who are here on behalf of the Roosevelt
16 neighborhood if they would kindly identify themselves for
17 the record.

18 MS. POST: I'm Dianne Post for the Randolph
19 Residents.

20 CHMN. KATZ: And I believe Ms. Johnson is also
21 present.

22 MS. JOHNSON: Autumn Johnson on behalf of the
23 Randolph Residents.

24 CHMN. KATZ: Right. And I'm just glad things
25 worked out, because I had to kick the butt of the State

1 Bar to get you that pro hac vice. And I finally got
2 through and you got what you needed, and I'm more than
3 happy to have you participate.

4 MS. JOHNSON: They didn't tell me that you
5 called, so thank you so much.

6 CHMN. KATZ: Yeah. I called them a couple --
7 about two or three days in a row, and I got a commitment
8 last Friday that they would issue it on Monday. So I'm
9 glad that worked out.

10 I would ask counsel for the Corporation
11 Commission to please identify himself. Or if there's
12 more than one attorney, you can take care of both of
13 them, Counsel, or have you each identify yourselves.

14 MR. EMEDI: Good afternoon, Mr. Chairman.
15 Stephen Emedi on behalf of Commission Staff. And I'll
16 let Katie introduce herself.

17 MS. UST: Hello. Kathryn Ust, also on behalf of
18 Staff.

19 CHMN. KATZ: Thank you very much.

20 And last but not least, I'll have one or both of
21 the attorneys representing the Sierra Club please
22 identify themselves.

23 MR. RICH: Good afternoon, Chairman. Court Rich
24 and Eric Hill from the Rose Law Group on behalf of the
25 Sierra Club.

1 CHMN. KATZ: Thank you all very much for being
2 here promptly and on time. What I need to advise --

3 MR. BREWER: Excuse me, Mr. Chairman.

4 MR. STAFFORD: Mr. Chairman.

5 CHMN. KATZ: Yes. I'm sorry.

6 MR. BREWER: Mr. Stafford needs to identify
7 himself for the record.

8 CHMN. KATZ: Go ahead, Mr. Stafford.

9 MR. STAFFORD: Yes. My name is Adam Stafford.
10 I'm here on behalf of Western Resource Advocates.

11 CHMN. KATZ: And I apologize to you. I didn't
12 mean to miss you. I know that we have -- at least if my
13 arithmetic skills are still good, we have three potential
14 intervenors, the neighborhood -- well, four, because we
15 have the Corporation Commission that's likely to
16 participate. I don't whether -- does the Commission
17 intend to present any evidence or just, where necessary,
18 cross-examine witnesses?

19 MR. EMEDI: I'm sorry, Chairman Katz. At this
20 point we don't intend to introduce any evidence or
21 present a witness. We'll just be there for
22 cross-examination.

23 CHMN. KATZ: And what about Western Resources?
24 I'm assuming -- well, I know you're calling witnesses and
25 you want to cross-examine other parties' witnesses,

1 correct?

2 MR. STAFFORD: Yes, Chairman.

3 CHMN. KATZ: And I'm assuming the same is true
4 with the Sierra Club, that they want to be able to fully
5 participate in presenting the witnesses that they've
6 identified and cross-examining other parties' witnesses
7 as well?

8 MR. RICH: Yes, Chairman, that's correct.

9 CHMN. KATZ: And last but not least, I'm
10 assuming that the Roosevelt neighborhood wants to
11 participate actively in this by calling the witnesses
12 they've identified and cross-examining other parties'
13 witnesses; is that correct?

14 MS. POST: That is correct, Chairman.

15 CHMN. KATZ: Thank you all very much.

16 And for those of you who maybe aren't
17 overwhelmingly familiar with this process, we don't have
18 real strict rules of evidence, but we want to proceed in
19 an orderly fashion. And I would ask you amongst
20 yourselves, otherwise, I'll have to assign you, but
21 hopefully you have agreed or can agree between
22 yourselves. I know Mr. Acken has the burden of going
23 forward and the burden of proof. So he will be going
24 first.

25 But I would ask the rest of you to perhaps, with

1 Mr. Acken, figure out what order you want to pursue your
2 cross-examination in, and that would be the same order
3 that you would present your witnesses in. And I also
4 want to make sure, just like we do in our courts, that
5 while there may be two lawyers for a particular witness,
6 only one of you participates with that witness. I don't
7 want multiple lawyers for any party both engaging in
8 cross-examination of a witness or on direct examination
9 of a witness. And I hope you can work that out between
10 yourselves.

11 MR. ACKEN: Mr. Chairman, sorry to interrupt,
12 but we actually did meet and confer yesterday, and so we
13 discussed a schedule of order of witnesses, order of
14 cross-examination. So if you want to hear a discussion
15 about it today, we'll be prepared to do so. But
16 otherwise, know that those discussions have occurred.

17 CHMN. KATZ: Well, most of you, I either know or
18 know of, and I trust that you will honor whatever
19 commitments you've made with one another, and I don't
20 need to spend a lot of our time today going through that.

21 What I do need to warn you, though, is we start
22 on Monday at 1:00. That's to allow -- we have several
23 folks from Phoenix. I know that we have a gentleman, an
24 elderly gentleman, Mr. Haenichen, coming down, at least
25 when I last spoke with him, from Heber. And he's well

1 into his 80s, so I sometimes get a little scared with him
2 driving down. I think he's going to come in Sunday
3 night. And we have Mr. Palmer that comes in from
4 Safford. So we have a lot of people traveling. So we
5 won't get started until 1:00 on Monday.

6 The rest of our days will probably start at
7 9 a.m. and run till about 4:30 or 5. On our first day,
8 we'll run till about 4:30 or 5, and then public comments
9 are going to take place on Monday, the 7th, from 5:30
10 till we're done. If it takes extraordinary long period
11 of time, we may continue it on a couple of other
12 evenings.

13 I hope, though, that you'll work with your
14 respective clients and those who are interested in your
15 positions to not offer a redundant amount of the same
16 testimony. I know that sometimes you think strength is
17 in numbers. I just want to be able to make sure that the
18 Committee and I understand what the concerns are of the
19 folks in the neighborhood, what the concerns of the
20 Sierra Club are, what the members of the general public
21 other than those I've identified have to say, and what
22 anybody in support of the project might have to say.

23 I also need to make sure -- Mr. Acken, we've
24 received some letters that were docketed that are in
25 favor and against this project . And I want to make sure

1 that they get marked by one party or the other for
2 identification.

3 And when it comes to numbering, what I would
4 suggest be done and what our court reporters prefer is
5 that we'll have -- it could be either Applicant or APP,
6 whatever abbreviation you want to use, 1, 2, 3, 4, 5, 6,
7 and 7.

8 For Sierra Club, it could be SC or SEC, however
9 you want to abbreviate it, SEC-1, 2, 3, 4, etc.

10 For the neighborhood, it could be Roosevelt-1,
11 2, 3, 4, 5, and 6.

12 And for Western Resources, it could be WR, or
13 however you want to use the abbreviation, 1, 2, 3, and 4.

14 But we don't need to go through Exhibit No. 58,
15 59, or 67. So just make sure -- because the exhibits
16 will ultimately be given to the court reporter and will
17 be included as part of the record and will ultimately
18 need to be docketed with the Corporation Commission. And
19 if we follow that routine, we should be in good shape.

20 The other thing that I --

21 MR. ACKEN: Mr. Chair.

22 CHMN. KATZ: Yes, Mr. Acken.

23 MR. ACKEN: Can I ask -- we don't typically mark
24 every public comment that comes into the docket as an
25 exhibit . Certainly, we select ones that we think we

1 want to share. Other parties can do the same. I don't
2 have a good sense for how many public comments will come
3 into this docket, but there may be quite a few.

4 Is it your expectation that the applicant mark
5 each and every one of those as an exhibit that could be
6 entered into the record? Because that is a little
7 different than what we typically do with respect to
8 public comment.

9 CHMN. KATZ: And I'm not locked into stone and
10 I'm educable. I historically believe that to be the
11 case. I don't think we need to mark them all because
12 they've already been docketed. But if any party wishes
13 to have that specially referenced in your respective
14 client's testimony, please mark it with part of your
15 exhibits. But I think it makes sense to not have every
16 letter or comment from cities, the County, the public
17 marked for identification. We'll get overwhelmed with
18 exhibits, even potentially as it is.

19 I also need to advise those of you who are
20 unfamiliar with this process, I can't rule on the motions
21 to intervene, but I wouldn't be dragging you through this
22 process if I didn't believe that all of the intervenors
23 will have the right to participate. And I'm going to
24 advise the Committee that I believe, under the statutes
25 and the rules, there's enough interest from all of the

1 parties to be entitled to intervene. Whether or not
2 there might be any -- I don't know if we're under any
3 beliefs that people won't be allowed to intervene, but if
4 we go too far afield, I have to make sure we're covering
5 things that are within the jurisdiction of the Committee
6 and the Corporation Commission. So I hope you'll be as
7 focused as you can.

8 The other thing that I was going to do before we
9 go into more of this procedure is to let you know that
10 I'm prepared to ask the Committee to take judicial notice
11 of the fact that the Roosevelt community is a historic
12 Black community. I believe it's immediately across the
13 street to the west of the existing power plant. So I'm
14 happy to take judicial notice of the fact that they've
15 been there long before SRP was there, that it's
16 culturally and historically a Black community. So I
17 don't believe I need people telling me that.

18 And I don't know if the applicant would have any
19 objection to my asking them to take judicial notice of
20 the fact so that we can get right into whatever their
21 concerns are rather than having to prove that they're a
22 historic community, even if they're not recognized on the
23 National or State Register of Historic Places.

24 MS. POST: Chairman.

25 CHMN. KATZ: Yes.

1 MS. POST: That's great. And I will certainly,
2 then, tailor our testimony to make sure that we're not
3 spending a lot of time on that issue. But I do need to
4 bring to your attention that two of the intervenors from
5 the Randolph -- I know you keep saying Roosevelt.

6 CHMN. KATZ: Is it Randolph?

7 MS. POST: It's Randolph.

8 CHMN. KATZ: I apologize to you. I've had Teddy
9 on my mind, I guess, but go ahead.

10 MS. POST: Two of the intervenors have to
11 withdraw due to health and family concerns. So Jeff
12 Jordan and Mary Turner cannot participate. They don't
13 want to be on there because of health and family
14 concerns. So I want to let you know that.

15 CHMN. KATZ: And that's fine. And I understand
16 some of the historical and economic concerns that the
17 experts for the community will be presenting. But I
18 don't need to hear a lot of people saying the same thing.
19 If we could have a spokesman that -- you know, interests
20 might be different. But I don't want to hear a lot of
21 people saying the same thing because I don't think we're
22 going to base this on strength in numbers. We're going
23 to base it on the quality of the testimony and exhibits
24 rather than the quantity.

25 And the same thing is, is I don't know how many

1 people from any of the parties or the communities at
2 large wish to participate in the public comment protocol.
3 I just sat through something -- I happened to be opposing
4 something in my neighborhood in a landlocked area in
5 Scottsdale where they want to put in a senior living
6 facility as part of a church. And I won't get into
7 details. I just sat from 5:30 until 8:00 last week to
8 comment before the Zoning Commission because everybody
9 was allowed three minutes.

10 If we have a lot of people that want to speak,
11 I'll probably limit them to a maximum of three minutes.
12 So you may want to try to figure out in advance who might
13 be participating if you know who they are. And I
14 understand that there might be people that we're unaware
15 of that show up.

16 Mr. Acken, did you have a question?

17 MR. ACKEN: Mr. Chairman, at the appropriate
18 time, I'd like to speak on the Randolph intervention and
19 also the judicial notice piece.

20 CHMN. KATZ: Right.

21 MR. ACKEN: Certainly, SRP is not going to
22 object to taking notice of the historic nature of the
23 Randolph community. We think that's a smart idea.
24 That's not at issue. And the parties did try yesterday
25 to identify what is at issue and what isn't. And in our

1 mind, that is not at issue. We are supportive of that.

2 I do want to just make sure you are aware, and I
3 raised this with counsel for Randolph yesterday. We do
4 not oppose Randolph's intervention, but we disagree that
5 they have a right to intervene. We think that they have
6 to request intervention. They don't meet the statutory
7 criteria for a nonprofit association or organization.
8 But certainly, the individual clients that are listed in
9 their intervention, we will not object to their
10 intervention in their individual capacities.

11 And what I heard Ms. Post say is there may be --
12 I think there were eight originally. We're looking at
13 six now. So those six individuals, in their individual
14 capacities, and as counsel, Ms. Post and Ms. Johnson, we
15 will not object. But we do want to flag that for you
16 that we just have a difference of opinion on the nature
17 of their intervention request.

18 CHMN. KATZ: Any comment from either Ms. Post or
19 Ms. Johnson?

20 MS. POST: Well, in our notice of intent, we did
21 argue the two positions that we believe we fit. It does
22 say organization. And our argument is that they are an
23 unincorporated association -- or it does say
24 association -- that they're an unincorporated association
25 and could come in under that provision.

1 But the other provision is the one regarding
2 the -- No. 5. It's A(4), which says that anyone that the
3 chairperson thinks is appropriate. And certainly it is
4 appropriate to hear the concerns of the people who
5 actually live there.

6 So I understand his position, but we believe
7 that because they are the people who are most directly
8 affected by this that they certainly do have a right and
9 an interest in being considered.

10 CHMN. KATZ: Well, there's going to be no
11 objection to allowing testimony. If it gets too
12 redundant or off track, I won't be bashful and I'll speak
13 up, but I want to be fair to the community because this
14 project may have an impact upon them. And I won't judge
15 the testimony in advance because I don't know exactly,
16 other than what's been disclosed in the witness
17 summaries, what's going to be presented.

18 So we'll cross one bridge at a time, but I'm
19 certainly going to recommend to the Committee that
20 intervention be allowed by all those that are wishing to
21 intervene.

22 And I don't know, in addition to the folks that
23 might be called, does -- I'll ask SRP first, have you
24 received a lot of input from folks that you know will
25 likely want to address the Committee by way of public

1 comment?

2 MR. ACKEN: Mr. Chairman, I anticipate there
3 will be a couple local representatives providing public
4 comment. As far as what time that happens, is it going
5 to be the first night, we'll certainly coordinate with
6 you and the Committee and with them as far as their
7 availability. For the most part, as you can see from the
8 docket, we're encouraging people to submit letters to the
9 docket. But there will be a handful.

10 CHMN. KATZ: That's fine. And I don't know if
11 there's a lot of folks from the neighborhood that are
12 going to appear other than the designated representatives
13 who have been chosen as witnesses to appear.

14 MS. POST: They have said that there will be
15 some. There won't be a hundred, but there will probably
16 be a few who will come from the community to testify.

17 CHMN. KATZ: And that's fine. Again, I just
18 want to make sure that we don't get into a lot of people
19 saying the same thing. And hopefully their efforts, no
20 matter whose behalf they're appearing, will be somewhat
21 coordinated. And I've already gone through what the
22 potential intervenors will be in.

23 So far, SRP right now is likely going to be
24 there as an observer. But if something comes up that
25 either counsel -- did I say SRP? I meant the Corporation

1 Commission. The Corporation Commission is going to be
2 present and is free, if they need to, to question
3 witnesses. Every other party will be free to
4 cross-examine and will be free to call the witnesses that
5 they've disclosed.

6 And what I'll probably do is once we're ready to
7 get started, is I'll probably do one panel at a time. In
8 other words, I'll probably have each of you make opening
9 remarks up front unless we want to do it piecemeal. But
10 I'll probably have the opening remarks up front. And
11 then I'll have Mr. Acken swear in his first panel.

12 And you might want to talk with your witnesses
13 because I'll ask up front, do they want to be affirmed or
14 sworn. And sometimes the panels of witnesses vary.
15 Sometimes they say everybody wants to be affirmed,
16 sometimes everybody wants to be sworn. But I'll try to
17 do that with whatever panels or groups of individuals you
18 want to be calling.

19 The other important thing to keep in mind, I'm
20 not right now -- when I was on the bench, I seldom
21 imposed time limits unless I had lawyers who were overly
22 verbose or couldn't be trusted. And I'm trying to avoid
23 that. But we have Monday through Friday of next week.
24 Monday is a half day. Then we have the following
25 Monday -- Monday through Friday. Then we have the second

1 week Monday through Friday. I don't know whether we'll
2 start at 9:00 on the second Monday or a little later in
3 the day, depending on who's staying over the weekend and
4 who has to transport themselves back. We might start a
5 little later that day. But if we don't finish up within
6 those nine and a half days, I don't have any other time
7 available. And the 21st is a federal and state holiday,
8 Presidents' Day, and I have a back doctor appointment. I
9 have a terrible lumbar spine. I won't cry to you. But I
10 need to get that taken care of, and I have a medical
11 appointment. And the next week is kind of tied up, and
12 we have another hearing unrelated to yours on the 28th.

13 MS. POST: Mr. Chairman, in our meet and confer
14 yesterday, we did hope we would start at 9 on the 14th,
15 also, because we're going to try to get all of the
16 Randolph Residents' witnesses in on that one day. So
17 we're hoping to start at 9.

18 CHMN. KATZ: We can. I'm going to go home on
19 the weekend, but it's only an hour drive. So I can
20 probably get my butt out of gear -- or on the road in
21 time to be there for a 9:00 start. At the latest, we'd
22 start at 10, but we can shoot for 9. And we'll see how
23 things flow during the first week.

24 And I'll ask you, Mr. Acken, have you given all
25 of the required notices under A.R.S. Section 40-360-04(A)

1 to any affected jurisdictions? And if so, would you just
2 tell us who those jurisdictions are.

3 MR. ACKEN: Thank you, Mr. Chairman. We have
4 the two affected jurisdictions are the City of Coolidge,
5 in which the project itself is located; and then
6 unincorporated Pinal County is adjacent to the project
7 location, incorporates the Randolph community and is
8 certainly within the study area. So those are the two
9 affected jurisdictions, and we have provided notice to
10 them.

11 CHMN. KATZ: That's fine.

12 Has your client or have you complied with
13 posting and publishing requirements of the Procedural
14 Order in accord with A.R.S. 40-360-5.04(A)? And I know
15 that we didn't have everything completely redone when we
16 continued this matter as requested by some of the
17 intervenors. But have you gone out of your way to give
18 appropriate notice to the affected jurisdictions as well
19 as the surrounding community at large?

20 MR. ACKEN: We have, Your Honor. We did the
21 initial required notices, publication, signs, library
22 postings initially. We also did supplemental mailers,
23 social media, things of that nature.

24 And then to make sure the public was notified of
25 the change, as you ordered in our last prehearing

1 conference, we posted that information on our website. I
2 believe that was an obligation for all the parties, and
3 we did so as well as social media and sent out yet
4 another mailer as well. So robust efforts to inform the
5 public.

6 CHMN. KATZ: And I also authorized yesterday the
7 Corporation Commission to post I think a link -- I'm not
8 sure if it was to SRP's site, but they were reluctant to
9 do it without an order from me. And I had Tod convey the
10 fact that we want to post that link for anybody that
11 might be interested.

12 Are there any other comments regarding -- and,
13 obviously, Mr. Acken has the burden of presenting
14 testimony that notice was given to whom and when and how.
15 Were there any meetings that the public was invited to
16 attend either virtual or in person?

17 MR. ACKEN: We had -- the answer is yes. There
18 was a virtual online open house on demand, if you will.
19 There were four online open houses. There were two
20 in-person open houses with this project, one at the Pinal
21 County Fair Grounds and one in the City of Coolidge. So
22 I believe those are the first open houses anybody's been
23 able to attempt to do since COVID. So a number of
24 virtual open houses and then the two in person held at
25 outdoor settings for safety reasons.

1 CHMN. KATZ: Has everyone had a chance to view
2 the agenda? And are there any objections or additions to
3 the agenda, which is pretty much pro forma?

4 (No response.)

5 CHMN. KATZ: Hearing silence, we'll move on. I
6 know what dates we're talking about, and we're going to
7 be at the Radisson in -- whatever the Radisson hotel is
8 in Casa Grande. And I believe there have been adequate
9 arrangements made for staff as well as for the Committee.
10 I'm assuming that any of our attorneys or staffs of the
11 parties have also made reservations either at that
12 location or elsewhere.

13 Any problems with accommodations?

14 (No response.)

15 CHMN. KATZ: Moving on, Mr. Acken, you've
16 already appeared in front of us on a couple of occasions,
17 but make sure that we have sign-in forms for the hearing
18 for the people that wish to make public comment. And we
19 have and will provide a Zoom link for anybody that wishes
20 to comment virtually rather than in person. We won't
21 require them to sign in, but I will require them to
22 identify who they are before speaking.

23 And I'm assuming -- despite the fact that
24 reasonable people have an absolute right to disagree, I'm
25 assuming that we won't need security at this hearing.

1 I'm assuming that it's going to go peacefully even if
2 there are parties that disagree with one another.

3 Any security concerns?

4 (No response.)

5 CHMN. KATZ: Moving on. I believe from my
6 prefiling hearing, which was with Mr. Acken and his
7 client was just to get things set up, we're not going to
8 do a tour; is that correct?

9 MR. ACKEN: Mr. Chairman, we actually have
10 prepared a tour protocol for this project. I shared it
11 with the other parties, prospective parties, yesterday.
12 I welcome your guidance on -- I understand the Committee
13 will make the decision on whether or not to do a tour or
14 not. We have prepared the tour protocol.

15 I would love guidance today, if we are to do
16 one, what day makes sense. My perspective would be that
17 we would do it on Wednesday because I think Monday,
18 between dealing with interventions, some of the legal
19 issues as far as the scope of the proceeding, opening
20 statements, and our first panel, we won't get to our
21 second panel discussing project description until
22 sometime Tuesday.

23 And so I think it would benefit the Committee,
24 if they wanted to do a tour, to do it after they see the
25 virtual tour and the project description testimony by

1 Mr. McClellan, who's the project manager.

2 So we have a tour. We have proposed a tour.
3 We're prepared to do it. My ask is if I could get
4 guidance from you today that if the Committee elects to
5 do it, that it would be Wednesday, I'd be grateful.

6 CHMN. KATZ: If everybody agrees to Wednesday --
7 one, I want to find out whether all of our parties think
8 the tour would be helpful in assisting the Committee to
9 understand. In a lot of our hearings, because of COVID
10 or areas that required a great deal of driving with
11 transmission, high-power transmission lines, whether
12 everybody thinks that a tour would be helpful to the ten
13 Members of the Committee because we will have a Google
14 Earth or similar presentation of the plant as well as the
15 surrounding neighborhoods. But I just didn't know
16 whether -- let me ask you first, Mr. Acken.

17 How many people are going to go on the bus or
18 the van? Would it be just the Committee or would it be
19 the attorneys? Because, obviously, we can't transport 15
20 or 20 or 30 people all together. And I would be somewhat
21 reluctant -- I'm not sure whether I'll wear a mask. I've
22 been vaccinated and boosted, but I don't know whether
23 I'll wear a mask or not. And it's up to all of you. I'm
24 not going to force it, but I hope we'll exercise social
25 distancing. But how are we going to facilitate it?

1 MR. ACKEN: Sure, Mr. Chairman. We're actually
2 going to have two fairly large buses, like 37-,
3 40-passenger buses.

4 One would be exclusively for the Committee and
5 Carolyn, or whoever the court reporter is that day, so
6 plenty of opportunity for social distancing. And that
7 way, we can make sure we don't have any issues with
8 unauthorized communications that aren't on the record.

9 The second bus would be available for the
10 parties and perhaps the public, depending on how many
11 people show up. And that's what we just don't know. So
12 if it's 20 people, we can put those folks on the bus. If
13 it's 50, individuals are going to have to take their own
14 vehicles and follow us. So we would just have to play it
15 by ear.

16 CHMN. KATZ: I'm going to go around in a circle
17 now and, Ms. Post or Ms. Johnson, do you think that a
18 tour would be helpful? And is there any problem, if we
19 did do one, whether Wednesday would work?

20 MS. POST: Well, it wouldn't be useful, of
21 course, to the residents because they live there, so they
22 already know that. I've been there. We're going to have
23 photos of their homes in comparison to the plant. It's a
24 lot of time. It's like six hours. So that's a lot of
25 time to take out of the meeting .

1 And then there's the issue of social distancing.
2 And I'm the same with you. But I'm up in the air about
3 it.

4 Autumn, what do you think?

5 MS. JOHNSON: I guess I would just add when we
6 had the last prehearing conference, the time estimates
7 are pretty different than now. My understanding is SRP
8 plans to take the whole first week, with the intervenors
9 and time for rebuttal being in the second week. So I
10 would consider whether or not that is significant. I
11 personally will not be able to attend given my
12 childbirthing obligations.

13 CHMN. KATZ: Understood.

14 What about either Mr. Hill or Mr. Rich, do you
15 think that the tour is really going to be critical?
16 We'll have photos. We will have a virtual tour. And I
17 just wanted to hear what your position might be.

18 MR. RICH: Mr. Chairman, I guess, given the
19 ability for photos and street view and all those things,
20 I'm not sure that a tour, unless it were at night, when
21 the setting there at night is significantly different and
22 pretty interesting, I don't think it would be -- perhaps
23 not that useful.

24 CHMN. KATZ: And anyone from the Corporation
25 Commission want to comment? Mr. Emedi?

1 MR. EMEDI: Thank you, Chairman Katz. Staff
2 doesn't feel strongly one way or the other, so we're
3 happy to defer to the Committee and the other parties.

4 CHMN. KATZ: Okay. I think we'll play it by
5 ear. If we do it, we'll do it on Wednesday.

6 And I would encourage everybody, including the
7 applicant, to the extent possible, to consolidate witness
8 testimony or information. But I'm not going to tell you
9 how to present your cases unless we get things out of
10 control from any of the parties, and I don't think that
11 will happen.

12 And I'm not concerned -- we are having the same
13 providers available, so we should have good WiFi
14 presentation -- or good WiFi service so that everybody
15 can hook in to their PCs. And I know that the applicant
16 is going to have all of their exhibits digitized. And
17 the Committee, by and large, is just as happy to get
18 digital exhibits, and we end up having a lot of them
19 projected on screens anyhow.

20 I know that you're going to provide Surface Pros
21 or iPads, but I don't know whether there's been any
22 coordination, Mr. Acken, with the other parties to have
23 their exhibits downloaded because we don't need four
24 different computers.

25 MR. ACKEN: Thank you, Mr. Chairman. I did

1 speak about this with Ms. Post but not the other parties.
2 We will have intervenor exhibits loaded on the tablets as
3 well. And so with that information, people can pull it
4 up and use it virtually.

5 What we have received from the intervenors is --
6 I don't think any of them are using PowerPoints, so we
7 don't have PowerPoints. But their exhibits we will have
8 available to pull up.

9 CHMN. KATZ: Any other comments from any of the
10 other parties regarding exhibits?

11 And I always like -- I saw a huge volume of
12 documents, I think, that came from Randolph -- or it
13 might have been the Sierra Club. I don't necessarily
14 need to have all of them. I'm computer literate. I know
15 that we have available to us already copies of all of the
16 exhibits. I'm not going to bring a truckload of hard
17 copy exhibits with me. But we should have at least a few
18 copies of exhibits available for any of the Committee
19 Members or parties that might like to have hard copies.

20 Yes, Mr. Rich.

21 MR. RICH: Thank you, Mr. Chairman. A couple of
22 things.

23 Just to clarify, then -- and thank you,
24 Mr. Acken and SRP, for agreeing to have our exhibits
25 loaded onto those digitally. Does that mean that we

1 don't -- I think you just said this, Mr. Chairman, but we
2 don't need to have one folder with all of our exhibits
3 for each Member of the Committee if they'll be loaded
4 onto those computers? I just want to make sure.

5 CHMN. KATZ: Most of the Committee Members favor
6 that. And I know that out of the ten, there will
7 probably be four that appear virtually. So if you
8 display the exhibit during your presentation -- and there
9 will be a whole setup with screens. So every exhibit you
10 have on your computer or hard drive or disc or thumb
11 drive can be projected so that the virtual participants
12 as well as everybody there can see that.

13 I would recommend that we have at least a few
14 copies of exhibits hard bound or whatever available, but
15 they're probably not going to be needed by most of the
16 Committee Members.

17 MR. RICH: Thank you, Mr. Chairman. And one
18 followup while I've got the floor.

19 CHMN. KATZ: Go ahead, Mr. Rich.

20 MR. RICH: My witness, Mr. Goggin, indicated
21 that he would prefer or be open to having a PowerPoint to
22 guide his presentation. And he had not anticipated that
23 that would be an exhibit, although perhaps that would be
24 beneficial to the Committee. And if that is the case,
25 we're happy to try to get that to you and Mr. Acken and

1 the other parties on Monday so, obviously, they won't be
2 surprised and have some time to look at that. If you
3 prefer it not to be an exhibit, that's another story as
4 well.

5 CHMN. KATZ: Well, I think it would be good to
6 either have the slide or he can put it on a thumb drive,
7 and we can mark that thumb drive as an exhibit. I just
8 want to make sure that everybody has the ability to see
9 what he's going to be projecting. And that should be the
10 same with respect to the virtual tour. I don't want any
11 major surprises. But I don't know what anybody else
12 might feel.

13 MR. ACKEN: I would -- yeah, SRP doesn't want
14 surprises either, so we would welcome that as soon as
15 possible, Mr. Rich.

16 CHMN. KATZ: Okay.

17 MR. RICH: Thank you.

18 CHMN. KATZ: Yes, Mr. Stafford.

19 MR. STAFFORD: So how many hard copies of our
20 exhibits should we bring to the Committee hearing? One?
21 None? Is there a specific number?

22 CHMN. KATZ: I would say two or three. I don't
23 imagine five or six or seven Members of the Committee are
24 going to want hard copies, and generally because we can
25 refer to the exhibits on an iPad. Or if they're being

1 projected, they'll be okay.

2 MR. STAFFORD: Thank you, Mr. Chairman.

3 MR. ACKEN: Can I make the same ask of other
4 parties who are considering using PowerPoints. It is
5 commonplace. And as you can see from what we provided,
6 we did share those PowerPoints, and we would ask that
7 other parties do the same.

8 CHMN. KATZ: Can you hold on just a second.

9 (A recess was taken from 2:43 p.m. to 2:44 p.m.)

10 CHMN. KATZ: I apologize to you for that delay.

11 Going forward, in terms of attire, business
12 casual. If you show up in a suit and tie, I'll just make
13 fun of you. But it's not like the days when I had to
14 appear in federal court or even when I was on the bench,
15 I was more formal. But you can dress business casual.
16 Right now you can't see my pants, but I'm wearing jeans
17 and a flannel shirt. But I really don't care how you're
18 dressed as long as you're neat and presentable. You're
19 not going to impress me or the Committee by wearing
20 suits, ties, skirts, dresses, or whatever formal business
21 attire you might wear, so don't worry about it.

22 And I don't know whether I need you to prepare a
23 spreadsheet of how you're going to be preparing, but if
24 you have reached an agreement as to how time should be
25 divided, you might want to docket that and present it to

1 me so I don't have to set time limits but can get a
2 determination as to whether we're ahead of course or
3 behind course.

4 And you've already exchanged your -- at least
5 the lion's share of your exhibits. And I think you've
6 worked with one another hopefully to try and narrow the
7 issues. And you may not agree as to how narrow the
8 issues should be. But, again, I implore you to make sure
9 that we don't get a lot of redundant testimony. I think
10 we have a bunch of smart, well-educated private citizens
11 as well as government employees on this Committee with
12 different backgrounds, so let's try to be as focused as
13 we can.

14 And I don't think I need to ask it because we've
15 had a prior conference or a couple of them. I'm assuming
16 everyone has complied, even though we've extended dates,
17 with the requirements of the Procedural Order regarding
18 disclosure of witnesses, testimony, and so forth.

19 Are any of you concerned with the inadequacy of
20 that process? Is there anything that you think might be
21 lacking that I might be able to assist you with?

22 MR. ACKEN: The only concern is the one I
23 mentioned earlier, Mr. Chairman, regarding PowerPoints.
24 If any party is planning to use them, we would ask that
25 they be provided as soon as possible.

1 CHMN. KATZ: And you should be doing the same if
2 you haven't already, so --

3 MR. ACKEN: Yeah.

4 CHMN. KATZ: And I know we don't have any other
5 currently pending litigation that I'm aware of.

6 And in terms of how we go about the certificate
7 of environmental compliance, I can't tell you whether one
8 will or won't be issued. But what I normally do is go
9 through the findings, proposed Findings of Fact,
10 Conclusions of Law, and conditions that we're going to
11 require before everything -- before the approval or
12 disapproval takes place.

13 So, in other words, there are pretty much
14 standard certificates of environmental compliance that we
15 issue consistent with the statutes and the rules with
16 minor modifications. I have received the proposed one
17 that I'm going to be editing. When it comes time to
18 reviewing that, I'm going to this time, Mr. Acken, send
19 it to you, and we'll make copies available or have you
20 make copies available to everybody. But I'm going to
21 have Tod Brewer, our paralegal, send you it in both PDF
22 and in Word.

23 And what will happen is the proposed certificate
24 will be on a screen on the -- a large screen on the left.
25 And that will be the PDF that we're not going to mess

1 with, but it will just document and be the Chair's
2 Exhibit No. 1.

3 And then on the right screen will be the
4 identical document in Word. And as we go through each
5 one of the findings, conditions, etc., we will make edits
6 to those as we go forward.

7 Keep in mind that if we approve certain
8 conditions or add or delete them, that doesn't mean that
9 the CEC will be issued. And the approval of individual
10 paragraphs or concepts goes one at a time. And it's just
11 by all in favor, all opposed. But when it comes to the
12 issuance of the certificate or the nonissuance of the
13 certificate of environmental compliance, it will be a
14 roll call vote of each Member of the Committee that
15 agrees or disagrees. But we'll at least have the
16 language, if it should issue, ironed out in advance.
17 Whether or not it gets issued is a separate matter for us
18 to consider and vote on.

19 But I'm not going to send it to you in PDF so
20 you have to convert it to Word and we end up with lines
21 and paragraphs not matching.

22 And we don't have any issues with federal
23 agencies at all, correct?

24 MR. ACKEN: Correct.

25 CHMN. KATZ: And you have applied for or will be

1 applying for any and all state, local permits that you
2 might be required to either build the facility if it's
3 permitted and to operate the facility if it's built?

4 MR. ACKEN: That's correct. The two primary
5 permits are the air quality permit, and that application
6 is submitted and in process with the Pinal County Air
7 Quality District. And the second one will be an aquifer
8 protection plan permit amendment that I don't think has
9 been submitted yet to the Arizona Department of
10 Environmental Quality, but we'll be prepared to discuss
11 that.

12 CHMN. KATZ: Are there concerns that anybody has
13 right now as we are sitting here together that we need to
14 resolve in advance?

15 MR. ACKEN: Yeah, a couple.

16 One, I was misinformed. We will have security
17 available just in case. It will be intended to be
18 discreet, not noticeable, and we hope not needed, but we
19 understand we will have security available. So I just
20 wanted to make that note.

21 And then the second piece is we do have a
22 disagreement with a couple of the parties regarding the
23 scope of this proceeding and what the Committee can
24 consider. And I think the two issues are the extent to
25 whether the Committee can disapprove this based on

1 climate change grounds and also whether the Committee can
2 disapprove it on the concept that another alternative
3 should be used.

4 So I just wanted to raise that with you. We
5 tried to narrow the issues, but that will be an area of
6 dispute that needs to be addressed or will be raised.
7 And so, you know, I like to be direct. We had this meet
8 and confer yesterday. We talked openly and directly
9 about it. And I said I'd raise it to you just so you are
10 aware of it. So however you want to proceed with it at
11 the hearing. I just wanted to let you know.

12 CHMN. KATZ: And before I hear any responses,
13 the -- as a general rule, air quality issues and water
14 quality issues are basically within the jurisdiction of
15 the city, the county, ADEQ, or the EPA. We do not have
16 jurisdiction over -- just generally speaking over how
17 much pollution can be allowed or not.

18 But the effect of the operation of the project
19 upon the community, recreation, living, and so forth, are
20 things that can at least be talked about or testified to.
21 We have to consider impact of everything on the
22 community.

23 But as I said, generally speaking, even if the
24 CEC were to be issued, the project could not operate
25 without having proper environmental permits, whether

1 those are required from ADEQ, EPA, city, or county.

2 But I'm not totally cutting off the subject
3 matter either. But the other thing is alternatives can
4 be considered, but I'm sure that we are going to have to
5 get into a discussion of what the immediate needs for
6 electricity of the -- of Pinal County and southern
7 Maricopa County, the area serviced by this station,
8 whether it were to be solar or gas-powered. What are the
9 immediate needs and how much power is needed. And it's
10 my understanding that these facilities aren't going to be
11 running full time but are there to deal with the critical
12 times when we are having high demand.

13 I'm not going to -- I have no preconceived
14 ideas, but I will allow at least some testimony as to
15 whether or not SRP has considered alternative sources of
16 electrical production and why it makes sense for one and
17 not the other and vice versa.

18 So I can't stop it completely, but if we go too
19 far afield -- I mean, I'm a member of the Audubon
20 Society. I'm a strong environmentalist. But I also
21 understand that we need to have -- businesses and
22 residences are things that need electricity. And it's
23 going to be a long, painful transition from traditional
24 power to solar, wind, and whatever hasn't been invested
25 as of yet. So I'm open-minded, but we can't get too far

1 afield. And it's hard for me to judge where we're going
2 to be at. But I'm not going to cut off all environmental
3 testimony.

4 And the other thing, too, is that -- well, I
5 don't have anything else I was going to say. I don't
6 know if Mr. Rich or his colleague have anything,
7 Mr. Hill, have anything to say.

8 MR. RICH: Sure, Chairman, and I appreciate your
9 comment there.

10 I know when Mr. Acken was talking about there
11 will be testimony about options, I'm sure he's referring
12 to our witness, Mr. Goggin, who will be responding not
13 only to the application, which talks about some of the
14 issues you just raised and which we respectfully disagree
15 that -- we believe there are very simple alternatives
16 that are clean that SRP actually provides testimony on.
17 And we do want to respond, and I think we should have an
18 opportunity to respond to their testimony on that front.

19 We're not asking and we're not suggesting that
20 the Committee -- that you somehow transform this CEC into
21 a CEC approving a solar facility because, obviously,
22 that's not what's before you. We will, no doubt, ask
23 that you reject the CEC request and use some of these
24 alternatives as a reason for that.

25 And I know in the statutory directives to the

1 Commission itself, it charges them with the need to
2 balance in the broad public interest the need for an
3 adequate, economic, and reliable supply of power with the
4 desire to minimize the effects thereon on the environment
5 and the ecology of the state, as you know, in 360-07.

6 So we intend to follow and hopefully provide
7 evidence to the Commission and the Committee in its role
8 as balancing those interests.

9 CHMN. KATZ: And I do understand that we have to
10 balance public utility against public safety and health
11 concerns. But there are certain matters that involve
12 public policy that are legislative decisions and not
13 within the hand of the Committee or the Commission. But
14 I'm not cutting you off from your ability to raise
15 issues. But if I see the need to limit testimony, I will
16 suggest or even order that we do so. But I'm going to be
17 open.

18 And at this point in time, I wish that we had
19 completely transitioned to non-carbon-emitting power
20 sources. Just what those would be are somewhat in
21 dispute. I think it was yesterday, I believe, that Biden
22 approved for Wyoming, that's coal dependent, monies for
23 building more modern nuclear power plants. And that's a
24 separate issue I won't get into because I don't believe
25 that's something happening in Arizona anytime soon.

1 But climate change is not something that's easy
2 to address, and I know I'd like to see us all do the best
3 we can, but we cannot operate outside the bounds of the
4 law either. That's for the courts to resolve.

5 I also would point out that I've sat through
6 five CEC hearings, and all but one of them involved the
7 building of high-voltage transmission lines to connect
8 solar facilities to the grid with SRP, TEP, and APS. So
9 I am aware that those utilities are working with the
10 solar companies to develop solar power plants as well.
11 And I'll say nothing more than that. I'm just sharing
12 with you what you can look up on your own and discover.

13 Anyway, I don't have anything else. I
14 appreciate the fact that you're all speaking with one
15 another. And in a civilized society, we all have the
16 right to respectfully disagree with one another, and then
17 life will go on and hopefully in a healthy and safe way.

18 Anything further?

19 MR. ACKEN: Not from the applicant. Thank you,
20 Mr. Chairman.

21 CHMN. KATZ: Anybody else?

22 (No response.)

23 CHMN. KATZ: Thank you all very much. I look
24 forward to seeing you all at 1:00. I'll probably be
25 there mooching some free lunch, which I think you might

1 all be invited to participate in at 1.

2 And just for the benefit of our court reporters,
3 whoever that might be -- I don't know if it will be
4 Carolyn or one of her colleagues -- we're going to break
5 at least once every hour and a half, if not sooner, plus
6 or minus a couple minutes. I don't want to beat the hell
7 out of court reporters, especially when you get into
8 highly technical testimony.

9 Thank you all. Have yourself a good rest of the
10 week, a relaxing -- haha -- weekend. I can relax more
11 than any of you. But relax, get yourselves prepared, and
12 we'll see you all on Monday. Adios.

13 (The prehearing conference concluded at
14 3:00 p.m.)

15
16
17
18
19
20
21
22
23
24
25

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings were
4 taken before me; that the foregoing pages are a full,
5 true, and accurate record of the proceedings, all done to
6 the best of my skill and ability; that the proceedings
7 were taken down by me in shorthand and thereafter reduced
8 to print under my direction.

9 I CERTIFY that I am in no way related to any of the
10 parties hereto nor am I in any way interested in the
11 outcome hereof.

12 I CERTIFY that I have complied with the ethical
13 obligations set forth in ACJA 7-206(F)(3) and
14 ACJA 7-206(J)(1)(g)(1) and (2). Dated at Phoenix,
15 Arizona, this 4th day of February, 2022.

16
17
18
19
20
21
22
23
24
25


CAROLYN T. SULLIVAN
Arizona Certified Reporter
No. 50528

16 I CERTIFY that COASH & COASH, INC., has complied
17 with the ethical obligations set forth in
18 ACJA 7-206(J)(1)(g)(1) through (6).

19
20
21
22
23
24
25


COASH & COASH, INC.
Arizona Registered Firm
No. R1036