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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 PETER T. ELSE,

15 Plaintiff,

16 v.

17 ARIZONA CORPORATION
18 COMMISSION,

19 Defendant.

Case No.: **CV2023-050310**

COMPLAINT

(Appeal pursuant to A.R.S. § 40-254
and Declaratory Judgment Action
pursuant to A.R.S. § 12-1831, *et seq.*)

(Preferential civil matter pursuant to
A.R.S. § 40-255.)

Assigned to:

20
21 Plaintiff Peter T. Else brings this appeal and alleges as follows:

22 **INTRODUCTORY STATEMENT**

23 Under Arizona law, power plants and transmission lines must be approved by the
24 Arizona Corporation Commission (“ACC” or “Commission”). If a utility seeks to build a
25 plant or transmission line, it must seek a Certificate of Environmental Compatibility
26 (“CEC”) from what is known as the Line Siting Committee (“LS Committee” or
27 “Committee”). A.R.S. § 40-360.01, .03, .07(A). The Committee holds a hearing and, in
28 approving or denying an application, must consider nine statutory factors, principally

1 environmental in nature: existing state, local, and private plans for or near the site; fish,
2 wildlife and plant life; noise emission levels and interference with communication signals;
3 the proposed availability of the site to the public for recreational purposes; existing scenic
4 areas, historic sites and structures or archaeological sites at or near the site; the total
5 environment of the area; the technical practicability of achieving a proposed objective; the
6 estimated cost, recognizing the potential subsequent impact on consumers; and any
7 additional factors that require consideration under applicable federal and state laws. A.R.S.
8 § 40-360.06(A). In addition, the Committee must “give special consideration to the
9 protection of areas unique because of biological wealth or because they are habitats for
10 rare and endangered species.” A.R.S. § 40-360.06(B).

11 Once the LS Committee approves a CEC, the Arizona Corporation Commission
12 must affirm and approve the CEC before an applicant can construct the plant or line. A.R.S.
13 § 40-360.07(A). “In arriving at its decision, the commission shall comply with the
14 provisions of section 40-360.06,” but, in addition, it “shall balance, in the broad public
15 interest, the need for an adequate, economical and reliable supply of electric power with
16 the desire to minimize the effect thereof on the environment and ecology of this state.”
17 A.R.S. § 40-360.07(B). In other words, the ACC must balance the effect of a new plant or
18 line specifically on the physical environment and ecology of Arizona against the need in
19 Arizona for the electric power that will be supplied by the plant or line.

20 In 2016, the Commission approved a novel CEC for a pair of massive 500 kilovolt
21 (kV) merchant transmission lines to be owned, constructed, and operated by SunZia
22 Transmission LLC. The proposed lines would cut a 515-mile path from a potential future
23 wind farm in central New Mexico to the Pinal Central Substation in Arizona. The first line
24 would be an alternating current (AC) line, which is a more traditional line that other
25 generators can access along the route, and the second would be either another AC line, or
26 a direct current (DC) line to which it is difficult to interconnect but which transmits power
27 more efficiently over long distances.

28 The proposed lines would also cut a forty-five-mile path through the San Pedro

1 River Valley. All parties agree that the valley is a unique biological watershed that has no
2 existing above-ground utility lines for the vast majority of the proposed route. The Sierra
3 Club, Tucson Audubon Society, Pima County, and other conservationists opposed the
4 project because it would “scar” the “pristine visual character of the valley”; even SunZia
5 opposed the route in front of the federal Bureau of Land Management (BLM) because the
6 valley was “a unique watershed and riparian environment” where damage from the project
7 “will be very difficult to mitigate.” Nevertheless, because the San Pedro Valley route was
8 pre-approved by BLM, SunZia presented only that route to the LS Committee even though
9 traditionally the Committee has worked with applicants to find a satisfactory route.

10 Also in a traditional line siting case, where the applicant is a utility, the ACC
11 determines “the need for an adequate, economical and reliable supply of electric power”
12 through an analysis of load growth projections provided by the utilities. A merchant
13 transmission line cannot demonstrate need in this way. Thus, in the 2015 LS Committee
14 hearings, the Committee first considered that if there was no “need” for the lines, then the
15 merchant would be unable to enter into sufficient power purchase agreements (PPAs) to
16 finance and construct them. The Committee also considered the potential benefits from the
17 construction of an AC line, namely encouraging the development of future renewable solar
18 generation sources in southeast Arizona that could hook up to the line, as well as the ability
19 of existing generation sources to interconnect with the line to decrease congestion and
20 increase reliability. The ACC approved the lines in a 3-2 vote in 2016.

21 Now, the jig is up. In mid-2022, SunZia filed an application to amend the original
22 CEC. In its application, SunZia requested the bifurcation of the two lines so that they could
23 be separately owned and separately financed. Not only that, but the first line is now the
24 DC line, which will be owned, constructed, and operated by Pattern Energy. Pattern also
25 purchased the rights to develop the wind farm in New Mexico. The second, AC line—
26 slated to be built in nearly a decade—is not ready for financing and may never be
27 constructed. In other words, all of the purported benefits of having two lines, at least one
28 AC, have evaporated. If the DC line is constructed while the AC line never is, then the

1 only one who benefits is the private corporation Pattern Energy—whose representative at
2 the 2022 LS Committee hearing could not (or would not) say how many Arizona utilities
3 or firms were in negotiations with Pattern for power, who could not (or would not) say
4 what percentage of power would be sold in Arizona, and who could not (or would not) say
5 whether Pattern’s wind power from New Mexico would be more cost effective than
6 obtaining power from the existing grid.

7 In short, the ACC initially approved building two transmission lines in Arizona, the
8 first of which was to be an alternating current line, to assist the Arizona solar industry and
9 relieve line congestion. Now, in 2022, the ACC has approved ripping up the San Pedro
10 Valley so that SunZia can transmit New Mexico wind power to California on a dedicated,
11 direct current line that no other utility or generator will be able to use. That change violates
12 Arizona law as it satisfies none of the requirements for approval. The ACC seemed to
13 believe it was required to approve the change because it had already approved the route in
14 2016. It was not, and its analysis was based on a misunderstanding of the law, a failure to
15 consider important aspects of the problem, and a weighing of irrelevant factors. This Court
16 needs to vacate the ACC decision, clarify the law, and remind the ACC of the factors that
17 it must consider when approving a transmission line. Had it considered those factors, these
18 lines would never have been approved.

19 **PARTIES, VENUE, AND JURISDICTION**

20 1. Plaintiff Peter T. Else has been a resident of Arizona for the past 42 years
21 and resides on 40 acres of land four miles north of Mammoth, Arizona, on the San Pedro
22 River.

23 2. Mr. Else has been the chairperson of the Lower San Pedro Watershed
24 Alliance, an all-volunteer, landowner-based conservation group of about 100 landowners
25 and an additional 100 supporting members, for the past nine years.

26 3. Mr. Else intervened in the LS Committee hearings for both the original CEC
27 application and the amended application at issue here.

28 4. Defendant Arizona Corporation Commission is an agency of the State of

1 Arizona under A.R.S. § 41-1001.

2 5. The Commission is a five-member publicly elected body created under Ariz.
3 Const., art. 15.

4 6. Commissioners of the Arizona Corporation Commission are not required to
5 be named defendants. A.R.S. § 40-254(A); *Fernandez v. Arizona Water Co.*, 21 Ariz. App.
6 107, 110 (1973), *vacated on other grounds, Arizona Corp. Comm'n v. Arizona Water Co.*,
7 111 Ariz. 74, 523 P.2d 505 (1974).

8 7. The Commission's principal office is in Maricopa County, Arizona.

9 8. This Court has jurisdiction and venue pursuant to A.R.S. §§ 12-1831, *et seq.*,
10 40-254(A), 40-360.07(C), and 41-1034(B).

11 9. Under A.R.S. § 40-255, this action "shall be preferred and shall be heard
12 and determined in preference to other civil matters except election actions."

13 10. Declaratory relief is appropriate in this action because, among other things,
14 the Plaintiff seeks a declaration of rights, status, and legal relations with respect to the
15 Commission's relevant actions and orders.

16 **FACTUAL ALLEGATIONS**¹

17 11. The plaintiffs restate the above allegations as though set forth fully here.

18 **A. Project Basics**

19 12. In its 2015 application to the ACC, SunZia proposed to build two, 500 kV
20 transmission lines from Lincoln County, New Mexico, to Pinal Central substation in
21 Arizona, with one line being an AC line and the other being either an AC or DC line.
22 Original CEC Application Packet at 18 (Application at 2).

23 13. SunZia requested up to 200 feet of right of way (ROW) for each of the
24

25 ¹ This Complaint cites to the underlying record. Plaintiff anticipates that the parties
26 will agree to and jointly file an administrative record. For purposes of this Complaint, LS-
27 171 Tr. refers to the original transcript of the 2015 LS Committee hearings; 2016 ACC Tr.
28 refers to the transcript of the ACC Open Meeting in 2016; and LS-171 Amend Tr. refers
to the transcript of the 2022 LS Committee hearings on the application to amend. Decision
No. 75464 is the ACC decision approving the original CEC. Decision No. 78769 is the
ACC decision upholding the Administrative Law Judge's recommendation to approve the
application to amend.

1 transmission lines, with a typical separation of fifty feet between the two lines and up to
2 1,000 feet of separation at some points. Original CEC Application Packet at 21
3 (Application at 5).

4 14. SunZia requested a single 2,500-foot-wide corridor for the two lines.
5 Original CEC Application Packet at 21 (Application at 5).

6 15. One of the aims of the project was to transmit to western markets high-
7 quality but stranded wind resources from a planned wind farm in New Mexico.

8 16. That project, if completed, would be the second largest wind farm in the
9 world and the largest in the western hemisphere.

10 17. The AC lines could each transmit up to 1,500 megawatts (MW) of power.
11 LS-171 Tr. 405:15-24.

12 18. The DC line, if constructed, could transmit up to 3,000 MW of power. LS-
13 171 Tr. 405:15-24.

14 **B. SunZia's Presented Routes to BLM and BLM's Selection**

15 19. In 2008, SunZia Transmission LLC, presented a series of routes to the BLM
16 for its proposed transmission lines. LS-171 Tr. 110:8, Original CEC Application Packet at
17 30.

18 20. SunZia began with the federal permitting process even though only twenty-
19 five percent of the Arizona portion of the transmission lines goes through federal BLM
20 lands, with sixty-six percent going through state trust lands and nine percent going through
21 private lands. LS-171 Tr. 48:20-25, 1239:8-14.

22 21. Over ninety percent of SunZia LLC was owned at the time by Southwestern
23 Power Group (SPG). LS-171 Tr. 81:15-17.

24 22. All of SunZia's proposed routes entered Arizona in one of two locations and
25 intersected at a proposed Willow Substation. Ex. ACC-3 at 28-29; Original CEC
26 Application Packet at 30.

27 23. The remainder of the proposed routes all began at the proposed Willow
28 Substation and terminated at the Pinal Central Substation. Ex. ACC-3 at 28-29; Original

1 CEC Application Packet at 30.

2 24. The proposed Willow Substation was approximately 15 miles away from
3 Bowie, Arizona. Original CEC Application Packet at 15; *see also* Southwestern Power
4 Group, Bowie Power Station LLC, Ten Year Plan filed with Arizona Corporation
5 Commission (Jan. 29, 2016), <https://images.edocket.azcc.gov/docketpdf/0000167615.pdf>.

6 25. SPG owned a Certificate of Environmental Compatibility to build a natural
7 gas-fired power plant in Bowie, Arizona. LS-171 Tr. 352:18-22, 359:21–360:4.

8 26. Two SunZia witnesses, Mr. Wray and Mr. Etherton, stated in the 2015 LS
9 Committee hearings that it was possible the Bowie plant could connect to the SunZia line
10 in the future through the Willow Substation. LS-171 Tr. 280:15-25, 301:1-10, 311:1-10.

11 27. In a 2010 filing SunZia submitted to the Federal Energy Regulatory
12 Commission (FERC), SunZia specifically noted that its principal owner, Southwestern
13 Power Group, intended to use the line to interconnect with its future Bowie plant. 2022
14 Exhibit Else-06; LS-171 Amend Tr. 350:16-23.

15 28. In October 2011, the Obama Administration designated the SunZia project
16 for fast-tracking through the federal permitting process. 2016 ACC Tr. 213:1-4.

17 29. A BLM representative stated that SunZia was “one of the presidential
18 priorities transmission lines” and that “when the president’s renewable energy effort
19 kicked off . . . there were a number of transmission projects that were identified as . . .
20 priority projects throughout the west, and this . . . happened to be one of them.” LS-171
21 Tr. 1729:3-6, 1749:8-13.

22 30. The final federal environmental impact statement (EIS) did not include any
23 analysis of the carbon emissions required to build two 500kV transmission lines each over
24 500 miles in length.

25 31. During the federal permitting process, BLM rejected the proposed routes that
26 cut through metropolitan Tucson out of “environmental justice” concerns because such
27 routes would require the demolition of homes in low-income communities. LS-171 Tr.
28 257:1-5.

1 32. SunZia’s preferred route in its application with BLM was a route that
2 avoided the San Pedro River Valley and went along the Sulphur Springs Valley and
3 crossed Aravaipa Creek instead. LS-171 Tr. 2133:8–2138:15, 2261:5-23.

4 33. SunZia’s witness explained that the Sulphur Springs “route was primarily
5 problematic to the Arizona Game & Fish Department because it conflicted with their
6 grassland restoration in this area in the Sulphur Springs Valley.” LS-171 Tr. 2262:10-20.

7 34. By eliminating routes through Tucson because of environmental justice
8 concerns, and by eliminating the Sulphur Springs Valley option, BLM settled on the
9 proposed route through the San Pedro Valley. LS-171 Tr. 47:5-11, 1739:10-24, 2263:1-5.

10 35. No routes were presented to BLM that did not intersect at the proposed
11 Willow Substation, and that did not go through either Tucson, the San Pedro Valley, or
12 Sulphur Springs Valley. Original Application Packet at 27, 30 (Application at 11, 13).

13 36. SunZia’s proposed lines would traverse 199 miles of Arizona territory. LS-
14 171 Tr. 92:19-23.

15 37. Eighty-two miles of the route would be in a new utility corridor (the lines
16 would not be collocated with any other existing utility lines or pipelines). LS-171 Tr.
17 256:4-6.

18 38. About forty-five miles of the project would go through the San Pedro Valley,
19 primarily on the west side. LS-171 Tr. 1865:3-25.

20 39. There are no existing transmission lines or towers in the San Pedro Valley
21 of a similar scale.

22 40. On the east side of the San Pedro River, there is an existing 115 kV
23 transmission line, which is substantially smaller than a 500 kV line. 2016 ACC Tr. 86:20-
24 87:9, 160:14-25.

25 41. There are no existing transmission lines, towers, or any other major utilities
26 at all on the west side of the San Pedro River for a thirty-three-mile portion of the route
27 through the San Pedro Valley. LS-171 Tr. 1865:3-25.

28 42. On the west side of the San Pedro River, the SunZia lines would, for about

1 twelve of the forty-five miles, parallel an underground gas pipeline. 2016 ACC Tr. 162:1-
2 12.

3 **C. 2015-2016 Proceedings**

4 43. SunZia filed its application for a Certificate of Environmental Compatibility
5 with the Arizona Corporation Commission on September 3, 2015.

6 44. On September 4, 2015, the Line Siting Committee published a notice of
7 hearing.

8 45. The LS Committee held hearings over multiple days between October 19,
9 2015, and November 19, 2015.

10 46. The Arizona Corporation Commission held an open meeting on the SunZia
11 CEC on February 2 and 3, 2016.

12 47. SunZia presented to the LS Committee the single BLM-approved route for
13 the SunZia transmission lines. LS-171 Tr. 47:5-11.

14 48. Mr. Else intervened in the proceedings and provided testimony.

15 49. Tom Wray, project manager for SunZia, testified at the proceedings.

16 50. Mark Etherton, engineering manager for SunZia, testified at the proceedings.

17 51. Ravi Sankaran of SunEdison testified at the proceedings.

18 52. SunEdison at that time owned the rights to develop the wind farm in central
19 New Mexico, then called the Gallo wind project. LS-171 Tr. 508:6–509:6.

20 53. The ACC's Utilities Division Staff intervened and participated in the
21 proceedings.

22 54. Mr. Ray Williamson provided testimony on behalf of the ACC Staff.

23 **1. Technical differences between AC and DC lines**

24 55. Compared to an alternating current (AC) line, a direct current (DC)
25 transmission line moves more power over longer distances more efficiently. Decision No.
26 78769 ¶ 48; LS-171 Amend Tr. 44:12-24; LS-171 Tr. 247:16–250:3.

27 56. DC lines cannot be hooked up to the power grid without first converting into
28 AC power, thus requiring a converter station should a DC line be constructed. LS-171 Tr.

1 224:6-7, 248:3-5, 248:19–250:3.

2 57. Mr. Etherton testified in 2015 that the “attributes” of an “AC line” is “the
3 more common interconnection facilities, definitely in our region. It allows for additional
4 interconnections to the existing AC system, more ready [sic] available equipment for those
5 interconnections.” LS-171 Tr. 222:6-11.

6 58. Mr. Etherton further testified in 2015, “The AC equipment itself is much less
7 expensive compared to a DC facility. . . . The traditional equipment suppliers for AC
8 transmission systems and AC substation facilities are a lot more prevalent than DC
9 suppliers.” LS-171 Tr. 222:15-19.

10 59. The cost of an AC substation in 2015 was only about \$90 million. LS-171
11 Tr. 223:24-25.

12 60. Line losses on a DC transmission line are approximately half of a
13 comparable AC line, which, Mr. Etherton testified, is “pretty significant over the term of
14 a transmission line project.” LS-171 Tr. 222:20-25.

15 61. The cost for a DC converter station is \$330 million—3.67 times more
16 expensive than an AC substation. LS-171 Tr. 224:6-7.

17 62. SunZia anticipated that its DC converter station at the Arizona terminus
18 could be 40 to 45 acres in size, almost double the 24 acres of Pinal Central Substation. LS-
19 171 Tr. 221:10-16.

20 63. Thyristor valves housed in air conditioned and cooled buildings that are
21 approximately 80 feet in height are required to convert from DC to AC power. LS-171 Tr.
22 220:15-18.

23 64. Harmonic filtering is required to ensure that the conversion is not causing
24 harmonics to the AC system. LS-171 Tr. 220:21-22.

25 65. A control room is required constantly to monitor the health of a DC station.
26 LS-171 Tr. 220:23-24.

27 66. Mr. Wray testified that “multiple interconnections along . . . a long DC line”
28 would be “very difficult to protect from a relaying and control standpoint when there are

1 line faults on long DC lines.” LS-171 Tr. 249:15-18.

2 67. The high cost of a DC converter station makes interconnection more difficult
3 than with an AC line.

4 68. “[T]he higher cost of the DC alternative,” Mr. Etherton testified in 2015, is
5 “imbedded primarily in the termination equipment at either end of the system.” LS-171 Tr.
6 374:19-21.

7 69. Mr. Etherton testified in 2015 that DC lines are more economical than AC
8 lines only for lines over 400 miles long. LS-171 Tr. 247:16-24.

9 **2. No traditional evidence of need**

10 70. In a traditional line siting case where the applicant is a utility, the ACC
11 usually determines “the need for an adequate, economical and reliable supply of electric
12 power” through an analysis of load growth projections provided by Arizona utilities. LS-
13 171 Tr. 362:6–363:10.

14 71. Mr. Sankaran of SunEdison testified in 2015 that it was possible that all the
15 power from the Gallo wind project in New Mexico would be delivered to California. LS-
16 171 Tr. 519:13–520:5, 524:25–525:22.

17 72. SunEdison testified in 2015 that they “intend” to sell to Arizona utilities. LS-
18 171 Tr. 536:19-21.

19 73. SunEdison testified in 2015 that it had been “marketing” to Arizona utilities
20 for several years. LS-171 Tr. 577:10-12.

21 74. The designee of the ACC Chairman on the LS Committee stated at the
22 ACC’s 2016 open meeting: “[S]ince there are no Arizona utilities that were witnesses at
23 the hearing that said that they actually need it to serve their customers from a technical
24 perspective, my opinion is there is not really a need for the line.” 2016 ACC Tr. 9:19-25.

25 75. The Salt River Project (SRP) had a 4.8 percent ownership interest in the
26 SunZia project. LS-171 Tr. 81:17-19.

27 76. Despite its ownership interest, SRP responded to an ACC data request by
28 stating it had “limited interest and participation in the SunZia Project.” Exhibit ACC-5 at

1 1.

2 77. SRP further wrote:

3 SRP joined as a participant in the effort to permit the Sun Zia Project in 2008.
4 We were interested in the project primarily for two reasons. First, at that time
5 our strategy for the procurement of renewable energy was focused on a mix
6 of renewable generation resources located both inside and outside the State
7 of Arizona. As such, we had potential interest in renewable projects, mostly
8 wind, located in New Mexico. Over time as the price of various types of
9 renewable generation has changed, SRP's focus has narrowed to mostly
10 renewable resources located close to the load we serve, primarily solar
11 projects in the Phoenix metropolitan area. Second, there is a long-term
12 interest to develop additional transmission from existing generation sources
13 located in eastern Arizona to serve load in central Arizona. The Sun Zia
14 Project presents an opportunity to develop a portion of that transmission and
15 improves reliability of the regional transmission system.

16 Exhibit ACC-5 at 2.

17 78. Tucson Electric Power (TEP) had a 0.4 percent ownership interest in the
18 project. LS-171 Tr. 81:17-19.

19 79. TEP responded to an ACC data request by stating: "In December of 2007
20 TEP committed to participate in permitting activities for the SunZia Project. The SunZia
21 Project was being developed to deliver renewable energy from New Mexico to Arizona
22 and California. TEP saw an opportunity for the potential to meet some of its renewable
23 needs through the project, and the potential to realize reliability benefits by having an
24 additional EHV transmission line connected to its system." Exhibit ACC-6 at 1.

25 80. Neither SRP nor TEP, nor representatives for them apart from SunZia's own
26 witnesses, testified at the line siting hearing in 2015.

27 81. ACC Staff's witness, Mr. Williamson, testified at the 2015 line siting
28 hearings that Arizona utilities "would still function properly" even if the SunZia lines
"didn't get built." LS-171 Tr. 1398:13-20.

82. The LS Committee's proposed findings in the original CEC provided that
"[t]he Project *may* aid the state and the southwest region in meeting the need for an
adequate, economical, and reliable supply of electric power." CEC 171 at 17:4-5 (emphasis

1 added).

2 83. The LS Committee’s proposed findings in the original CEC provided that
3 the SunZia project “*may* aid the state in preserving a safe and reliable electric transmission
4 system.” CEC 171 at 17:6-7 (emphasis added).

5 84. The LS Committee’s proposed findings in the original CEC provided that
6 “[t]he Project is in the public interest because the Project’s *potential* contribution to
7 meeting the need for an adequate, economical, and reliable supply of electric power
8 outweighs the minimized impact of the Project on the environment and ecology of the
9 state.” CEC 171 at 17:16-19 (emphasis added).

10 85. At the beginning of the line siting proceedings, counsel for ACC Utilities
11 Division Staff explained that “the need could be presented as speculative,” and so “Staff
12 is taking a neutral position on whether there is a need for the project.” LS-171 Tr. 71:22–
13 72:5.

14 86. In closing argument, Staff’s counsel reiterated, “Staff is taking no position
15 as to whether the application should be approved. Staff does recognize there is uncertainty
16 with relation to whether any of the benefits posed by the project will be realized.” LS-171
17 Tr. 2525:2-6; 2016 ACC Tr. 304:4–311:3, 310:20-24.

18 **3. No evidence of cost**

19 87. SunZia’s project manager testified that the cost to produce the wind power
20 from New Mexico and transmit it elsewhere affects retail rates and ultimately is borne by
21 the consumer. LS-171 Tr. 184:7-8.

22 88. SunEdison’s Mr. Sankaran refused to discuss cost and pricing in 2015,
23 stating such information was proprietary. LS-171 Tr. 547:20–548:1.

24 **4. Financing as evidence of need for merchant line**

25 89. Counsel for ACC Staff argued in 2015 that “in the event that generators do
26 arrive, the PPAs they will enter into with the SunZia or transmission access will constitute
27 a demonstration of the need for that transmission.” LS-171 Tr. 2525:15-19.

28 90. The ACC Staff’s witness, Mr. Williamson, further testified: “Remember, this

1 is a merchant project. And the need will determine whether or not they get financing. If
2 there is no need, it is not going to get built because it is not going to get financed. And I
3 think that's critical. I would like to say it about four more times. Because I have heard
4 some of the questions that have been asked here, and everybody forgets this is a merchant
5 [line]. It is working in the free marketplace. If it can go out and get people to sign contracts,
6 then it can take those contracts to a lender and the lender can say here is \$2.2 billion that
7 we are going to loan you to build this project to go forward." LS-171 Tr. 1397:8-21.

8 91. When asked "what happens if the line is built and then the merchant
9 transmission line owner goes bankrupt," Mr. Williamson responded, "[T]hen we benefit,
10 don't we? If it is sold for pennies on the dollar, the ratepayers don't have to pay for the
11 other 98 cents on the dollar that somebody lost, some bank lost somewhere. That's a hard
12 thing to say, but that's a reality in the free market system." LS-171 Tr. 1400:11-1401:1.

13 92. If the full lines are built and the owner goes bankrupt, the lines would still
14 exist in the San Pedro River Valley.

15 93. If the full lines are built and the owner goes bankrupt, it is possible that the
16 lines will not be profitable for future owners to operate.

17 94. SunZia's attorney argued in closing that "[t]he method of financing mitigates
18 the risk of constructing a line that is not needed," that the line "won't be built unless it is
19 utilized," and that "[i]t is the lenders taking their risk" rather than "the Arizona citizens."
20 LS-171 Tr. 2532:23-2533:2, 2533:20-21.

21 95. The LS Committee Chairman stated: "If the applicant -- if the intervenors
22 are correct that there is no need for this project, I am sure the free market will bear that out
23 and this project will never be built." LS-171 Tr. 2706:1-4.

24 96. The ACC Chairman's designee to the LS Committee stated at the ACC's
25 open meeting: "This now presents a policy question to the Commission on merchant lines,
26 is do you want to set a policy now. Well, if you build a merchant line, there are some
27 advantages in fact, that you aren't using money from a utility to build the line; therefore it,
28 is not going to go against the utility customers if it fails. It is going to go against the

1 applicant. . . .” 2016 ACC Tr. 10:2-9, 186:6-11.

2 **5. Importance of AC Line for development of renewables**

3 97. SunZia’s witnesses testified in 2015 that one advantage of the AC line is that
4 future generators along the route would be able to interconnect with the line, thereby
5 encouraging production of renewable energy, and particularly solar power, in southeast
6 Arizona.

7 98. Mr. Wray testified in 2015: “[T]here are solar resources in the Interstate 10
8 corridor particularly in Arizona, particularly in the area of the San Simon Valley in
9 southeastern Arizona, north and south of Interstate 10 [T]his area of solar
10 development here that’s referred to as Arizona, this Arizona south here, I believe they have
11 estimated somewhere around over 6,000 megawatts of developable solar resources in that
12 area. . . . SunZia is interested in being able to harvest developable solar that could be scaled
13 down here to meet both Arizona and other states’ needs” LS-171 Tr. 128:3–129:7.

14 99. Mr. Wray further testified, “We believe the project creates access to high
15 quality stranded renewable resources, both in Arizona and in New Mexico.” LS-171 Tr.
16 134:24–135:1.

17 100. Mr. Wray further testified, “The thing to take away from this, is the project
18 literally goes through an area of major solar development along the Interstate 10 corridor
19 both in southeastern Arizona and southwestern New Mexico. . . . Again, it needs
20 transmission to get over into markets to the west.” LS-171 Tr. 137:9-19.

21 101. Mr. Wray further testified that the project “can access solar zones, solar
22 development zones along the Interstate 10 corridor.” LS-171 Tr. 176:25–177:1.

23 102. Mr. Wray stated at the ACC’s open meeting, “The point is there are solar
24 areas distributed along the Interstate 10 corridor that is [bisected] by the SunZia route that
25 it would allow interconnection and put those future generation facilities into the market.”
26 2016 ACC Tr. 172:16-19.

27 103. Without an AC line, future solar generators will not be able to hook up to
28 SunZia’s line without first building an expensive DC converter station that only makes

1 economic sense if the generator is transmitting that power for a distance of at least 400
2 miles.

3 **6. Importance of AC line for Tucson reliability loop**

4 104. SunZia’s witnesses testified in 2015 that the Willow Substation on the AC
5 line would interconnect with a TEP 345 kV line, thereby providing power to Tucson and
6 creating a reliability loop. LS-171 Tr. 89:1-4, 95:12-17, 212:4-8, 216:22-24, 217:12-13,
7 225:18-21, 225:22–227:12, 571:5-12.

8 105. SunZia’s witnesses testified about how SunZia “fit[s] into the long-term
9 transmission plan for central Arizona” established by Arizona’s transmission planning
10 group (SWAT, previously CATS), with participation of the ACC. LS-171 Tr. 242:3–
11 243:11.

12 106. Mr. Etherton specifically testified that “the long-term plan was to connect to
13 the Southeast Valley project down to the Tucson Electric system at the Winchester
14 substation,” thus providing a “critical loop for this part of the EHV transmission system.”
15 LS-171 Tr. 243:1-3.

16 107. Mr. Etherton further testified that “although we don’t connect at Winchester,
17 we do connect to the TEP 345 kV system as well as the Pinal Central 500kV transmission
18 . . . to provide that loop in a similar fashion.” LS-171 Tr. 243:6-9.

19 108. Mr. Etherton further testified that “future conductivity into Winchester
20 substation is capable as well.” LS-171 Tr. 243:9-11.

21 109. Mr. Wray further explained to ACC Staff’s attorney, “[T]he reason the
22 Willow substation at 500kV is in the project definition is to offer the interconnection with
23 the Springerville-Vail 345kV system to create an on-ramp and off-ramp for others who
24 have access to that system to do business onto SunZia.” LS-171 Tr. 376:8-13.

25 110. In closing argument, counsel for SunZia stated, “So the Willow 500kV
26 substation is necessary as part of this project to create the loop providing the benefits to
27 Tucson” LS-171 Tr. 2531:23-25.

28 111. Counsel further argued that the substation “will enhance the electric system

1 reliability of the Tucson metropolitan area.” LS-171 Tr. 2532:5-7.

2 112. In response to a question about whether interconnecting at Winchester
3 “would . . . alleviate . . . concerns about reliability,” Staff’s attorney answered, “yes, if
4 there is the interconnect with Winchester following the proposed path, Staff would believe
5 that would satisfy and perfect the creation of a loop around the Tucson area,” improving
6 reliability. LS-171 Tr. 2528:13-20.

7 113. SunZia’s counsel explained at the ACC open meeting why it was not a good
8 idea to tie the project to the construction of the wind project in New Mexico: “if you want
9 the reliability benefit, you need to start at Pinal Central,” and so it would be beneficial to
10 “construct from Pinal Central to Willow first.” 2016 ACC Tr. 216:11-13.

11 114. The ACC Staff’s attorney stated at the ACC’s open meeting that the SunZia
12 project would create reliability benefits with additional interconnections in and around
13 Tucson. 2016 ACC Tr. 184:10–185:15.

14 115. Without an AC line, there is no reliability loop benefit to TEP from the
15 SunZia line.

16 **7. Importance of AC line for reliability and congestion relief**

17 116. SunZia’s witnesses also testified in 2015 that an AC line would relieve
18 congestion and improve reliability generally on existing transmission lines by allowing
19 additional interconnections.

20 117. In its application for its original CEC, SunZia stated that the “need for
21 additional transmission infrastructure to increase transfer capability, improve reliability,
22 and address existing congestion has been identified in federal, regional, and state
23 processes,” and that one of the “purposes” of the SunZia project is to “contribute to
24 improved system reliability with additional transmission lines and substation connections
25 increasing transmission capacity where congestion exists and providing access where
26 limited transmission currently restricts delivery to customers.” Original CEC Application
27 Packet, at 3.

28 118. At the LS Committee hearing in 2015, Mr. Etherton testified to “the

1 additional transmission capacity and transfer capability that SunZia creates for the EHV,
2 extra high voltage, grid in Arizona, particularly southern Arizona, and relief of congestion
3 on existing facilities” LS-171 Tr. 136:4-8.

4 119. Mr. Etherton specifically mentioned the importance of the Willow substation
5 for the relief of congestion: “Another example I would like to demonstrate here is for our
6 connection at Willow. If you had a – let’s say one of the commitments was that Tucson
7 Electric had to deliver from Springerville to, say, toward Palo Verde on the Springerville
8 Greenlee path. The Willow connection would provide another path to be able to provide
9 that transmission service commitment on another path either under normal or emergency
10 conditions if something happened to the primary path that’s available today in this area. . . .
11 This connection between Pinal Central and Willow actually does provide that loop for an
12 alternate path under normal and contingency positions in this area.” LS-171 Tr. 237:2-11,
13 238:7-9.

14 120. Mr. Etherton further testified, “At the termination at Pinal Central substation,
15 and along the way, there is actually a few other locations that I might mention where the
16 project could interconnect in the future, but is not currently part of our plan of service.”
17 LS-171 Tr. 212:8-12.

18 121. Mr. Etherton further testified that “we also pass very close to the Saguaro
19 and Tortolita substation where Tucson Electric and Arizona Public Service have 500kV
20 terminations in that area,” and that “as part of the long-term plan of the transmission system
21 develops, both of those interconnections could be accommodated.” LS-171 Tr. 212:17-23.

22 122. Mr. Etherton further testified that future interconnections would lead to “the
23 reduction of congestion on existing facilities.” LS-171 Tr. 233:2, 233:18–238:9.

24 123. Mr. Wray testified, “There is very little opportunity for midway
25 interconnections to [a] DC Circuit.” LS-171 Tr. 249:9-10.

26 124. Therefore, without an AC line, there would be no interconnections to the
27 SunZia line from other generators and utilities and no concomitant congestion relief and
28 improvement in reliability, unless future generators constructed DC converter stations that

1 only make economic sense if transmitting power for distances of at least 400 miles.

2 **8. Reliability and WECC path rating**

3 125. The Western Electricity Coordinating Council (WECC) “is one of the North
4 American Electric Reliability Council [NERC] regions that covers most of North
5 America,” whose “primary purpose is to enhance the reliability standards and ensure the
6 reliability standards of NERC are met and the local NERC compliance for each of the
7 transmission owners within the region, and also provide planning coordination within the
8 region to ensure that the transmission system is adequate and reliable throughout the
9 western interconnection.” LS-171 Tr. 230:1-13.

10 126. Mr. Etherton testified, “One of the many coordinating efforts within WECC
11 is to ensure that the major transmission paths within WECC have gone through a project
12 coordination and path rating process. The project coordination ensures that among WECC
13 members that they have fully vetted and reviewed the transmission path rating and
14 analysis.” LS-171 Tr. 230:22–231:2.

15 127. Mr. Etherton testified that the WECC rating process is painstaking, technical,
16 and takes about two years. LS-171 Tr. 231:14-25.

17 128. Specifically, Mr. Etherton testified, “The technical studies include non-
18 simultaneous and simultaneous interactions with other paths, and it takes approximately
19 two years to complete these major studies. It is a pretty significant effort with, again, with
20 peer review and sharing of information required to go through the process. The goal for
21 the WECC three-phase rating process is to get an accepted rating, which is to increase the
22 transfer capability in a reliable manner.” LS-171 Tr. 231:14-25.

23 129. Mr. Etherton testified that SunZia’s “additional transmission capacity or
24 transfer capability” was “primarily based on our WECC three-phase rating.” LS-171 Tr.
25 232:23-25.

26 130. Mr. Etherton testified that one of “[t]he ACC guiding principles . . . is
27 compliance with all NERC, WECC, and regional reliability criteria.” LS-171 Tr. 243:14-
28 24.

1 131. Mr. Etherton testified, “We believe we have demonstrated that [regional
2 reliability criteria] with the WECC three-phase rating.” LS-171 Tr. 243:23–244:1.

3 132. Mr. Etherton thus testified that an approved WECC rating was an important
4 indication of “reliability.” LS-171 Tr. 243:23–244:1.

5 133. Mr. Etherton further testified that its WECC rating was for 3,000 MW of
6 power. LS-171 Tr. 209:2-8, 232:6-13.

7 134. Mr. Etherton further testified that SunZia had a WECC rating for “Option
8 A,” that is, two AC lines. LS-171 Tr. 209:2-8, 232:6-13.

9 135. Mr. Etherton further testified, “Any change in plan of service to what we
10 have for our WECC rating will require us to go back to the peer review group and WECC
11 and reconfirm that rating itself.” LS-171 Tr. 232:10-13.

12 **9. Interconnections and FERC’s “open season”**

13 136. SunZia’s counsel explained that 50 percent of each transmission line would
14 be allocated to the anchor tenant (SunEdison) developing the wind power in New Mexico,
15 while the other 50 percent of each line would be allocated by FERC “on the open season.”
16 LS-171 Tr. 566:18–567:3.

17 137. By allocating the transmission line to other generators, those generators
18 would be able to use SunZia’s lines to increase reliability and relieve congestion.

19 **10. AC line to be built first**

20 138. SunZia proposed two alternatives to the LS Committee: one option to include
21 two AC lines, and another option to include an AC line and a DC line.

22 139. Mr. Etherton testified, “Both options include one AC 500kV line as a
23 primary component.” LS-171 Tr. 211:17-18.

24 140. In response to Member Haenichen’s question, “How are you going to make
25 this decision between these two options? I mean if the DC is that much better, why aren’t
26 you using it?” Mr. Wray testified:

27 There is very little opportunity for midway interconnections to the DC
28 Circuit. Should an interconnector want to interconnect, because the cost of
interconnection on a direct current basis is just like the cost that Mr. Etherton

1 went to with regard to the DC converter stations, it is an expensive
2 proposition and, as you know, multiple interconnections along a DC circuit,
3 a long DC line, it is very difficult to protect from a relaying and control
4 standpoint when there are line faults on long DC lines, which leads us to
5 believe that in our approach, the first project that's likely to be constructed
6 will be an alternating current facility at 500kV to allow for more affordable
7 interconnections along the length of that as we go through resource zones
8 that we talked about earlier in some of my testimony, particularly along the
9 Interstate 10 corridor. And in all likelihood the construction of the direct
10 current facility would be a commercial decision that would be made after the
11 construction and operation of the 500 kV alternating current facility.

12 LS-171 Tr. 248:3-5, 248:19-250:3.

13 141. The original CEC provided: “*At least one (1) of the two (2) 500 kV*
14 *transmission lines will be constructed and operated as an alternating current (AC) facility,*
15 *the other transmission line will be either an AC or DC facility. As contemplated and*
16 *provided for in this Certificate, the two (2) transmission lines may be constructed at*
17 *different points in time.*” CEC 171 at 4:2-6 (emphasis added).

18 142. The original CEC further provided: “This authorization to construct the
19 Project shall expire at two (2) different points in time, unless extended by the Commission,
20 as provided below: a) The Certificate for the first 500 kV transmission line and related
21 facilities and the 500 kV-Willow Substation shall expire ten (10) years from the date this
22 Certificate is approved by the Commission, with or without modification, and b) The
23 Certificate for the second 500 kV transmission line and related facilities shall expire fifteen
24 (15) years from the date this Certificate is approved by the Commission, with or without
25 modification.” CEC 171 ¶ 23 at 12:22-13:3.

26 143. The Willow Substation is a substation for the AC line and is unnecessary for
27 a DC line.

28 144. One LS Committee member stated about this portion of the CEC, “[A]fter a
few years they are going to know whether this has been a good deal or not and decide
whether or not to build the second part.” LS-171 Tr. 2594:7-10.

145. At the ACC's open meeting, the ACC Chairman's designee on the LS
Committee stated, “[T]he project consists of two 500kV, transmission lines. And *the first*

1 *line* will be an alternating line, AC. The second line was approved to be either AC or DC.”
2 2016 ACC Tr. 7:25–8:3 (emphasis added).

3 **11. Clean Power Plan**

4 146. At the 2015 LS Committee hearing, there was significant discussion of the
5 project’s potential to help Arizona meet its commitments under the Obama
6 Administration’s Clean Power Plan.

7 147. Mr. Wray testified, “You would have to be locked in a basement not to
8 understand that the State of Arizona has come under a lot of scrutiny with respect to a
9 couple of air quality mandates and changes to air quality regulations that will have
10 enormous effect on the State of Arizona’s ability to generate electricity.” LS-171 Tr. 191:3-
11 12.

12 148. Mr. Wray testified that the Clean Power Plan will make plant closures
13 “unavoidable.” LS-171 Tr. 195:10-11.

14 149. Mr. Wray testified, “[T]he emission reductions under the [state
15 implementation plan] on the Clean Power Plan must begin by 2022.” LS-171 Tr. 197:7-9.

16 150. Mr. Wray testified, “We believe SunZia provides an option to the State of
17 Arizona to reach compliance with the Clean Power Plan.” LS-171 Tr. 197:14-16.

18 151. Multiple members of the LS Committee discussed the potential for the
19 SunZia project to give Arizona credits under the Clean Power Plan. LS-171 Tr. 532:24–
20 537:23.

21 152. Mr. Wray testified that even if all of SunZia’s power ended up being bought
22 by California, Arizona would still get carbon credits for delivering that power from the
23 Pinal Central substation. LS-171 Tr. 252:7-21.

24 153. Mr. Wray subsequently testified that whether Arizona would receive credits
25 for energy delivered to California would depend on the final rule and state implementation
26 plans. LS-171 Tr. 253:11-16.

27 154. Mr. Wray subsequently testified that according to the CPP as then-drafted,
28 the offsetting credits could “accrue to the utilities in California who are making that

1 purchase.” LS-171 Tr. 254:1-2.

2 155. Mr. Wray subsequently deferred to SunEdison’s witness, Mr. Sankaran, on
3 whether credits would accrue to Arizona under the plan. LS-171 Tr. 254:11-14.

4 156. Mr. Sankaran testified that whether Arizona received credits under the CPP
5 would depend on the state implementation plan. LS-171 Tr. 532:24–537:23.

6 157. The ACC Staff’s attorney stated that the Clean Power Plan might require the
7 closure of a coal power plant serving Phoenix, which would then create reliability
8 problems with flow of electricity into the Phoenix area:

9 [Y]ou remind me of another reliability point that I wanted to bring up, but
10 one thing, and with reference to Clean Power Plan, for instance, and the
11 anticipated shutdown of various coal plants, you indicated there is essentially
12 two geographic locations that generation is coming into the Phoenix load
13 pocket right now, basically the north and from the west. And in comments
14 that the ACC posed to reliability interest that the Commission noted, and
15 with the proposed Clean Power Plan rules, there was one great alarm, that
16 you basically only have two paths, and if you shut down the coal, you have
17 really wound it just down to one path coming into the Phoenix load pocket.

18 LS-171 Tr. 384:20–385:5.

19 158. When Staff’s attorney asked Mr. Wray, “[D]o you foresee SunZia . . . , in
20 terms of the second path coming into the Phoenix load pocket, alleviating some of that
21 issue?” Mr. Wray responded, “[W]e do see that. . . . And we think it will have a material
22 betterment to the loss of that generation, something that the Commission did not have an
23 opportunity to consider when it was looking at the Clean Power Plan” LS-171 Tr.
24 385:10-20.

25 159. Pinal County, which intervened to support the project, stated in closing
26 argument: “Pinal County is all too aware of the threats and the regulations being faced by
27 the EPA and Clean Air Act. It was, at this point that the board of supervisors granted their
28 support for this line, balancing those two factors of the benefits versus just the inherent
29 cost of this sort of a line.” LS-171 Tr. 2516:15-21.

30 160. In the ACC’s open meeting, Commissioner Stump stated, “But you
31 mentioned the issue of need. And, of course, the federal government has been active of

1 late as with regard to ozone rules, Clean Power Plan. And I understand the Obama
2 Administration took a keen interest in this project, the issue of stranded wind resources.
3 So on the question of need, how, in your view, would Arizona meet its requirements
4 without it?” 2016 ACC Tr. 16:6-12.

5 **12. Economic benefits**

6 161. There was testimony and discussion in the 2015-16 proceedings of the
7 economic benefits of the SunZia project. LS-171 Tr. 136:1-3, 198:19–201:9.

8 162. One ACC commissioner specifically asked at the ACC open meeting, “So
9 my question on this is about economic development for Arizona. . . . [C]an you give some
10 explanation to how this does or does not benefit the economy in Arizona?” 2016 ACC Tr.
11 12:1-6.

12 163. One Pinal County supervisor stated at the ACC’s open hearing, “We
13 welcome economic development in Pinal County. In my district, industrial projects like
14 mining operations are the life blood of small communities. So I support economic benefits
15 that come from large-scale energy projects.” 2016 ACC Tr. 19:18-22.

16 164. One Greenlee County supervisor stated at the ACC’s open hearing, “The
17 project will generate money for our schools and state tax land leases and create jobs and
18 tax revenues for our local communities.” 2016 ACC Tr. 20:19-21.

19 165. The ACC Staff stated at the open meeting that the SunZia project would help
20 meet federal mandates and it would create jobs. 2016 ACC Tr. 183:23–184:9.

21 **13. The harm to the San Pedro Valley**

22 166. About forty-five miles of the SunZia project would traverse the San Pedro
23 Valley, and for a thirty-three-mile portion of the route through the Valley there are no
24 existing transmission lines. LS-171 Tr. 1865:3-25.

25 167. In closing argument, SunZia’s counsel stated “that San Pedro is an area of
26 biological wealth and a unique area.” LS-171 Tr. 2538:4-5.

27 168. SunZia’s original application stated, “The San Pedro River riparian corridor
28 supports important fish habitat and is an important avian migratory corridor. The ESA-

1 listed Yellow-billed Cuckoo, Gray Hawk (*Buteo plagiatus*), and many other avian species
2 use this reach of the San Pedro River.” Original CEC Application Packet at 66 (C-10).

3 169. SunZia’s original application stated, “The Lower San Pedro River Important
4 Bird Area (IBA), identified by the National Audubon Society, consists of 6,938 acres of
5 riparian habitat along nearly 59 miles of the river The entire San Pedro River corridor
6 in Arizona is an important movement corridor for avian and other wildlife species. The
7 Lower San Pedro River is designated as a globally significant IBA.” Original CEC
8 Application Packet at 68 (C-12).

9 170. SunZia’s original application stated, “Transmission lines lead to increased
10 bird-power line collision risk along the Proposed Route, particularly for larger birds such
11 as Sandhill Cranes and waterfowl and in locations with high levels of bird use such as the
12 San Pedro River and near Picacho Reservoir.” Original CEC Application Packet at 44 (B-
13 8).

14 171. SunZia’s original application stated, “Road construction and habitat loss
15 may impact the Sonoran Desert Tortoise from the San Pedro River Valley to the vicinity
16 of the Tortolita Substation, and near the Picacho Mountains.” Original CEC Application
17 Packet at 44 (B-8).

18 172. SunZia’s original application stated, “Moderate-High impacts to Class A
19 landscapes are anticipated at the San Pedro River Crossing.” Original CEC Application
20 Packet at 47 (B-11).

21 173. In response to a data request, Pima County stated, “The proposed SunZia
22 alignment will irrevocably scar the San Pedro Valley, cutting a swath of destruction
23 through many archaeological sites, diminishing cultural and traditional values held by
24 Native American tribes, and scarring the pristine visual character of the valley.” Pima
25 County Oct. 16, 2015 Filing, Comments at Page 14.

26 174. Mr. Schwarz of Environmental Planning Group, who testified on behalf of
27 SunZia, stated, “For scenery there are three specific classes, which include A, B, and C
28 landscapes. . . . [L]andscapes are identified by looking at the vegetation in a given area,

1 the topography in a given area, the scarcity of landscape, if there is water occurring or not,
2 as well as adjacent scenery. . . . And the A, B, and C represent different levels of the
3 elements that comprise the landscape. So A landscapes have the most diversity of the
4 elements I previously described, such as vegetation.” LS-171 Tr. 744:16–745:14, 747:20-
5 25..

6 175. Mr. Schwarz further testified, “This is the San Pedro River. And again,
7 because of the occurrence of water, that’s a scarce resource in southeastern Arizona, the
8 occurrence of the riparian vegetation, which has a lot of species diversity, and so that is an
9 example of an A landscape” where the SunZia transmission lines would cross the river.
10 LS-171 Tr. 745:19-25.

11 176. SunZia opposed the route in front of the federal BLM. LS-171 Tr. 1864:22–
12 1866:18; 2022 Else Ex. 11.

13 177. Mr. Wray wrote a letter to BLM in response to the draft Environmental
14 Impact Statement (EIS) in which he stated, “The BLM’s Preferred Alternative . . .
15 unnecessarily parallels the San Pedro River for 45 miles, cutting across perennial feeder
16 streams and creating an increased likelihood of negative impacts to what was identified as
17 a unique watershed and riparian environment during scoping.” 2022 Else Ex. 11 at 2.

18 178. Mr. Wray further wrote that the route “will very likely result in negative
19 impacts on water resources and the riparian habitat in the lower San Pedro River, and
20 increase the risk of erosion.” 2022 Else Ex. 11 at 2.

21 179. Mr. Wray further wrote that “SunZia believes such damage will be very
22 difficult to mitigate and sets forth in this letter why it believes the best course of action is
23 for the BLM to select” the route through the Sulphur Springs Valley. 2022 Else Ex. 11 at
24 2.

25 180. Mr. Wray further wrote that “only 12 miles of the 45-mile portion” of the
26 route “that parallels the San Pedro River follows existing linear infrastructure,” and that
27 that “infrastructure is an *underground* pipeline” (emphasis in original), which is the “*only*
28 area along the San Pedro River” (emphasis in original) where the route “follows an existing

1 linear feature,” and therefore “SunZia believes this amounts to an insignificant collocation
2 of utility corridors and does not result” in the route “being a more environmentally sound
3 alternative” to the route through Sulphur Springs Valley. 2022 Else Ex. 11 at 2.

4 181. Mr. Wray further wrote that the BLM’s preferred route “has more mileage
5 of impacts which are much greater than those of” the Sulphur Springs Valley route “with
6 respect to Mineral Resources, Paleontological Resources, Water Resources, Biological
7 resources (including Vegetation, and Threatened and Endangered Species), Existing Land
8 Use and Special Management Areas, and Future Land Use.” 2022 Else Ex. 11 at 2.

9 182. Mr. Wray further wrote that BLM’s route would “result in indirect impacts
10 affecting outstanding opportunities for solitude as it would be located 2 to 2.5 miles from
11 and be visible from 17 percent of the Rincon Mountain Wilderness Area.” 2022 Else Ex.
12 11 at 3.

13 183. Mr. Wray further wrote that BLM’s route “impacts more environmental
14 justice tracts than” a route through Sulphur Springs Valley. 2022 Else Ex. 11 at 3.

15 184. Mr. Wray further wrote, “During and following the year-long scoping
16 period, members of the public, local units of government, and Members of Congress,
17 expressed many concerns regarding impacts associated with routes traversing the San
18 Pedro River Valley and paralleling the lower San Pedro River.” 2022 Else Ex. 11 at 4.

19 185. Mr. Wray further wrote, “Pima County indicated that a route through the San
20 Pedro River Valley would (i) cause habitat fragmentation in a relatively undisturbed
21 environment, (ii) would impact unique wildlife characteristics and habitat, including
22 traversing a number of wildlife corridors, (iii) would lead to permanent loss of vegetation
23 while allowing and facilitating noxious weeds and invasive plant species, (iv) would
24 traverse a number of important conservation areas, and (v) impact cultural resources.”
25 2022 Else Ex. 11 at 4.

26 186. Mr. Wray further wrote, “In addition to opposition from Pima County during
27 scoping, routes through the San Pedro River Valley . . . likewise received opposition from
28 U.S. Representative Raul Grijalva of Arizona and former U.S. Representative Gabrielle

1 Giffords of Arizona. Both Representatives indicated that they support the development of
2 renewable energy, which includes the development of new transmission infrastructure.
3 However, both Representatives consistently opposed any routes through the San Pedro
4 River Valley. . . . [B]oth Representatives expressed concerns over impacts to wildlife,
5 water resources, and disturbance of a unique and relatively intact environment.” 2022 Else
6 Ex. 11 at 4.

7 187. Mr. Wray testified to the LS Committee that there are “biological resources”
8 and “habitat,” as well as “cultural resources” and “recreational resources that exist along
9 the proposed . . . route.” LS-171 Tr. 256:8-11.

10 188. Scott Wilbor, a wildlife biologist and conservationist, testified that 192,000
11 acres of the San Pedro Valley Watershed where the SunZia lines would traverse have been
12 subject to conservation efforts for over four decades. LS-171 Tr. 1654:7–23.

13 189. Numerous residents of the Valley, and numerous conservationists, opposed
14 the line in public comments to the LS Committee. LS-171 Tr. 408:22-24.

15 190. The local Sierra Club opposed the project. 2016 ACC Tr. 81:19–83:21.

16 191. The Tucson Audubon Society opposed the project. 2016 ACC Tr. 95:17–
17 98:6.

18 192. The executive director of the Tucson Audubon Society stated at the ACC’s
19 open meeting that “the San Pedro Valley” is “an important bird migratory route,” as
20 “[t]here are over 350 species that can be found in that valley, which is an extraordinary
21 wealth of . . . biodiversity in the bird world.” 2016 ACC Tr. 96:17-21.

22 193. The director further stated that the Valley represented “one of the
23 southwest’s last free-flowing rivers and all of its diversity.” 2016 ACC Tr. 97:22–98:1.

24 194. The Chairman of the LS Committee stated in the LS hearing:

25 I am very upset that there is not an alternate route. I don’t necessarily
26 blame the applicant for that, but it is – the decision is very difficult. I have
27 been very torn by it. . . . I think this is a perfect example of the . . . effort to
28 find the least worst decision. And boy, if there has ever been a case that
demonstrates that, I think this is it. The jewel, the San Pedro River Valley is
pristine. That tour that we took, it was beautiful, absolutely beautiful. And

1 my heart just breaks that, you know, there is going to be a transmission line
2 that's going through there. . . .

3 And when you have the BLM, you have the State Land Department,
4 you have Fish & Game, you have got the Department of Transportation all
5 acknowledging that, the applicant didn't go in with this route, the BLM
6 basically went through their process and picked it [A]nd so the path of
7 least resistance is the pristine valley, the San Pedro River Valley, that's
8 protected, given special consideration by statute, it just angers me. . . .

9 So I vote aye, reluctantly, and it is painful for me to do it. Because I
10 think that statute does mean something, that statute that requires special
11 consideration be given to areas such as the San Pedro River Valley.

12 LS-171 Tr. 2704:4–2705:25.

13 **14. Discussion of alternative routes**

14 195. The Commission and the LS Committee were given only one option for the
15 SunZia route, the option that had already been approved by federal authorities. LS-171 Tr.
16 255:10–256:14.

17 196. Mr. Wray testified that SunZia's preferred route when it filed an application
18 with BLM was along the Sulphur Springs Valley, crossing at Aravaipa Creek. LS-171 Tr.
19 2133:8–2138:15, 2261:5-23.

20 197. Mr. Wray explained that this "route was primarily problematic to the
21 Arizona Game & Fish Department because it conflicted with their grassland restoration in
22 this area in the Sulphur Springs Valley." LS-171 Tr. 2262:10-20.

23 198. Mr. Wray testified that routes through "metropolitan Tucson were flawed
24 heavily from the standpoint of significant inmitigable environmental justice issues
25 associated with removal of numerous homes in low income areas." LS-171 Tr. 257:1-5.

26 199. Mr. Wray claimed that a presidential executive order required federal
27 agencies to "consider" environmental justice impacts "where possible." LS-171 Tr.
28 2065:19-25.

200. Despite bringing forward a single route to the LS Committee, SunZia stated
that ultimately the LS Committee had authority to choose an alternative route, which would
then have to go back through federal processes for new approvals. LS-171 Tr. 270:19-25.

201. The LS Committee asked a representative of BLM to come and present its

1 perspective on the proposed route. LS-171 Tr. 1725:14-22.

2 202. Mr. Ray Suazo of the BLM presented unsworn public comments to the
3 Committee.

4 203. Mr. Suazo stated that the New Mexico BLM office was the lead agency on
5 the project. LS-171 Tr. 1727:1-7.

6 204. Mr. Suazo stated that the SunZia line was “one of the presidential priorities
7 transmission lines” and BLM was “putting a lot of resources towards getting this project
8 . . . moving forward and trying to . . . get it to a Record of Decision.” LS-171 Tr. 1729:3-
9 6.

10 205. LS Committee Member Hamway subsequently stated,

11 [I]t seems like that good land planning is being impeded because of
12 environmental justice issues. Because I do believe that if you look at the use
13 of land, that it is probably better to run utilities next to other utilities in a
14 commercial area rather than down a pristine 31-mile corridor of untouched
15 virgin land. I know it is not completely virgin. There are a few little roads
16 and a gas pipeline and some other stuff, so I know it is not completely virgin.
17 But what I do in my day-to-day job is land planning. And so I guess part of
18 my concern about this is that this is not good land planning, when we don't
19 consider the long-term aspects of where this stuff goes.

20 LS-171 Tr. 2082:20–2083:11.

21 206. Mr. Wray additionally testified that there was an existing 138 kV power line
22 that goes along the west side of Alvernon Way in Tucson. LS-171 Tr. 2092:11-18.

23 207. Mr. Wray testified that it was “possible” to collocate one of the SunZia lines
24 with the 138 kV power line by double circuiting the existing 138 kV line and putting one
25 of the 500 kV lines on one set of poles. LS-171 Tr. 2093:12–25, 2094:18-22, 2109:11-23.

26 208. Mr. Wray testified that doing so would be “getting around this
27 [environmental justice] population by an alternative alignment,” but that there would be
28 other “siting problems upstream,” such as interference with an archeological site. LS-171
Tr. 2094:1-3, 2096:11–2097:19.

29 209. Mr. Wray testified that there were cultural and land use impacts on any route
that would go further south to avoid Tucson, as well as the need to cross Tohono O'odham

1 lands. LS-171 Tr. 2103:13–2108:5.

2 210. SunZia did not propose any routes to BLM or the LS Committee that did not
3 intersect with the proposed Willow Substation.

4 211. SunZia did not propose any routes to BLM or the LS Committee that entered
5 Arizona north of the Sulphur Springs Valley.

6 **15. The Southline Project**

7 212. At the LS Committee hearing, Mr. Wray testified about the Southline
8 transmission project.

9 213. The Southline project is collocated with Interstate 10 and goes through
10 metropolitan Tucson. 2015 Exhibit SUN-16 at 3.

11 214. The Southline project involves a single 345 kV transmission line, which
12 includes new sections as well as upgrades to existing transmission lines. LS-171 Tr.
13 175:22–176:2.

14 215. Mr. Wray testified, “With regard to accessing resources, both projects, as I
15 provided on the maps yesterday for the Committee, can access solar zones, solar
16 development zones along the Interstate 10 corridor. However, the Southline project does
17 not extend into the wind resource such as does SunZia that I described yesterday in my
18 testimony. So Southline does not configure itself to harvest the stranded wind resources
19 that we believe are valuable to the State of Arizona, as does SunZia.” LS-171 Tr. 176:23–
20 177:4.

21 216. On November 6, 2015, the Southline project was approved by the federal
22 BLM, which issued a final Environmental Impact Statement. LS-171 Amend Tr. 376:5-
23 16; [https://www.energy.gov/nepa/downloads/eis-0474-final-environmental-impact-](https://www.energy.gov/nepa/downloads/eis-0474-final-environmental-impact-statement)
24 [statement](https://www.energy.gov/nepa/downloads/eis-0474-final-environmental-impact-statement) (<https://perma.cc/V8LQ-S6X8>).

25 217. The federal EIS for the Southline project did not anticipate condemnation of
26 low-income homes because the project only required 50 feet of additional rights-of-way.

27 **16. ACC vote, decision, and dissent**

28 218. The LS Committee approved the CEC on November 19, 2015.

1 219. The ACC approved the CEC on February 3, 2016, by a 3-2 vote.

2 220. The ACC's order stated, "The Project is in the public interest because it aids
3 the state in meeting the need for an adequate, economical, and reliable supply of electric
4 power." Decision No. 75464 at 2.

5 221. The ACC's order further stated, "In balancing the need for the Project with
6 its effect on the environment and ecology of the state, the conditions placed on the CEC
7 effectively minimize its impact on the environment and ecology of the state." Decision No.
8 75464 at 2.

9 222. The ACC's order further stated, "The conditions placed on the CEC resolve
10 matters concerning the need for the Project and its impact on the environment and ecology
11 of the state raised during the course of proceedings, and as such, serve as the findings on
12 the matters raised." Decision No. 75464 at 2.

13 223. The ACC's order further stated, "In light of these conditions, the balancing
14 in the broad public interest results in favor of granting the CEC." Decision No. 75464 at
15 2.

16 224. Chairman Doug Little published a dissent. Decision No. 75464 at 6-13.

17 225. The dissent stated, "The application by SunZia Transmission, LLC is unique
18 and unprecedented since it is the first instance of a merchant transmission line application."
19 Decision No. 75464 at 6.

20 226. The dissent further stated, "[T]he record contains either no evidence or
21 questionable evidence that any of . . . benefits will actually materialize." Decision No.
22 75464 at 7.

23 227. The dissent further stated, "The record does not identify any specific
24 congestion point that will be alleviated by the proposed line. I am not aware of any Arizona
25 utilities or merchant generators that have claimed the proposed line is necessary to relieve
26 congestion affecting their system." Decision No. 75464 at 7.

27 228. The dissent further stated, "There is no real assurance that the proposed line
28 will actually lead to the development of additional renewable energy resources.

1 Furthermore, there is no evidence on the record that allowing for importation of wind
2 power from New Mexico is the most cost effective way to develop renewable generation.”
3 Decision No. 75464 at 7.

4 229. The dissent further stated, “No Arizona utility has indicated that the
5 proposed line is necessary for meeting future demand. There is no evidence on the record
6 that building the proposed line will provide for meeting future demand in a more cost
7 effective manner than what is currently contemplated without the line.” Decision No.
8 75464 at 7.

9 230. The dissent further stated, “No Arizona utility intervened in the line siting
10 hearings. Not one. No Arizona utility claimed that the SunZia line would be necessary (or
11 even helpful) in complying with Arizona’s REST [Renewable Energy Standard and Tariff]
12 rules, the CPP or even in simply providing reliable and economic service generally.”
13 Decision No. 75464 at 9.

14 231. The dissent further stated, “On numerous occasions in testimony, several
15 witnesses, including Intervenors Else, McVie and Meader provided compelling evidence
16 that the portion of the SunZia route that runs along the San Pedro River Valley is an ‘area
17 unique because of biological wealth’ and that part of the route provides ‘habitats for rare
18 and endangered species.’ While the CEC does contain significant conditions to mitigate
19 the environmental harm to that portion of the route, the fact that the Line Siting Committee
20 and the Commission were effectively barred from considering alternative routes that
21 avoided the San Pedro River Valley altogether severely limited what ‘special
22 consideration’ could be given to the area.” Decision No. 75464 at 11.

23 232. The dissent further stated, “This leads to another disturbing aspect of this
24 case: the different routes available for consideration were evaluated by the Bureau of Land
25 Management (BLM) not by Arizona’s Line Siting Committee or the Commission. This is
26 another unique aspect of this case. Typically, the Line Siting Committee and the
27 Commission have several routes to choose from, thus allowing the pros and cons of the
28 various routes to be evaluated on the record. In this case, the Line Siting Committee and

1 the Commission were essentially presented with an ‘up or down vote’ on the entire route,
2 as a whole. This apparent usurpation of Arizona’s jurisdiction by a federal agency is
3 disturbing for many reasons.” Decision No. 75464 at 11.

4 233. The dissent further stated, “[O]ur statutory requirement to ‘give special
5 consideration to protected areas unique because of biological wealth or because they are
6 habitats for rare and endangered species’ was impeded because we were unable to consider
7 any other routes.” Decision No. 75464 at 12.

8 **D. Mr. Else’s Prior Lawsuit**

9 234. On April 25, 2016, Mr. Else filed an action in Superior Court challenging
10 the Commission’s granting of the original CEC.

11 235. SunZia intervened in the action.

12 236. The parties filed cross motions for judgment on the pleadings.

13 237. Mr. Else argued that SunZia’s intent to bring wind power from New Mexico
14 was questionable because, Mr. Else claimed, SunZia intended to connect SPG’s Bowie
15 plant to the Willow Substation.

16 238. Mr. Else argued there was no substantial evidence of need for the project in
17 light of the Southline project.

18 239. On December 15, 2016, the Superior Court held in favor of the Commission,
19 concluding that Mr. Else failed to demonstrate by clear and convincing evidence that his
20 factual claims were correct and that there was a lack of substantial evidence to support the
21 Commission’s decision to approve the SunZia project.

22 240. On appeal, Mr. Else argued that the Commission approved the SunZia
23 project largely on the basis of speculative evidence, that speculation was not substantial
24 evidence, and that the New Mexico wind farm might never be built.

25 241. The Court of Appeals disagreed, holding that there was substantial evidence,
26 and concluding that “[w]hile there was no evidence presented that the New Mexico project
27 had been built at the time of the CEC’s grant, there was similarly no evidence to support
28 Else’s contention that the New Mexico project would never be built *or that SunZia’s*

1 *transmission lines would be incapable of carrying renewable energy from other sources.”*
2 *Else v. Arizona Corp. Comm’n*, 2018 WL 542924, at *4 (Ariz. Ct. App. Jan. 25, 2018)
3 (emphasis added).

4 242. The Court of Appeals further held that Mr. Else’s claim that the project as
5 constructed would constitute a substantial change from the proposal was not ripe because
6 “we do not know at this time whether and to what extent the Project will ultimately transmit
7 renewable energy, and we cannot speculate as to whether a substantial change will occur.”
8 *Id.* at *5.

9 243. The Arizona Supreme Court denied review on September 27, 2018.

10 **E. The 2022 Amendment Proceedings**

11 244. SunZia filed an application to amend pursuant to A.R.S. § 40-252 on May
12 13, 2022. Decision No. 78769 ¶ 3.

13 245. The amendment application sought to authorize the use of updated structure
14 design changes and additional structure types associated with the DC line; to bifurcate the
15 original CEC into two CECs to provide for separate ownership of each line, which would
16 enable the projects to be financed; and to extend the expiration date of the CEC for the first
17 line (now the DC line) from February 2026 to February 2028. Decision No. 78769 ¶ 3.

18 246. At the time of the amendment application, Pattern Energy owned the rights
19 to build the DC line as well as the wind project in New Mexico. LS-171 Amend Tr. 52:11-
20 18.

21 247. The amendment application did not mention that the original CEC had
22 required that the Willow Substation be built along with the first line and that SunZia,
23 because it was building the DC line first, would therefore need the expiration date for the
24 Willow Substation to be moved to the second expiration date. 40-252 Application at 1, 4-
25 5.

26 248. On the first day of the line siting hearing, SunZia mentioned for the first time
27 that it would need to move the expiration date of the Willow Substation to the second
28 expiration date. LS-171 Amend Tr. 67:1-15.

1 249. The amendment application requested approval without an LS Committee
2 hearing, stating that “the proposed changes have no or minimal effects on reliability of the
3 regional grid and the environment.” 40-252 Application at 6.

4 250. On May 23, Mr. Else filed a response to the amendment application,
5 requesting an evidentiary hearing.

6 251. Mr. Else stated in that response, “The CEC in this case approved two lines.
7 The Application now proposes that a separate CEC be issued for each line. The first line
8 planned to be constructed is a DC line. It is the only line that currently has agreements
9 pending for financing. *This line could turn out to be the only line associated with the*
10 *original CEC that is ever constructed.*” Else (May 23) Resp. at 4 (emphasis added).

11 252. Mr. Else further stated, “The elimination of [the Willow] substation also
12 eliminates economic opportunities for uploading renewable energy produced in Arizona
13 counties that were promoted by SunZia during the development of the CEC and at the
14 subsequent decision meeting by the Commission. This substantial change needs to be
15 considered at Line Siting hearings for the first of the two new CECs that SunZia is
16 seeking.” Else (May 23) Resp. at 4-5.

17 253. Mr. Else further stated:

18 SunZia states on page 2 of their Application that their project will “reduce
19 existing transmission congestion”. The first line now proposed to be
20 constructed would not accommodate alternative routing of AC grid
21 electricity during periods of congestion or major line failures. It is a 515-
22 mile DC tie-line originating at a single substation in central NM and
23 terminating at a single substation in AZ. As a DC tie-line with no other
24 substations in Arizona, it is debatable whether the line would be helpful in
25 reducing existing congestion.

26 Else (May 23) Resp. at 5.

27 254. Mr. Else further stated that “Pattern Energy’s dominance of Arizona’s grid
28 capacity between the Pinal Central Substation and major demand markets could affect
Arizona’s opportunities for renewable energy production, transmission, and export.” Else
(May 23) Resp. at 4.

1 255. On May 31, SunZia filed a reply to Mr. Else. SunZia (May 31) Reply ISO
2 Application.

3 256. In that reply, SunZia stated, among other things, that Mr. Else “raises several
4 asserted concerns that are unrelated to the application at issue and reflect a desire to
5 relitigate the Line Siting Committee’s and Commission’s original approval of the Project.”
6 SunZia (May 31) Reply ISO Application at 2-3.

7 257. On June 6, Mr. Else wrote a further response to SunZia. Else (June 6) Resp.

8 258. In that response, Mr. Else stated,

9 Eliminating the Willow Substation from the first of the two CECs SunZia is
10 now seeking is a substantial change from what was represented in the
11 original CEC, which clearly states that both lines would have an intermediate
12 substation. It is also a substantial change from the evidentiary basis for the
13 CEC, which included documents touting the economic benefits that would
14 result from SunZia facilitating renewable energy generation in various
15 counties of Arizona. Using the first line to inject SunZia’s full 3000 MW
16 Western Electricity Coordinating Council reliability rating with New
17 Mexico wind energy into the center of Arizona’s grid will have
18 consequences on the availability of transmission capacity for the
19 development and export of Arizona’s own renewable energy. This is a
substantial change from the understanding that the Line Siting Committee
and Commission held, because prior testimony had indicated the first line
would be a 1500 MW AC line that would provide opportunities for
uploading and downloading electricity along its route, as well as providing
a contingency loop around Tucson in the event of a major line failure within
the Tucson area.

20 Else (June 6) Resp. at 4.

21 259. Mr. Else further stated, “In order to fulfill the Commission’s mandate to act
22 in the public interest, these substantial changes warrant evidentiary hearings” Else
23 (June 6) Resp. at 5.

24 260. On June 14, the Staff of the ACC Utilities Division recommended a hearing
25 on the application.

26 261. On June 23, Mr. Else filed another response in support of that
27 recommendation.

28 262. In that response, he stated,

1 SunZia is also now proposing to split their original CEC into two CECs and
2 change the configuration [of] the first project to a Direct Current tie-line
3 owned and supplied with electricity by the same corporation. This first 3000
4 MW DC tie-line would offer no opportunity for generators located along its
5 route in Arizona to upload electrical power. Public input regarding the
6 impacts of this plan on the development of energy generation within Arizona
7 for both in-state and export purposes is essential. Because of the significant
8 changes being proposed to SunZia's first line, the public should be allowed
9 to provide testimony regarding impacts to the economical and reliable supply
10 of electric power.

11 Else (June 23) Resp. at 2.

12 263. Mr. Else further stated, "These [substantial] changes," among the other
13 substantial changes he identified, "should be considered in reference to sections of Arizona
14 Revised Statutes that require consideration of environmental impacts and the promotion of
15 an economical and reliable supply of electric power." Else (June 23) Resp. at 1.

16 264. On June 28, SunZia filed a response indicating that it did not oppose a LS
17 Committee hearing on the amended application.

18 265. On July 11, the Commission sent the matter to the LS Committee for a
19 hearing.

20 266. The LS Committee held hearings from September 6 through September 9,
21 2022.

22 267. Mr. Else intervened in the proceedings.

23 268. Kevin Wetzel testified on behalf of Pattern Energy as the manager of the
24 SunZia project.

25 269. Mark Etherton testified on behalf of Pattern Energy as the engineering
26 manager of the SunZia project.

27 270. Adam Cernea Clark testified on behalf of Pattern Energy as a senior manager
28 of environmental and natural resources.

271. Western Resource Advocates (WRA) intervened.

272. Dr. Alexander Routhier testified on behalf of the WRA.

1 **1. Issues Mr. Else raised in the 2022 proceedings**

2 273. At the 2022 LS Committee hearing, Chairman Katz stated, “From what I can
3 tell, the only real issues -- and I’m not cutting anybody off upfront -- but when I look at
4 the nine requirements, what we are really looking at, I think, primarily are the visual
5 impacts of the increased height and the reconfiguration; any effect that it might have on
6 wildlife, and specifically avian or bird flight, and whether the CEC should be split in two.”
7 LS-171 Amend Tr. 9:11-17.

8 274. At the LS Committee hearing, Chairman Katz stated prior to public
9 comments, “We’re not here to hear objections to the line because it has already been sited
10 and approved by the Corporation Commission, the Superior Court, and the Arizona Court
11 of Appeals in 2015 through 2018. We’re here only to look at the increased or changed
12 configuration, some increased pole heights and the like. And the primary concerns would
13 be the effect upon avian species, birds, and the effect on the visual appearance. There may
14 be a few other things.” LS-171 Amend Tr. 140:1-9.

15 275. At the LS Committee hearing, Chairman Katz stated, “We have one of two
16 alternatives in today’s proceedings or this week’s proceedings: One is to deny the amended
17 CECs, and then we are going to follow the original CEC; or to allow the amended CEC
18 with some additional stipulations and conditions.” LS-171 Amend Tr. 13:22–14:1,
19 334:23–335:1.

20 276. At the LS Committee hearing, Mr. Else stated: “I don’t believe that the
21 Commission only has two choices, which is to approve both lines or not to approve both
22 CECs. I may be wrong, but I think they also have the option to approve CEC-1 only or
23 CEC-2 only. . . . [T]he Committee could approve both of the CECs, CEC-1 only, CEC-2
24 only, or neither of the CECs. Maybe that’s not the case. I don’t have an attorney sitting
25 beside me.” LS-171 Amend Tr. 376:19-22, 490:1-4.

26 277. Mr. Else stated that the applicant did not disclose in the application to amend
27 that the original CEC required the first line to be AC and that it would seek to move the
28 expiration date for the Willow Substation to the second deadline. LS-171 Amend Tr.

1 352:11-22.

2 278. At the hearing, Mr. Else further testified, “With the variable 3,000-megawatt
3 impact on the transmission capacity of power lines near the Pinal Central Substation,
4 Pattern’s 550-mile tie-line would in some critical ways reduce energy reliability in
5 Arizona” because “[y]ou wouldn’t have the sort of diversity you might have if you had
6 multiple resource zones feeding a line as you normally would with an AC line” and
7 “Pattern’s DC tie-in line would provide no access for energy development within Arizona
8 along its route.” LS-171 Amend Tr. 361:22–362:19.

9 279. Mr. Else subsequently asked, “Would this 550-mile tie-line facilitate
10 economical electricity in Arizona?” LS-171 Amend Tr. 363:5-6.

11 280. At that point, SunZia’s counsel objected to the scope of Mr. Else’s testimony,
12 stating, “[W]e are very, very far afield of the requested amendments and the focus of this
13 proceeding.” LS-171 Amend Tr. 363:7-14.

14 281. Mr. Else responded, “I saw inherent in one of those changes, the one where
15 the first line would be DC instead of AC, that that was a substantial change from what was
16 in the record.” LS-171 Amend Tr. 368:13-18.

17 282. Mr. Else further stated that he “will go with whatever decisions the Chairman
18 decides on whether these things are substantial changes or not, but that one’s a big one.
19 That one is a big one because the original plan was definitely for an AC line.” LS-171
20 Amend Tr. 368:19-25.

21 283. Mr. Else was allowed to continue his testimony.

22 284. Mr. Else discussed the importance of the AC line to tie-ins (interconnections)
23 and reliability loops, as promoted by SunZia in 2015. LS-171 Amend Tr. 373:16-23.

24 285. Chairman Katz subsequently asked, “The one question, though, that I have
25 is that if this Committee and, more importantly, the Corporation Commission, granted an
26 Option B, which would allow this DC line, and it was planned to be 550-some miles long,
27 how can we change that now? . . . I don’t think we have authority to do that.” LS-171
28 Amend Tr. 374:5-13.

1 286. Mr. Else further testified, “The original plan of service was . . . promoted as
2 facilitating the development of distributed energy resources located along the I-10 corridor
3 in Southern Arizona.” LS-171 Amend Tr. 351:4-10, 352:23–353:1.

4 287. Mr. Else further testified that having only a DC line would “accommodate
5 the interests of a single corporation.” LS-171 Amend Tr. 362:18-23, 407:12-24.

6 288. In his proposed findings of fact and conclusions of law, Mr. Else wrote, “The
7 Project does not offer access along its route to electrical generation resources located
8 within Arizona.” Else Proposed Findings of Fact and Conclusions of Law at 1.

9 289. Mr. Else further testified that the amendment would lead to increased
10 congestion because “the injection of 3,000 megawatts of New Mexico wind energy at the
11 Pinal Central Substation” would require the use of existing transmission lines to move the
12 power to its final destinations. LS-171 Amend Tr. 370:18–371:4.

13 290. Mr. Else testified that the original WECC path rating for SunZia assumed
14 there would be at least one AC line. Decision No. 78769 ¶¶ 43, 63, 65, 70, 80, 84, 115;
15 LS-171 Amend Tr. 349:16-19.

16 291. In his proposed findings and conclusions, Mr. Else stated, “The Project will
17 increase transmission congestion between its termination point in central Arizona and its
18 electricity markets in other states.” Else Proposed Findings of Fact and Conclusions of
19 Law at 2.

20 292. Mr. Else also argued at the hearing that the testimony from the WRA on
21 climate change was irrelevant because “the way the statute is written in Arizona is that the
22 Committee and the Commission are charged with finding economical electrical energy,
23 and it doesn’t distinguish between renewable and non-renewable,” and that the amended
24 project “would not provide economical electricity for Arizona’s use.” LS-171 Amend Tr.
25 483:3-15.

26 293. Mr. Else stated that Southline transmission project “received all of its
27 required permits and is accepting requests for generator access at 12 planned substations
28 in New Mexico and Arizona” and provides “multiple access points to provide benefits

1 along its route,” that the project “follows the Interstate 10 corridor and is collocated with
2 existing power lines for two-thirds of its approved route,” and that the line provides many
3 of the benefits of the proposed SunZia AC line but without the ecological and
4 environmental difficulties. LS-171 Amend Tr. 376:5-16.

5 294. Mr. Else stated in his proposed findings that the AC line “is redundant with
6 another approved merchant transmission line that has not yet been used to capacity.” Else
7 Proposed Findings of Fact and Conclusions of Law at 2.

8 295. Mr. Else further stated in his proposed findings that the AC line “more than
9 doubles the ground disturbance of the first line, but is capable of transferring only half the
10 amount of energy as the first line.” Else Proposed Findings of Fact and Conclusions of
11 Law at 3.

12 296. Mr. Else further stated, “The Project is not in the public interest because the
13 Project’s potential contribution of supplying some electricity to the state is outweighed by
14 the Project’s adverse impacts to the environment, ecology, and supply of economical and
15 reliable electricity in the state.” Else Proposed Findings of Fact and Conclusions of Law
16 at 2.

17 **2. Mr. Wetzel’s testimony on the amendment request**

18 297. Testifying for Pattern Energy, Mr. Wetzel explained that Pattern is also the
19 owner of the wind projects to be developed in New Mexico. LS-171 Amend Tr. 46:14-22.

20 298. Mr. Wetzel testified that the company anticipated “starting construction mid
21 next year and financing the project at the same time, which is why . . . we’re . . . requesting
22 these amendments, which are required – all three required to be able to actually finance
23 and begin construction in this project next year and bring it online in 2025 to meet the
24 growing needs of the Southwest region.” LS-171 Amend Tr. 51:25–52:8.

25 299. Mr. Wetzel further stated that the amendments were crucial to start on the
26 anticipated “time frames” that had been discussed. LS-171 Amend Tr. 103:23–104:1.

27 300. Mr. Wetzel stated that the two proposed lines had two separate owners. LS-
28 171 Amend Tr. 52:11-18.

1 301. Mr. Wetzel testified that Pattern has the “financial resources and the
2 experience to develop a second line” if necessary. LS-171 Amend Tr. 520:9-22.

3 **3. Evidence of need, cost, and market**

4 302. Mr. Wetzel testified that the project was “critical to meet growing demand.”
5 Decision No. 78769 ¶ 49; LS-171 Amend Tr. 45:13-46:4.

6 303. Mr. Wetzel further testified “that Pattern Energy has talks on a regular basis
7 with 60 or 70 counter parties for purchase of the wind generation, which parties include
8 different utilities and largescale commercial and industrial customers across the West
9 including Arizona.” Decision No. 78769 ¶ 74; LS-171 Amend Tr. 526:12-18.

10 304. Mr. Wetzel further testified “about how the demand for power by California
11 affects the market for power in the region, opining that more capacity in the western market
12 is good for the region regardless of where the individual resource is going.” Decision No.
13 78769 ¶ 75; LS-171 Amend Tr. 538:2-539:12.

14 305. No Arizona utility testified at the 2022 proceedings that they needed power
15 from SunZia.

16 306. When asked, “of those [counter parties] you are currently having discussions
17 with, what percentage of those, say 60, are in Arizona?” Mr. Wetzel stated, “I don’t think
18 I can provide a specific percentage to you. I apologize, is to kind of current discussions
19 with counter parties in one state relative to another.” LS-171 Amend Tr. 527:8-21.

20 307. Mr. Wetzel further stated that “we absolutely *are attempting to and hope to*
21 *provide* a material amount of power to Arizona customers,” although “it’s dependent on
22 market conditions and their interest in the product that we have to sell.” LS-171 Amend
23 Tr. 527:8-21 (emphasis added).

24 308. When asked “Can you disclose perhaps what number of megawatts from the
25 wind facility in New Mexico would end up in Arizona should you secure these potential
26 contracts?” Mr. Wetzel stated, “I don’t think I can. Because, again, we just don’t know
27 about whether we will be selected and at what volume.” LS-171 Amend Tr. 527:25–528:9.

28 309. Mr. Sankaran testified in 2015 that financing sufficient for construction

1 required that 70-80 percent of transmission service agreements be in place. LS-171 Tr.
2 183:17–184:1, 184:20–185:1, 364:16-20, 366:1–368:8.

3 310. Mr. Wetzel testified in 2022 that construction of the first line is set to begin
4 in mid-2023. LS-Amend Tr. 52:1.

5 311. Despite the imminence of construction, Mr. Wetzel did not testify as to any
6 transmission service agreements with Arizona utilities.

7 312. Mr. Wetzel testified, “This project competes in the market and if our value
8 proposition to market participants who buy wholesale power is not attractive enough and
9 they don’t see value in our value proposition in our project, then this project won’t move
10 forward.” LS-171 Amend. Tr. 496:4-8.

11 313. The ACC Staff response to the proposed amendments explained that
12 SunZia’s transmission lines “*could* help improve reliability, safety of the grid, and the
13 delivery of power in Arizona.” Staff Response (Aug. 29, 2022), at 2 (emphasis added).

14 314. In 2022, LS Committee Member Haenichan stated, “it looks like the only
15 reason for using or attempting to use the wind energy from New Mexico is the
16 environmental advantages of it,” and then asked: “If it’s going to be a lot more expensive
17 because of transmission costs, despite the fact that there are no fuel costs, I think we need
18 to understand this question, is it really not economically advantageous to use that energy?
19 Who can answer that?” LS-171 Amend Tr. 486:12-21.

20 315. Mr. Wetzel responded to Member Haenichan’s question as follows: “So [on]
21 any given day it could be cheaper or more expensive to take power from the grid relative
22 to a long-term contract to buy power from the transmission-enabled wind projects.” LS-
23 171 Amend Tr. 517:4-7, 517:19–518:15.

24 316. Mr. Wetzel was further asked by Mr. Else, “Regarding the economics, Mr.
25 Wetzel, is it true that Pattern, like most corporations, will focus on the power purchase
26 agreements that provide the most profit to the corporation?” LS-171 Amend Tr. 569:11-
27 14.

28 317. Mr. Wetzel responded: “Pattern is a for-profit enterprise, the way that we

1 balance considerations for any power purchase agreement include economics and also
2 include non-economic elements such as risk, reputation, things of that nature.” LS-171
3 Amend Tr. 569:15-19.

4 318. Mr. Else provided testimony that the average cost of energy per kilowatt hour
5 in California was almost twice as much as in Arizona. LS-171 Amend Tr. 359:13-20.

6 319. Mr. Else introduced into evidence a slide deck that SunZia presented at a
7 July 2021 California Energy Commission conference. LS-171 Amend Tr. 358:1–359:12;
8 2022 Else Exhibit 13 at slides 26-29.

9 320. Upon information and belief, SunZia has no purchase power agreements in
10 place with an Arizona utility.

11 321. Upon information and belief, SunZia has no purchase power agreements in
12 place with any counter party in Arizona.

13 322. Upon information and belief, SunZia’s only purchase power agreements in
14 place, if any, are with counter parties in California.

15 **4. Pattern awarded 100 percent of DC line transmission.**

16 323. Mr. Etherton testified, “[T]he only common point [along the DC line] is
17 going to be the Pinal Central Substation, again, with the DC converter station in New
18 Mexico and Pinal Central” because “there’s no, at least proposed, interconnection to
19 those.” LS-171 Amend Tr. 87:7-11.

20 324. Pattern Energy’s proposed wind project was awarded 100% of the
21 transmission capability on the DC line by FERC’s open solicitation process. LS-171
22 Amend Tr. 46:14-22.

23 325. Pattern Energy was awarded 100% of the transmission capability because no
24 other utility or plant would have the capability of interconnecting to the proposed DC line
25 without a DC converter station.

26 **5. No WECC path rating**

27 326. At the time of the 2022 proceedings, SunZia had only recently filed for a
28 path rating from the WECC for a single DC line. LS-171 Amend Tr. 118:15–119:11.

1 327. At the time of the 2022 proceedings, SunZia had not filed for a path rating
2 from the WECC for the second SunZia line. LS-171 Amend Tr. 570:15-24.

3 328. At the LS Committee hearing, Mr. Else raised the issue of a lack of WECC
4 path rating. LS-171 Amend Tr. 354:4-12.

5 329. At the LS Committee hearing, Chairman Katz stated, “But the thing is, is
6 that I don’t know that this Committee can get into what’s going on in FERC or WECC.”
7 LS-171 Amend Tr. 357:1-3.

8 330. Chairman Katz further stated, “Well, the Committee has to consider whether
9 or not any of the proposed changes would affect reliability of electrical -- reasonable and
10 reliable source of electricity to the Arizona community, but I don’t think we need to get
11 any further into what FERC or WECC have or might need to do.” LS-171 Amend Tr.
12 357:15-20.

13 331. In the 2015 proceedings, SunZia at least had a WECC path rating for “Option
14 A,” which was two AC lines and at least two substations in Arizona, the Willow and Pinal
15 Central substations.

16 332. After the grant of the original CEC, SunZia would have had to secure a path
17 rating from WECC before operating a DC line.

18 333. When the amended CECs were granted, neither amended CEC had a path
19 rating from WECC.

20 334. Without the AC line, the DC line will increase congestion because all the
21 new power from New Mexico would have to go from Pinal Central to its final destinations
22 through other, existing transmission lines.

23 335. Without an approved WECC path rating, it is impossible to know how a
24 single DC line will affect congestion and reliability.

25 **6. Evidence of impact**

26 336. Mr. Cernea Clark testified, “[E]very project does have impacts. You can’t
27 get to zero impacts on a project. So even as you’re concurrently going through the process
28 of avoidance and minimization, you get to a point where you’re able to be clear that you

1 do have certain impacts, and so that's where mitigation really comes in." LS-171 Amend
2 Tr. 133:4-9.

3 **7. Climate Change testimony**

4 337. The United States Supreme Court invalidated the Clean Power Plan in June
5 of 2022.

6 338. In the 2022 amendment hearings, there was no discussion of the Clean Power
7 Plan.

8 339. In the 2022 amendment hearings, there was discussion spanning
9 approximately thirty-five pages of transcript of the need of the SunZia line to combat
10 global climate change. LS-171 Amend Tr. 291:15–325:25.

11 340. Western Resource Advocates (WRA) testified in favor of the SunZia project.

12 341. The WRA's witness, Dr. Routhier, testified: "I indicated before, there is a
13 limited window to act. And they [the Intergovernmental Panel on Climate Change]
14 emphasize if we don't act immediately, we may lose our opportunity. . . . [T]he amounts
15 that they are recommending are 45 percent economywide carbon emission reductions by
16 2030 and 100 percent economywide emission reductions by 2050. And that's a short time
17 frame. 'Immediate' means 'immediate.'" LS-171 Amend Tr. 304:5-18.

18 342. Dr. Routhier further testified, "Looking at water savings and carbon dioxide
19 emission reductions, it will -- the SunZia line will have a significant positive impact on
20 climate change." LS-171 Amend Tr. 313:6-9.

21 343. Dr. Routhier further testified that if the wind energy replaces gas generation
22 rather than coal, there would be less of an impact on climate change. LS-171 Amend Tr.
23 314:1-3.

24 344. Dr. Routhier further testified, "We recommend that the Line Siting
25 Committee approve the Certificate of Environmental Compatibility for the SunZia line,"
26 and the line should be approved "as soon as possible" because "the window that we have
27 to deal with climate change is limited, and it is closing quickly." LS-171 Amend Tr.
28 314:17–315:8.

1 345. Dr. Routhier testified that he “did not look into” the emissions footprint of
2 constructing over 500 miles of 500kV transmission lines. LS-171 Amend Tr. 322:12–
3 323:15.

4 **8. Economic benefits**

5 346. The LS Committee in 2022 heard testimony about the economic benefits of
6 the proposed SunZia project.

7 347. Mr. Wetzel testified, “We anticipate over 3,000 jobs to be created through
8 these projects. The majority of those will be construction jobs, but we do anticipate long-
9 term, well-paying jobs associated with the operation of these facilities.” LS-171 Amend
10 Tr. 56:17-21.

11 348. Mr. Wetzel further testified, “And of those 3,000 jobs mentioned on the last
12 slide, up to 400 of construction jobs are anticipated to be located in Arizona as well as up
13 to 14 permanent staff to operate the facilities.” LS-171 Amend Tr. 58:16-19.

14 **9. Route modifications and alternatives**

15 349. The SunZia project has undergone route changes since it was originally
16 granted the CEC in Arizona.

17 350. After the 2016 CEC was issued by the ACC, SunZia’s project was initially
18 denied approval by New Mexico’s Public Regulation Commission. LS-171 Amend Tr.
19 348:9–349:7.

20 351. After the 2016 CEC was issued by the ACC, SunZia made route changes in
21 New Mexico and filed an application for a supplemental federal environmental impact
22 statement, the approval process for which remains ongoing. LS-171 Amend Tr. 348:9–
23 349:7; 2022 Exhibit Else 04 at 1-4.

24 352. The draft EIS indicates that SunZia is seeking six localized route
25 modifications in three of four project segments; additional rights of way for 844.5 miles of
26 existing and new access roads; in the fourth segment, a reroute to move the line outside
27 the White Sands Missile Range Northern Call-Up Area, a reroute to partially parallel the
28 Western Spirit 345 kV transmission line, and a reroute to move the eastern substation

1 closer to the proposed wind-generation projects; and an additional converter station in
2 Arizona near Pinal Central for the DC line. 87 FR 25653, <https://perma.cc/34YC-VRT8>.

3 353. The proposed High Plains Express Transmission project, if approved, would
4 parallel SunZia for portions of New Mexico, would enter Arizona around Springerville,
5 well north of where SunZia would enter Arizona. 2015 Else Ex. 1 at 4.

6 354. This northern routing avoids South Tucson and avoids the San Pedro River
7 Valley.

8 355. Mr. Else provided uncontradicted testimony that the “High Plains route
9 would pretty much follow the same route as SunZia. But when it gets to this point [where
10 it diverges in New Mexico], it’s totally collocated with existing power lines for the rest of
11 the way to this point in Central Arizona [near Pinal Central].” LS-171 Amend Tr. 378:7-
12 23; 2022 Else Ex. 13 at 44.

13 **10. Decisions and briefing**

14 356. The LS Committee approved the application to amend and recommended
15 approval of two new CECs, CEC-A and CEC-B, one for each line.

16 357. Mr. Else filed a request for review.

17 358. In that request, he also asked the ACC to reconsider the original CEC on the
18 basis of the testimony and materials from the proceedings involving the application to
19 amend, stating: “Intervenor requests that the Commission consider whether Decision
20 75464 should be rescinded based on testimony by the Applicant’s first witness during the
21 recent Hearing that CEC-A and CEC-B would be used almost exclusively for the export
22 of wind energy from central New Mexico, with no assurance that a substantial portion of
23 this energy would be economically competitive within Arizona.” Else (Sept. 28) Request
24 for Review at 2.

25 359. Mr. Else further stated, “This is a significant departure from the original
26 portrayal of Decision 75464 as a project that would facilitate the development of diverse
27 and distributed energy development within Arizona along the approved route. In order to
28 fulfill the Commission’s mandate to facilitate the development of an adequate, economical,

1 and reliable supply of electricity in Arizona and to assure that Arizona would benefit to a
2 similar degree as energy interests in New Mexico and California, reconsideration of
3 Decision 75464 is warranted.” Else (Sept. 28) Request for Review at 2.

4 360. In Mr. Else’s request, he further suggested that each line be considered
5 independently, stating:

6 In the alternative, if the Commission decides that injecting 3000 MW of wind
7 energy into the center of Arizona’s grid (with CEC-A) would help facilitate
8 an adequate, economical, and reliable supply of electricity in Arizona,
9 Intervenor hereby files a specific exception that injecting up to an additional
10 1500 MW of New Mexico’s wind energy with CEC-B does not meet the
11 Commission’s balancing mandate of A.R.S. §40-360.07 B. The Applicant’s
12 witnesses stated CEC-B would include AC transmission facilities that are
13 very similar in size and environmental impacts as compared to DC
14 transmission facilities included in CEC-A but would be half as efficient in
15 transfer capability. CEC-B had not even applied for a reliability path rating
16 from the WECC at the time of the recent Hearing. The total amount of
17 transfer capacity approved by the WECC prior to SunZia’s original CEC was
18 3000 MW for two AC lines, and now that capability would be achieved with
19 a single DC line. Additionally, CEC-B would initiate a trend of co-locating
20 high-impact extra-high-voltage lines in the relatively narrow conservation
21 corridor of the San Pedro Valley to the further ecological detriment of
22 mitigation off-sets that compensate for development impacts throughout
23 Arizona. In the broad public interest, CEC-B should be denied by the
24 Commission.

25 Else (Sept. 28) Request for Review at 3.

26 361. In his brief to the Administrative Law Judge (ALJ), Mr. Else insisted that
27 each line should be evaluated independently, stating: “The Commission is now also faced
28 with considering and voting on two separate decisions, CEC-A and CEC-B.” Else ALJ Br.
at 15.

362. In his brief, Mr. Else further stated that the original CEC should be rescinded
in light of the new circumstances of the applicant and the nature of the application to
amend: “The Commission has the authority under A.R.S. § 40-252 to rescind the original
Certificate of Environmental Compatibility (‘CEC’) granted to the Applicant in 2016 after
providing notice to the Applicant and an opportunity for response. The Commission should

1 exercise this option, because the new proposed plan of service would not facilitate an
2 adequate, economical, and reliable supply of electric power within Arizona, would have
3 deleterious impacts on the Arizona electrical grid, and would cause critical environmental
4 impacts that are avoidable.” Else ALJ Br. at 3, 12.

5 363. In his brief, Mr. Else stated that there was no testimony at the proceedings
6 involving the second line. Else ALJ Br. at 13.

7 364. In his brief, Mr. Else further stated regarding the first line, “The CEC-A line
8 would not provide access for new Arizona-based energy generation facilities along its
9 route, because that first line is now planned to have a DC configuration. This is completely
10 contrary to what had been planned for the first line in the original 2016 CEC. Arizona must
11 develop diverse and distributed energy resources throughout the state in order to provide
12 resiliency to large-scale power outages and ensure public safety. This new plan for the first
13 line does nothing to fulfill that urgent need, but instead allows a single private corporation
14 to dominate transmission capacity on lines in central Arizona for purposes that primarily
15 benefit energy interests in California and the financial interests of the Applicant.” Else ALJ
16 Br. at 13.

17 365. In his brief, Mr. Else further stated that “The Chair failed to recognize that
18 the Applicant’s amendments created a new plan of electrical service” by pushing 3,000
19 MW of power from New Mexico into Central Arizona, without the benefit of
20 interconnections. Else ALJ Br. at 5.

21 366. Mr. Else further stated, “The Applicant specifically cited the need for
22 ‘affordable interconnections’ that would be provided by SunZia’s first-constructed AC
23 line, especially along the Interstate 10 corridor.” Else ALJ Br. at 7.

24 367. Mr. Else further stated, “Intervenor Else documented that no [WECC path
25 rating] study had been completed to change the first line to a 3000 MW DC configuration
26 that intersects with a single substation in Arizona.” Else ALJ Br. at 8.

27 368. In his brief, Mr. Else further stated, “Intervenor Else demonstrated that
28 alternative routes proposed by the High Plains Express project and other grid planners

1 would provide up to 100% colocation with existing extra-high-voltage power lines in
2 Arizona.” Else ALJ Br. at 14.

3 369. In his reply brief, Mr. Else stated: “Now it is clear that the Commission is
4 faced with evaluating three different CEC decisions”—each line, and then the original
5 CEC—“with each decision involving substantial changes that have taken place during the
6 past seven years.” Else (Oct. 24) Reply Br. at 13-14.

7 370. The ALJ issued a proposed order upholding the amendments.

8 371. The proposed conclusions of law provided that “Decision No. 75464 [the
9 original CEC] is a final Decision of the Commission subject to the doctrine of *res judicata*
10 and is the law of the case.” Decision No. 78769 at 31 (conclusion 3).

11 372. The ALJ stated in paragraph 116 of the proposed findings: “The record
12 shows that CEC 171 originally was approved without an approved WECC plan of service.
13 There is no evidence in the record that an approved WECC plan of service is required for
14 approval of a CEC. Condition 18 of the original CEC, which will remain in effect if the
15 modifications are approved, requires the Project to follow the most current WECC/North
16 American Electric Reliability Corporation planning standards. There is no substantial
17 evidence in the record that the proposed changes will adversely affect the safety and
18 reliability of the grid.” Decision No. 78769 ¶ 116.

19 373. Contrary to the statements in paragraph 116 of the ALJ’s proposed findings,
20 the original SunZia project was approved by the ACC in 2016 with a WECC path rating
21 for at least one of its two options (Option A, with two AC lines).

22 374. In 2015, Mr. Etherton had testified that a path rating was an important
23 indicator of “reliability.”

24 375. Paragraph 117 of the ALJ’s proposed findings stated:

25 The record shows that the original CEC was approved with the option for
26 two AC lines or one AC and one DC line that could be constructed at
27 different points in time and that the lines were to be used to bring wind power
28 resources from New Mexico to Central Arizona. The original CEC does not
specify which line was to be built first. The record shows that there has not
been a change in the anticipated use of the lines.

1 Decision No. 78769 ¶ 117.

2 376. Mr. Else took exception to several parts of the ALJ's proposed findings.

3 377. Among other exceptions, Mr. Else took exception to the inaccuracies in
4 paragraph 116 of the ALJ's proposed findings. Else (Nov. 7) Exceptions to Judge Rodda's
5 Recommended Order at 3.

6 378. Among other exceptions, Mr. Else took exception to paragraph 117, stating
7 (with internal record citations omitted):

8 The record shows that the Applicant **explicitly** testified in 2015 that the first
9 line would be an AC Line. The Record shows that the construction of the
10 Willow Substation was tied to the construction of the first line. The original
11 CEC ties the first line to the same deadline for construction as the Willow
12 Substation, and the Willow Substation is only planned to be connected to AC
13 lines. All of this clear and unambiguous evidence supports that the first line
14 was presented to the Committee and the Commission as one that would be
15 of AC configuration. The changed plan for the first line to be of DC
16 configuration and held as a vertical monopoly by Pattern Energy is a
17 substantial change to the 2016 CEC.

18 Else (Nov. 7) Exceptions to Judge Rodda's Recommended Order at 3.

19 379. The Commission adopted the ALJ's recommendation to approve the
20 amendment and the two new CECs on November 21, 2022.

21 380. On December 12, Mr. Else, now represented by counsel, brought a timely
22 application for rehearing pursuant to A.R.S. § 40-253, and for reconsideration pursuant to
23 A.R.S. § 40-360.07(C). Attached hereto as Exhibit A.

24 381. There was no Commission response within twenty days and Mr. Else's
25 application for rehearing and reconsideration is deemed denied as a matter of law as of
26 January 3, 2023.

27 382. Mr. Else timely filed the present action in Maricopa County Superior Court.

28 **General Legal Standards**

383. Plaintiff restates the above allegations as though set forth fully here.

384. "In all trials, actions and proceedings the burden of proof shall be upon the
party adverse to the commission or seeking to vacate or set aside any determination or

1 order of the commission to show by clear and satisfactory evidence that it is unreasonable
2 or unlawful.” A.R.S. § 40-254(E).

3 385. The courts apply this standard differently to questions of law and questions
4 of fact.

5 386. “[B]oth the superior court and [the Court of Appeals] may depart from the
6 Commission’s legal conclusions or interpretation of a statute and determine independently
7 whether the Commission erred in its interpretation of the law.” *Grand Canyon Tr. v.*
8 *Arizona Corp. Comm’n*, 210 Ariz. 30, 33–34 (Ct. App. 2005) (quoting *Babe Invs. v.*
9 *Arizona Corp. Comm’n*, 189 Ariz. 147, 150 (Ct. App. 1997) (citation omitted)).

10 387. “However, when the plaintiff challenges a factual determination of the
11 Commission, the superior court is not free to overturn it unless the plaintiff demonstrates
12 by ‘clear and convincing’ evidence that the Commission’s determination is unreasonable.
13 In making this assessment Arizona courts uphold such determinations if they are supported
14 by substantial evidence.” *Grand Canyon*, 210 Ariz. at 34.

15 388. “The Superior Court may not reweigh the evidence and substitute its
16 judgment for that of the Commission, but may disturb the Commission’s . . . decision only
17 if it is not reasonably supported by the evidence, is arbitrary, or is otherwise unlawful.”
18 *Tucson Elec. Power Co. v. Arizona Corp. Comm’n*, 132 Ariz. 240, 243 (1982).

19 389. Arizona courts “shall affirm the agency action unless the court concludes
20 that the agency’s action is contrary to law, is not supported by substantial evidence, is
21 arbitrary and capricious or is an abuse of discretion.” A.R.S. § 12-910.

22 390. The arbitrary and capricious standard is intended to ensure that an agency
23 “examine the relevant data and articulate a satisfactory explanation for its action including
24 a rational connection between the facts found and the choice made,” and to determine
25 “whether the decision was based on a consideration of the relevant factors.” *Motor Vehicle*
26 *Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal
27 citations and quote marks omitted); *see also Billingsley v. Arizona Corp. Comm’n*, 2019
28 WL 6130830, at *9 (Ariz. Ct. App. Nov. 19, 2019) (relying on *State Farm* standard).

1 transmission line within this state until it has received *a* certificate of environmental
2 compatibility from the committee” A.R.S. § 40-360.07(A) (emphases added).

3 402. At a minimum, each line must be assessed independently in this case because
4 the second line may never be built given the separate ownership and the fact that only the
5 first line is apparently ready for financing.

6 403. Supposing this will in fact happen, the entire statutory calculus is changed:
7 On the “need” side of the equation, the only need is now for whatever power Arizona
8 utilities require from Pattern Energy’s wind farm, and there was no evidence of that in the
9 record.

10 404. On the side of the environment and ecology of the state, SunZia testified that
11 if it built only one line, it could collocate it with an existing line and avoid environmental
12 justice concerns in Tucson, avoiding also any harm to the San Pedro River Valley.

13 405. Therefore, the statutory balancing—balancing “the need for an adequate,
14 economical and reliable supply of electric power with the desire to minimize the effect
15 thereof on the environment and ecology of this state,” A.R.S. § 40-360.07(B)—could come
16 out entirely differently.

17 406. Thus, the ACC made an “unlawful determination” under A.R.S. § 40-254(E)
18 by failing to conduct the requisite statutory analysis for each CEC independently.

19 COUNT II

20 **Unlawful Determination: The Commission Acted Arbitrarily and Capriciously by** 21 **Failing to Consider an Important Aspect of the Problem**

22 407. Plaintiff restates the above allegations as though set forth fully here.

23 408. The Commission acted arbitrarily and capriciously by failing to recognize
24 the salient fact that it is now possible that the only line that will ever be built is a DC line—
25 a line that would be unable to connect to potential new energy producers in southeastern
26 Arizona, relieve congestion, or improve reliability.

27 409. Indeed, the entire capacity of the DC line was already awarded to Pattern
28 Energy in New Mexico because it was the only entity that could plausibly hook up to its

1 own DC line.

2 410. In other words, many of the central benefits of the project—the ability to
3 develop new renewables in southeastern Arizona in the future, the ability to interconnect
4 with TEP, and the ability to create future interconnections to relieve congestion and
5 increase reliability—have evaporated.

6 411. The central question with the new arrangement should therefore be whether
7 there is a “need” in Arizona for this power from New Mexico; yet, as noted, there was no
8 evidence of this in the initial application and hearings in 2015, nor in the application or
9 hearings in 2022.

10 412. The only evidence of need was hearsay evidence supplied by the applicant
11 itself; not a single utility testified.

12 413. The ACC’s decision adopting the ALJ recommendation, however, made the
13 following argument:

14 The record shows that the original CEC was approved with the option for
15 two AC lines or one AC and one DC line that could be constructed at
16 different points in time and that the lines were to be used to bring wind power
17 resources from New Mexico to Central Arizona. The original CEC does not
specify which line was to be built first. The record shows that there has not
been a change in the anticipated use of the lines.

18 414. That is all the ACC decision says about the central issue in the case, and it is
19 incorrect.

20 415. The original CEC guaranteed that an AC line would be built:

21 *At least one (1) of the two (2) 500 kV transmission lines will be constructed*
22 *and operated as an alternating current (AC) facility, the other transmission*
23 *line will be either an AC or DC facility. As contemplated and provided for*
in this Certificate, the two (2) transmission lines may be constructed at
different points in time.

24 416. With the bifurcated CECs, the AC line might never be built.

25 417. The CEC contemplated specifically that the AC line would be built first
26 along with the Willow Substation:

27 This authorization to construct the Project shall expire at two (2) different
28 points in time, unless extended by the Commission, as provided below:

- 1 a) The Certificate for the first 500 kV transmission line and related facilities
2 and the 500 kV-Willow Substation shall expire ten (10) years from the
3 date this Certificate is approved by the Commission, with or without
4 modification, and
5 b) The Certificate for the second 500 kV transmission line and related
6 facilities shall expire fifteen (15) years from the date this Certificate is
7 approved by the Commission, with or without modification.

8 418. In discussing this part of the CEC, one LS Committee member specifically
9 stated, “after a few years they are going to know whether this has been a good deal or not
10 and decide whether or not to build the second part.”

11 419. Additionally, SunZia’s project manager testified that “in all likelihood the
12 construction of the direct current facility would be a commercial decision that would be
13 made after the construction and operation of the 500 kV alternating current facility”
14 because the AC line would “allow for more affordable interconnections along the length
15 of that as we go through the resource zones” in southeastern Arizona.

16 420. The ACC Chairman’s designee on the LS Committee stated at the ACC’s
17 open meeting, “[T]he project consists of two 500kV, transmission lines. And the first line
18 will be an alternating line, AC. The second line was approved to be either AC or DC.”

19 421. The ACC completely failed to grapple with the central problem—that unlike
20 in the original CEC, here there might never be a second line, and thus no AC line at all.

21 422. It is the AC line that would have created the capacity for new resources to
22 develop in southeastern Arizona.

23 423. It is the AC line that would have interconnected to TEP to deliver power to
24 Tucson and create a reliability loop.

25 424. It is the AC line that would have allowed TEP and other existing generators
26 to connect to the new transmission line, thereby relieving transmission congestion and
27 increasing reliability.

28 425. Without the AC line, a DC line might increase congestion because all the
new power from New Mexico would have to go from Pinal Central to its final destinations
through other, existing transmission lines.

1 the route because the statute requires the ACC to balance “the environment and ecology of
2 this state” against the need for power. A.R.S. § 40-360.07(B).

3 449. The route was accepted in 2015 as a fait accompli on the basis of concerns
4 for “environmental justice.”

5 450. The route was not considered at all in 2022.

6 451. Environmental justice concerns should be considered, but they cannot be
7 dispositive—because the statute requires consideration of the “environment” and ecology
8 of the “state,” and not “environmental justice.”

9 452. Certainly, if environmental justice and the actual environment can both be
10 accommodated—as routes unconnected to the Bowie plant might have been—then they
11 both should be.

12 453. There is no statutory authority to sacrifice the actual environment because of
13 concerns over environmental justice.

14 454. The federal executive order only requires considering environmental justice
15 as between otherwise permissible options and does not authorize the LS Committee to
16 ignore its statutory mandate.

17 455. Environmental justice considerations in the federal permit process
18 unnecessarily and improperly restricted Arizona route alternatives presented in 2015 to the
19 Commission to a narrow range of options that favored SunZia’s interest in developing the
20 separately permitted Bowie Power Plant.

21 456. In 2015 the LS Committee was left with making an unnecessarily and
22 improperly restricted choice between a route affecting environmental justice populations
23 in Tucson and a route passing through a region of extraordinary biological wealth in the
24 San Pedro Valley.

25 457. Economic benefits were improperly considered both in 2015 and 2022.

26 458. This Commission’s statutory authority requires it to “balance, in the broad
27 public interest, the need for an adequate, economical and reliable supply of electric power
28 with the desire to minimize the effect thereof on the environment and ecology of this state.”

1 A.R.S. § 40-360.07(B).

2 459. Economic benefits have no relation to an economical supply of electric
3 power, and such testimony is merely introduced to bias the decisionmakers improperly.

4 460. A substantial factor motivating this Commission’s approval in 2016 was
5 potential compliance with the Obama Administration’s Clean Power Plan.

6 461. The Commission acted appropriately by considering the CPP in 2015
7 because compliance with the CPP might otherwise risk an “adequate” supply of electric
8 power.

9 462. At the time of the amended application, however, the Obama
10 Administration’s CPP had been declared unlawful.

11 463. The legislature did not intend for the ACC to rely on an unlawful EPA
12 regulation in coming to a siting decision.

13 464. The amended CEC was approved largely based on the original record, in
14 which there was robust reliance on the since-invalidated CPP.

15 465. The ACC should have re-balanced the factors for each individual CEC
16 without any reliance on the CPP.

17 466. A principal motivating factor in the 2022 LS Committee hearings was
18 climate change generally.

19 467. The statute does not allow for testimony about climate change generally.

20 468. The statutory standard—“the environment and ecology of this state”—is in
21 contradistinction to global environmental trends.

22 469. As explained by dissenting Justices in *Massachusetts v. EPA*, 549 U.S. 497
23 (2007), there is a difference between ordinary “pollutants” and naturally high
24 concentrations of a substance throughout the entire atmosphere: “[R]egulating the buildup
25 of CO₂ and other greenhouse gases in the upper reaches of the atmosphere, which is alleged
26 to be causing global climate change, is not akin to regulating the concentration of some
27 substance that is *polluting the air.*” *Id.* at 559 (Scalia, J., dissenting). Rather, pollution
28 means “impurities in the ambient air at ground level or near the surface of the earth.” *Id.*

1 at 560 (internal quote marks omitted).

2 470. The statutory balancing is among the need for *power*, and the environment
3 and ecology of the state that is sacrificed to *generate* or *transmit* that power.

4 471. The environmental factors in A.R.S. § 40-360.06—“[f]ish, wildlife and plant
5 life,” “scenic areas” and “historic sites,” and the “total environment of the area”—only
6 make sense in the context of the local environment impacted by the physical placement of
7 plants and transmission lines.

8 472. It is highly unlikely that the state legislature would have given the
9 Commission authority to consider global climate change through ambiguous language
10 such as the “environment and ecology of *this state*” or the “total environment” of a site.

11 473. In *Roberts v. State*, the Arizona Supreme Court explained that “the Supreme
12 Court [of the United States] limits the exercise of legislative power by the executive branch
13 on major policy questions to instances where a statute ‘plainly authorizes’ executive
14 agency action.” 253 Ariz. 259, 512 P.3d 1007, 1016 (2022) (citation omitted). “This
15 doctrine guards against unintentional, oblique, or otherwise unlikely delegations of the
16 legislative power.” *Id.* (citation omitted; cleaned up). “What the United States Constitution
17 structurally implies, the Arizona Constitution makes explicit.” *Id.* Thus, when an agency
18 deals with a “major policy question,” it must look for “plain” statutory authority for it.

19 474. There is no question that climate change, and how to deal with it, is a “major
20 policy question.”

21 475. The Commission’s authority in § 40-360.07(B) is hardly plain authority for
22 the Commission to make decisions on the basis of global climate change.

23 476. In *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), the question was whether
24 the provision of the Clean Air Act allowing the Environmental Protection Agency (EPA)
25 to impose the “best system of emissions reduction” authorized the EPA to impose *within*
26 *a plant* the best system of emissions reduction—as the EPA had traditionally understood
27 this authority—or whether it allowed EPA to impose *nationwide* a best system of emissions
28 reduction, mandating a particular mix of energy sources.

1 477. In *West Virginia*, the U.S. Supreme Court invalidated the Clean Power Plan
2 on the ground that it was not authorized by this statutory language.

3 478. The Court concluded, had Congress intended to give EPA authority to
4 implement carbon caps and offsets—had Congress given EPA authority to regulate the
5 mix of energy production at a national scale in order to combat climate change—then
6 Congress would have said so expressly.

7 479. The Court explained that the “major questions doctrine” applies to “agencies
8 asserting highly consequential power beyond what Congress could reasonably be
9 understood to have granted.” 142 S. Ct. at 2609.

10 480. The doctrine invalidates enormously consequential assertions of agency
11 authority where Congress has not spoken clearly because “[w]e are confident that Congress
12 could not have intended to delegate a decision of such economic and political significance
13 to an agency in so cryptic a fashion.” *Id.* at 2613 (quoting *FDA v. Brown & Williamson*
14 *Tobacco Corp.*, 529 U.S. 120, 160 (2000)).

15 481. If the state legislature had intended to give the ACC power to authorize clean
16 energy for the purpose generally of combatting global climate change, without any need
17 for power in Arizona specifically, it would have said so expressly.

18 482. Global climate change impacts fall under the purview of the federal permit
19 process, not the Arizona line siting process.

20 483. In any case, climate change impacts associated with this proposed project
21 have not been analyzed in a comprehensive manner; neither Dr. Routhier nor the original
22 EIS accompanying the SunZia application included any analysis of the carbon emissions
23 required to construct two massive 500kV transmission lines for over 500 miles.

24 484. The ACC’s decision to approve the new CECs was based on considerations
25 of irrelevant and extraneous factors and was therefore arbitrary and capricious. *State Farm*,
26 463 U.S. at 43 (“Normally, an agency rule would be arbitrary and capricious if the agency
27 has relied on factors which [the legislature] has not intended it to consider.”).

28 485. The ACC therefore made an “unlawful determination” under A.R.S. § 40-

1 254(E).

2 **COUNT V**

3 **Unlawful Determination:**
4 **No Substantial Evidence as a Matter of Law**

4 486. Plaintiff restates the above allegations as though set forth fully here.

5 487. Ordinarily, hearsay evidence alone cannot constitute substantial evidence.
6 *See Richardson v. Perales*, 402 U.S. 389 (1971).

7 488. In *Perales*, the U.S. Supreme Court found in the limited circumstances of an
8 expert medical report that such a report alone could constitute substantial evidence even if
9 the doctor did not testify, so long as the doctor was not subpoenaed by the party challenging
10 the evidence.

11 489. In that case, the Court discussed decisions holding that, as a general matter,
12 “uncorroborated hearsay . . . does not constitute substantial evidence.” 402 U.S. at 407
13 (quoting *Consol. Edison Co. of New York v. NLRB*, 305 U.S. 197, 230 (1938)).

14 490. In Arizona, the rule is that a Commission “*may* act upon [hearsay] where the
15 circumstances are such that the evidence offered is deemed by the Commission to be
16 trustworthy.” *Reynolds Metals Co. v. Indus. Comm’n*, 98 Ariz. 97, 102 (1965).

17 491. If hearsay alone is ordinarily not sufficient for substantial evidence, then
18 hearsay provided by a self-interested applicant is not sufficiently “trustworthy” to
19 constitute substantial evidence.

20 492. Without an AC line, the only benefit to the DC line is if New Mexico’s wind
21 power is needed to supply economical, reliable, and adequate electric power in Arizona.

22 493. The only evidence of such need was the hearsay testimony of the applicant
23 that they were “marketing” to and were in “discussions” with utilities in Arizona.

24 494. Neither SRP nor TEP indicated any desire or need for SunZia power.

25 495. SRP specifically disclaimed any need and TEP thought there was some
26 “potential” to meet “some” of its renewable energy goals, none of which would be
27 achievable with a DC line.

28 496. The only evidence that the parties with whom Pattern was in negotiations are

1 interested in Pattern’s power is Pattern’s own testimony describing those negotiations.

2 497. Pattern’s self-interested hearsay testimony is not substantial evidence of
3 need as a matter of law.

4 498. The remaining evidence of need for New Mexico wind power was testimony
5 about financing.

6 499. Numerous parties repeated that if the line fails, then the ratepayers don’t pay
7 for it—“some bank” somewhere loses instead.

8 500. If the line is built but the owner goes bankrupt because the line is not
9 profitable, then it is not just some bank somewhere that loses; the towers, lines, access
10 roads, and other disturbances are still there, and the San Pedro Valley loses.

11 501. Pattern’s own expert testified: “[E]very project does have impacts. You can’t
12 get to zero impacts on a project. So even as you’re concurrently going through the process
13 of avoidance and minimization, you get to a point where you’re able to be clear that you
14 do have certain impacts, and so that’s where mitigation really comes in.”

15 502. Thus, there will be harms to the “environment and ecology of this state” and
16 to the San Pedro Valley specifically.

17 503. If the project goes bankrupt and the line is built, it is possible that future
18 owners would not be able to operate the line profitably.

19 504. In that case, there will be an unused transmission line providing no power
20 whatsoever.

21 505. As a matter of *law*, the Commission cannot approve a CEC when on one side
22 of the balance (power) is zero, and on the other side is environmental and ecological harm.

23 506. Even if the lines are financed and constructed, it is possible that none of the
24 power will be sold in Arizona, and therefore the need for such lines to supply reliable,
25 adequate, and economical electric power in Arizona is speculative.

26 507. There is therefore no substantial evidence *as a matter of law* that Pattern’s
27 wind power from New Mexico will meet a need in Arizona for reliable, adequate, and
28 economical electric power.

1 built, and all the benefits of the AC line therefore evaporate.

2 517. The LS Committee chair specifically stated that he did not think the
3 Committee could consider this change.

4 518. The ALJ incorrectly asserted that the original CEC did not require the AC
5 line to be built first.

6 519. The change of the first line was a substantial change that was neither properly
7 noticed nor properly considered at the hearings, violating the Administrative Procedure
8 Act and the Commission's decision in *Whispering Ranch*.

9 520. The ACC therefore made an "unlawful determination" under A.R.S. § 40-
10 254(E).

11 **COUNT VII**
12 **Declaratory Judgment**

13 521. Plaintiff restates the above allegations as though fully set forth here.

14 522. "Any person . . . whose rights, status or other legal relations are affected by
15 a statute . . . may have determined any question of construction or validity arising under
16 the . . . statute . . . and obtain a declaration of rights, status, or other legal relations
17 thereunder." A.R.S. § 12-1832.

18 523. The line siting statute requires the LS Committee to consider nine statutory
19 factors:

- 20 1. Existing plans of this state, local government and private entities for other
developments at or in the vicinity of the proposed site.
- 21 2. Fish, wildlife and plant life and associated forms of life on which they are
dependent.
- 22 3. Noise emission levels and interference with communication signals.
- 23 4. The proposed availability of the site to the public for recreational
purposes, consistent with safety considerations and regulations.
- 24 5. Existing scenic areas, historic sites and structures or archaeological sites
at or in the vicinity of the proposed site.
- 25 6. The total environment of the area.
- 26 7. The technical practicability of achieving a proposed objective and the
previous experience with equipment and methods available for achieving a
27 proposed objective.
- 28 8. The estimated cost of the facilities and site as proposed by the applicant
and the estimated cost of the facilities and site as recommended by the

1 committee, recognizing that any significant increase in costs represents a
2 potential increase in the cost of electric energy to the customers or the
applicant.

3 9. Any additional factors that require consideration under applicable federal
and state laws pertaining to any such site.

4 A.R.S. § 40-360.06(A).

5 524. The line siting statute provides that the LS Committee “shall give special
6 consideration to the protection of areas unique because of biological wealth or because
7 they are habitats for rare and endangered species.” A.R.S. § 40-360.06(B).

8 525. In arriving at its decision on a CEC, the ACC “shall comply with the
9 provisions of section 40-360.06 and shall balance, in the broad public interest, the need for
10 an adequate, economical and reliable supply of electric power with the desire to minimize
11 the effect thereof on the environment and ecology of this state.”

12 526. Mr. Else is entitled to a declaratory judgment that neither the LS Committee
13 nor the ACC can consider “environmental justice” where doing so otherwise conflicts with
14 their mandates.

15 527. Mr. Else is entitled to a declaratory judgment that neither the LS Committee
16 nor the ACC can consider economic benefits that are unrelated to an “economical” supply
17 of electric power.

18 528. Mr. Else is entitled to a declaratory judgment that neither the LS Committee
19 nor the ACC can consider a since-invalidated federal regulatory program.

20 529. Mr. Else is entitled to a declaratory judgment that neither the LS Committee
21 nor the ACC can consider climate change more broadly.

22 530. Mr. Else is entitled to a declaratory judgment that, under the statutory
23 balancing, each CEC should have been evaluated independently.

24 531. A.R.S. § 41-1025(A) provides, “An agency may not submit a rule . . . that is
25 substantially different from the proposed rule contained in the notice of proposed rule
26 making or a supplemental notice filed with the secretary of state pursuant to section 41-
27 1022. However, an agency may terminate a rule making proceeding and commence a new
28 rule making proceeding for the purpose of making a substantially different rule.”

1 authorizing the original CEC, or in the alternative, remand to the
2 Commission with instructions to reconsider the original CEC in light of the
3 substantial changes revealed by the application to amend and other
4 substantial changes that have taken place since the Decision was made in
5 2016.

6 D. Declare that each CEC in this case must be assessed independently.

7 E. Declare that environmental justice considerations may not factor into the
8 Commission's decision.

9 F. Declare that global climate change may not factor into the Commission's
10 decision.

11 G. Declare that the since-invalidated Clean Power Plan may not factor into the
12 Commission's decision.

13 H. Declare that job creation and economic development may not factor into
14 the Commission's decision.

15 I. Declare that the Commission acted arbitrarily and capriciously by failing to
16 consider the possibility that the second line might never be built.

17 J. Declare that the Commission acted arbitrarily and capriciously by failing to
18 recognize the change in the lack of a WECC rating.

19 K. Declare that the Commission acted arbitrarily and capriciously by
20 considering extraneous factors such as environmental justice, global
21 climate change, and job creation.

22 L. Declare that, as a matter of law, the possible availability of financing for an
23 interstate merchant line is not substantial evidence of fulfilling the need for
24 an adequate, economical, and reliable supply of electric power in Arizona
25 given the speculative nature of where the power would primarily be
26 marketed and the ecological damage that unused transmission lines could
27 cause.

28 M. Declare that, as a matter of law, an applicant's own hearsay testimony that

1 it is in talks with Arizona utilities for power is not substantial evidence of
2 those utilities' needs.

- 3 N. Declare that SunZia's application was not properly noticed for failing to
4 mention the AC line was to be built first in the original CEC and for failing
5 to indicate that SunZia would be seeking to change the expiration date of
6 the Willow Substation to the expiration date for the second line.
- 7 O. Award Plaintiff's attorneys' fees incurred in this matter, pursuant to A.R.S.
8 sections 12-348(A)(2), 12-348(A)(7), the private-attorney-general doctrine,
9 and any other applicable statute, rule, or authority.
- 10 P. Award Plaintiff's costs incurred in this matter, pursuant to A.R.S. sections
11 12-341 and 12-1840, and any other applicable statute, rule, or authority.
- 12 Q. Grant such other and further relief as the Court deems just and reasonable
13 under the circumstances.

14
15 RESPECTFULLY SUBMITTED this 24th day of January, 2023.

16
17 **TULLY BAILEY LLP**

18
19 */s/ Ilan Wurman*
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28

Exhibit A

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10 **BEFORE THE ARIZONA CORPORATION COMMISSION**

11 **COMMISSIONERS**

12 Lea Márquez-Peterson, Chairwoman
13 Sandra D. Kennedy
14 Justin Olson
15 Anna Tovar
16 Jim O'Connor

17 IN THE MATTER OF THE APPLICATION)
18 OF SUNZIA TRANSMISSION LLC, IN)
19 CONFORMANCE WITH THE)
20 REQUIREMENTS OF ARIZONA)
21 REVISED STATUTES 40-360, ET SEQ.,)
22 FOR A CERTIFICATE OF)
23 ENVIRONMENTAL COMPATIBILITY)
24 AUTHORIZING THE SUNZIA)
25 SOUTHWEST TRANSMISSION)
26 PROJECT, WHICH INCLUDES THE)
27 CONSTRUCTION OF TWO NEW 500 KV)
28 TRANSMISSION LINES AND)
ASSOCIATED FACILITIES)
ORIGINATING AT A NEW SUBSTATION)
(SUNZIA EAST) IN LINCOLN COUNTY,)
NEW MEXICO, AND TERMINATING AT)
THE PINAL CENTRAL SUBSTATION IN)
PINAL COUNTY, ARIZONA. THE)
ARIZONA PORTION OF THE PROJECT)
IS LOCATED WITHIN GRAHAM,)
GREENLEE, COCHISE, PINAL, AND)
PIMA COUNTIES.)
_____)

DOCKET NO. L-00000YY-15-0318-00171

Case No. 171 (Application to Amend Decision 75464)

APPLICATION FOR REHEARING AND RECONSIDERATION OF DECISION NO. 78769

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1 The case before the Arizona Corporation Commission (ACC, or Commission)
2 involves two novel, intricate, and intertwined issues: first, how to demonstrate “need” for
3 a merchant line under the ACC’s statutory balancing obligation; and second, whether as a
4 matter of law the ACC must conduct the statutory balancing with respect to *each* individual
5 transmission line when an applicant seeks to amend a prior Certificate of Environmental
6 Compatibility (CEC) into two separate CECs for the benefit of two separate owners, and
7 when the lines have not yet been built.¹ Intervenor Peter Else²—without counsel until
8 now—repeatedly suggested to the Line Siting (LS) Committee,³ and to this Commission,⁴
9 that the LS Committee could and must consider whether to approve one line, the other line,
10 both lines, or neither. The Committee ignored him, repeatedly stating that the question to
11 be addressed was the question as framed by the applicant, namely whether to amend the
12 original CEC into two CECs or to retain the original CEC.⁵ Respectfully, Mr. Else was
13 right and the Committee was wrong.

14 Because the ACC did not consider, under the statutory factors, each transmission
15 line independently, the ACC committed an error of law. When each line is independently
16 considered, the applicant has not demonstrated the requisite need to offset the
17 environmental and ecological damage it causes to the San Pedro Valley. Mr. Else’s

18 ¹ The original trial transcript from the 2015 proceeding shall be designated in this brief as LS-171
19 Tr. The ACC’s 2016 open meeting transcript shall be designated as 2016 ACC Tr. The transcript from the
2022 amendment hearing shall be designated as LS-171 Amend Tr.

20 ² Mr. Else has been the chairperson of the Lower San Pedro Watershed Alliance, an all-volunteer,
21 landowner-based conservation group of about 100 landowners and an additional 100 supporting members,
for the past nine years. LS-171 Amend Tr. 328:15-19.

22 ³ LS-171 Amend Tr. 376:19-22 (“I don’t believe that the Commission only has two choices, which
23 is to approve both lines or not to approve both CECs. I may be wrong, but I think they also have the option
to approve CEC-1 only or CEC-2 only.”); *see also id.* 490:1-4: (“[T]he Committee could approve both of
the CECs, CEC-1 only, CEC-2 only, or neither of the CECs. Maybe that’s not the case. I don’t have an
attorney sitting beside me.”).

24 ⁴ Else (May 23) Resp. at 4. (“The CEC in this case approved two lines. The Application now
25 proposes that a separate CEC be issued for each line. The first line planned to be constructed is a DC line.
It is the only line that currently has agreements pending for financing. This line could turn out to be the
26 only line associated with the original CEC that is ever constructed.”); Else (Oct. 24) Reply Br. at 13 (“Now
it is clear that the Commission is faced with evaluating three different CEC decisions, with each decision
involving substantial changes that have taken place during the past seven years . . .”).

27 ⁵ LS-171 Amend Tr. 13:22–14:1 (Chairman) (“We have one of two alternatives in today’s
28 proceedings or this week’s proceedings: One is to deny the amended CECs, and then we are going to follow
the original CEC; or to allow the amended CEC with some additional stipulations and conditions.”); *see
also id.* 334:23–335:1 (same).

1 application for rehearing and reconsideration should be granted, so that the Commission
2 can perform the analysis required by law.

3 **I. INTRODUCTION**

4
5 In 2016, this Commission approved a novel CEC for a pair of merchant
6 transmission lines to be owned, constructed, and operated by SunZia Transmission LLC.
7 The proposed lines would cut a 515-mile path from a potential future wind farm in central
8 New Mexico to the Pinal Central Substation in Arizona. In a traditional line siting case
9 where the applicant is a utility, the ACC usually determines “the need for an adequate,
10 economical and reliable supply of electric power,” A.R.S. § 40-360.07(B), through an
11 analysis of load growth projections provided by the utilities.⁶ A merchant transmission line
12 cannot demonstrate need in this traditional way. Thus, in the 2015 LS Committee hearings,
13 the Committee considered needs and benefits in at least two nontraditional ways. First, it
14 considered that if there was no “need” for the lines, then the merchant would be unable to
15 enter into sufficient power purchase agreements (PPAs) to finance and therefore construct
16 them.⁷ Second, it considered other potential benefits from their construction, namely the
17 ability of the lines to encourage the construction of future potential renewable generation
18 sources that could hook up to the lines.⁸ The Commission also considered the potential for
19 the lines to decrease congestion⁹ and increase reliability,¹⁰ as well as other factors such as
20 economic development¹¹ and compliance with the since-invalidated Clean Power Plan.¹²

21 The first transmission line of the proposed project would be a 500 kV alternating
22 current (AC) line, and the second either another 500kV AC line or a 500kV direct current

23 ⁶ See, e.g., LS-171 Tr. 362:6–363:10.

24 ⁷ See, e.g., LS-171 Tr. 2525:15-19, 2532:23–2534:7, 2706:1-4; 2016 ACC Tr. 10:2-9, 186:6-11;
see also LS-171 Amend Tr. 496:4-8.

25 ⁸ See, e.g., LS-171 Tr. 128:3–129:7, 137:9-19, 176:25–177:1, 2532:9; 2016 ACC Tr. 172:16-19.

26 ⁹ See, e.g., LS-171 Tr. 136:4-8, 212:8-23, 233:2, 233:18–238:9, 237:2-11, 238:7-9; 2016 ACC Tr.
207:8-20, 208:19-21.

27 ¹⁰ See, e.g., LS-171 Tr. 2528:13-20, 2532:5-7; 2016 ACC Tr. 216:11-13.

28 ¹¹ See, e.g., LS-171 Tr. 136:1-3, 199:17-21, 198:19–201:9; 2016 ACC Tr. 12:1-6, 19:18-22, 20:19-
21.

¹² See, e.g., LS-171 Tr. 135:13-25, 191:3–198:18, 205:10-14, 252:7–254:14, 384:18–385:20,
532:24–537:23; 2016 ACC Tr. 16:6-12, 307:5-16.

1 (DC) line. The central benefit of a DC line is that it moves more power longer distances
2 with more efficiency. DC lines cannot, however, be hooked up to the power grid without
3 first converting into AC power. The conversion from DC to AC requires an enormously
4 expensive converter station that renders DC lines uneconomical except when used over
5 long distances. The advantage of an AC transmission line is that any power source along
6 the line can hook up to the grid at relatively low cost. Throughout the testimony in 2015,
7 the evidence showed that almost all of the purported benefits touted by SunZia—the ability
8 to develop future renewable sources in southeastern Arizona, the ability to interconnect
9 with Tucson Electric Power (TEP), and generally to decrease congestion and increase
10 reliability by allowing future interconnections—depended on the construction of an AC
11 line and the accompanying AC substation in Willow. The CEC, approved by the ACC in
12 a 3-2 vote in 2016, provided for the construction of the AC line and Willow Substation
13 before the second line, thereby guaranteeing the construction of the AC line.

14 But now, SunZia’s original business plan appears to have failed to gather sufficient
15 economic support. In SunZia’s recent application to amend the original CEC, SunZia
16 requested the bifurcation of the two lines so that they could be separately owned and
17 separately financed. Not only that, but the first line is now the DC line, which will be
18 owned, constructed, and operated by Pattern Energy, which also purchased the rights to
19 develop the wind farm in New Mexico. The second, AC line—slated to be built in nearly
20 a decade—is not ready for financing and may never be constructed. In other words, all of
21 the purported benefits of having two lines, at least one AC, have evaporated. If the DC line
22 is constructed while the AC line never is, then the only one who benefits is the private
23 corporation Pattern Energy—whose representative at the 2022 LS Committee hearing
24 could not (or would not) say how many Arizona utilities or firms were in negotiations with
25 Pattern for power,¹³ who could not (or would not) say what percentage of power would be

26 ¹³ “I don’t think I can provide a specific percentage to you. I apologize, is to kind of current
27 discussions with counter parties in one state relative to another. I can tell you that we absolutely *are*
28 *attempting to and hope to provide* a material amount of power to Arizona customers. However, it’s
dependent on market conditions and their interest in the product that we have to sell.” LS-171 Amend Tr.
527:8-21 (emphasis added).

1 sold in Arizona,¹⁴ and who could not (or would not) say whether Pattern’s wind power
2 from New Mexico would be more cost effective than obtaining power from the existing
3 grid.¹⁵

4 On the other side of the balancing equation—the “desire to minimize the effect” of
5 the need for power “on the environment and ecology of this state,” A.R.S. § 40-
6 360.07(B)—the stakes are enormous. The entire project would create 200 miles of 500kV
7 transmissions lines in Arizona, over 80 miles of which would be in new utility corridors.¹⁶
8 About 33 miles of new corridor go through the San Pedro Valley—which is one of the few
9 remaining intact watersheds in the southwest.¹⁷ Numerous residents and conservationists
10 opposed the line.¹⁸ All the parties recognized “that San Pedro is an area of biological
11 wealth and a unique area,”¹⁹ and SunZia had even opposed the route in front of the federal
12 Bureau of Land Management (BLM).²⁰ Pima County responded to a data request by
13 stating, “The proposed SunZia alignment will irrevocably scar the San Pedro Valley,
14 cutting a swath of destruction through many archaeological sites, diminishing cultural and
15 traditional values held by Native American tribes, and scarring the pristine visual character
16 of the valley.”²¹ The local Sierra Club opposed the project.²² The Tucson Audubon
17 Society, an environmental group centered on protecting birds and which supports a
18 transition to clean energy, also opposed.²³ The executive director commented about “the
19 importance of the San Pedro Valley as an important bird migratory route” as “[t]here are

20
21 ¹⁴ LS-171 Amend Tr. 527:25–528:9 (refusing to say what percentage of power would end up in
Arizona because “we just don’t know about whether we will be selected and at what volume.”).

22 ¹⁵ “So any given day it could be cheaper or more expensive to take power from the grid relative to
a long-term contract to buy power from the transmission-enabled wind projects.” LS-171 Amend Tr. 517:4-
7; *see also id.* 517:19–518:15.

23 ¹⁶ *Id.* 256:4-6.

24 ¹⁷ Forty-five miles of the line go through the valley, with 12 miles paralleling an underground
pipeline; 33 miles are new utility corridor altogether. All 45 miles would constitute the only above-ground
utility line of any kind. LS-171 Tr. 1865:3-25.

25 ¹⁸ *Id.* 408:22-24 (“[A]t the public comments last night . . . all the objections that came in seemed
to be concerning the San Pedro Valley.”).

26 ¹⁹ *Id.* 2538:4-5 (SunZia closing argument).

27 ²⁰ *Id.* 1864:22–1866:18.

28 ²¹ Pima County Oct. 16, 2015 Filing, Comments at Page 14.

²² 2016 ACC Tr. 81:19–83:21.

²³ *Id.* 95:17–98:6.

1 over 350 species that can be found in that valley, which is an extraordinary wealth of . . .
2 biodiversity in the bird world.”²⁴ The Valley represented “one of the southwest’s last free-
3 flowing rivers and all of its diversity.”²⁵ A professor of conservation biology at Arizona
4 State University opposed the route for the same reasons.²⁶

5 As the final vote unfolded in 2015, the Chairman of the LS Committee noted, after
6 other members had expressed regret that they were only presented by SunZia with one
7 possible route selected by BLM:

8 I am very upset that there is not an alternate route. I don’t necessarily
9 blame the applicant for that, but it is – the decision is very difficult. I have
10 been very torn by it. . . . I think this is a perfect example of the . . . effort to
11 find the least worst decision. And boy, if there has ever been a case that
12 demonstrates that, I think this is it. The jewel, the San Pedro River Valley is
13 pristine. That tour that we took, it was beautiful, absolutely beautiful. And
14 my heart just breaks that, you know, there is going to be a transmission line
15 that’s going through there. . . .

16 And when you have the BLM, you have the State Land Department,
17 you have Fish & Game, you have got the Department of Transportation all
18 acknowledging that, the applicant didn’t go in with this route, the BLM
19 basically went through their process and picked it [A]nd so the path of
20 least resistance is the pristine valley, the San Pedro River Valley, that’s
21 protected, given special consideration by statute, it just angers me. . . .

22 So I vote aye, reluctantly, and it is painful for me to do it. Because I
23 think that statute does mean something, that statute that requires special
24 consideration be given to areas such as the San Pedro River Valley.²⁷

25 Those are the costs and the stakes. And, to repeat, the only benefit of a DC line is
26 to Pattern Energy—they’re the only ones that can hook up to it, and they will have a
27 monopoly on the line. Their energy will be sold to the highest bidder. Not a single watt
28 may end up in Arizona. And the second line, with separate ownership, may never get built.
The environment will be scarred so that a for-profit corporation can create power that
probably will not end up in Arizona and that may not be cheaper than other power. And, if
the wind farm is not profitable, the line may stand unused across Arizona’s landscape.

²⁴ *Id.* 96:17-21.

²⁵ *Id.* 97:22-98:1.

²⁶ *Id.* 98:10-20.

²⁷ LS-171 Tr. 2704:4-2705:25.

1 After reviewing the factual record, this application for rehearing and
2 reconsideration will raise the following errors of law.²⁸ First, the ACC should have
3 weighed the statutory factors independently for each new CEC, standing on its own legs.
4 A.R.S. § 40-360.07(A) (“No utility may construct *a* plant or transmission line within this
5 state until it has received a certificate of environmental compatibility”) (emphasis
6 added). Given the separate ownership and the fact that only the first line is ready for
7 financing, it is now possible that the only line that will ever be built is the DC line, which
8 would be unable to connect to potential new energy producers in southeastern Arizona,
9 would not relieve congestion, would not increase reliability, and would not provide TEP
10 with power or a reliability loop around their service area. The line would have to be
11 justified entirely on the “need” for New Mexico wind power in Arizona—and (as explained
12 further below) there was no record evidence of such a need. Regardless, the Commission
13 did not do the relevant analysis to determine if the DC line on its own met the legal standard
14 for approval.

15 Second, regardless of whether the lines are considered independently or together,
16 this Commission has acted arbitrarily and capriciously by failing to consider the possibility
17 that the AC line would never in fact be built. The arbitrary and capricious standard is
18 intended to ensure that an agency “examine the relevant data and articulate a satisfactory
19 explanation for its action including a rational connection between the facts found and the
20 choice made,” and to determine “whether the decision was based on a consideration of the
21 relevant factors.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins.*
22 *Co.*, 463 U.S. 29, 43 (1983) (internal citations and quote marks omitted). “Normally, an
23 agency rule would be arbitrary and capricious if the agency has relied on factors which
24 [the legislature] has not intended it to consider, entirely failed to consider an important

25 ²⁸ To the extent Mr. Else did not pursue any particular legal argument in intricate detail below, the
26 rehearing provision contemplates that any and all issues may be raised so the ACC has a final chance to
27 correct any errors before judicial review. A.R.S. § 40-253(A) (any party “may apply for a rehearing of *any*
28 matter determined in the action or proceeding”) (emphasis added). It is not up to a pro se intervenor to
ensure that the proceedings are conducted according to law. It is up to the applicant to ensure it is providing
sufficient facts and evidence under the correct legal standard, and it is up to the ACC to ensure the same.
In any case, the following arguments were all raised in some fashion by Mr. Else.

1 aspect of the problem, offered an explanation for its decision that runs counter to the
2 evidence before the agency, or is so implausible that it could not be ascribed to a difference
3 in view or the product of agency expertise.” *Id.*; see also *Billingsley v. Arizona Corp.*
4 *Comm’n*, 2019 WL 6130830, at *9 (Ariz. Ct. App. Nov. 19, 2019) (relying on *State Farm*
5 standard). Here, the importance of the AC line is that it would have allowed for future
6 energy resources in southeastern Arizona to be developed and allowed existing generators
7 to hook up to the line, thereby relieving congestion and increasing reliability—the central
8 benefits touted by SunZia. With a single DC line, those benefits vanish. Thus, the ACC
9 has “entirely failed to consider an important aspect of the problem.” *State Farm*, 463 U.S.
10 at 43.

11 Third, as noted in the standard, it is also arbitrary and capricious for the agency to
12 rely on factors that the legislature never intended it to consider. Once each amended line
13 is assessed independently and on the basis of the record—including the original record—
14 it becomes clear that each was approved in 2016 in substantial part because it would help
15 Arizona comply with the Obama Administration’s Clean Power Plan (CPP). The CPP had
16 been declared unlawful as of the time of the amended application, see *West Virginia v.*
17 *EPA*, 142 S. Ct. 2587 (2022); yet, the amended application was approved almost entirely
18 on the basis of the original application, which evinced numerous indications of reliance on
19 Arizona’s contribution to the CPP. Surely the legislature did not intend for the ACC to rely
20 on an EPA rule that had been declared unlawful. And substantial testimony from the 2022
21 hearings was about climate change generally,²⁹ which also is outside the scope of the
22 statutory standard. There is still further evidence of extraneous considerations, including
23 the impact that the alternative routes that SunZia and federal authorities had rejected would
24 have had on low-income communities. There was also testimony about the economic
25 benefits of building the project, but that is not the Commission’s mandate. Its mandate is
26 to ensure an *economical supply of power*. A.R.S. § 40-360.07(B).

27 Fourth, there is no substantial evidence of “need” for Pattern’s potential future New

28 ²⁹ LS-171 Amend Tr. 291:15–325:25.

1 Mexico wind project. The only evidence of need is the hearsay testimony of the applicant
2 that Arizona utilities have expressed interest in the project’s power. Not a single Arizona
3 utility actually testified in the original or subsequent hearing to indicate that they had a
4 need for SunZia’s power. As a matter of law, the substantial evidence standard generally
5 cannot be satisfied solely by hearsay evidence, let alone hearsay evidence propounded by
6 the self-interested applicant. *Cf. Richardson v. Perales*, 402 U.S. 389 (1971); *Reynolds*
7 *Metals Co. v. Indus. Comm’n*, 98 Ariz. 97, 102-03 (1965). Additionally, the idea—repeated
8 throughout both proceedings—that financing will ensure need is also inadequate as a
9 matter of law. The financing may be based on the needs of California and not Arizona.
10 And, as acknowledged in the proceedings, it is always possible for the line to be
11 constructed and the merchant to go bankrupt. It was repeatedly asserted that only “some
12 bank” loses in that situation. That is incorrect: there would still be an unused, 500 kV
13 transmission line marring the environment and ecology of this state with no offsetting
14 benefit. That fails the statutory balancing as a matter of law. More is needed to establish
15 need—and certainly more is needed to establish that either of the two lines would supply
16 *cost-effective* power to Arizona.

17 Fifth and finally, the applicant failed to disclose in the application to amend that the
18 original CEC required the first line to be an AC line, but that the applicant was now going
19 to build the DC line first (and thus the AC line might never be built). This Commission,
20 relying on A.R.S. § 41-1025, has previously held in its *Whispering Ranch* case that if a
21 CEC is approved for a DC line but is then constructed as an AC line, that is a substantial
22 change that needs to be noticed. ACC Decision No. 58793 (“Whispering Ranch”). If that
23 case involved a substantial change, then the proposed changes here are substantial. Yet it
24 was not noticed and not properly considered in the hearings. That was error.

25 II. FACTUAL BACKGROUND

26
27 In 2016, the ACC approved SunZia’s CEC, which provided for one AC
28 transmission line, and for another line either AC or DC. The entire project would create

1 200 miles of transmission lines in Arizona, over eighty miles of which would be in new
2 utility corridors.³⁰ The project’s central aim was to transmit stranded potential wind power
3 from New Mexico, and the project and particular route for the line was determined by and
4 “fast-tracked by the Obama Administration because it was connected to wind.”³¹ About
5 forty-five miles of the project go through the San Pedro Valley, where there are no existing
6 transmission lines or towers of a similar scale, and where there are no existing transmission
7 lines or towers at all for a thirty-three mile portion.³²

8 **A. Technical differences between AC and DC**

9 The central advantage of a DC line is that it moves more power longer distances
10 with more efficiency.³³ DC lines cannot, however, be hooked up to the power grid without
11 first converting into AC power, thus requiring a converter station should a DC line be
12 constructed.³⁴ The advantage of an AC transmission line is that any power source along
13 the line can hook up to the grid more easily.³⁵ Mr. Etherton, one of SunZia’s witnesses,
14 testified in 2015 about the differences between AC and DC lines. Mr. Etherton explained
15 that the “attributes” of an “AC line” is “the more common interconnection facilities,
16 definitely in our region. It allows for additional interconnections to the existing AC system,
17 more ready available equipment for those interconnections.”³⁶ He added that “[t]he AC
18 equipment itself is much less expensive compared to a DC facility. . . . The traditional
19 equipment suppliers for AC transmission systems and AC substation facilities are a lot
20

21 ³⁰ LS-171 Tr. 256:4-6.

22 ³¹ 2016 ACC Tr. 16:18-21. There is some evidence that SunZia was “well into planning in 2006
23 when the Department of Energy took it upon themselves to decide seven projects in the United States, two
24 in the eastern interconnection, five in the western interconnection, would become rapid response
25 transmission projects.” *Id.* 202:18-22. Nonetheless, the project was not fast tracked until 2011: “The
26 designation we received from the Department of Energy by being selected as one of the five western
27 transmission projects was in October of 2011.” *Id.* 213:1-4.

28 ³² LS-171 Tr. 1865:3-25. On the east side of the San Pedro River, there is a 115 kV line, which is
substantially smaller than a 500kV line. 2016 ACC Tr. 86:20-87:9, 160:14-25. And on the west side where
the SunZia lines would go, there are no lines. *Id.* 160:2-12. On the west side, the line parallels a gas pipeline
at some points, but that pipeline is underground. *Id.* 162:1-12.

³³ Decision No. 78769 ¶ 48. Decision No. 78769 is the decision approving the amended CEC. *See*
also LS-171 Amend Tr. 44:12-24; LS-171 Tr. 247:16–250:3.

³⁴ *See, e.g.*, LS-171 Tr. 224:6-7, 248:3-5, 248:19–250:3.

³⁵ Decision No. 78769 ¶ 74; LS-171 Tr. 529:10-14, 536:2-537:15.

³⁶ LS-171 Tr. 222:6-11.

1 more prevalent than DC suppliers.”³⁷ The cost of an AC substation, Mr. Etherton testified
2 in 2015, is only about \$90 million.³⁸

3 A DC line, on the other hand, has “two very important and very positive attributes,”
4 namely “line losses are approximately half of a comparable AC line,” which is “pretty
5 significant over the term of a transmission line project.”³⁹ “The line costs themselves” are
6 also “approximately 25 percent less than a comparable AC line.”⁴⁰ The cost of the
7 *substation* and to interconnect, however, are tremendous. DC converter stations “are fairly
8 large, sizable investments.”⁴¹ The cost for a DC converter station is \$330 million—3.5
9 times more expensive than an AC substation, making interconnection more difficult.⁴²
10 “[T]he higher cost of the DC alternative,” Mr. Etherton explained, is therefore “imbedded
11 primarily in the termination equipment at either end of the system,”⁴³ making DC lines
12 more economical only for lines over 400 miles long.⁴⁴ In short, a DC line and AC line
13 bring different features to the table. If all one is looking for is a major infusion of power
14 from one source—such as 3,000 megawatts of wind power from New Mexico—that has
15 to travel over 400 miles, a DC line is preferred. If one is looking for other interconnections
16 to the grid, however, an AC line is required. This distinction was important throughout the
17 testimony about “needs and benefits” in 2015.

18 **B. No traditional evidence of “need”**

19 In the 2015 proceedings, there was no evidence of “need” in the traditional sense.
20 As one dissenting commissioner observed, “The record does not identify any specific
21 congestion point that will be alleviated by the proposed line,” and “[n]o Arizona utility has
22 indicated that the proposed line is necessary for meeting future demand.”⁴⁵ SunEdison, the
23

24 ³⁷ *Id.* 222:15-19.

25 ³⁸ *Id.* 223:24-25.

26 ³⁹ *Id.* 222:20-25.

27 ⁴⁰ *Id.* 223:1-2.

28 ⁴¹ *Id.* 204:12-13.

⁴² *Id.* 224:6-7.

⁴³ *Id.* 374:19-21

⁴⁴ *Id.* 247:16-24.

⁴⁵ Decision No. 75464 at 7. Decision No. 75464 is the original ACC decision approving the CEC.

1 predecessor developer that proposed to build the wind farms in New Mexico, testified that
2 it was possible that all the power would be delivered to California.⁴⁶ SunEdison also, for
3 example, owned wind farms in Utah whose power ended up entirely in California.⁴⁷

4 The only evidence that the power *might* end up in Arizona was SunEdison’s
5 testimony that they “intend” to sell to Arizona utilities,⁴⁸ and that they had been
6 “marketing” to Arizona utilities for several years.⁴⁹ However, SunEdison apparently could
7 not find a single Arizona utility actually to testify that they would be interested in the wind
8 power from New Mexico.⁵⁰ As the designee of the ACC Chairman on the LS Committee
9 stated at the ACC’s open meeting, “[S]ince there are no Arizona utilities that were
10 witnesses at the hearing that said that they actually need it to serve their customers from a
11 technical perspective, my opinion is there is not really a need for the line.”⁵¹

12 SRP and TEP—who had very small ownership interests in the line⁵²—both
13 responded to ACC data requests and made clear they did not need SunZia’s power to serve
14 load. They were both interested in the line to the limited extent an AC line could improve
15 reliability by allowing interconnections to the existing system and existing generators. SRP
16 wrote in introduction, “We hope that our responses help to clarify SRP’s limited interest
17 and participation in the SunZia Project.”⁵³ It then explained:

18 SRP joined as a participant in the effort to permit the Sun Zia Project in 2008.
19 We were interested in the project primarily for two reasons. First, at that time
20 our strategy for the procurement of renewable energy was focused on a mix
21 of renewable generation resources located both inside and outside the State

22 ⁴⁶ LS-171 Tr. 519:13–520:5, 524:25–525:22; *id.* 520:1-5 (“Have you committed any of this energy
23 directly to any state, or is it too premature? A. At this point none of the energy is committed to any utility
24 or state.”); *id.* 524:25-10 (“[Y]ou said you were talking to California utilities. So that means there is a
possibility that you could sell all your power to California? And I am not talking about the probability, just
a possibility. . . . A. I guess if the question is possible, I would have to say yes. But there are also a number
of other possibilities where the power could go.”).

25 ⁴⁷ *Id.* 545:22–546:2.

26 ⁴⁸ *Id.* 536:19-21.

27 ⁴⁹ *Id.* 577:10-12.

28 ⁵⁰ Notwithstanding that SRP had a 4.8 percent ownership interest and TEP had a 0.4 percent
ownership interest in the line, and presumably could have been induced to testify. *Id.* 81:17-19.

⁵¹ 2016 ACC Tr. 9:19-25.

⁵² *See supra* note 50.

⁵³ Exhibit ACC-5 at 1.

1 of Arizona. As such, we had potential interest in renewable projects, mostly
2 wind, located in New Mexico. Over time as the price of various types of
3 renewable generation has changed, SRP's focus has narrowed to mostly
4 renewable resources located close to the load we serve, primarily solar
5 projects in the Phoenix metropolitan area. Second, there is a long-term
6 interest to develop additional transmission from existing generation sources
7 located in eastern Arizona to serve load in central Arizona. The Sun Zia
8 Project presents an opportunity to develop a portion of that transmission and
9 improves reliability of the regional transmission system.⁵⁴

7 Thus, SRP was no longer interested in receiving power from SunZia; it was
8 interested in the project to the limited extent existing generation sources in eastern Arizona
9 could "tie in" to the AC line. TEP, similarly, responded to the ACC request as follows:

10 In December of 2007 TEP committed to participate in permitting activities
11 for the Sun Zia Project. The Sun Zia Project was being developed to deliver
12 renewable energy from New Mexico to Arizona and California. TEP saw an
13 opportunity for the potential to meet some of its renewable needs through
14 the project, and the potential to realize reliability benefits by having an
15 additional EHV transmission line connected to its system.⁵⁵

14 TEP thus saw some "potential" to meet "some" of its "renewable" energy needs
15 through SunZia, as well as the potential to improve reliability by interconnecting to the
16 Willow substation (more on that below). Neither utility testified at the hearing, neither
17 committed to buying SunZia power, and neither appeared to need that power. One LS
18 Committee member brought the point home when he asked a member of the ACC's Staff,
19 "if this line didn't get built, the Arizona utilities would still function properly, am I
20 correct?" to which the witness responded, "They would still function properly."⁵⁶

21 It is not surprising, then, that the LS Committee's proposed findings in the original
22 CEC provided that "[t]he Project *may* aid the state and the southwest region in meeting the
23 need for an adequate, economical, and reliable supply of electric power."⁵⁷ And it "*may*
24 aid the state in preserving a safe and reliable electric transmission system."⁵⁸ This was the

25 ⁵⁴ *Id.* at 2.

26 ⁵⁵ Exhibit ACC-6 at 1.

27 ⁵⁶ LS-171 1398:13-20.

28 ⁵⁷ CEC 171 at 17:4-5 (emphasis added).

⁵⁸ *Id.* at 17:6-7 (emphasis added); *see also id.* at 17:16-19 ("The Project is in the public interest because the Project's *potential* contribution to meeting the need for an adequate, economical, and reliable

1 ambivalent position of the ACC Staff as well. At the beginning of the proceedings, the
2 Staff representative explained that “the need could be presented as speculative,” and so
3 “Staff is taking a neutral position on whether there is a need for the project.”⁵⁹ In closing
4 argument, Staff reiterated, “Staff is taking no position as to whether the application should
5 be approved. Staff does recognize there is uncertainty with relation to whether any of the
6 benefits posed by the project will be realized.”⁶⁰ The ACC, in its simple, one-page order,
7 approved the initial CEC in 2016, asserting without elaboration that “[t]he Project is in the
8 public interest because it aids the state in meeting the need for an adequate, economical,
9 and reliable supply of electric power.”⁶¹

10 There was also no evidence of traditional need in 2022. The Staff response to the
11 proposed amendments still explained that SunZia’s transmission lines merely “*could* help
12 improve reliability, safety of the grid, and the delivery of power in Arizona.”⁶² And that
13 was based entirely on SunZia’s own submissions. The testimony in 2022 was similarly
14 speculative—even cagey. The project manager, Mr. Wetzel, who is employed by the
15 current developer, Pattern Energy, testified that the project was “critical to meet growing
16 demand.”⁶³ Similar to SunEdison’s testimony in 2015, Mr. Wetzel testified “that Pattern
17 Energy has talks on a regular basis with 60 or 70 counter parties for purchase of the wind
18 generation, which parties include different utilities and largescale commercial and
19 industrial customers across the West including Arizona.”⁶⁴ And “Mr. Wetzel testified
20 about how the demand for power by California affects the market for power in the region,
21 opining that more capacity in the western market is good for the region regardless of where

22
23 supply of electric power outweighs the minimized impact of the Project on the environment and ecology
24 of the state.”) (emphasis added).

⁵⁹ LS-171 Tr. 71:22–72:5

25 ⁶⁰ *Id.* 2525:2-6; see also 2016 ACC Tr. 304:4–311:3 (using the word “speculative” ten times
26 regarding the needs for the project); *id.* 310:20-24 (“Staff came down as saying yes, there are benefits to
it. They are speculative. Staff is not opposed it. Staff has opposed projects before. Staff has supported
projects before. In this instance Staff has decided to go down a neutral route.”).

⁶¹ Decision No. 75464 at 2.

⁶² Staff Response (Aug. 29, 2022), at 2 (emphasis added).

⁶³ Decision No. 78769 ¶ 49; LS-171 Amend Tr. 45:13-46:4.

⁶⁴ Decision No. 78769 ¶ 74; LS-171 Amend Tr. 526:12-18.

1 the individual resource is going.”⁶⁵

2 But still not a single Arizona utility testified that they needed this power. And once
3 again, the developer would not say that any power would actually end up in Arizona. Mr.
4 Wetzel would not testify about what percentage of utilities and companies Pattern Energy
5 was talking to in Arizona, citing confidentiality.⁶⁶ The best he could say was that “we
6 absolutely *are attempting to and hope to provide* a material amount of power to Arizona
7 customers,” although “it’s dependent on market conditions and their interest in the product
8 that we have to sell.”⁶⁷ Mr. Wetzel also refused to say what percentage of power would
9 end up in Arizona because “we just don’t know about whether we will be selected and at
10 what volume.”⁶⁸ Mr. Wetzel could not—or would not—say with whom they were
11 negotiating contracts even though the first line was set to begin construction in mid 2023,⁶⁹
12 which meant that 70-80 percent of their transmission service agreements would have to be
13 in place by then.⁷⁰

14 Not only does an applicant have to put on evidence of “need,” but the power has to
15 be “economical.” Such evidence was also lacking. SunZia’s project manager admitted that
16 the cost is ultimately borne by the consumer.⁷¹ Yet, in 2015, SunEdison’s witness refused
17 even to discuss cost and pricing, claiming such information was proprietary.⁷² And in 2022,
18 Mr. Wetzel could only speculate as to cost effectiveness: “So any given day it could be
19 cheaper or more expensive to take power from the grid relative to a long-term contract to
20 buy power from the transmission-enabled wind projects.”⁷³ That was all he could say in
21 response to Member Haenichan’s concern that “it looks like the only reason for using or
22 attempting to use the wind energy from New Mexico is the environmental advantages of

23 ⁶⁵ Decision No. 78769 ¶ 75; LS-171 Amend Tr. 538:2-539:12.

24 ⁶⁶ LS-171 Amend Tr. 527:8-21 (“I don’t think I can provide a specific percentage to you. I
apologize, is to kind of current discussions with counter parties in one state relative to another.”)

25 ⁶⁷ *Id.*

26 ⁶⁸ *Id.* 527:25–528:9.

27 ⁶⁹ *Id.* 52:1.

28 ⁷⁰ LS-171 Tr. 183:17–184:1, 184:20–185:1, 364:16-20, 366:1–368:8

⁷¹ LS-171 Tr. 184:7-8 (“So the food chain, if you will, ultimately ends up in retail rates one way or
another.”).

⁷² LS-171 Tr. 547:20–548:1.

⁷³ LS-171 Amend Tr. 517:4-7; *see also id.* 517:19–518:15.

1 it,” and his pointed question: “If it’s going to be a lot more expensive because of
2 transmission costs, despite the fact that there are no fuel costs, I think we need to
3 understand this question, is it really not economically advantageous to use that energy?
4 Who can answer that?”⁷⁴

5 Finally, there was some evidence in the record to suggest that SunZia, and now
6 Pattern Energy, would prefer to sell its energy to California. Mr. Wetzel effectively
7 conceded that Pattern will sell to highest bidder.⁷⁵ And Mr. Else provided uncontradicted
8 testimony that the average cost of energy per kilowatt hour in California was almost twice
9 as much as in Arizona.⁷⁶ He also provided a slide deck that SunZia presented at a July
10 2021 California Energy Commission conference, showing that Pattern was actively
11 marketing to California utilities.⁷⁷

12 C. Financing as evidence of need

13 Testimony in both 2015 and 2022 revealed how the financing process assuaged
14 concerns about need for the merchant line. Staff explained in 2015 that “in the event that
15 generators do arrive, the PPAs they will enter into with the SunZia or transmission access
16 will constitute a demonstration of the need for that transmission.”⁷⁸ SunZia argued in
17 closing that “[t]he method of financing mitigates the risk of constructing a line that is not
18 needed. . . . It won’t be built unless it is utilized.”⁷⁹ “It is the lenders taking their risk. It is
19 not the Arizona citizens.”⁸⁰ The LS Committee Chairman, after explaining his dismay that
20 the line would scar the San Pedro River Valley, noted, “If the applicant -- if the intervenors
21 are correct that there is no need for this project, I am sure the free market will bear that out
22

23 ⁷⁴ LS-171 Amend Tr. 486:12-21.

24 ⁷⁵ LS-171 Amend Tr. 569:11-19 (“Regarding the economics, Mr. Wetzel, is it true that Pattern, like
25 most corporations, will focus on the power purchase agreements that provide the most profit to the
26 corporation? A. (BY MR. WETZEL) Pattern is a for-profit enterprise, the way that we balance
27 considerations for any power purchase agreement include economics and also include non-economic
28 elements such as risk, reputation, things of that nature.”).

⁷⁶ *Id.* 359:13-20.

⁷⁷ *Id.* 358:1–359:12; 2022 Else Exhibit 13 at slides 26-29.

⁷⁸ LS-171 Tr. 2525:15-19.

⁷⁹ *Id.* 2532:23–2533:2.

⁸⁰ *Id.* 2533:20-21.

1 and this project will never be built.”⁸¹ And the ACC Chairman’s designee to the LS
2 Committee stated at the ACC’s open meeting, after observing there was no “need” for the
3 project in the traditional sense:

4 This now presents a policy question to the Commission on merchant lines,
5 is do you want to set a policy now. Well, if you build a merchant line, there
6 are some advantages in fact, that you aren’t using money from a utility to
7 build the line; therefore it, is not going to go against the utility customers if
8 it fails. It is going to go against the applicant.⁸²

8 This echoed one Staff witness’s comments:

9 Remember, this is a merchant project. And the need will determine whether
10 or not they get financing. If there is no need, it is not going to get built
11 because it is not going to get financed. And I think that’s critical. I would
12 like to say it about four more times. Because I have heard some of the
13 questions that have been asked here, and everybody forgets this is a merchant
14 [line]. It is working in the free marketplace. If it can go out and get people
15 to sign contracts, then it can take those contracts to a lender and the lender
16 can say here is \$2.2 billion that we are going to loan you to build this project
17 to go forward.⁸³

15 When asked “what happens if the line is built and then the merchant transmission
16 line owner goes bankrupt,” the witness responded, “[T]hen we benefit, don’t we? If it is
17 sold for pennies on the dollar, the ratepayers don’t have to pay for the other 98 cents on
18 the dollar that somebody lost, some bank lost somewhere. That’s a hard thing to say, but
19 that’s a reality in the free market system.”⁸⁴ Pattern Energy repeated the point in 2022.⁸⁵
20 Interestingly, no witness or member pointed out that if the line is built but the owner goes
21 bankrupt because the line is not profitable, then it is not just some bank somewhere that
22 loses. The towers and lines are still there. The San Pedro Valley loses.

24 ⁸¹ *Id.* 2706:1-4.

25 ⁸² 2016 ACC Tr. 10:2-9; *see also id.* 186:6-11 (“And the need will determine whether or not they
26 get financing. If there is no need, it is not going to get built because it is not going to get financed. And I
27 think that’s critical. I would like to say it about four more times.”).

26 ⁸³ LS-171 Tr. 1397:8-21.

27 ⁸⁴ *Id.* 1400:11–1401:1.

28 ⁸⁵ LS-171 Amend. Tr. 496:4-8 (“This project competes in the market and if our value proposition
to market participants who buy wholesale power is not attractive enough and they don’t see value in our
value proposition in our project, then this project won’t move forward.”).

1 **D. Benefits of the AC line**

2 Because of the absence of any real evidence of need in Arizona, the strength of the
3 original application, if any there was, was its promise to establish an AC transmission line
4 that would provide three benefits: first, it would encourage development of potential
5 renewable energy generators in southeastern Arizona by giving a means to hook up to the
6 grid; second, it would create an interconnection through the new Willow substation to the
7 Tucson Electric Power 345 kV system, increasing reliability; and third, it would more
8 generally relieve congestion on existing transmission lines by allowing other generators
9 (such as TEP) to transmit through the SunZia transmission line through new and future
10 interconnections.

11 *1. Encouraging production of future renewable energy sources*

12 One central benefit touted throughout 2015 was that the SunZia line would be able
13 to hook up to future generators along the route, thereby encouraging production of
14 renewable energy, and particularly solar power, in southeast Arizona. Such
15 interconnections would, of course, require an AC line. Tom Wray, the original project
16 manager for the line, testified in 2015:

17 [T]here are solar resources in the Interstate 10 corridor particularly in
18 Arizona, particularly in the area of the San Simon Valley in southeastern
19 Arizona, north and south of Interstate 10 [T]his area of solar
20 development here that's referred to as Arizona, this Arizona south here, I
21 believe they have estimated somewhere around over 6,000 megawatts of
22 developable solar resources in that area. . . . SunZia is interested in being
able to harvest developable solar that could be scaled down here to meet both
Arizona and other states' needs⁸⁶

23 Wray further testified, “We believe the project creates *access* to high quality
24 stranded renewable resources, *both in Arizona and* in New Mexico.”⁸⁷ “The thing to take
25 away from this,” he added, “is the project literally goes through an area of major solar
26 development along the Interstate 10 corridor both in southeastern Arizona and

27 _____
28 ⁸⁶ LS-171 Tr. 128:3–129:7.

⁸⁷ *Id.* 134:24–135:1 (emphasis added).

1 southwestern New Mexico. . . . Again, it needs transmission to get over into markets to the
2 west.”⁸⁸ Mr. Wray testified again at the ACC’s open meeting, “The point is there are solar
3 areas distributed along the Interstate 10 corridor that is [bisected] by the SunZia route that
4 it would allow interconnection and put those future generation facilities into the market.”⁸⁹

5 *2. Interconnecting with TEP and reliability loop*

6 Another specific benefit that SunZia touted throughout the 2015 proceedings was
7 that the Willow substation on the AC line would interconnect with a TEP 345 kV line,
8 thereby providing power to Tucson and creating a reliability loop. There was significant
9 discussion of this benefit.⁹⁰ There was related testimony about how SunZia “fit[s] into the
10 long-term transmission plan for central Arizona” established by Arizona’s transmission
11 planning group (SWAT, previously CATS), with participation of the ACC.⁹¹ Mr. Etherton
12 testified that “the long-term plan was to connect to the Southeast Valley project down to
13 the Tucson Electric system at the Winchester substation,” thus providing a “critical loop
14 for this part of the EHV transmission system.”⁹² He testified that “although we don’t
15 connect at Winchester, we do connect to the TEP 345 kV system as well as the Pinal
16 Central 500kV transmission . . . to provide that loop in a similar fashion.”⁹³ Mr. Etherton
17 added that “future conductivity into Winchester substation is capable as well.”⁹⁴ Mr. Wray
18 explained later to Staff’s attorney, “[T]he reason the Willow substation at 500kV is in the
19 project definition is to offer the interconnection with the Springerville-Vail 345kV system
20 to create an on-ramp and off-ramp for others who have access to that system to do business
21 onto SunZia.”⁹⁵

22 _____
23 ⁸⁸ *Id.* 137:9-19; *see also id.* 176:25–177:1 (the project “can access solar zones, solar development
24 zones along the Interstate 10 corridor”); *id.* 2532:9 (closing argument) (project “will improve access to new
renewables”).

⁸⁹ 2016 ACC Tr. 172:16-19.

25 ⁹⁰ *See, e.g.,* LS-171 Tr. 225:18-21 (asking about “the plan to interconnect the project . . . to TEP’s
26 system at the new Willow 500kV substation”); *id.* 225:22–227:12 (describing plan); *see also id.* 89:1-4,
95:12-17, 212:4-8, 216:22-24, 217:12-13, 571:5-12.

⁹¹ *Id.* 242:3–243.11.

⁹² *Id.* 243:1-3.

⁹³ *Id.* 243:6-9.

⁹⁴ *Id.* 243:9-11.

⁹⁵ *Id.* 376:8-13.

1 In closing argument, counsel for Sunzia stated, “So the Willow 500kV substation is
2 necessary as part of this project to create the loop providing the benefits to Tucson”⁹⁶
3 Counsel further argue that the substation “will enhance the electric system reliability of the
4 Tucson metropolitan area.”⁹⁷ It was also important to Staff—and some members of the LS
5 Committee—to have the possibility of an interconnection at Winchester in the future,
6 which would further increase reliability in the Tucson area. Member Eberhart asked Staff
7 if the project “also interconnected at Winchester, would that alleviate . . . concerns about
8 reliability,” to which Staff’s attorney answered, “yes, if there is the interconnect with
9 Winchester following the proposed path, Staff would believe that would satisfy and perfect
10 the creation of a loop around the Tucson area,” which would improve reliability.⁹⁸

11 In front of the ACC, SunZia’s counsel explained why it was not a good idea to tie
12 the project to the construction of the wind project in New Mexico: “if you want the
13 reliability benefit, you need to start at Pinal Central,” and so it would be beneficial to
14 “construct from Pinal Central to Willow first.”⁹⁹ Without an AC line, there is no reliability
15 benefit.

16 3. *Relieving congestion and improving reliability*

17 A related benefit that an AC line brings is interconnections generally, which allow
18 for congestion relief on existing transmission lines and accompanying reliability benefits.
19 In its application for its original CEC, SunZia specifically stated that the “need for
20 additional transmission infrastructure to increase transfer capability, improve reliability,
21 and address existing congestion has been identified in federal, regional, and state
22 processes,” and that one of the “purposes” of the SunZia project is that it “will contribute
23 to improved system reliability with additional transmission lines and substation
24 connections increasing transmission capacity where congestion exists and providing
25

26 _____
27 ⁹⁶ *Id.* 2531:23-25 (closing argument).

⁹⁷ *Id.* 2532:5-7 (closing argument).

⁹⁸ *Id.* 2528:13-20.

⁹⁹ 2016 ACC Tr. 216:11-13.

1 access where limited transmission currently restricts delivery to customers.”¹⁰⁰ Thus at the
2 LS Committee hearing in 2015, Mr. Etherton testified to “the additional transmission
3 capacity and transfer capability that SunZia creates for the EHV, extra high voltage, grid
4 in Arizona, particularly southern Arizona, and relief of congestion on existing facilities
5”¹⁰¹ And Mr. Etherton specifically mentioned the importance of the Willow substation
6 for the relief of congestion.¹⁰²

7 A central theme of the testimony was the possibility of future interconnections. “At
8 the termination at Pinal Central substation, and along the way, there is actually a few other
9 locations that I might mention where the project could interconnect in the future, but is not
10 currently part of our plan of service,” Mr. Etherton testified.¹⁰³ “And we also pass very
11 close to the Saguaro and Tortolita substation where Tucson Electric and Arizona Public
12 Service have 500kV terminations in that area,” he added. “They are not part of our plan of
13 service, as I mentioned, but as part of the long-term plan of the transmission system
14 develops, both of those interconnections could be accommodated.”¹⁰⁴ These future

15 ¹⁰⁰ CEC Application (2015), at 3.

16 ¹⁰¹ LS-171 Tr. 136:4-8.

17 ¹⁰² *Id.* 237:2-11 (“Another example I would like to demonstrate here is for our connection at
18 Willow. If you had a – let’s say one of the commitments was that Tucson Electric had to deliver from
19 Springerville to, say, toward Palo Verde on the Springerville Greenlee path. The Willow connection would
20 provide another path to be able to provide that transmission service commitment on another path either
21 under normal or emergency conditions if something happened to the primary path that’s available today in
22 this area.”); *see also id.* 238:7-9 (“This connection between Pinal Central and Willow actually does provide
23 that loop for an alternate path under normal and contingency positions in this area.”).

24 Mr. Etherton did give one example of arguably reducing congestion that would not depend on the
25 AC line. He testified that the flow from Palo Verde east to Pinal Central will reverse once Pinal Central
26 gets power from New Mexico flowing west to Pinal Central. LS-171 Tr. 240:16-16; *see generally id.*
27 238:24–240:22. In front of the Commission, Mr. Wray similarly stated that SunZia might be able to relieve
28 congestion on lines in the west transmitting to load pockets in Phoenix because now some of that load will
be served by transmission from Pinal Central. 2016 ACC Tr. 207:8-20; *id.* 208:19-21 (“SunZia actually
increases the capability to flow into the load pockets because there is opposing flows coming from the east
side.”). In other words, since power will flow to Pinal Central from the east, at least one transmission lines
from the west currently sending power to Pinal Central—the Palo Verde East path—will become less
congested *in one direction*. However, Etherton noted that *more* power will now flow through the Palo
Verde line, just east to west. Ex. Sun-3 at L-57, L-58. Thus, this does not have anything to do with
congestion, but rather has to do with “increasing utilization of existing transmission,” *id.*, and changing
direction of one transmission line. Indeed, this benefits SunZia if it wants to send to California customers,
because the “Palo Verde hub there actually is controlled by the California independent system operator for
all the flows west on existing lines over toward, the existing line over toward Devers.” LS-171 Tr. 251:15–
252:6.

¹⁰³ *Id.* 212:8-12.

¹⁰⁴ *Id.* 212:17-23.

1 interconnections would specifically lead to “the reduction of congestion on existing
2 facilities.”¹⁰⁵ This benefit was discussed extensively.¹⁰⁶

3 **E. AC line to be built first**

4 Critically, and as already noted, a DC line would not be able to meet any of these
5 needs because to interconnect with a DC line requires a prohibitively expensive converter
6 station. That is why Mr. Etherton testified, “Both options include one AC 500kV line as a
7 *primary* component.”¹⁰⁷ And it is why Mr. Wray testified that the AC line was likely to be
8 built first—because it was the only line that could reap the benefits to which SunZia
9 testified:

10
11 MEMBER HAENICHEN: Okay. How are you going to make this
12 decision between these two options? I mean if the DC is that much better,
13 why aren’t you using it?

14
15 MR. WRAY: . . . [I]t is a decision that’s going to turn on two factors.
16 One is can you recover the cost associated with the more expensive DC cost
17 spread over more megawatts, because you are spreading that cost over 3,000
18 megawatts versus 1500—cost is higher but units are larger—and do you have
19 transmission service customers who can step up with financeable contracts
20 to utilize that capacity from a commercial standpoint.

21 That said, the issue with a direct current transmission line . . . [is] long
22 DC lines. For example, the TransWest project, it is 698 miles or something
23 like that, 3,000 megawatt facility.

24 *There is very little opportunity for midway interconnections to the DC*
25 *Circuit.* Should an interconnector want to interconnect, because the cost of
26 interconnection on a direct current basis is just like the cost that Mr. Etherton
27 went to with regard to the DC converter stations, it is an expensive
28 proposition and, as you know, multiple interconnections along a DC circuit,
a long DC line, it is very difficult to protect from a relaying and control
standpoint when there are line faults on long DC lines, which leads us to
believe that in our approach, the first project that’s likely to be constructed
will be an alternating current facility at 500kV to allow for more affordable
interconnections along the length of that as we go through resource zones
that we talked about earlier in some of my testimony, particularly along the
Interstate 10 corridor.

¹⁰⁵ *Id.* 233:2.

¹⁰⁶ *Id.* 233:18–238:9.

¹⁰⁷ *Id.* 211:17-18 (emphasis added).

1 And in all likelihood the construction of the direct current facility
2 would be a commercial decision that would be made after the construction
and operation of the 500 kV alternating current facility.¹⁰⁸

3 This testimony highlights two points. First, the AC line was necessary to bring most
4 of the purported benefits of the project. Second, that AC line was therefore almost certainly
5 going to be built first. On this point, however, the original CEC compels the construction
6 of the AC line first, and guaranteed that such a line *would* be built. The CEC provided:

7 *At least one (1) of the two (2) 500 kV transmission lines will be constructed*
8 *and operated as an alternating current (AC) facility, the other transmission*
9 *line will be either an AC or DC facility. As contemplated and provided for*
10 *in this Certificate, the two (2) transmission lines may be constructed at*
11 *different points in time.*¹⁰⁹

12 Further, the CEC contemplated specifically that the AC line would be built first:

13 This authorization to construct the Project shall expire at two (2) different
14 points in time, unless extended by the Commission, as provided below:

- 15 a) The Certificate for the first 500 kV transmission line and related facilities
16 and the 500 kV-Willow Substation shall expire ten (10) years from the
17 date this Certificate is approved by the Commission, with or without
modification, and
- 18 b) The Certificate for the second 500 kV transmission line and related
19 facilities shall expire fifteen (15) years from the date this Certificate is
20 approved by the Commission, with or without modification.¹¹⁰

21 The Willow Substation was the substation for the AC line, which demonstrates that
22 the first line was going to be the AC line. In discussing this part of the CEC, one LS
23 Committee member specifically stated, “[A]fter a few years they are going to know
24 whether this has been a good deal or not and decide whether or not to build the second
25 part.”¹¹¹ And the ACC Chairman’s designee on the LS Committee stated at the ACC’s
open meeting that “the project consists of two 500kV, transmission lines. And *the first line*
will be an alternating line, AC. The second line was approved to be either AC or DC.”¹¹²
This suggests, at a minimum, that at least some members of the LS Committee and likely

26 ¹⁰⁸ *Id.* 248:3-5, 248:19-250:3 (emphasis added).

27 ¹⁰⁹ CEC 171 at 4:2-6 (emphasis added).

¹¹⁰ CEC 171, ¶ 23 at 12:22-13:3.

¹¹¹ LS-171 Tr. 2594:7-10.

¹¹² 2016 ACC Tr. 7:25-8:3 (emphasis added).

1 some members of this Commission had understood that, if only one line was to be built, it
2 would be the AC line.

3 **F. Other considerations**

4 In both the 2015 and 2022 proceedings, there was significant testimony and
5 discussion of other matters: in 2015, the since-invalidated Clean Power Plan, and in 2022,
6 climate change more generally; why only one route was selected by SunZia and the BLM,
7 and the relation to environmental justice concerns; and economic benefits.

8 *1. Clean Power Plan and Climate Change*

9
10 In 2015, there was significant discussion of the project’s potential to help Arizona
11 meet its commitments under the Obama Administration’s Clean Power Plan. To take but
12 one example, SunZia’s project manager testified in 2015, “You would have to be locked
13 in a basement not to understand that the State of Arizona has come under a lot of scrutiny
14 with respect to a couple of air quality mandates and changes to air quality regulations that
15 will have enormous effect on the State of Arizona’s ability to generate electricity.”¹¹³ The
16 Clean Power Plan will make plant closures “unavoidable.”¹¹⁴ “[T]he emission reductions
17 under the [state implementation plan] on the Clean Power Plan must begin by 2022.”¹¹⁵
18 “We believe SunZia provides an option to the State of Arizona to reach compliance with
19 the Clean Power Plan.”¹¹⁶ The discussion of this matter was extensive.¹¹⁷

20 Compliance with the Clean Power Plan appears to have been important to the
21 deliberations, as SunZia (Mr. Wray) testified that even if all the power ended up being
22 bought by California, Arizona would still get carbon credits for delivering that power from

23
24 ¹¹³ LS-171 Tr. 191:3-12.

¹¹⁴ *Id.* 195:10-11.

¹¹⁵ *Id.* 197:7-9.

¹¹⁶ *Id.* 197:14-16.

25
26 ¹¹⁷ *See also, e.g., id.* 135:13-25 (mentioning Clean Power Plan and stating “it is [SunZia’s] view
27 that transmission and high quality wind resources provide an important tool for the state and the incumbent
28 utilities in the state to deal with addressing these increasingly onerous air quality mandates”); *id.* 191:14–
198:18 (discussing Clean Power Plan, in addition to ozone and regional haze rules); *id.* 205:10-14 (member
asking about impact on Clean Power Plan); *id.* 532:24–537:23 (multiple members discussing potential for
the plan to give Arizona credits under the plan).

1 the Pinal Central substation.¹¹⁸ LS Committee members pushed back, suggesting the end
2 use is what would matter.¹¹⁹ SunZia emphasized that it would depend on the final rule and
3 also the state implementation plans.¹²⁰ SunZia admitted, however, that after the final rule,
4 the offsetting credits could “accrue to the utilities in California who are making that
5 purchase.”¹²¹ But Mr. Wray deferred to SunEdison’s witness, Mr. Sankaran, on this
6 point,¹²² who later testified that it would depend on the state implementation plan.¹²³

7 More still, Staff’s attorney explained that the Clean Power Plan might require the
8 closure of a coal power plant, which would then create reliability problems with flow of
9 electricity into the Phoenix area:

10 [By Mr. Haines]: [Y]ou remind me of another reliability point that I
11 wanted to bring up, but one thing, and with reference to Clean Power Plan,
12 for instance, and the anticipated shutdown of various coal plants, you
13 indicated there is essentially two geographic locations that generation is
14 coming into the Phoenix load pocket right now, basically the north and from
15 the west. And in comments that the ACC posed to reliability interest that the
16 Commission noted, and with the proposed Clean Power Plan rules, there was
one great alarm, that you basically only have two paths, and if you shut down
the coal, you have really wound it just down to one path coming into the
Phoenix load pocket.

17 Do you – are you saying that, or do you foresee SunZia providing, in
18 terms of the second path coming into the Phoenix load pocket, alleviating
some of that issue?

19 A. (BY MR. WRAY) Mr. Chairman, we do see that. . . . And we think
20 it will have a material betterment to the loss of that generation, something
that the Commission did not have an opportunity to consider when it was
looking at the Clean Power Plan reaction when they did that.¹²⁴

21 Pinal County, which intervened to support the project, explained in closing
22 argument: “Pinal County is all too aware of the threats and the regulations being faced by
23 the EPA and Clean Air Act. It was, at this point that the board of supervisors granted their
24

25 ¹¹⁸ *Id.* 252:7-21.
26 ¹¹⁹ *Id.* 253:3-9.
27 ¹²⁰ *Id.* 253:11-16.
28 ¹²¹ *Id.* 254:1-2.
¹²² *Id.* 254:11-14.
¹²³ *Id.* 532:24–537:23.
¹²⁴ *Id.* 384:18–385:20; *see also* 2016 ACC Tr. 307:5-16 (same).

1 support for this line, balancing those two factors of the benefits versus just the inherent
2 cost of this sort of a line.”¹²⁵ And, in the ACC’s open meeting, Commissioner Stump
3 specifically asked, after hearing from an LS Committee member that there was no “need”
4 for the project in the traditional sense: “But you mentioned the issue of need. And, of
5 course, the federal government has been active of late as with regard to ozone rules, Clean
6 Power Plan. And I understand the Obama Administration took a keen interest in this
7 project, the issue of stranded wind resources. So on the question of need, how, in your
8 view, would Arizona meet its requirements without it?”¹²⁶

9 Of course, the Supreme Court invalidated the Clean Power Plan in 2022. Thus, in
10 the 2022 amendment hearings, there was a substantial discussion of the need of the SunZia
11 line to combat global climate change generally. The discussion spans some 35 pages of the
12 record, in which the climate change organization Western Resource Advocates (WRA)
13 testified in favor of the project.¹²⁷ The WRA emphasized the urgency of the project:

14 [Dr. Routhier:] I indicated before, there is a limited window to act.
15 And they [the Intergovernmental Panel on Climate Change] emphasize if we
16 don’t act immediately, we may lose our opportunity.

16 MEMBER HAMWAY: What is “immediately”? Like I know right
17 now, but that’s not going to happen.

17 DR. ROUTHIER: Right. So the amounts that they are recommending
18 are 45 percent economywide carbon emission reductions by 2030 and 100
19 percent economywide emission reductions by 2050. And that’s a short time
20 frame. “Immediate” means “immediate.”¹²⁸

19 Summarizing the testimony, the WRA witness testified that “[l]ooking at water
20 savings and carbon dioxide emission reductions, it will -- the SunZia line will have a
21 significant positive impact on climate change.”¹²⁹ The witness recognized that if the wind
22 energy replaces gas generation rather than coal, there would be less of an impact.¹³⁰ He
23 concluded, “We recommend that the Line Siting Committee approve the Certificate of
24 Environmental Compatibility for the SunZia line,” and it should be approved “as soon as
25

26 ¹²⁵ LS-171 Tr. 2516:15-21.

27 ¹²⁶ 2016 ACC Tr. 16:6-12.

28 ¹²⁷ LS-171 Amend Tr. 291:15–325:25.

¹²⁸ LS-171 Amend 304:5-18.

¹²⁹ *Id.* 313:6-9.

¹³⁰ *Id.* 314:1-3.

1 possible” because “the window that we have to deal with climate change is limited, and it
2 is closing quickly.”¹³¹

3 2. *No alternative routes*

4 As the Commission will recall, the Commission and the LS Committee were given
5 only one option for the SunZia route, the option that had already been approved by federal
6 authorities,¹³² even though it was admitted by SunZia that there are “biological resources”
7 and “habitat,” as well as “cultural resources” and “recreational resources that exist along
8 the proposed . . . route.”¹³³ The reason alternative routes were rejected in discussions with
9 federal authorities was, among other reasons, that routes through “metropolitan Tucson
10 were flawed heavily from the standpoint of significant inmitigable environmental justice
11 issues associated with removal of numerous homes in low income areas.”¹³⁴ Mr. Wray
12 claimed that a presidential executive order required federal agencies to “consider”
13 environmental justice impacts “where possible.”¹³⁵

14 Additionally, the proposed route passes near Bowie, Arizona, where Mr. Wray’s
15 company owned land where they intended to construct a natural gas plant, and for which
16 they had a CEC.¹³⁶ Mr. Wray and Mr. Etherton specifically stated that it was possible the
17 Bowie plant could connect to the SunZia line in the future through the Willow
18 substation,¹³⁷ which was not far from Bowie.¹³⁸ All the proposed alternative routes in
19 Arizona that were considered by BLM intersected with the Willow substation.¹³⁹ In the
20 2022 proceedings, Mr. Else introduced a 2010 filing SunZia submitted to the Federal
21 Energy Regulatory Commission (FERC), in which SunZia specifically noted that its
22 principal owner, Southwestern Power Group, intended to use the line to interconnect with
23

24 ¹³¹ *Id.* 314:17–315:8.

25 ¹³² *See, e.g.*, LS-171 Tr. 255:10–256:14.

26 ¹³³ *Id.* 256:8-11.

27 ¹³⁴ *Id.* 257:1-5.

28 ¹³⁵ *Id.* 2065:19-25.

¹³⁶ *Id.* 359:21–360:4; *see also id.* 352:18-22.

¹³⁷ *Id.* 280:15-25, 301:1-10, 311:1-10.

¹³⁸ The distance appears to be about 16 miles. Original CEC Application Packet at 15.

¹³⁹ Original CEC Application Packet at 30.

1 its future Bowie plant.¹⁴⁰ Thus, even the federal authorities had not evaluated any routes
2 that begin further south or further north and that could have avoided both the San Pedro
3 Valley and concerns about environmental justice, such as the Southline project¹⁴¹ and the
4 High Plains Express Transmission project.¹⁴²

5 Despite bringing forward a single route to the LS Committee, SunZia recognized
6 that ultimately the LS Committee had authority to choose an alternative route, which would
7 then have to go back through federal processes for new approvals.¹⁴³ Indeed, in 2022, Mr.
8 Else provided uncontradicted testimony and evidence that after the 2016 CEC was issued
9 by the ACC, SunZia's project was denied approval by New Mexico's Public Regulation
10 Commission, which led SunZia to consider and make route changes in New Mexico and
11 to file a supplemental federal environmental impact statement, the approval process for
12 which remains ongoing.¹⁴⁴

13 3. *Economic benefits*

14 There was also numerous testimony and discussion of the economic benefits of the
15 project in the sense of job creation.¹⁴⁵ This was also a concern to one of the ACC
16 commissioners.¹⁴⁶ One Pinal County supervisor specifically supported the project at the
17 ACC's open hearing because "We welcome economic development in Pinal County. In
18 my district, industrial projects like mining operations are the life blood of small
19 communities. So I support economic benefits that come from large-scale energy
20

21 ¹⁴⁰ 2022 Exhibit Else-06; LS-171 Amend Tr. 350:16-23.

22 ¹⁴¹ LS-171 Amend Tr. 376:5-16 (describing approval of Southline project); 2015 Exhibit SUN-16
at 3 (Southline project map).

23 ¹⁴² *Id.* 378:7-23.

24 ¹⁴³ LS-171 Tr. 270:19-25 ("Ultimately, as you know, if the Committee decides that they prefer a
different route, the Committee can do that. That would require renotece, additional requirements with
respect to that. And then it raises, of course, the issues that we have been discussing and we will be prepared
to discuss in more detail, the reopening of the federal NEPA process.").

25 ¹⁴⁴ LS-171 Amend Tr. 348:9-349:7; 2022 Exhibit Else 04 at 1-4.

26 ¹⁴⁵ LS-171 Tr. 136:1-3 (the project "also results in economic benefits in Arizona and counties here
in Arizona"); *id.* 199:17-21 ("The job formations here under each option, Option A, the university has
estimated 2200 jobs associated only with the transmission line construction, and 2400 jobs during the
period of construction for Option B."); *see generally id.* 198:19-201:9 (discussing economic need
generally).

27 ¹⁴⁶ 2016 ACC Tr. 12:1-6 ("So my question on this is about economic development for Arizona. . . .
28 [C]an you give some explanation to how this does or does not benefit the economy in Arizona?").

1 projects.”¹⁴⁷ Staff’s own testimony regarding “need” at the LS hearing was twofold: it
2 would help meet federal mandates, and it would create jobs.¹⁴⁸ Aside from that, there
3 would be reliability benefits with additional interconnections in and around Tucson.¹⁴⁹ The
4 LS Committee similarly considered economic benefits in 2022.¹⁵⁰

5 **G. Amendment application and proceedings**

6 As described in the Administrative Law Judge (ALJ) recommendation, adopted by
7 the ACC in this case, SunZia filed an application to amend pursuant to A.R.S. § 40-252 on
8 May 13, 2022.¹⁵¹ As stated by the ALJ, the amendment sought to authorize the use of
9 updated structure design changes and additional structure types associated with the DC
10 line; to bifurcate the original CEC into two CECs to provide for separate ownership of
11 each line, which would enable the projects to be financed; and to extend the expiration date
12 of the CEC for the first line (the DC line) from February 2026 to February 2028.¹⁵² The
13 application did not mention that the original CEC had required that the AC line be built
14 first and that therefore the date for the Willow Substation would have to be moved to the
15 second expiration date.¹⁵³ The application requested approval without an LS Committee
16 hearing, asserting that “the proposed changes have no or minimal effects on reliability of
17 the regional grid and the environment.”¹⁵⁴

18 On May 23, Mr. Else filed a response to the application, requesting an evidentiary
19 hearing. Mr. Else explained, “The CEC in this case approved two lines. The Application
20 now proposes that a separate CEC be issued for each line. The first line planned to be
21

22 ¹⁴⁷ 2016 ACC Tr. 19:18-22; *id.* 20:19-21 (Greenlee County Supervisor: “The project will generate
23 money for our schools and state tax land leases and create jobs and tax revenues for our local
24 communities.”).

¹⁴⁸ 2016 ACC Tr. 183:23–184:9.

¹⁴⁹ *Id.* 184:10–185:15 (reliability increase with interconnections in Tucson).

¹⁵⁰ LS-171 Amend Tr. 56:17-21 (“We anticipate over 3,000 jobs to be created through these
25 projects. The majority of those will be construction jobs, but we do anticipate long-term, well-paying jobs
26 associated with the operation of these facilities.”); *id.* 58:16-19 (“And of those 3,000 jobs mentioned on
the last slide, up to 400 of construction jobs are anticipated to be located in Arizona as well as up to 14
permanent staff to operate the facilities.”).

¹⁵¹ Decision No. 78769 ¶ 3.

¹⁵² *Id.* ¶ 3.

¹⁵³ 40-252 Application at 1, 4-5.

¹⁵⁴ *Id.* at 6.

1 constructed is a DC line. It is the only line that currently has agreements pending for
2 financing. *This line could turn out to be the only line associated with the original CEC that*
3 *is ever constructed.*¹⁵⁵ Mr. Else explained that the central benefit of the original
4 application would disappear: “The elimination of this substation also eliminates economic
5 opportunities for uploading renewable energy produced in Arizona counties that were
6 promoted by SunZia during the development of the CEC and at the subsequent decision
7 meeting by the Commission. This substantial change needs to be considered at Line Siting
8 hearings for the first of the two new CECs that SunZia is seeking.”¹⁵⁶ Mr. Else also
9 explained that the transmission benefits would evaporate:

10 SunZia states on page 2 of their Application that their project will “reduce
11 existing transmission congestion”. The first line now proposed to be
12 constructed would not accommodate alternative routing of AC grid
13 electricity during periods of congestion or major line failures. It is a 515-
14 mile DC tie-line originating at a single substation in central NM and
15 terminating at a single substation in AZ. As a DC tie-line with no other
16 substations in Arizona, it is debatable whether the line would be helpful in
17 reducing existing congestion.¹⁵⁷

18 Mr. Else also identified other potential changes and consequences that he viewed to
19 be substantial, including “how Pattern Energy’s dominance of Arizona’s grid capacity
20 between the Pinal Central Substation and major demand markets could affect Arizona’s
21 opportunities for renewable energy production, transmission, and export.”¹⁵⁸

22 After the Staff of the ACC Utilities Division recommended a hearing on the
23 application, Mr. Else filed another response in support of that recommendation. He
24 explained:

25 SunZia is also now proposing to split their original CEC into two CECs and
26 change the configuration the first project to a Direct Current tie-line owned
27 and supplied with electricity by the same corporation. This first 3000 MW
28 DC tie-line would offer no opportunity for generators located along its route
in Arizona to upload electrical power. Public input regarding the impacts of

¹⁵⁵ Else (May 23) Resp. at 4 (emphasis added).

¹⁵⁶ Else (May 23) Resp. at 4-5; *see also* Else (May 31) Resp. at 4 (similar).

¹⁵⁷ Else (May 23) Resp. at 5.

¹⁵⁸ *Id.* at 4.

1 this plan on the development of energy generation within Arizona for both
2 in-state and export purposes is essential. Because of the significant changes
3 being proposed to SunZia’s first line, the public should be allowed to provide
4 testimony regarding impacts to the economical and reliable supply of electric
5 power.¹⁵⁹

6 “These [substantial] changes,” among the other substantial changes he identified,
7 “should be considered in reference to sections of Arizona Revised Statutes that require
8 consideration of environmental impacts and the promotion of an economical and reliable
9 supply of electric power.”¹⁶⁰

10 At the LS Committee hearing, Chairman Katz stated, “We have one of two
11 alternatives in today’s proceedings or this week’s proceedings: One is to deny the amended
12 CECs, and then we are going to follow the original CEC; or to allow the amended CEC
13 with some additional stipulations and conditions.”¹⁶¹ Mr. Else reiterated: “I don’t believe
14 that the Commission only has two choices, which is to approve both lines or not to approve
15 both CECs. I may be wrong, but I think they also have the option to approve CEC-1 only
16 or CEC-2 only.”¹⁶²

17 At the hearing, after SunZia objected to the scope of Mr. Else’s testimony, Mr. Else
18 explained, “I saw inherent in one of those changes, the one where the first line would be
19 DC instead of AC, that that was a substantial change from what was in the record.” Mr.
20 Else said he “will go with whatever decisions the Chairman decides on whether these
21 things are substantial changes or not, but that one’s a big one. That one is a big one because
22 the original plan was definitely for an AC line.”¹⁶³ Mr. Else was allowed to continue this
23 line of testimony, and discussed the importance of the AC line to tie-ins (interconnections)
24 and reliability loops, as promoted by SunZia in 2015.¹⁶⁴ Chairman Katz then asked, “The
25 one question, though, that I have is that if this Committee and, more importantly, the

25 ¹⁵⁹ Else (June 23) Resp. at 2.

26 ¹⁶⁰ *Id.* at 1.

27 ¹⁶¹ LS-171 Amend Tr. 13:22–14:1; *see also id.* 334:23–335:1 (same).

28 ¹⁶² LS-171 Amend Tr. 376:19–22; *see also id.* 490:1–4: (“[T]he Committee could approve both of
the CECs, CEC-1 only, CEC-2 only, or neither of the CECs. Maybe that’s not the case. I don’t have an
attorney sitting beside me.”).

¹⁶³ *Id.* 368:13–25.

¹⁶⁴ *Id.* 373:16–23.

1 Corporation Commission, granted an Option B, which would allow this DC line, and it
2 was planned to be 550-some miles long, how can we change that now? . . . I don't think
3 we have authority to do that.”¹⁶⁵

4 Nevertheless, Chairman Katz did allow Mr. Else to provide additional relevant
5 testimony. He repeatedly returned to the point that “[t]he original plan of service was . . .
6 promoted as facilitating the development of distributed energy resources located along the
7 I-10 corridor in Southern Arizona,”¹⁶⁶ but having only a DC line would “accommodate the
8 interests of a single corporation.”¹⁶⁷ And in his proposed findings of fact and conclusions
9 of law, Mr. Else wrote, “The Project does not offer access along its route to electrical
10 generation resources located within Arizona.”¹⁶⁸

11 Mr. Else also testified that not only would the amendment eliminate the congestion
12 benefits that SunZia had touted in 2015, but that it would actually *increase* congestion
13 because “the injection of 3,000 megawatts of New Mexico wind energy at the Pinal Central
14 Substation” would then have to go somewhere, utilizing existing transmission lines.¹⁶⁹
15 Indeed, Mr. Else repeatedly pointed out that the original path rating from the Western
16 Electricity Coordinating Council (WECC) for SunZia assumed there would be at least one
17 AC line;¹⁷⁰ SunZia itself explained in 2015 that its “additional transmission capacity or
18 transfer capability” was “primarily based on our WECC three-phase rating,”¹⁷¹ and that
19 an approved WECC rating was an important indication of “reliability.”¹⁷² In his proposed
20 findings and conclusions, Mr. Else summarized, “The Project will increase transmission
21 congestion between its termination point in central Arizona and its electricity markets in
22 other states.”¹⁷³

23 ¹⁶⁵ *Id.* 374:5-13.

24 ¹⁶⁶ *Id.* 352:23–353:1; *see also id.* 351:4-10.

25 ¹⁶⁷ *Id.* 362:18-23; *see also id.* 407:12-24 (similar).

26 ¹⁶⁸ Else Proposed Findings of Fact and Conclusions of Law at 1.

27 ¹⁶⁹ LS-171 Amend Tr. 370:18–371:4.

28 ¹⁷⁰ The WECC rating process is painstaking, technical, and takes about two years. LS-171 Tr. 231:14-25. Mr. Else raised this issue several times in the 2022 proceedings, as recognized by the ALJ. Decision No. 78769 ¶¶ 43, 63, 65, 70, 80, 84, 115. *See also* LS-171 Amend Tr. 349:16-19.

¹⁷¹ LS-171 Tr. 232:23-25.

¹⁷² *Id.* 243:23–244:1.

¹⁷³ Else Proposed Findings of Fact and Conclusions of Law at 2.

1 Mr. Else also argued at the hearing that the testimony from the WRA on climate
2 change was irrelevant because “the way the statute is written in Arizona is that the
3 Committee and the Commission are charged with finding economical electrical energy,
4 and it doesn’t distinguish between renewable and non-renewable,” which is why Mr. Else
5 concluded that the amended project “would not provide economical electricity for
6 Arizona’s use.”¹⁷⁴

7 Mr. Else also commented on the fact that the second, AC line would be essentially
8 redundant of the Southline transmission project. The project “received all of its required
9 permits and is accepting requests for generator access at 12 planned substations in New
10 Mexico and Arizona,” and provides “multiple access points to provide benefits along its
11 route.” The project “follows the Interstate 10 corridor and is collocated with existing power
12 lines for two-thirds of its approved route,” thus providing many of the benefits of the
13 proposed SunZia AC line but without the ecological and environmental difficulties.¹⁷⁵ Mr.
14 Else concluded in his proposed findings that the project “is redundant with another
15 approved merchant transmission line that has not yet been used to capacity,”¹⁷⁶ and “more
16 than doubles the ground disturbance of the first line [if built in addition to it], but is capable
17 of transferring only half the amount of energy as the first line.”¹⁷⁷

18 Overall, Mr. Else suggested, “The Project is not in the public interest because the
19 Project’s potential contribution of supplying some electricity to the state is outweighed by
20 the Project’s adverse impacts to the environment, ecology, and supply of economical and
21 reliable electricity in the state.”¹⁷⁸

22 Testifying for Pattern Energy, the new owner of the DC line, Mr. Wetzel explained
23 that Pattern is also the owner of the wind projects to be developed in New Mexico.¹⁷⁹ He
24 testified that the company anticipated “starting construction mid next year and financing

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26 ¹⁷⁴ LS-171 Amend Tr. 483:3-15.

¹⁷⁵ *Id.* 376:5-16.

¹⁷⁶ Else Proposed Findings of Fact and Conclusions of Law at 2.

¹⁷⁷ *Id.* at 3.

¹⁷⁸ *Id.* at 2.

¹⁷⁹ LS-171 Amend Tr. 46:14-22.

1 the project at the same time, which is why . . . we’re . . . requesting these amendments,
2 which are required – all three required to be able to actually finance and begin construction
3 in this project next year and bring it online in 2025 to meet the growing needs of the
4 Southwest region.”¹⁸⁰ These amendments are crucial to start on the anticipated “time
5 frames” that had been discussed.¹⁸¹ Although the lines already had two owners,¹⁸² Mr.
6 Wetzel testified that Pattern has the “financial resources and the experience to develop a
7 second line,”¹⁸³ if necessary.

8 For his part, Mr. Etherton, testifying now in the 2022 hearings, acknowledged that
9 no one else would be able to interconnect to the DC line: “[T]he only common point is
10 going to be the Pinal Central Substation, again, with the DC converter station in New
11 Mexico and Pinal Central, there’s no, at least proposed, interconnection to those.”¹⁸⁴ The
12 fact that no one else could interconnect explains why Pattern Energy’s proposed wind
13 project was awarded 100% of the transmission capability by FERC’s open solicitation
14 process.¹⁸⁵

15 The LS Committee approved the application to amend and recommended approval
16 of two new CECs, one for each line. Mr. Else filed a request for review.¹⁸⁶ In that request,
17 he also asked the ACC to reconsider the original CEC on the basis of the testimony and
18 materials from the proceedings involving the application to amend.¹⁸⁷ And he suggested
19 that each line be considered independently.¹⁸⁸ In his brief to the ALJ, Mr. Else again
20 insisted that each line should be evaluated independently, that the original CEC should be
21 rescinded in light of the new circumstances of the applicant and the nature of the
22 application to amend, and that there was no testimony at all at the proceedings involving
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24 ¹⁸⁰ *Id.* 51:25–52:8.

25 ¹⁸¹ *Id.* 103:23–104:1.

26 ¹⁸² *Id.* 52:11-18.

27 ¹⁸³ *Id.* 520:9-22.

28 ¹⁸⁴ *Id.* 87:7-11.

¹⁸⁵ *Id.* 46:14-22.

¹⁸⁶ Decision No. 78769 ¶ 28.

¹⁸⁷ Else (Sept. 28) Request for Review at 2.

¹⁸⁸ *Id.* at 2-3

1 the second line.¹⁸⁹ In his reply brief, Mr. Else reiterated: “Now it is clear that the
2 Commission is faced with evaluating three different CEC decisions”—each line, and then
3 the original CEC—“with each decision involving substantial changes that have taken place
4 during the past seven years.”¹⁹⁰

5 The ALJ issued a proposed order upholding the amendments. Among other things,
6 the proposed conclusions of law provided that “Decision No. 75464 [the original CEC] is
7 a final Decision of the Commission subject to the doctrine of *res judicata* and is the law of
8 the case.”¹⁹¹ The ALJ failed to consider the crucial matter of a lack of a path rating, stating
9 that the original CEC provided that SunZia would have to comply with all WECC path
10 ratings, and ignoring the possibility that no satisfactory path rating might be possible with
11 only a DC line pushing power entirely westward.¹⁹² (The ALJ also incorrectly stated that
12 the original CEC was approved with no path rating.¹⁹³)

13 Although Mr. Else took exception to several parts of the ALJ’s proposed findings,
14 he was particularly concerned with paragraph 117, which provided,

15 The record shows that the original CEC was approved with the option for
16 two AC lines or one AC and one DC line that could be constructed at
17 different points in time and that the lines were to be used to bring wind power
18 resources from New Mexico to Central Arizona. The original CEC does not
19 specify which line was to be built first. The record shows that there has not
20 been a change in the anticipated use of the lines.¹⁹⁴

21 In his exceptions to the ALJ proposed ruling, Mr. Else specifically commented
22 about this paragraph as follows (with internal record citations omitted):

23 The record shows that the Applicant **explicitly** testified in 2015 that the first
24 line would be an AC Line. The Record shows that the construction of the
Willow Substation was tied to the construction of the first line. The original
CEC ties the first line to the same deadline for construction as the Willow

25 ¹⁸⁹ Else (Oct. 17) Opening Br. at 12-16.

26 ¹⁹⁰ Else (Oct. 24) Reply Br. at 13-14.

27 ¹⁹¹ Decision No. 78769 at 31 (conclusion 3).

28 ¹⁹² Decision No. 78769 ¶ 116.

¹⁹³ *Id.* The original record reveals that there was a path rating, LS-171 Tr. 232:6-13, which, as noted above, was important for SunZia’s testimony on reliability, capability, and congestion.

¹⁹⁴ Decision No. 78769 ¶ 117.

1 Substation, and the Willow Substation is only planned to be connected to AC
2 lines. All of this clear and unambiguous evidence supports that the first line
3 was presented to the Committee and the Commission as one that would be
4 of AC configuration. The changed plan for the first line to be of DC
configuration and held as a vertical monopoly by Pattern Energy is a
substantial change to the 2016 CEC.¹⁹⁵

5 This Commission adopted the ALJ's recommendation to approve the amendment
6 and the two new CECs. Mr. Else now brings this timely application for rehearing pursuant
7 to A.R.S. § 40-253, and for reconsideration pursuant to A.R.S. § 40-360.07(C).

8 **III. ARGUMENT**

9 Under Arizona law, in approving a CEC where there was a petition for review (as
10 there was here), the ACC must consider the factors of A.R.S. § 40-360.06, but then it must
11 also “balance, in the broad public interest, the need for an adequate, economical and
12 reliable supply of electric power with the desire to minimize the effect thereof on the
13 environment and ecology of this state.” A.R.S. § 40-360.07(B). Thus, in approving the
14 amended CECs, the ACC must have, in addition to its environmental impact conclusions,
15 concluded that the project will benefit Arizona's power supply by assuring power needs in
16 Arizona will be met by providing New Mexico wind power, or at least by creating the
17 ability for new or existing Arizona energy producers to hook up to the grid to supply
18 congestion, reliability, and other future benefits.

19 Additionally, basic administrative law principles apply. Arizona courts “shall
20 affirm the agency action unless the court concludes that the agency's action is contrary to
21 law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of
22 discretion.” A.R.S. § 12-910. Thus, there must be substantial evidence for any factual
23 findings. And the arbitrary and capricious standard specifically requires the ACC to
24 consider all important aspects of the problem, and not to consider extraneous factors.
25 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
26 (1983); *Grand Canyon Trust v. Ariz. Corp. Comm'n*, 210 Ariz. 30, 34 (Ct. App. 2005)

27
28

¹⁹⁵ Else (Nov. 7) Exceptions to Judge Rodda's Recommended Order at 3.

1 (arbitrary and capricious standard); *Billingsley v. Arizona Corp. Comm'n*, 2019 WL
2 6130830, at *9 (Ariz. Ct. App. Nov. 19, 2019) (relying on *State Farm* standard). Finally,
3 any substantial change to a CEC, as to any proposed rule, must be properly noticed. ACC
4 Decision No. 58793 (“Whispering Ranch”).

5 In approving the amended CECs, the ACC committed five legal errors. First, the
6 statutory factors should have been weighed for each CEC independently. Second,
7 regardless of whether the lines should have been considered independently or together, the
8 agency acted arbitrarily and capriciously by failing to recognize an important aspect of the
9 problem, namely that under the amended CECs the AC line might never be built, and thus
10 most of the benefits of the original application evaporated. Third, the agency acted
11 arbitrarily and capriciously by relying on factors—such as global climate change and, from
12 the previous record, the Clean Power Plan which has since been declared unlawful—that
13 the legislature did not intend for it to consider. Fourth, the evidence of Arizona’s actual
14 “need” for the power itself was supplied entirely by the applicant’s own hearsay evidence,
15 which as a matter of law is not substantial evidence; and from illogical speculations about
16 the consequences of future bankruptcy, which were also insufficient as a matter of law.
17 Fifth and finally, SunZia did not notice in its application to amend that the original CEC
18 required the first line to be an AC line, and that it was therefore requesting a substantial
19 change in this regard. That was error under *Whispering Ranch*.

20 These legal errors require the Commission to reject the application to amend, and
21 further to rescind the original CEC. If the Commission approves the first line, but not the
22 second, there is no legally sufficient evidence of need in Arizona in the absence of an AC
23 line. If the Commission approves the second line, but not the first, the Commission will
24 then have to consider the consequences of marring Arizona’s landscape and environment
25 for the purpose of a mere 1,500 megawatts of power that apparently no one in Arizona
26 needs, and which has significant redundancies with another project (the Southline project)
27 that has developed since 2016. And because the second line might never be built, the
28 Commission also cannot approve both lines for the same reason it cannot approve the first

1 standing alone.

2 Sticking to the original CEC is also not a viable option, however, given the
3 substantial changes that have occurred since 2016: namely, the elimination of the Clean
4 Power Plan, which was a substantial motivating factor in the approval of the original CEC;
5 the Southline project, which creates numerous redundancies with the proposed SunZia AC
6 line(s); the financing difficulties, which SunZia has revealed in its application to amend;
7 and the fact that SunZia was willing to modify its route in New Mexico and go through a
8 new federal permitting process. Simply put, the Commission should revoke the original
9 CEC and force the applicant to refile with additional evidence of need in this state, and/or
10 to choose a new route (as it did in New Mexico), and one that does not scar the ecology
11 and environment of this state.

12 **A. Each CEC must be assessed independently as a matter of law.**

13 The LS Committee Chairman, time and again, stated that the question for the
14 Committee (and Commission) was whether to adopt both new CECs or to retain the old
15 one. “We have one of two alternatives in today’s proceedings or this week’s proceedings:
16 One is to deny the amended CECs, and then we are going to follow the original CEC; or
17 to allow the amended CEC with some additional stipulations and conditions.”¹⁹⁶ The CECs
18 were not considered independently by the ACC, which adopted the findings of the ALJ.
19 The ACC stated, “Decision No. 75464 is a final Decision of the Commission subject to the
20 doctrine of *res judicata* and is the law of the case.”¹⁹⁷ The ACC then approved the two
21 new CECs together: “. . . the broad public interest weighs in favor of approving ROO CEC
22 171-A and ROO CEC 171-B as issued by the LS Committee.”¹⁹⁸ The ACC concluded, “It
23 is reasonable and in the public interest *to modify* Decision No. 75464”¹⁹⁹ There was
24 no suggestion that each CEC was evaluated independently. The CECs were evaluated
25 together on the basis of the original CEC record in 2015, and the limited additional
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27 ¹⁹⁶ LS-171 Amend Tr. 13:22–14:1; *see also id.* 334:23–335:1 (same).

¹⁹⁷ Decision No. 78769 at 31.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 32 (emphasis added).

1 testimony in 2022.

2 This was legal error. The question the ACC had to answer was whether *each* new
3 CEC, standing on its own legs, should be approved on the basis of the record. The statutory
4 language provides, “No utility may construct *a* plant or transmission line within this state
5 until it has received *a* certificate of environmental compatibility from the committee”
6 A.R.S. § 40-360.07(A) (emphases added). Following this language is all the more
7 important in this case because the second line may never be built given the separate
8 ownership and the fact that only the first line is apparently ready for financing. It is
9 therefore entirely possible that the *only* line that will ever be built is a DC line.

10 Supposing this will in fact happen, the entire statutory calculus is changed. On the
11 “need” side of the equation, the only need is now for whatever power Arizona utilities need
12 from Pattern Energy’s wind farm, and there was essentially no evidence of that in the
13 record. Because this is a possibility, the statutory balancing—balancing “the need for an
14 adequate, economical and reliable supply of electric power with the desire to minimize the
15 effect thereof on the environment and ecology of this state,” A.R.S. § 40-360.07(B)—could
16 come out entirely differently.

17 **B. The ACC acted arbitrarily and capriciously.**

18 *1. The ACC failed to consider an important aspect of the problem—that only*
19 *the DC line might be built, thus eliminating the benefits of the original*
20 *CEC.*

21 Whether or not the two lines could be considered in tandem, the Commission still
22 acted arbitrarily and capriciously by failing to recognize the salient fact that it is now
23 possible that the only line that will ever be built is a DC line—a line that would be unable
24 to connect to potential new energy producers in southeastern Arizona, relieve congestion,
25 or improve reliability. Indeed, the entire capacity of the DC line was already awarded to
26 Pattern Energy in New Mexico because it was the only entity that could plausibly hook up
27 to its own DC line.²⁰⁰

28 ²⁰⁰ Decision No. 78769 ¶ 50; LS-171 Amend Tr. 46:5-47:8.

1 In other words, many of the central benefits of the project—the ability to develop
2 new renewables in southeastern Arizona in the future, the ability to interconnect with TEP,
3 and the ability to create future interconnections to relieve congestion and increase
4 reliability—have now evaporated. The central question with the new arrangement should
5 therefore be whether there is a “need” in Arizona for this power from New Mexico. Yet,
6 as noted, there was essentially no evidence of this in the initial application and hearings in
7 2015, nor in the application or hearings in 2022. The only evidence of need was hearsay
8 evidence supplied by the applicant itself; apparently they could not find a single utility to
9 testify.

10 The ACC’s decision adopting the ALJ recommendation, however, made the
11 following argument:

12 The record shows that the original CEC was approved with the option for
13 two AC lines or one AC and one DC line that could be constructed at
14 different points in time and that the lines were to be used to bring wind power
15 resources from New Mexico to Central Arizona. The original CEC does not
specify which line was to be built first. The record shows that there has not
been a change in the anticipated use of the lines.²⁰¹

16 That is all the ACC decision says about the central issue in the case—and it is patently
17 wrong.

18 As previously noted, the original CEC specifically contemplated that the AC line
19 would be built first. Not only that, it guaranteed that it *would* be built. The CEC provided:

20 *At least one (1) of the two (2) 500 kV transmission lines will be constructed*
21 *and operated as an alternating current (AC) facility, the other transmission*
22 *line will be either an AC or DC facility. As contemplated and provided for*
in this Certificate, the two (2) transmission lines may be constructed at
*different points in time.*²⁰²

23 Thus, this was a *guarantee* that at least one AC line would be built. But now, with the
24 bifurcated CECs, the AC line *might never be built*. Further, the CEC contemplated
25 specifically that the AC line would be built first:

26 This authorization to construct the Project shall expire at two (2) different

27 ²⁰¹ Decision No. 78769 ¶ 117.

28 ²⁰² CEC 171 at 4:2-6 (emphasis added); *see also* LS-171 Tr. 211:17-18 (Eherton) (“Both options
include one AC 500kV line as a primary component.”).

- 1 points in time, unless extended by the Commission, as provided below:
- 2 c) The Certificate for the first 500 kV transmission line and related facilities
- 3 and the 500 kV-Willow Substation shall expire ten (10) years from the
- 4 date this Certificate is approved by the Commission, with or without
- 5 modification, and
- 6 d) The Certificate for the second 500 kV transmission line and related
- 7 facilities shall expire fifteen (15) years from the date this Certificate is
- 8 approved by the Commission, with or without modification.²⁰³

9 The Willow Substation was the substation for the AC line, which demonstrates that

10 the first line was going to be the AC line. In discussing this part of the CEC, one LS

11 Committee member specifically stated, “after a few years they are going to know whether

12 this has been a good deal or not and decide whether or not to build the second part.”²⁰⁴

13 Additionally, SunZia’s project manager testified that “in all likelihood the construction of

14 the direct current facility would be a commercial decision that would be made after the

15 construction and operation of the 500 kV alternating currently facility,”²⁰⁵ precisely

16 because the AC line would “allow for more affordable interconnections along the length

17 of that as we go through the resource zones” in southeastern Arizona.²⁰⁶ The ACC

18 Chairman’s designee on the LS Committee stated at the ACC’s open meeting that “the

19 project consists of two 500kV, transmission lines. And *the first line* will be an alternating

20 line, AC. The second line was approved to be either AC or DC.”²⁰⁷

21 In short, the ACC completely failed to grapple with the central problem—that

22 unlike in the original CEC, here there might never be a second line, and thus no AC line at

23 all. Yet it is the AC line that would have created the capacity for new resources to develop

24 in southeastern Arizona. It is the AC line that would have interconnected to TEP to deliver

25 power to Tucson. And it is the AC line that would have allowed TEP and other existing

26 generators to connect to the new transmission line, thereby relieving transmission

27 congestion and increasing reliability—a central benefit touted by SunZia. In fact, without

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26 ²⁰³ CEC 171 ¶ 23 at 12:22–13:3.

27 ²⁰⁴ LS-171 Tr. 2594:7-10.

28 ²⁰⁵ *Id.* 249:25–250:3.

²⁰⁶ *Id.* 249:20-24

²⁰⁷ 2016 ACC Tr. 7:25–8:3.

1 the AC line, a DC line might *increase* congestion—because all the new power from New
2 Mexico would have to go from Pinal Central to its final destinations through other, existing
3 transmission lines. Without an approved WECC path rating for Pattern’s plan, it is
4 impossible to know how a single DC line will affect congestion and reliability.

5 Simply put, unlike in the initial plan that included an AC line that would reap the
6 many benefits to which SunZia testified, there now may only be a single line, whose entire
7 purpose is to give Pattern Energy an efficient line for its own power. All the promised
8 benefits to Arizona may never actually accrue. By failing to consider this, the ACC cannot
9 be said to have considered the relevant factors, and it “entirely failed to consider an
10 important aspect of the problem.” *State Farm*, 463 U.S. at 43. It therefore acted arbitrarily
11 and capriciously.

12 2. *The ACC considered factors that the legislature did not intend for it to*
13 *consider.*

14 An agency also acts arbitrarily and capriciously “if the agency has relied on factors
15 which [the legislature] has not intended it to consider.” *State Farm*, 463 U.S. at 43. What
16 is clear from the record—particularly in light of the absence of any direct, non-hearsay
17 testimony of a need for the power in Arizona—is that a substantial factor motivating this
18 Commission’s approval in 2016 was potential compliance with the Obama
19 Administration’s Clean Power Plan, and a principal motivating factor in 2022 was climate
20 change generally. Environmental justice and economic benefits were also improperly
21 considered both in 2015 and 2022.²⁰⁸

22 This Commission’s statutory authority requires it to “balance, in the broad public
23 interest, the need for an adequate, economical and reliable supply of electric power with
24 the desire to minimize the effect thereof on the environment and ecology of this state.”
25 A.R.S. § 40-360.07(B). Economic benefits have no relation to an economical supply of
26 electric power, and such testimony is merely introduced to bias the decisionmakers
27 improperly.

28 ²⁰⁸ The ALJ summarized Mr. Wetzel’s testimony on economic benefits. Decision No. 78769 ¶ 51.

1 Additionally, there was substantial testimony in 2015 about why the route was
2 submitted to the LS Committee as a *fait accompli*, even though the Committee had the
3 authority to choose an alternate route. The cited concerns were over environmental justice.
4 Mr. Wray testified that the reason alternative routes were rejected in discussions with
5 federal authorities was, among other reasons, that routes through “metropolitan Tucson
6 were flawed heavily from the standpoint of significant immitigable environmental justice
7 issues associated with removal of numerous homes in low income areas.”²⁰⁹ Mr. Wray
8 claimed that a presidential executive order required federal agencies to “consider”
9 environmental justice impacts “where possible.”²¹⁰ Of course, had SunZia presented
10 federal authorities routing options that did not pass near Bowie, Arizona, it might have
11 avoided by the San Pedro Valley and environmental justice concerns.

12 In considering each new line independently, the Commission must now also
13 consider the route because the statute requires the ACC to balance “the environment and
14 ecology of this state” against the need for power. A.R.S. § 40-360.07(B). Yet the route was
15 accepted in 2015 as a *fait accompli* on the basis of concerns for “environmental justice,”
16 and was not considered at all in 2022. To be sure, the applicant might still be able to show
17 that one or the other line meets the statutory balancing if an alternative route that has less
18 effect on the environment and ecology of the state is selected. Environmental justice
19 concerns should be considered, but they cannot be dispositive—because the statute
20 requires consideration of the “environment” and ecology of the “state,” and not
21 “environmental justice.” Certainly, if environmental justice and the actual environment
22 can both be accommodated—as routes unconnected to the Bowie plant might have been—
23 then they both should be. And if both cannot be accommodated, then perhaps the route
24 should not be approved. But there is certainly no statutory authority to sacrifice the actual
25 environment because of concerns over environmental justice.

26 Most pressing, when considering each independent CEC, the Commission should

27 ²⁰⁹ LS-171 Tr. 257:1-5.

28 ²¹⁰ *Id.* 2065:19-25.

1 not consider any of the original record evidence about compliance with the Clean Power
2 Plan, nor any of the testimony about climate change from the 2022 proceedings. That is
3 because the statutory standard—“the environment and ecology of this state” is in
4 contradistinction to *global* environmental trends. As explained by dissenting Justices in
5 *Massachusetts v. EPA*, 549 U.S. 497 (2007), there is a difference between ordinary
6 “pollutants” and naturally high concentrations of a substance throughout the entire
7 atmosphere. “[R]egulating the buildup of CO₂ and other greenhouse gases in the upper
8 reaches of the atmosphere, which is alleged to be causing global climate change, is not
9 akin to regulating the concentration of some substance that is *polluting the air*.” *Id.* at 559
10 (Scalia, J., dissenting). Pollution really means “impurities in the ambient air at ground level
11 or near the surface of the earth.” *Id.* at 560 (internal quote marks omitted).

12 Indeed, it is highly unlikely that the state legislature would have given the
13 Commission authority to consider global climate change through ambiguous language
14 such as the “environment and ecology of *this state*.” To be sure, climate change may have
15 global effects that, over time, manifest themselves in some ways in Arizona. But that is
16 not what the statute means. The balancing is among the need for *power*, and the
17 environment and ecology of the state that is sacrificed to *generate* or *transmit* that power.
18 That is, the balancing only makes sense if the statute is referring to the actual local physical
19 environment. The environmental factors in A.R.S. § 40-360.06—“[f]ish, wildlife and plant
20 life,” “scenic areas” and “historic sites,” and the “total environment of the area”—only
21 make sense in the context of the local environment impacted by the physical placement of
22 plants and transmission lines.

23 The Arizona Supreme Court’s recent “major questions” doctrine buttresses this
24 point. In *Roberts v. State*, the Court explained that “the Supreme Court [of the United
25 States] limits the exercise of legislative power by the executive branch on major policy
26 questions to instances where a statute ‘plainly authorizes’ executive agency action.” 253
27 Ariz. 259, 512 P.3d 1007, 1016 (2022) (citation omitted). “This doctrine guards against
28 unintentional, oblique, or otherwise unlikely delegations of the legislative power.” *Id.*

1 (citation omitted; cleaned up). “What the United States Constitution structurally implies,
2 the Arizona Constitution makes explicit,” the Court explained. *Id.* Thus, when an agency
3 deals with a “major policy question,” it must look for “plain” statutory authority for it.
4 There is no question that climate change, and how to deal with it, is a “major policy
5 question.” The Commission’s authority in § 40-360.07(B) is hardly plain authority for the
6 Commission to make decisions on the basis of global climate change.

7 Indeed, that was the conclusion of the U.S. Supreme Court in *West Virginia v. EPA*,
8 142 S. Ct. 2587 (2022), which invalidated the Clean Power Plan that the Commission relied
9 on in 2015. In *West Virginia*, the question was whether the provision of the Clean Air Act
10 allowing the Environmental Protection Agency (EPA) to impose the “best system of
11 emissions reduction” authorized the EPA to impose *within a plant* the best system of
12 emissions reduction—as the EPA had traditionally understood this authority—or whether
13 it allowed EPA to impose *nationwide* a best system of emissions reduction, mandating a
14 particular mix of energy sources. In *West Virginia*, the U.S. Supreme Court invalidated the
15 Clean Power Plan on the ground that it was not authorized by this statutory language. Had
16 Congress intended to give EPA authority to implement carbon caps and offsets and the
17 like—had Congress given EPA authority to regulate the mix of energy production at a
18 national scale in order to combat climate change—the Court concluded that Congress
19 would have said so expressly.

20 The Court explained that the “major questions doctrine” applies to “agencies
21 asserting highly consequential power beyond what Congress could reasonably be
22 understood to have granted.” 142 S. Ct. at 2609. The doctrine invalidates enormously
23 consequential assertions of agency authority where Congress has not spoken clearly
24 because “[w]e are confident that Congress could not have intended to delegate a decision
25 of such economic and political significance to an agency in so cryptic a fashion.” *Id.* at
26 2613 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).
27 Quite simply, if the state legislature had intended to give the ACC power to authorize clean
28 energy, without any need in Arizona and for the purpose generally of combatting global

1 climate change, it would have said so expressly. It did not.

2 To be sure, this Commission acted appropriately by considering the CPP in 2015.
3 That is because compliance with the CPP might otherwise risk an “adequate” supply of
4 electric power. But certainly the 2022 testimony about climate change was irrelevant. More
5 still, at the time of the amended application, the Obama Administration’s CPP had been
6 declared unlawful. And it cannot be said that the legislature intended the ACC to rely on
7 an unlawful EPA regulation in coming to a siting decision. Yet, the amended CEC was
8 approved largely based on the original record, in which there was robust reliance on the
9 since-invalidated CPP, as well as the extraneous 2022 testimony about climate change.
10 The ACC should have balanced the factors *without* any reliance on the CPP or climate
11 change. Its failure to do so was legal error.

12 In sum, the ACC’s decision to approve the new CECs was based on considerations
13 of irrelevant and extraneous factors and was therefore arbitrary and capricious.

14 **C. There was no substantial evidence of need as a matter of law.**

15 *1. An applicant’s own hearsay testimony of need is not substantial evidence.*

16 Without an AC line, the only benefit to the DC line is if New Mexico’s wind power
17 is needed to supply economical, reliable, and adequate power *to Arizona*. The only
18 evidence of such need, however, was the hearsay testimony of the applicant that they were
19 “marketing” to and were in “discussions” with utilities in Arizona. But as noted earlier,
20 neither SRP nor TEP indicated any desire or need for SunZia power; SRP specifically
21 disclaimed any need and TEP thought there was some “potential” to meet “some” of its
22 renewable energy goals.²¹¹ It is therefore not clear to whom Pattern Energy was speaking.
23 What’s clear is the only evidence that the parties to whom Pattern was speaking are
24 interested in this power is Pattern’s own testimony. That is hearsay.

25 Ordinarily, hearsay evidence alone cannot constitute substantial evidence. *See*
26 *Richardson v. Perales*, 402 U.S. 389 (1971). In *Perales*, the U.S. Supreme Court found in
27

28 ²¹¹ Exhibit ACC-5 at 1; Exhibit ACC-6 at 1.

1 the limited circumstances of an expert medical report that such a report alone could
2 constitute substantial evidence even if the doctor did not testify, so long as the doctor was
3 not subpoenaed by the party challenging the evidence. In that case, the Court discussed
4 decisions holding that, as a general matter, “uncorroborated hearsay . . . does not constitute
5 substantial evidence.” 402 U.S. at 407 (quoting *Consol. Edison Co. of New York v. NLRB*,
6 305 U.S. 197, 230 (1938)). In Arizona, the rule is that a Commission “*may act upon*
7 [hearsay] where the circumstances are such that the evidence offered is deemed by the
8 Commission to be trustworthy.” *Reynolds Metals Co. v. Indus. Comm’n*, 98 Ariz. 97, 102
9 (1965). If hearsay alone is ordinarily not sufficient for substantial evidence, then certainly
10 hearsay provided by a self-interested applicant is not sufficiently “trustworthy” to
11 constitute substantial evidence.

12 2. *The possibility of financing alone is not substantial evidence.*

13 Additionally, most of the remaining evidence of need was the testimony about
14 financing. Time and again, numerous parties repeated that if the line fails, then the
15 ratepayers don’t pay for it—“some bank” somewhere loses instead. The following
16 exchange was particularly telling. When asked “what happens if the line is built and then
17 the merchant transmission line owner goes bankrupt,” the Staff witness responded, “[T]hen
18 we benefit, don’t we? If it is sold for pennies on the dollar, the ratepayers don’t have to
19 pay for the other 98 cents on the dollar that somebody lost, some bank lost somewhere.
20 That’s a hard thing to say, but that’s a reality in the free market system.”²¹² As noted,
21 Pattern Energy repeated the point in 2022.²¹³ Yet, this is erroneous reasoning. If the line is
22 built but the owner goes bankrupt because the line is not profitable, then it is not just some
23 bank somewhere that loses. The towers, lines, access roads, and other disturbances are still
24 there. It is the San Pedro Valley that loses.

25 Pattern’s own expert testified: “[E]very project does have impacts. You can’t get to

26 _____
27 ²¹² LS-171 Tr. 1400:11–1401:1.

28 ²¹³ LS-171 Amend. Tr. 496:4-8 (“This project competes in the market and if our value proposition to market participants who buy wholesale power is not attractive enough and they don’t see value in our value proposition in our project, then this project won’t move forward.”).

1 zero impacts on a project. So even as you're concurrently going through the process of
2 avoidance and minimization, you get to a point where you're able to be clear that you do
3 have certain impacts, and so that's where mitigation really comes in."²¹⁴ Thus, there are
4 *always* harms to the "environment and ecology of this state"—and there *will* be harms to
5 the San Pedro Valley. No one disputes that. But now, if the project *does* go bankrupt, and
6 the line *is* built, then there will be an unused transmission line providing no power
7 whatsoever. As a matter of *law*, the Commission cannot approve a CEC when on one side
8 of the balance (power) is zero, and on the other side is environmental and ecological harm.

9 **D. Lack of notice in application to amend.**

10 Finally, the LS Committee and ALJ ignored a point made by Mr. Else repeatedly
11 throughout the proceedings—that the applicant did not disclose in the application to amend
12 that the original CEC required the first line to be AC.²¹⁵ Under this Commission's own
13 precedent in *Whispering Ranch*, a "substantial change" to an original CEC must be
14 disclosed in an application to amend. The ACC's decision in the *Whispering Ranch* case
15 relied on Section 41-1025 of the Administrative Procedure Act, which "governs when a
16 proposed administrative rule is deemed to be modified so significantly that it must be
17 renoticed before final adoption." *Whispering Ranch*, at 24. That section provides that "[a]n
18 agency may not submit a rule . . . that is substantially different from the proposed rule
19 contained in the notice of proposed rule making," and in "determining whether a rule is
20 substantially different from the proposed rule," the agency must consider "[t]he extent to
21 which the subject matter of the rule or the issues determined by that rule are different from
22 the subject matter or issues involved in the published proposed rule" and "[t]he extent to
23 which the effects of the rule differ from the effects of the published proposed rule if it had
24 been made instead." A.R.S. § 41-1025.

25 In *Whispering Ranch*, this Commission specifically concluded that when a line was
26 approved as a DC line, but it was being constructed as an AC line, that was a substantial
27

28 ²¹⁴ *Id.* 133:4-9.

²¹⁵ *See, e.g., id.* 373:16-23.

1 change that the utility needed to notice. Here, the applicant did not disclose in the
2 application to amend that the original CEC required the first line to be an AC line, and that
3 SunZia intended a change in that regard. As noted above, this is a substantial change
4 because it means the AC line might never be built, and all the benefits of the AC line
5 therefore evaporate. If the issue in *Whispering Ranch* involved a substantial change, then
6 so did the issues here. The LS Committee chair specifically said, however, that he did not
7 think the Committee could consider this change.²¹⁶ And the ALJ incorrectly asserted that
8 the original CEC did not require the AC line to be built first,²¹⁷ although it specifically
9 connected the Willow Substation to the first line.²¹⁸ Thus, this was a substantial change
10 that was neither properly noticed nor properly considered at the hearings, violating the
11 Administrative Procedure Act, the Commission’s decision in *Whispering Ranch*, and due
12 process more generally.

13 **E. The Commission should reject the amended application.**

14 The Commission should reject the amended application. It should reject the DC line
15 because, without the AC line, the only evidence of “need” is hearsay testimony and the
16 speculation about financing, neither of which is sufficient as a matter of law to establish
17 substantial evidence. The AC line, without the DC line, should also be rejected—it would
18 deliver a fraction of the power originally promised, and its other benefits would be
19 redundant of the Southline project.

20 Not only that, but the entire original CEC must be reconsidered as a result of the
21 substantial changes highlighted by SunZia in its application to amend, and by Mr. Else
22 throughout the proceedings. Specifically, not only are SunZia’s financing difficulties
23 apparent, but now that the Southline project is fully permitted and will allow
24 interconnections throughout southeastern Arizona, many of the benefits of the SunZia line
25 can already be realized. The Southline project shows that there are routes from New
26

27 ²¹⁶ *Id.* 374:5-13.

28 ²¹⁷ Decision No. 78769 ¶ 117.

²¹⁸ CEC 171 ¶ 23 at 12:22–13:3.

1 Mexico to Pinal Central Substation that do not traverse the San Pedro Valley and do not
2 have environmental justice concerns; and SunZia’s route modifications in New Mexico
3 suggest that it has the ability to revisit routes with federal permitting authorities if
4 necessary. And, of course, the Clean Power Plan—which was a significant motivating
5 factor in the original decisionmaking—has since been invalidated.

6 Under this Commission’s own precedents, the elimination of the Clean Power Plan
7 alone is, arguably, a “substantial change” warranting reconsideration of a prior CEC under
8 *Whispering Ranch*. Although the *Whispering Ranch* case involved a substantial change to
9 the actual construction of the line, other substantial changes relevant to the initial grant of
10 a CEC can and should be considered when this Commission exercises its power to
11 “rescind, alter or amend any order or decision made by it.” A.R.S. § 40-252. In sum, the
12 substantial changes that have occurred since 2016 demonstrate that there is no need for
13 either line in Arizona, and there is no need for both lines. The Commission should reject
14 the amendment application and rescind the original CEC.

15 **IV. CONCLUSION**

16 Mr. Else understands that the Commission, the Line Siting Committee, the ALJ,
17 and Staff have spent hundreds of hours reviewing and hearing the issues involved in this
18 case, and that there is undoubtedly a desire and institutional momentum to consider the
19 decision settled. Mr. Else appreciates all the effort and work that has been expended,
20 including the effort by SunZia and now Pattern Energy. But when you take a wrong
21 direction, you do not get closer to your goal by staying on the wrong highway. If the
22 foundation is uneven, the house has to come down no matter how far along the
23 construction. It is all too easy to press on when often we should just stop. Here it seems
24 clear that SunZia’s original business plan failed to get sufficient financial support and that
25 it has now flexed to a new plan. The new plan is to transmit wind power from New Mexico
26 to California through the San Pedro Valley of Arizona. California is a big state. It can
27 generate its own power without spoiling one of this state’s few remaining unspoiled
28

1 areas—an area to which Arizona law requires this Commission give special consideration.
2 The Commission should grant a rehearing.

3
4 RESPECTFULLY SUBMITTED this 12th day of December, 2022.

5
6 **TULLY BAILEY LLP**

7 /s/ Ilan Wurman

8 Stephen W. Tully

9 Ilan Wurman

10 *Attorneys for Intervenor Peter T. Else*

11
12 **Certificate of Service**

13 ORIGINAL of the foregoing,
14 Plus THIRTEEN (13) copies,
15 filed in person this 12th day
of December, 2022, with:

16 Docket Control
17 Arizona Corporation Commission
1200 W. Washington St.
18 Phoenix, AZ 85007

19 COPIES of the foregoing mailed/mailed this
20 12th day of December, 2022, to the persons
21 identified on the attached service list, consisting
of one page.

22
23 /s/ Ilan Wurman

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Exhibit B

RECEIVED SEP 23 1994

BEFORE THE ARIZONA CORPORATION COMMISSION

MARCIA WEEKS
CHAIRMAN
RENZ D. JENNINGS
COMMISSIONER
DALE H. MORGAN
COMMISSIONER

IN THE MATTER OF THE APPLICATION)
OF SALT RIVER PROJECT AGRICULTURAL)
IMPROVEMENT AND POWER DISTRICT,)
DEVELOPMENT MANAGER, MEAD-PHOENIX)
DC INTERTIE PROJECT, ON ITS OWN)
BEHALF AND ON BEHALF OF SOUTHERN)
CALIFORNIA PUBLIC POWER AUTHORITY)
AND M-S-R PUBLIC POWER AGENCY,)
OTHER PARTICIPANTS IN THE)
MEAD-PHOENIX DC INTERTIE PROJECT,)
IN CONFORMANCE WITH THE)
REQUIREMENTS OF ARIZONA REVISED)
STATUTES SECTION 40-360, ET. SEQ.,)
FOR A CERTIFICATE OF ENVIRONMENTAL)
COMPATIBILITY FOR THAT PORTION)
LYING WITHIN THE GEOGRAPHICAL)
CONFINES OF THE STATE OF ARIZONA)
OF THE PROPOSED +500 kV DC)
TRANSMISSION LINE FROM THE)
EXISTING MEAD SUBSTATION NEAR)
BOULDER CITY, NEVADA, (SECTION 28,)
T23S, R64E, MDB&M), TO THE)
PROPOSED NEW EASTWING TERMINAL)
NORTHWEST OF PHOENIX ARIZONA)
(SECTION 8, T4N, R1E, G&SRB&M);)
SUCH PORTION BEING FROM A POINT)
ON THE ARIZONA-NEVADA BORDER,)
MIDSTREAM OF THE COLORADO RIVER)
APPROXIMATELY FIVE MILES)
DOWNSTREAM OF WILLOW BEACH,)
ARIZONA (SECTION 12, T28N, R23W,)
G&SRB&M) TO THE PROPOSED EASTWING)
TERMINAL NINE MILES NORTHWEST OF)
PHOENIX, ARIZONA.)

CASE NO. 70

Arizona Corporation Commission
DOCKETED

SEP 21 1994

DOCKETED BY *C.M.*

DECISION NO. 58793

OPINION AND ORDER

DATES OF HEARING: June 18, 1994 (Public Comments); June 20, 21, 22, 23, 24, and 27, 1994 (Hearing).

PLACES OF HEARING: Whispering Ranch Estates, Arizona (Public Comments); Phoenix, Arizona (Hearing).

95 24

1 PRESIDING OFFICER: Charles S. Pierson, Chairman-Designee,
 2 Power Plant and Transmission Line Siting
 3 IN ATTENDANCE: Various members of the Power Plant and
 4 APPEARANCES: JENNINGS, STROUSS & SALMON, P.L.C., by Mr.
 5 Preston H. Longino, Jr., and Ms. Deborah
 6 A. Jamieson, Staff Attorney, Salt River
 7 Project, on behalf of Salt River Project
 8 Agricultural Improvement and Power Dis-
 9 trict;
 10 APKER, APKER, HAGGARD & KURTZ, P.C., by
 11 Mr. Burton M. Apker and Mr. David B.
 12 Apker, on behalf of Douglas Land Corpora-
 13 tion;
 14 ARIZONA SENIOR CITIZENS LAW PROJECT, by
 15 Mr. Thomas T. Rapp, on behalf of James
 16 Osborn and Penny Osborn and as amicus
 17 curiae;
 18 Mr. Adam T. Miller, In Propria Persona;
 19 Mr. Alford R. Smith, In Propria Persona.

20 BY THE COMMISSION:

HISTORY OF THE PROCEEDINGS

21 On November 26, 1985, the Arizona Corporation Commission
 22 ("Commission") entered Decision No. 54792, wherein it confirmed the
 23 granting of a Certificate of Environmental Compatibility ("CEC") by
 24 the Power Plant and Transmission Line Siting Committee ("Committee")
 25 to Salt River Project Agricultural Improvement and Power District
 26 ("SRP") for SRP's Mead-Phoenix 500 kV DC Intertie Project, Case No.
 70 of the Committee.

Following informal investigation occasioned by complaints by
 landowners in Whispering Ranch Estates, the Commission on March 12,
 1987, entered Decision No. 55471, which confirmed Decision No.

1 54792. The informal investigation looked into allegations that the
2 Committee's decision was based upon misrepresentations by WIRTH
3 Environmental Services (the prime environmental consultant for the
4 project, including preparation of the Federal Environmental Impact
5 Statement) and a claim that counsel for intervenor Douglas Ranch
6 had, under oath, during the 1985 hearing misrepresented to the
7 Committee the number of residences in Whispering Ranch.

8 In January, 1994, the Commission received a request from Adam
9 Miller, Vice Chairman of the Whispering Ranch Residents Association,
10 *inter alia*, to rescind Decisions Nos. 55471 and 54792. Mr. Miller's
11 request contains a number of allegations in support of his request
12 for relief, including allegations of inadequate notice to residents
13 of Whispering Ranch of hearings held by the Committee in 1985, of
14 efforts by an employee of SRP to persuade residents of Whispering
15 Ranch not to attend such hearings, and that SRP has begun construc-
16 tion of the transmission line as an AC line rather than the DC line
17 that was applied for and approved.

18 The Commission entered Decision No. 58576, in which we found
19 that "[t]he allegations raised by Mr. Miller, especially in light
20 of the significant passage of time since the issuance of Decision
21 No. 54792, are sufficient cause to reopen Decision Nos. 55471 and
22 54792." In addition, we found that "[t]he Committee should be
23 appointed to act as a hearing officer in this matter . . . to
24 conduct proceedings for the purpose of 1) determining whether SRP's
25 construction of the authorized transmission line is in conformance
26 with Decision No. 54792, 2) determining whether Decision Nos. 55471

1 and 54792 should be rescinded, altered or amended, and 3) any other
2 related issue as may be deemed appropriate by the Committee."

3 ISSUES

4 In accordance with this directive, the chairman-designee of the
5 Committee (the presiding officer) convened a prehearing conference
6 on April 27, 1994. In a procedural order dated May 17, 1994
7 ("Procedural Order No. One"), the following issues were set forth
8 for determination:

9 1. Whether SRP's decision to build the
10 line so that it can be initially energized as an
11 alternating current (AC) line, rather than the
12 direct current (DC) line that was applied for
13 and granted by the Committee, requires that SRP
14 file either a new or amended application.

15 2. Whether residents of Whispering Ranch
16 received legally adequate notice of the initial
17 Committee proceeding.

18 3. Whether an employee of SRP made
19 misleading representations that caused residents
20 of Whispering Ranch not to attend the [initial]
21 Siting Committee proceeding.

22 [4. W]hether counsel for Douglas Ranch
23 committed a fraud on the Committee in his
24 representations as to the number of residences
25 in Whispering Ranch as of the time of the
26 initial Committee proceeding.

27 Procedural Order No. One at 3-4. For convenience, issue number 1
28 will be referred to as the "DC-AC Issue"; issue number 2 will be
29 referred to as the "Notice Issue"; issue number 3 will be referred
30 to as the "Extrinsic Fraud Issue"; and issue number 4 will be
31 referred to as the "Fraud on the Court [Tribunal] Issue."

PARTIES

1
2 In Procedural Order No. One, Adam T. Miller, Alford R. Smith,
3 SRP and Douglas Ranch were made parties. SRP moved to drop Mr.
4 Smith as a party and to limit the participation of Mr. Miller. In
5 Procedural Order Number Three, dated June 20, 1994, SRP's motions
6 were denied as untimely.

7 On the first day of hearing, Whispering Ranch residents James
8 Osborn and Penny Osborn were made parties to the proceedings, as
9 represented by Thomas T. Rapp, of the Arizona Senior Citizens Law
10 Project. Mr. Rapp was also granted status to appear as amicus
11 curiae. Mr. Rapp put on the case for Messrs. Miller and Smith, as
12 well as for the Osborns. These parties will collectively be
13 referred to from time to time as the "Whispering Ranch Parties."

14 The hearing commenced on June 20, 1994 and concluded on June
15 27. Oral arguments were held on June 27, 1994, and the Committee
16 deliberated on July 12, 1994. No post-hearing briefs or memoranda
17 were filed.

DISCUSSIONI. JURISDICTION

18
19 Under the act governing the activities of the Committee, A.R.S.
20 §§ 40-360 through 40-360.13 (the "Siting Act"), a certificate of
21 environmental compatibility issued by the Committee ("CEC") is not
22 effective until it is "affirmed and approved by an order of the
23 commission." A.R.S. § 40-360.07. A.R.S. § 40-360.11 provides:

24
25 *Subject to the rights to judicial review*
26 *recognized in §§ 40-254 and 40-360.07, no court*
in this state has jurisdiction to hear or
determine any case or controversy concerning

1 any matter which was or could have been deter-
2 mined in a proceeding before the committee or
3 the commission under this article or to stop or
4 delay the construction or operation of any
5 facility, except to enforce compliance through
6 the procedures established by article 3 of this
7 chapter [A.R.S. §§ 40-241 through 40-255].

8 (Emphasis added.) SRP contends that the Commission lacks jurisdic-
9 tion to reconsider decisions confirming CECs, arguing that A.R.S.
10 § 40-254 (which provides for judicial review of Commission deci-
11 sions) is the only non-Siting Act statute applicable.

12 SRP's reading of A.R.S. § 40-360.11 is too narrow. For
13 example, when section 40-254 is referenced, A.R.S. § 40-253 (which
14 provides for rehearings of Commission decisions) is automatically
15 included, because an application for rehearing is a jurisdictional
16 prerequisite to a judicial review proceeding under section 40-254.
17 Also, section 40-360.11 incorporates the provisions of the entire
18 Article 3 of Chapter 2 of Title 40, Arizona Revised Statutes, to
19 "enforce compliance" with a CEC and with a Commission decision
20 confirming or modifying a CEC. Article 3 includes not only A.R.S.
21 §§ 40-253 and 40-254, but also other general statutes setting out
22 procedures for investigations and hearings by the Commission. If
23 SRP were correct that the only general Commission statute applicable
24 to Siting Committee proceedings is section 40-254, this entire
25 portion of section 40-360.11 would be superfluous, a situation to
26 be avoided if at all possible in statutory construction. *Union Rock
& Materials Corp. v. Scottsdale Conference Center*, 139 Ariz. 268,
678 P.2d 453 (App. 1983); cf. *Chaparral Development v. RMED
International, Inc.*, 170 Ariz. 309, 823 P.2d 1317 (App. 1992) (court

1 must harmonize apparently conflicting language of different parts
2 of the statute to give effect to both). Article 3 contains A.R.S.
3 § 40-252, which provides:

4 The commission may at any time, upon
5 notice to the corporation affected, and after
6 opportunity to be heard as upon a complaint,
7 rescind, alter or amend any order or decision
8 made by it. When the order making such re-
9 scission, alteration or amendment is served
upon the corporation affected, it is effective
as an original order or decision. In all
collateral actions or proceedings, the orders
and decisions of the commission which have
become final shall be conclusive.

10 When necessary "to enforce compliance [with a CEC and a confirming
11 Commission decision]," the Commission's powers under § 40-252 may
12 be invoked, as they have been in this proceeding.

13 There is longstanding precedent for the exercise by the
14 Commission of its powers under A.R.S. § 40-252 in proceedings under
15 the Siting Act. The Committee granted Tucson Gas & Electric Co.
16 (now Tucson Electric Power Co.) ("TGE") a CEC in Case No. 12 for a
17 500 kV transmission line from the Arizona-New Mexico border to Vail
18 Substation; the CEC was confirmed by Commission order of March 7,
19 1975. TGE filed an application asking for reconsideration and
20 modification of the order, to permit TGE to build the line either
21 as a 500 or as a 345 kV line. The application was granted by the
22 Commission, which found that it had power to do so under A.R.S. §
23 40-252. After hearing the CEC was modified as requested by Decision
24 No. 46262. Thereafter, TGE applied for a second modification of the
25 CEC to permit a seventeen-mile segment to be constructed with
26

1 double-circuit 345 kV towers. After hearing pursuant to A.R.S. §
2 40-252, this application was granted in Decision No. 48059.

3 In this case, the issues addressed under A.R.S. § 40-252 have
4 been limited to those of a jurisdictional nature, given the fact
5 that the CEC and confirming Decision No. 54792 were entered nearly
6 nine years ago. Although § 40-252 may arguably permit the Commis-
7 sion to reopen a decision confirming a CEC on even broader grounds,
8 in this case the Commission confined its inquiry to matters that
9 might properly be raised this long after entry of an order under
10 Arizona Rules of Civil Procedure 60(c)¹, which provides:

11 On motion and upon such terms as are just
12 the court may relieve a party or a party's
13 legal representative from a final judgment,
14 order or proceeding for the following reasons:
15 . . . (3) fraud (whether heretofore denominated
16 intrinsic or extrinsic), misrepresentation or
17 other misconduct of an adverse party; (4) the
18 judgment is void; . . . or (6) any other reason
19 justifying relief from the operation of the
20 judgment. The motion shall be filed within a
21 reasonable time, and for reasons (1), (2) and
22 (3) not more than six months after the judgment
or order was entered or proceeding was taken.
A motion under this subdivision does not affect
the finality of a judgment or suspend its
operation. This rule does not limit the power
of a court to entertain an independent action
to relieve a party from a judgment, order or
proceeding, . . . or to set aside a judgment
for fraud upon the court. The procedure for
obtaining any relief from a judgment shall be

23 ¹ A.A.C. R14-3-101 provides in part:

24 In all cases in which procedure is set forth
25 neither by law, nor by these rules, nor by
26 regulations or orders of the Commission, the
Rules of Civil Procedure for the Superior Court
of Arizona as established by the Supreme Court
of the state of Arizona shall govern.

1 by motion as prescribed in these rules or by an
2 independent action.

3 **A. The Notice Issue**

4 One of the issues raised by Messrs. Miller and Smith is that
5 residents of Whispering Ranch did not receive legally-adequate
6 notice of the original Committee proceedings in 1985. Public notice
7 of Committee hearings is required by A.R.S. § 40-360.04 and
8 prescribed by A.A.C. R14-3-208. It has long been held that
9 proceedings of the Commission held in violation of statutory notice
10 requirements are void, as the Commission is without jurisdiction in
11 such cases. *Gibbons v. Ariz. Corp. Comm'n*, 95 Ariz. 343, 390 P.2d
12 582 (1964); *Metropolitan Lines v. Brooks*, 70 Ariz. 344, 220 P.2d 480
13 (1950); see *Walker v. De Concini*, 86 Ariz. 143, 341 P.2d 933 (1959).
14 Thus, if Messrs. Miller and Smith are correct that notice was
15 legally inadequate, the CEC would be void, as would the Commission
16 order confirming it. This challenge is one contemplated by
17 Ariz.R.Civ.P. 60(c)(4). A void judgment may be attacked at any
18 time. 11 Charles A. Wright & Arthur R. Miller, *Federal Practice and*
19 *Procedure* § 2862 (1973)[hereinafter 11 Wright & Miller]; see also
20 7 James W. Moore & Jo Desha Lucas, *Moore's Federal Practice*
21 ¶60.24[4] (1993)[hereinafter 7 Moore's Federal Practice].²

22 **B. The Extrinsic Fraud Issue**

23 The essential allegation underlying this issue is that a
24 representative of Salt River Project made misleading statements to

25 ² Ariz. R. Civ. P. 60(c) is the equivalent of Fed. R. Civ. P.
26 60(b); therefore, interpretations of equivalent the federal rule are
persuasive as to the meaning of the State rule. *Edwards v. Young*,
107 Ariz. 283, 486 P.2d 181 (1971).

1 Mr. Alford Smith and to a Mr. Robert Mills, which caused them to
2 refrain from attending the 1985 Committee hearing. This issue falls
3 under Rule 60(c)(3), "fraud (whether heretofore denominated
4 intrinsic or extrinsic)." Although a motion brought under Rule
5 60(c)(3) must be brought "not more than six months after the
6 judgment or order was entered," it has long been held that an
7 independent action based on allegations of extrinsic fraud may be
8 maintained beyond the limitation imposed by the rule. See *Kupferman*
9 *v. Consolidated Research & Manufacturing Corp.*, 459 F.2d 1072 (2d
10 Cir. 1972). A misrepresentation by one party that deprives an
11 opposing party of his right to appear in court would be considered
12 extrinsic fraud. See *United States v. Throckmorton*, 98 U.S. 61, 25
13 L.Ed. 93 (1898). Because the complaint on this issue (by the
14 Commission on its own motion or by Messrs. Miller and Smith) could
15 be considered the equivalent of an independent action, the six-month
16 limitation does not govern. Alternatively, A.R.S. § 40-252 contains
17 no temporal limitations equivalent to those of Rule 60(c), and the
18 former provision governs if inconsistent with Rule 60(c). A.A.C.
19 R14-3-101.

20 C. The Fraud on the Court Issue

21 As provided in Rule 60(c), fraud on the court [tribunal] may
22 be raised at any time. 7 *Moore's Federal Practice* ¶ 60.33; 11
23 *Wright & Miller* § 2870.

24 D. The DC-AC Issue

25 The substantive issue considered in this proceeding may be
26 summarized as follows. SRP was granted a CEC to build a 500 kV DC

1 line. However, SRP is now building a 500 kV AC line that later may
2 be converted to DC. The question is whether the 1985 CEC can be
3 construed as authorizing the AC line, or whether SRP must apply for
4 a new or modified CEC to authorize the line being built. This is
5 a jurisdictional issue: if the 1985 CEC does not encompass the AC
6 line being built, it is void as to the new line and SRP is without
7 jurisdiction to build that line without applying for, and receiving,
8 a new or amended CEC.

9 **II. LACHES**

10 SRP contends that Messrs. Miller and Smith are too late in
11 raising the Notice, Extrinsic Fraud and Fraud on the Court Issues
12 — that they are barred by laches.³ In addition, Adam Miller moved
13 to prevent the introduction by Salt River Project of evidence of
14 financial losses that would be sustained by the 1985 applicants if
15 the line were delayed or rerouted as a result of these proceedings.⁴
16 This evidence is in effect part of SRP's laches defense.

17 **A. The Notice Issue**

18 A void judgment may be attacked at any time; the doctrine of
19 laches is inapplicable. 11 Wright & Miller § 2862; 7 Moore's Federal
20 Practice ¶ 60.24[4].
21
22
23

24 ³ "Salt River Project's Prehearing Memorandum Regarding the
25 Untimeliness of the Whispering Ranch Residents' Request to Rescind
or Modify the CEC," dated June 16, 1994.

26 ⁴ "Motion to Prevent Irrelevant Financial Evidence," filed
June 13, 1994.

B. The Extrinsic Fraud Issue

1
2 As noted in part I.B, above, A.R.S. § 40-252 contains no time
3 limits for reopening Commission decisions. However, it has been
4 held that Commission grants of certificates of public convenience
5 and necessity may be rescinded, altered or amended under A.R.S. §
6 40-252 only when the public interest would be served by such an
7 action. *James P. Paul Water Co. v. Ariz. Corp. Comm'n*, 137 Ariz.
8 426, 671 P.2d 404 (1983). The court came to this conclusion because
9 the Commission's authority to grant a certificate of public
10 convenience and necessity "is controlled by the public interest."
11 137 Ariz. at 428, n.2, 671 P.2d at 406, n.2. By analogy, A.R.S. §
12 40-360.06(A)(8) requires the Committee to consider

13 [t]he estimated cost of the facilities and site
14 as proposed by the applicant and the estimated
15 cost of the facilities and site as recommended
16 by the committee, recognizing that any significant
17 increase in costs represents a potential
18 increase in the cost of electric energy to the
19 customers or the applicant.

20 (Emphasis added.) If it is determined that SRP did in fact commit
21 extrinsic fraud, which kept Whispering Ranch residents from
22 attending the original hearing, it appears reasonable to consider
23 both claims of laches on the part of Messrs. Miller and Smith and
24 claimed additional costs to SRP if the line must be rerouted as a
25 result of additional proceedings.

C. The Fraud on the Court [Tribunal] Issue

26 Laches does not preclude relief for fraud on the court
[tribunal]. Ariz. R. Civ. P. 60(c); 7 *Moore's Federal Practice* ¶
60.33; 11 *Wright & Miller* § 2870.

1 **III. Decision No. 55471**

2 Decision No. 55471, the order confirming Decision No. 54792,
 3 was docketed March 12, 1987. It is undisputed that Decision No.
 4 55471 was entered without notice and hearing. As noted in part I.A,
 5 above, proceedings of the Commission held in violation of statutory
 6 notice requirements are void, as the Commission is without jurisdic-
 7 tion in such cases. *Gibbons v. Ariz. Corp. Comm'n*, 95 Ariz. 343,
 8 390 P.2d 582 (1964); *Metropolitan Lines v. Brooks*, 70 Ariz. 344, 220
 9 P.2d 480 (1950); see *Walker v. De Concini*, 86 Ariz. 143, 341 P.2d
 10 933 (1959). Accordingly, Decision No. 55471 is void and should be
 11 rescinded.

12 **III. THE MERITS**

13 **A. The Notice issue**

14 Public notice is required for Committee proceedings by A.R.S.
 15 § 40-360.04(A). The required notice is specified in A.A.C. R14-3-
 16 208(C), which provides:

17 "Public notice," as used herein, shall
 18 mean two publications in a daily or weekly
 19 newspaper of general circulation within the
 20 general area in which the proposed plant or
 21 transmission line is proposed to be located.
 22 Such notice shall contain a general description
 of the substance and purpose of such hearing.
 If a transmission line is proposed to be locat-
 ed in more than one county, publication shall
 be made in each county wherein the line is
 proposed to be located.

23 The evidence establishes that the requisite notice was published in
 24 *The Arizona Republic*, *The Phoenix Gazette*, and the *Wickenburg Sun*.⁵

25 _____
 26 ⁵ Because this proceeding focused on the Whispering Ranch
 area, the evidence of notice was confined to papers likely to be
 seen by Whispering Ranch residents. However, the Commission takes

1 There was also testimony that no newspapers were circulated in the
2 Whispering Ranch area in 1985, but that many residents travelled
3 regularly to, or worked in, either Phoenix or Wickenburg. Alford
4 Smith testified that he had seen the notice in one of the Phoenix
5 papers, although at the time he was living in Phoenix, and merely
6 contemplating a move to Whispering Ranch.

7 SRP also offered evidence that its employees had posted hearing
8 notices at several points in the Whispering Ranch area and on its
9 approaches, and that the notices were still posted after the hearing
10 when an employee went to remove them. In addition, Exhibit SRP 68,
11 a letter to Nils I. Larson from Robert R. Mills, dated August 27,
12 1985, stated in part:

13 After reviewing the alternative routes for
14 the Mead-Phoenix DC Intertie Project with a
15 number of the property owners and investor
16 [sic] in the area, and having them bring us
17 their comments after you "posted" the property
18 we vote NO to the First, and Third Alternatives.

19 (Emphasis added.) On the other hand, several residents testified
20 that they had not seen the posted notices.

21 The Whispering Ranch Parties contend that, because the three
22 newspapers were not actually physically "circulated" on Whispering
23 Ranch in 1985, there was no adequate public notice. The rule
24 provides that the newspaper shall be "of general circulation within
25 the general area in which the proposed plant or transmission line
26 is proposed to be located." (Emphasis added.) The Commission is

notice of the files of the Committee hearing in 1985, and finds that
similar public notice was published in other counties traversed by
the route and the alternatives contained in the application.

1 of the opinion that the Phoenix and Wickenburg papers satisfy the
2 criterion of being circulated in the general area. Anyone resident
3 in the Whispering Ranch area in 1985 almost certainly had to travel
4 either to Phoenix or Wickenburg for supplies and, in many cases, for
5 employment. Any of these persons would have had access to a
6 newspaper during such visits. Although there was no evidence that
7 any resident received a newspaper by mail, mail delivery would
8 certainly have been possible. To require that a newspaper be
9 actually delivered to persons in each discrete area along a
10 transmission line route would make notice by publication legally
11 impossible in instances such as this. The Commission concludes that
12 the notice prescribed by R14-208(C) is legally adequate and that the
13 required notice was given prior to the 1985 proceedings.

14 The Whispering Ranch Parties also contend that the notices
15 posted by SRP were not adequate. These notices were not required
16 by law, and the Commission was not directed to any precedent that
17 would impose on SRP any particular standard of performance for such
18 a voluntary act. In any event, the preponderance of the evidence
19 establishes that the notices were posted, as claimed by SRP, and
20 that they remained posted until after the 1985 hearing. Moreover,
21 Mr. Mills's letter (Exhibit SRP 68) seems to be an acknowledgement
22 of the posting of the notices.

23 **B. The Extrinsic Fraud Issue**

24 The Whispering Ranch Parties contend that Nils Larson, an SRP
25 employee, made misleading statements to Alford Smith that caused Mr.

26

1 Smith to refrain from attending the 1985 Committee hearing.⁶ Mr.
2 Larson's and Mr. Smith's testimony is in conflict. Mr. Larson
3 testified that at no time prior to the 1985 hearing did he indicate
4 to Mr. Smith that he should not or need not attend the hearing.
5 [III, 427] Mr. Larson also testified that he did not recall having
6 any meetings with Mr. Smith prior to the hearing. He also testified
7 that Mr. Smith and Mr. Mills had made these same allegations and
8 others in a letter to Mr. Gary Frey of the Western Area Power
9 Administration, who then convened a meeting attended by, among
10 others, Messrs. Mills, Smith and Larson. Mr. Larson testified that
11 he was prepared to refute these allegations at the meeting, but
12 neither Mr. Smith nor Mr. Larson brought up the issue.

13 Mr. Smith testified that he did meet with Mr. Larson shortly
14 before the Committee hearing on September 4, 1985. At that time,
15 Mr. Larson showed Mr. Smith Mr. Mills's letter of August 27, 1985.
16 This exhibit (SRP 68) is stamped "Received, Aug 30 1985, Environ.
17 Serv. Dept." Mr. Smith did not recall Mr. Larson's precise words,
18 but he testified that "I was led to believe, by the totality of what
19

20 ⁶ The Whispering Ranch Parties claim that Mr. Larson made
21 similar statements to Robert Mills. Mr. Larson testified that he
22 had one meeting with Mr. Mills prior to the September 1985 hearing,
23 that he does not recall making any statements to Mr. Mills regarding
24 the outcome of the hearing, and that he does not recall that Mr.
25 Mills inquired about the likely outcome of the hearing. Mr. Larson
26 also testified that he was sure he would remember making such
statements because of the importance of the matter and because it
would have been out of character for him to do so. The Whispering
Ranch Parties did not offer Mr. Mills as a witness, either in person
or by deposition, and failed to provide a legally-sufficient reason
why his testimony was not proffered. Under these circumstances, the
Commission must assume that Mr. Mills's testimony would not
contradict that of Mr. Larson and would not support the allegations.

1 he [Mr. Larson] said, that there was no need to go and there was
2 nothing to worry about, mainly because SRP wanted to stay with the
3 preferred route." In other words, Mr. Smith inferred from what Mr.
4 Larson said that there was no need to attend the Committee hearing;
5 Mr. Larson did not explicitly say there was no need to attend.
6 Apparently, the primary reason that Mr. Smith inferred there was no
7 need to attend was that SRP continued to support its preferred
8 route. The Commission finds that, assuming the meeting did in fact
9 occur, whatever Mr. Larson said to Mr. Smith did not constitute an
10 attempt to dissuade Mr. Smith from attending the hearing; thus, no
11 extrinsic fraud was practiced.

12 **C. The Fraud on the Court [Tribunal] Issue**

13 A fraud on the court is fraud that

14 does or attempts to defile the court itself, or
15 is a fraud that is perpetrated by officers of
16 the court so that the judicial machinery cannot
perform in the usual manner its impartial task
of adjudging cases that are presented for
adjudication.

17 *Kupferman v. Consolidated Research & Manufacturing Corp.*, 459 F.2d
18 1072, 1078 (2d Cir. 1972) (quoting 7 Moore, *Federal Practice* ¶ 60.33
19 at 515 [1971 ed.]) (emphasis added). As the *Kupferman* court
20 observed, "[An attorney's] loyalty to the court, as an officer
21 thereof, demands integrity and honest dealing with the court. And
22 when he departs from that standard in the conduct of a case he
23 perpetrates a fraud upon the court." 459 F.2d at 1078 (quoting 7
24 Moore, *Federal Practice* ¶ 60.33 at 513); *H.K. Porter Co., Inc. v.*
25 *Goodyear Tire & Rubber Co.*, 536 F.2d 1115 (6th Cir. 1976); *Mallonee*
26 *v. Grow*, 502 P.2d 432 (Alaska 1972); *Sutter v. Easterly*, 189 S.W.2d

1 284 (Mo. 1945) (when an attorney sponsors perjured testimony, it
2 constitutes fraud on the court).

3 Rule 60(b), Federal Rules of Civil Procedure,⁷ recognizes the
4 inherent power of a court to grant relief to a party from a judgment
5 which has been procured by fraud on the court. In *Alberta Gas*
6 *Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9, 12-13 (2d Cir. 1981),
7 the court recognized "the inherent power of any administrative
8 agency to protect the integrity of its own proceedings" and noted
9 that "[t]he . . . power of a federal court to investigate whether
10 a judgment was obtained by fraud . . . has been applied to proceed-
11 ings before administrative agencies." See also *WKAT, Inc. v. FCC*,
12 296 F.2d 375 (D.C. Cir. 1961), cert. denied, 368 U.S. 841 (1961).

13 In this case, if fraud on the court [tribunal] has been
14 committed, it would be because the following testimony of Burton M.
15 Apker, counsel for Douglas Ranch, given at the 1985 Committee
16 hearing was perjured:

17 The problem with Double P [Whispering
18 Ranch] is that it was not planned, that it was
19 structured to cause an environmental financial
20 disaster, which it did, and the long-term
result of the subdivision up there has been a
total of five or six trailer homes or small
houses over a long period of time.

21 (Transcript at 117.)

22 In the present hearing, Mr. Apker testified that during his
23 1985 testimony, he was thinking of the transmission line corridor,
24 not the entire Whispering Ranch area. He testified also that his

25 _____
26 ⁷ As noted above, this rule is the equivalent of Rule 60(c),
Arizona Rules of Civil Procedure.

1 information came from his client, Robert D. Wilson, who was
2 president of Douglas Land Corporation at the time, and that he
3 understood Mr. Wilson to be speaking of the corridor. Mr. Apker
4 testified that he did not remember having been at Whispering Ranch
5 before giving his testimony. Mr. Apker also testified that he did
6 not intend to mislead, or misstate anything to, the Committee or the
7 Commission. There was no other testimony on this issue, and the
8 Whispering Ranch Parties did not cross-examine Mr. Apker. They
9 apparently relied on other factual material elicited during the
10 hearing that contradicted Mr. Apker's 1985 testimony. The Commis-
11 sion finds that there is no way at this time to determine whether
12 or not Mr. Apker, in 1985, committed an intentional fraud on the
13 court [tribunal]; accordingly, Decision No. 54792 cannot be
14 overturned on this ground at this time.

15 **D. Overall Inequitable Conduct of SRP**

16 In addition to the notice, extrinsic fraud and fraud on the
17 court [tribunal] issues, during the hearing the Whispering Ranch
18 Parties for the first time suggested that SRP's overall conduct at
19 the time of the 1985 proceeding rendered it inequitable that
20 Decision No. 54792 be allowed to stand. The Commission finds no
21 evidence to support this contention, especially in light of the fact
22 that we find no merit in the notice, extrinsic fraud and fraud on
23 the court [tribunal] issues.
24
25
26

1 E. The DC-AC Issue

2 By notice in the Federal Register of Friday, September 7,
3 1990,⁸ the Western Area Power Administration (WAPA) gave notice that
4 the project sponsors proposed to construct the Mead-Phoenix 500 kV
5 line as "a 500 kV AC-transmission line with the capability to be
6 upgraded to \pm 500-kV DC when warranted by increased demand for
7 transmission capacity." However, SRP did not, at that time or any
8 time subsequent, either file an application with the Committee for
9 a new or amended certificate or an application with the Commission
10 requesting that the Commission, pursuant to A.R.S. § 40-252, amend
11 Decision No. 54792 to permit the line to be built as proposed.

12 As required by A.R.S. § 40-360, SRP did file with the Commis-
13 sion Ten-Year Plans in January 1986 through January 1989 (Exhibits
14 40 through 43, respectively), showing the Mead-Phoenix 500 kV DC
15 line, as authorized by the Committee in 1985. The January 1989
16 report reads as follows:

17 SRP is involved in a joint study of a \pm
18 500kV direct current transmission line which
19 would connect the Mead Substation, near Hoover
20 Dam in Nevada, with the Eastwing Substation
21 area. The proposed in-service date of this
22 line is 1994. Approval was granted by the
23 Arizona Power Plant and transmission Line
24 Siting Committee in late 1985.

25 (Emphasis added.) This information varied from that supplied in
26 January 1986 (Exhibit SRP 40) primarily in the change of the
proposed in-service date from 1991 to 1994.

⁸ 55 Fed. Reg. 36,864 (1990) (Exhibit SRP 49).

1 The January 1990 Ten-Year Plan (Exhibit SRP 44) contained the
2 following information:

3 SRP is involved in a joint study of a
4 500kV transmission system which will link
5 southern Nevada with the Phoenix metropolitan
6 area. *The proposed 500kV transmission line
7 will be constructed initially as 500kV alter-
8 nating current (AC) with the capability of
9 being converted to direct current (DC) in the
10 future. The interim terminations for the AC
11 line will be McCullough II Substation, a new
12 substation to be located in southern Nevada,
13 and the existing Westwing Substation north of
14 Sun City. Ultimately the line will be con-
15 verted to DC and the terminations will be moved
16 from McCullough II to the existing Mead Substa-
17 tion in Nevada and from Westwing to Eastwing,
18 a new Converter Station Site to be constructed
19 in northwest Phoenix. The proposed in-service
20 date of the interim AC line is 1994. Approval
21 for this transmission line was granted by the
22 Arizona Power Plant and Transmission Line
23 Siting Committee in late 1985.*

14 (Emphasis added.) The filings for January 1991 through January 1994
15 (Exhibits SRP 45 through 48, respectively) are substantially similar
16 to that of January 1994, except that they show the planned in-
17 service date as 1995.

18 SRP offered these Ten-Year Plan filings apparently to show that
19 the Commission had notice of the planned change in the configuration
20 of the Mead-Phoenix line. However, the filings after the decision
21 to change the configuration do not call attention to the fact that
22 the plans had changed, and each of those reports misleadingly
23 recites that the AC (convertible to DC) line had been approved by
24 the Committee in 1985. Thus, as actual notice of the proposed
25 change, these filings fall far short of being informative. In
26 addition, the filing of a Ten-Year Plan does not relieve SRP of

1 filing requisite applications for permission to construct facili-
2 ties. The Commission rejects the implied argument that the filing
3 of a Ten-Year Plan somehow shifts the burden to the Commission to
4 seek out a utility and require that it file an application for an
5 amended CEC or for an amendment to a CEC if the applicant's plans
6 change after the initial granting of the CEC.

7 The ultimate issue is whether the change in the planned
8 configuration of the line requires that SRP either apply to the
9 Committee for an amended CEC, or to the Commission pursuant to
10 A.R.S. § 40-252 for an amendment to Decision No. 54792, to permit
11 the line to be built initially as an AC line, with the later option
12 of converting it to DC.

13 The first question to be addressed is whether a new CEC or a
14 modification to a CEC must be sought whenever a utility contemplates
15 any modification, however minor, to a transmission line for which
16 a CEC has been granted. SRP, in a memorandum entitled "Salt River
17 Project's Prehearing Memorandum on Standard for When Amended
18 Certificate of Environmental Compatibility is Required" (the "SRP
19 Memorandum"), urges that amendments should be limited to instances
20 in which modifications would cause a "substantial change" in the
21 anticipated environmental impacts of the transmission line.

22 The Siting Act is silent on the subject of when modifications
23 in a CEC should be sought, if ever.⁹ However, as SRP apparently

24 ⁹ A.R.S. § 40-360.04(A) provides in part:

25 If the committee subsequently proposes to
26 condition the certificate on the use of a site
other than the site or alternative sites gener-

1 recognizes, it is unrealistic to think that the Legislature intended
2 that no change to a planned transmission line after issuance of a
3 CEC should require a modification of the CEC. Such an interpreta-
4 tion would render the Siting Act virtually meaningless. Any
5 applicant could propose a very environmentally-innocuous project
6 and, after receiving a CEC, modify its plans to suit itself. As a
7 New York appellate court found:

8 While strict compliance with prescribed
9 procedures is required, nothing in [the State
10 Environmental Quality Review Act] or its regu-
11 lations expressly calls for issuance of a
12 [supplemental environmental impact statement].
13 Indeed, a supplemental statement is not even
14 mentioned. However, an agency making a final
15 decision about a project must make findings
16 that the environmental concerns of the act have
17 been considered and satisfied . . . , and from
18 this it may reasonably be inferred that an
19 agency must prepare a [supplemental environmen-
20 tal impact statement] if environmentally sig-
21 nificant modifications are made after issuance
22 of a [final environmental impact statement].

23 *Jackson v. New York State Urban Development Corp.*, 494 N.E.2d 429,
24 444 (N.Y. App. 1986). Similarly, expression in the legislative
25 intent of the Siting Act that "it is the purpose of the article to
26 provide a single forum for the expeditious resolution of all matters
concerning the location of electric generating plants and transmis-

27 ally described in the notice and considered at
28 the hearing, a further hearing shall be held
29 thereon after public notice.

30 This section does not address a situation in which a CEC has been
31 issued *before* a new route is desired; therefore, it is not directly
32 on point. However, the existence of the section is some indication
33 that the Legislature is aware that projects can change after the
34 initial notice has been given and, if they do, renoticing (and
35 rehearing) may be required.

1 sion lines in a single proceeding," 1971 Ariz. Sess. Laws, ch. 67,
2 § 1, is a strong indication that substantial changes in such lines
3 or generating plants after issuance of CECs would have to be
4 addressed by applications for modifications of the CECs.

5 The SRP Memorandum discussed several statutes in which the
6 "substantial change" test has been adopted as the test of whether
7 modifications to environmental impact statements or to rules must
8 be undertaken. Also, SRP called attention to the Arizona Adminis-
9 trative Procedure Act, in which section 41-1025 governs when a
10 proposed administrative rule is deemed to be modified so signifi-
11 cantly that it must be renoticed before final adoption:

12 A. An agency may not adopt a rule that
13 is *substantially different* from the proposed
14 rule contained in the notice of proposed rule
15 adoption filed with the secretary of state
16 pursuant to § 41-1022. However, an agency may
17 terminate a rule making proceeding and commence
18 a new rule making proceeding for the purpose of
19 adopting a substantially different rule.

20 B. In determining whether an adopted
21 rule is *substantially different* from the pub-
22 lished proposed rule on which it is required to
23 be based, all of the following must be consid-
24 ered:

25 1. The extent to which all persons
26 affected by the adopted rule should have under-
stood that the published proposed rule would
affect their interests.

2. The extent to which the subject
matter of the adopted rule or the issues deter-
mined by that rule are different from the
subject matter or issues involved in the pub-
lished proposed rule.

3. The extent to which the effects of
the adopted rule differ from the effects of the
published proposed rule if it had been adopted
instead.

1 (Emphasis added.) The Commission finds that the "substantial
2 change" criterion is appropriate for application in this case, and
3 that the tests suggested in A.R.S. § 41-1025 are appropriately
4 utilized in applying this criterion.

5 The change from a 500 kV DC line to a 500 kV AC line that is
6 later convertible to DC results in a number of differences between
7 the line SRP is building and the line that the Committee and
8 Commission in 1985 authorized it to build. The towers themselves
9 are changed somewhat in design and in dimensions. There are three,
10 rather than two, conductors. The converters (which change direct
11 current to alternating current) are not needed at this time, thereby
12 saving considerable present expense. Also, the possibility lurks
13 that SRP would never choose to convert the line to DC, but instead
14 might seek authorization for a parallel second AC line along the
15 same route.

16 By far the most significant change caused by conversion to AC,
17 however, has to do with potential biological and health effects of
18 the line. The evidence established that the electromagnetic field
19 ("EMF") generated by a high voltage DC line such as that authorized
20 by Decision No. 54792 does not cause any known or suspected
21 biological and health effects on human beings. However, the
22 evidence also established that the EMF from a high voltage AC line
23 such as SRP has currently under construction does have effects on
24 both human beings and animals because of what is called a "coupling
25 effect." The Whispering Ranch Parties offered into evidence a
26 number of articles discussing studies that purport to show elevated

1 incidence of leukemia in children living near high-voltage power
2 lines.¹⁰ These articles were admitted into evidence for the limited
3 purpose of showing that a controversy exists in the scientific
4 community over this issue. SRP offered evidence that these studies
5 suffer from methodological flaws that prevent any conclusive
6 findings to be drawn from them.¹¹

7 The articles submitted by SRP establish that the issue is far
8 from definitively resolved either way. For example:

9 The possibility that exposure to electro-
10 magnetic fields causes cancers, including
11 childhood cancers, is one of continuing public
12 concern and scientific debate. . . .

13

14 The possibility that magnetic fields
15 associated with electricity transmission may
16 cause some cases of childhood cancer cannot be
17 dismissed, but the lack of consistency among
18 published studies, and the absence of an ac-
19 cepted biologic explanation for such a rela-
20 tion, means that we have to conclude that at
21 present no causal relation has been estab-
22 lished. Results from the large case-control
23 studies of childhood cancer currently in prog-
24 ress will be awaited with great interest.

25 Gerald Draper, *Electromagnetic fields and childhood cancer*, British
26 Medical Journal, 307:884-85 (1993) (Exhibit SRP 111).

The possibility that exposure to extremely
low frequency (ELF) electromagnetic radiation
may increase risk of cancer has been studied
epidemiologically in human populations since

¹⁰ Exhibits WR 4 through 7 and 9.

¹¹ Exhibits SRP 111 through 124. Like Exhibits WR 4 through
7 and 9, Exhibits SRP 111 through 124 were admitted for the limited
purpose of establishing the existence of scientific controversy over
the biological and health effects of high voltage AC power lines.

1 the mid-1970's. Such studies continue, espe-
2 cially with respect to childhood cancers, but
3 are inconclusive. . . .

4 Further studies are needed, both
5 laboratory experiments and human observations,
6 to clarify this complex and difficult topic.

7 Clark W. Heath, Jr., *Extremely Low Frequency Electromagnetic*
8 *Radiation*, American Cancer Society Fact Sheet No. 2680 (1993) (Exhi-
9 bit SRP 113).

10 "In the absence of any unambiguous experimental
11 evidence to suggest that exposure to [extremely
12 low frequency] electromagnetic fields is likely
13 to be carcinogenic, in the broadest sense of
14 the term, the findings to date can be regarded
15 only as sufficient to justify formulating a
16 hypothesis for testing by further investiga-
17 tion."

18 J.A. Dennis, *New Evidence on the Possible Hazards of Electromagnetic*
19 *Fields*, *Radiation Protection Dosimetry*, 51:75-77 (1974) (quoting
20 *Electromagnetic Fields and the Risk of Cancer. Report of an*
21 *Advisory Group on Non-Ionising [sic] Radiation. Documents of the*
22 *NRPB 3(1) 1992.*) (Exhibit SRP 122).

23 While the possibility of a public health
24 concern has been raised in some epidemiological
25 studies, we do not yet have enough information
26 to say whether EMFs pose a health risk or not.
27 . . . It must be remembered that no safe or
28 unsafe levels have been determined.

29 *Environmental Protection Agency, Questions and Answers About Elec-*
30 *tric And Magnetic Fields (EMFs)*, 16, December 1992 (Exhibit SRP
31 118).

32 Based on the evidence before it, the Commission cannot conclude
33 that it has been conclusively established that persons living near

1 high-voltage AC power lines are subjected to increased risk of
2 adverse health effects. However, the evidence does establish that
3 the issue is still open. In other words, there are no studies that
4 conclusively establish that there are no adverse health effects from
5 living in proximity to high voltage AC power lines. Given the known
6 coupling effects, it is possible that human beings may suffer
7 adverse effects from living near high voltage AC power lines,
8 however remote that possibility may seem at this time.

9 One thing is certain, however: there is a great deal of public
10 concern over the possibility of adverse health effects, as is
11 demonstrated by the opposition mounted in this case by the Whisper-
12 ing Ranch residents and by the multitude of studies and articles
13 that address the issue.

14 Given the number of scientific studies that have been performed
15 and the high profile of the controversy in the scientific community,
16 as well as the concern among the general public over this issue, the
17 Commission regards the issue as significant and the decision to
18 convert from a DC line to an AC line as a substantial change
19 requiring an application for an amended CEC.

20 These health concerns did not arise when SRP requested
21 permission to build a 500 kV DC line. Thus, persons concerned with
22 this health issue (the "EMF Issue") were given no notice by the 1985
23 proceedings that the EMF Issue was a concern at all. Accordingly,
24 they would have had no reason to appear and protest the location of
25 the line. As discussed above, under A.R.S. § 41-1025(B) a modifica-
26 tion to a proposed rule would be considered to make the rule

1 substantially different unless "all persons affected by the adopted
2 rule should have understood that the published proposed rule would
3 affect their interests." Those persons interested in the EMF Issue
4 most certainly would not have realized that this issue might be
5 affected by the 1985 proceedings. By this criterion — suggested by
6 SRP — the conversion from DC to AC is a substantial change.

7 The application and evidence presented at the 1985 hearing
8 demonstrate that SRP understood that the EMF Issue was not an issue
9 because the line was to be a DC line, and the utility stressed that
10 fact in attempting to persuade the Committee to grant the CEC:

11 [A] static DC field, *unlike a changing AC*
12 *field*, is not able to induce a significant
13 electric field or current flow within organ-
14 isms, and so the overall probability that DC
electrical fields emanating from the transmis-
sion line would produce biological effects is
considered to be exceedingly small.

. . . .

15 There is a limited amount of data regard-
16 ing the biological effects of exposure to DC
17 electric fields. A review of this data does
18 not suggest that there is sufficient evidence
19 to establish the existence of such effects.
20 Furthermore, the magnitude of energy trans-
ferred from a DC electric field to biological
21 organisms is very small. It is, therefore,
highly unlikely that the DC electric field
found under the Mead-Phoenix DC Intertie Pro-
ject would produce biological effects.

. . . .

22 These findings strongly support the con-
23 clusion of the Participants that the DC trans-
24 mission line electric environment associated
25 with the proposed Mead-Phoenix DC Intertie
Project will not pose a risk to human health or
26 safety.

1 *Application for Certificate of Environmental Compatibility, Mead-*
2 *Phoenix DC Intertie Project, Exhibit J-2 at J-2-2, J-2-3 (emphasis*
3 *added).*

4 Equal DC and AC field strengths do not
5 produce the same electrical or biological
6 effects. The field coupling to organisms or
7 objects for the two cases are entirely differ-
8 ent. In the DC case, the electric field cou-
9 pling is resistive, with charge carried by
10 natural and corona-generated ions. For AC, the
11 coupling is capacitive and inductive, and is
12 the result of the changing electric magnetic
13 fields. Typically, the DC current coupled to
14 an object is several orders of magnitude small-
15 er than the induced current in an AC field of
16 comparable amplitude. Electromagnetic induc-
17 tion does not occur from DC because the current
18 flow which causes the magnetic field is unidi-
19 rectional.

20 Exhibit B-1 to *Application for Certificate of Environmental*
21 *Compatibility, Mead-Phoenix DC Intertie Project, at 5-18, 5-19.*

22 There is a limited amount of data regard-
23 ing the biological effects of exposure to DC
24 electric field. While some data have indicated
25 biological effects from this component, these
26 studies are not of sufficient quality to estab-
lish the existence of such effects, particular-
ly since the absence of a coupling mechanism
for transfer of electrical energy suggests that
direct biological effects from electrostatic
field exposure are unlikely. In sum, there is
no scientifically credible evidence to suggest
adverse health effects are attributable to this
HV DC environmental agent.

It can be concluded, based upon a review
of the literature available, that most of the
components of the HV DC field are of the same
order of magnitude as normal ambient levels of
these components and thus do not cause any
significantly greater risk to biological organ-
isms than the environment without a HV DC line.

Id. at 5-21, 5-22 (emphasis added).

1 SRP went to great lengths to differentiate DC from AC lines and
2 to highlight the lack of biological and health effects from DC
3 lines. None of the studies discussed in Exhibits SRP 111 through
4 124 and in WR 4 through 7 and 9 are mentioned in the Draft Environ-
5 mental Statement and do not appear in the bibliography contained in
6 Exhibit B-1 filed in the 1985 hearing, even though one of them, the
7 Wertheimer-Leeper study, had been conducted in 1979. The reason is
8 obvious: the studies have no relevance to a DC line. Having made
9 such a point of the differences in biological effects between DC and
10 AC current in its 1985 presentation, SRP is now on shaky ground in
11 arguing that the difference is so insignificant that the utility can
12 proceed without applying for a new CEC or a modification to the
13 existing CEC.

14 SRP's decision to change the configuration of the line without
15 approaching either the Committee or the Commission evinces a lack
16 of understanding as to the Committee/Commission role in the siting
17 of power plants and transmission lines. Although SRP quoted from
18 the purpose clause of the Siting Act portions which the utility
19 thought justified its course of action, SRP ignored other, relevant
20 portions. The purpose clause in its entirety reads:

21 The legislature hereby finds and declares
22 that there is at present and will continue to
23 be a growing need for electric service which
24 will require the construction of major new
25 facilities. It is recognized that such facili-
26 ties cannot be built without in some way
affecting the physical environment where the
facilities are located. The legislature fur-
ther finds that it is essential in the public
interest to minimize any adverse effect upon
the environment and upon the quality of life of
the people of the state which such new facili-

1 ties might cause. The legislature further
2 finds that present practices, proceedings and
3 laws relating to the location of such utility
4 facilities may be inadequate to protect envi-
5 ronmental values and take into account the
6 total effect on society of such facilities.
7 The lack of adequate statutory procedures may
8 result in delays in new construction and in-
9 creases in costs which are eventually passed on
10 to the people of the state in the form of
11 higher electric rates and which may result in
12 the possible inability of the electric suppli-
13 ers to meet the needs and desires of the people
14 of the state for economical and reliable elec-
15 tric service. Furthermore, the legislature
16 finds that existing law does not provide ade-
quate opportunity for individuals, groups
interested in conservation and the protection
of the environment, local governments, and
other public bodies to participate in timely
fashion in the decision to locate a specific
major facility at a specific site. The legis-
lature therefore declares it is the purpose of
this article to provide a single forum for the
expeditious resolution of all matters concern-
ing the location of electric generating plants
and transmission lines in a single proceeding
to which access will be open to interested and
affected individuals, groups, county and munic-
ipal governments and other public bodies to
enable them to participate in these decisions.

17 1971 Ariz. Sess. Laws ch. 67, § 1 (emphasis added). The Committee
18 is not charged only with conducting expeditious proceedings to save
19 utilities time and money. It is delegated the duty of making sure
20 that such projects will "minimize any adverse effect upon the
21 environment and upon the quality of life of the people of the state
22 which such new facilities might cause."

23 To enable the Committee to carry out its charge, the Legisla-
24 ture has not limited the Committee to sites selected by the utility-
25 applicants. Section 40-360.04(A) specifically provides that "[i]f
26 the committee subsequently proposes to condition the certificate on

1 the use of a site other than the site or alternative sites generally
2 described in the notice and considered at the hearing, a further
3 hearing shall be held thereon after public notice." Subsection E
4 provides that if the Committee's action results in increased costs,
5 the order shall so reflect, to assist the utility in subsequent
6 ratemaking proceedings. The Legislature recognized that in some
7 cases choices proposed by applicant-utilities would not be seen by
8 the Committee as consonant with its statutory charge, presumably
9 after public input provided new perspectives.

10 The decision of SRP to convert this line from DC to AC without
11 applying for an amended CEC undermines the very foundations of the
12 Siting Act. SRP's action in fact deprives the Committee and,
13 ultimately, the Commission of their statutory powers. The purpose
14 clause of the Siting Act, applied to this situation, seems clearly
15 to call for the *Committee* — not SRP — to decide whether the change
16 from a DC to an AC line requires reconsideration of the route
17 previously selected.

18 In making a decision pursuant to an application for an amended
19 CEC, the Committee would undoubtedly be asked to consider the
20 possible biological effects of conversion to AC. Even if harmful
21 effects were not conclusively proven in such a hearing, the
22 Committee could take note of the fact that *lack of harm* has likewise
23 not been conclusively proven. The Committee could also consider the
24 number of residents in proximity to the present route, and take into
25 account their fears and concerns. It might be that the Committee
26 would find that protection of the quality of life of the residents

1 of Whispering Ranch requires that the line be rerouted along an
2 unpopulated route segment. Obviously, it is one thing to site a
3 line in an already populated area, the residents of which might find
4 it difficult if not impossible to relocate even though the line's
5 presence is repugnant to them, and quite another to site it along
6 an unpopulated segment, where future residents could make a choice
7 whether to live in proximity to the line.¹² If SRP files an
8 application for an amended CEC, such a course of action would be
9 open to the Committee, as would a decision that the route should not
10 be changed. What is clear is that this choice cannot appropriately
11 be left to SRP.

12 The SRP Memorandum cites a number of cases, both state and
13 federal, upholding decisions of agencies not to file supplemental
14 environmental statements before proceeding with projects that were

15
16 ¹² A prospective resident who chose not to reside close to the
17 line would be practicing "prudent avoidance":

18 Prudent avoidance is an approach to
19 making decisions about risks. This decision-
20 making process is based on judgment and val-
21 ues, can be applied by groups and individuals,
22 and can be considered for all aspects of our
23 lives, not just EMFs. Prudent avoidance
24 applied to EMFs suggests adopting measures to
25 avoid EMF exposures when it is reasonable,
26 practical, relatively inexpensive and simple
to do. . . . Until the health issues are
clearer, it is entirely up to individuals to
decide if they wish to take actions which may
or may not reduce any potential health risks.

25 *Environmental Protection Agency, Questions and Answers About*
26 *Electric And Magnetic Fields (EMFs)*, 16, December 1992 (Exhibit SRP
118). On the other hand, if the route remains as originally sited,
Whispering Ranch residents could avoid living near the line only if
they move.

1 modified in some measure since the filing of required environmental
2 impact statements, on the grounds that the changes were not
3 "substantial." The Commission is of the opinion that the fact
4 situations in these cases can be distinguished from this case. Even
5 more important, however, is the fact that those situations are
6 distinguishable because, in those cases, the agencies that were
7 responsible for filing the environmental impact statements (and any
8 required supplements) had the authority to commence the projects
9 themselves, without any intervention, except through judicial
10 review. The only inquiry in those cases was whether the agencies
11 abused their discretion by deciding that there would be no substan-
12 tial change in the projects. By contrast, SRP cannot commence the
13 project without obtaining a CEC from the Committee, confirmed by the
14 Commission. Thus, in this case, the decision as to whether a
15 substantial change is being made in a project is necessarily a
16 decision for the Committee, subject to judicial review.

17 This same reasoning makes the decision of WAPA, in its
18 "Environmental Analysis of the Changes to the Proposed Mead-Phoenix
19 Transmission Project, February 1990" ("1990 Environmental Analy-
20 sis"), not to file a supplemental environmental impact statement
21 also irrelevant. Again, the decision is for the Committee, not
22 WAPA, as to whether an application for an amended CEC must be filed.
23 In any event, the Commission notes that the 1990 Environmental
24 Analysis is deficient in discussing the possible health effects of
25 the change from DC to AC current. For example, the narrative
26 section of the document fails to mention by name any of the studies

1 cited in the exhibits filed by SRP and by the Whispering Ranch
2 Residents. Furthermore, the narrative omits even a general
3 reference to various studies of the relationship between childhood
4 leukemia and electric power configurations that were conducted in
5 Europe prior to the publication of the 1990 Environmental Analysis,
6 and the bibliography lists no publications consulted concerning any
7 such tests. The big deficiency, from the perspective of the
8 Commission, however, is that the analysis ignores the statutory
9 responsibilities of the Committee and the Commission to decide
10 whether the change in line configuration is substantial or not.

11 Precedent in previous Siting Act proceedings indicates that an
12 issue of such moment as the conversion from DC to AC should have
13 prompted SRP either to apply to the Committee for an amended CEC or,
14 at the very least, to invoke the Commission's power under A.R.S. §
15 40-252 to modify the existing CEC by modification of Decision No.
16 54792. As noted in part I, above, TGE in 1975 twice asked the
17 Commission to act under section 40-252, once to permit the company
18 to build either a 500 or a 345 kV line, rather than just the
19 previously-authorized 500 kV line, and the second time to permit the
20 company to erect, on a seventeen-mile stretch of the route, towers
21 to accommodate an additional 345 kV line. Neither modification
22 appears to be as significant as the one proposed in this case, yet
23 TGE prudently sought authority before implementing the changes.

24 Although in the TGE case, the Commission may have appropriately
25 modified the CEC through A.R.S. § 40-252 actions, in this case, the
26 modification is of such significance that the Commission is of the

1 opinion that an application should be made to the Committee for an
2 amended certificate, so that the proposed change will be noticed to
3 permit the public input deemed so important by Legislature, as
4 evidenced in the purpose clause of the Siting Act, on the EMF Issue.

5 FINDINGS OF FACT

6 1. SRP was granted a CEC for the Mead-Phoenix 500 kV DC
7 Intertie Project, Case No. 70 of the Committee. The CEC was
8 confirmed by order of the Commission on November 26, 1985, in
9 Decision No. 54792.

10 2. After an informal investigation prompted by complaints of
11 residents of Whispering Ranch Estates that the Committee's decision
12 in Case No. 70 was induced by misrepresentations of certain
13 witnesses, the Commission, in Decision No. 55471, dated March 12,
14 1987, confirmed Decision No. 54792.

15 3. Decision No. 55471 was entered without notice and hearing.

16 4. The present proceeding was occasioned by an informal
17 complaint filed by Adam T. Miller, a resident of Whispering Ranch
18 Estates, and was instituted by the Commission on its own motion
19 pursuant to A.R.S. § 40-252.

20 5. This proceeding considered the following issues:

21 a. Whether SRP's decision to build the
22 line so that it can be initially energized as
23 an alternating current (AC) line, rather than
24 the direct current (DC) line that was applied
25 for and granted by the Committee, requires that
26 SRP file either a new or amended application.
[The "DC-AC Issue."]

b. Whether residents of Whispering Ranch
received legally adequate notice of the initial
Committee proceeding. [The "Notice Issue."]

1 c. Whether an employee of SRP made
2 misleading representations that caused resi-
3 dents of Whispering Ranch not to attend the
4 [initial] Siting Committee proceeding. [The
5 "Extrinsic Fraud Issue."]

6 d. Whether counsel for Douglas Ranch
7 committed a fraud on the Committee in his
8 representations as to the number of residences
9 in Whispering Ranch as of the time of the
10 initial Committee proceeding. [The "Fraud on
11 the Court (Tribunal) Issue.]

12 THE NOTICE ISSUE

13 6. The Whispering Ranch Parties allege that they did not
14 receive legally-sufficient notice of the 1985 Committee hearing, and
15 that as a result, the CEC issued as a result of that hearing is
16 void.

17 7. Public notice of Committee proceedings is required by
18 A.R.S. § 40-360.04(A); the form of notice is prescribed by A.A.C.
19 R14-3-208, which requires publication in "a newspaper of general
20 circulation within the general area in which the proposed plant or
21 transmission line is proposed to be located."

22 8. The required notice was published in *The Arizona Republic*,
23 *The Phoenix Gazette*, and the *Wickenburg Sun*, which are newspapers
24 of general circulation in the Phoenix and Wickenburg areas,
25 respectively.

26 9. Many, if not most, residents of Whispering Ranch Estates
get their supplies and work in the Phoenix and Wickenburg areas,
where they would have access to these papers.

10. Publication in the Phoenix and Wickenburg newspapers is
publication in the "general area" of Whispering Ranch Estates, as
required by R14-3-208.

1 11. In addition to publication of notice required by law, SRP
2 posted notice of the hearing at several communal areas of Whispering
3 Ranch Estates, which notices remained posted until after the 1985
4 Committee hearing. These notices were identical in content to the
5 notices published in the newspapers.

6 **THE EXTRINSIC FRAUD ISSUE**

7 12. The Whispering Ranch Parties contend that Nils Larson, an
8 employee of SRP, made statements to Robert Mills and to Alford Smith
9 that induced them not to attend the 1985 Committee hearing.

10 13. Mr. Larson made no statements either to Mr. Mills or to
11 Mr. Smith to the effect that they need not attend the 1985 Committee
12 hearing. Mr. Smith inferred that there was no need to attend
13 because SRP continued to support its preferred route, which ran
14 through Douglas Ranch, not through Whispering Ranch Estates. The
15 inference drawn by Mr. Smith from Mr. Larson's statements to him (if
16 any) that he need not attend the hearing to protect his interests
17 was not reasonable.

18 **THE FRAUD ON THE COURT [TRIBUNAL] ISSUE**

19 14. Certain Whispering Ranch residents claimed in 1987 that
20 the following sworn testimony of Burton M. Apker, counsel for
21 Douglas Ranch, given during the 1985 Committee hearing was perjured:

22 The problem with Double P [Whispering
23 Ranch] is that it was not planned, that it was
24 structured to cause an environmental financial
25 disaster, which it did, and the long-term
26 result of the subdivision up there has been a
total of five or six trailer homes or small
houses over a long period of time.

1 15. This issue was made a part of this hearing by the
2 presiding officer on his own motion in Procedural Order No. One.

3 16. Mr. Apker's testimony in this proceeding tends to negate
4 the charge of perjury. No contrary evidence was offered in this
5 proceeding. However, there is no way at this time to determine
6 whether Mr. Apker, in 1985, committed perjury before the Committee.

7 OVERALL INEQUITABLE CONDUCT OF SRP

8 17. During the hearing, the Whispering Ranch Parties for the
9 first time alleged that SRP's overall conduct at the time of the
10 1985 Committee hearing was so inequitable that the CEC and Decision
11 No. 54792 should be voided.

12 18. The Whispering Ranch Parties failed to offer proof of this
13 allegation, particularly in light of the fact that the Commission
14 has found adversely to the Whispering Ranch Parties on the Notice,
15 Extrinsic Fraud and Fraud on the Court [Tribunal] Issues.

16 THE DC-AC ISSUE

17 19. The electromagnetic field ("EMF") from high-voltage DC
18 line, such as the one approved by the CEC issued in Case No. 70, has
19 no known biological and health effects on human beings.

20 20. SRP emphasized the lack of such biological and health
21 effects in its application and supporting exhibits in Case No. 70.

22 21. The EMF from high-voltage AC lines, such as the one SRP
23 is constructing in place of the DC line approved in Case No. 70,
24 does have certain biological effects on human beings because of a
25 so-called "coupling effect."

26

1 22. Whether the coupling effect results in adverse health
2 effects is the subject of considerable scientific debate and has
3 occasioned a growing number of studies, as well as critiques of
4 these studies.

5 23. At the present time no one can say with any scientific
6 certainty whether or not exposure to the EMF of high-voltage AC
7 transmission lines results in any adverse health effects. Even
8 those scientists that subscribe to the position that it is more
9 likely than not that there are no ill health effects concede that
10 the issue is still open, and that the possibility of adverse health
11 effects cannot be ruled out pending further, and more scientifically
12 rigorous, studies.

13 24. There is considerable public concern over the possibility
14 of such adverse health effects, particularly as a result of studies
15 apparently linking childhood leukemia to exposure to high-voltage
16 AC transmission lines.

17 25. The Committee and, ultimately, the Commission are charged
18 under the Siting Act, among other things, with "minimiz[ing] any
19 adverse effect upon the environment and upon the quality of life of
20 the people of the state which such new facilities [such as the
21 transmission line being constructed by SRP] might cause."

22 26. Even though the possibility of adverse health effects is
23 arguably small, the fact that they cannot be ruled out causes
24 anxiety for many persons living near high-voltage AC transmission
25 lines and for many persons who might in the future find themselves
26 living near such lines as the result of decisions made in Siting Act

1 proceedings. Such concerns are viewed as quality of life issues for
2 many persons affected and potentially affected by the siting of
3 high-voltage AC lines; because of their concerns over possible
4 health effects, the siting of such lines near their homes causes an
5 adverse environmental effect.

6 27. Persons concerned about adverse health effects from
7 exposure to high-voltage AC transmission lines would have had no
8 reason to understand that the 1985 proceedings for the siting of a
9 high-voltage DC line would affect their interests.

10 28. In addition to possible adverse biological and health
11 effects from exposure to high-voltage AC transmission lines (but not
12 DC lines), other changes as a result of the conversion include
13 changes in configuration of the towers, the addition of a third
14 conductor, and the elimination for the present of the expensive
15 converters that would be necessary to link the DC line to the rest
16 of the system.

17 29. The change from DC to AC constitutes a "substantial
18 change" in the project from that approved in Case No. 70, primarily
19 because of the issues created over biological and health effects.

20 30. The Ten-Year Plans filed by SRP after the decision to
21 convert the line from DC to AC are misleading in that they invite
22 the inference that the AC line had been approved in the 1985
23 Committee proceedings.

24 31. Statements concerning modifications to facilities
25 previously authorized (in CECs issued by the Committee) made in a
26 Ten-Year Plan do not constitute notification to the Commission that

1 an applicant such as SRP is requesting authorization for such
2 modifications.

3 32. At no time since the decision was made to convert the
4 project from a DC to an AC transmission line has SRP sought
5 authorization from either the Committee or the Commission to build
6 the AC line.

7 CONCLUSIONS OF LAW

- 8 1. The Commission has jurisdiction, pursuant to A.R.S. § 40-
9 252, to conduct these proceedings.
- 10 2. Adequate notice was given of these proceedings.
- 11 3. Commission orders entered without proper notice and
12 without an opportunity for hearing are void.
- 13 4. Decision No. 55471 is void.
- 14 5. Notice of the 1985 Committee proceedings was legally
15 adequate.
- 16 6. Neither SRP nor Mr. Nils Larson practiced extrinsic fraud
17 on Messrs. Mills and Smith.
- 18 7. The evidence is insufficient to support a finding that Mr.
19 Apker, in the 1985 Committee hearing, committed perjury; therefore,
20 the CEC and Decision No. 54792 cannot be voided for fraud on the
21 court [tribunal].
- 22 8. The Siting Act imposes an implied burden on an applicant
23 to make application for an amended CEC when a substantial change is
24 contemplated in a project for which a CEC has previously been
25 granted.
- 26

1 9. Unless and until such application is made and acted upon,
2 the applicant has no authority to construct such a substantially-
3 changed project.

4 10. Neither the CEC issued in Case No. 70 nor Decision No.
5 54792 authorizes the 500 kV AC transmission line that SRP is
6 presently constructing.

7 ORDER

8 IT IS THEREFORE ORDERED that Decision No. 55471 is void.

9 IT IS FURTHER ORDERED, denying relief on the complaint
10 regarding the "Notice Issue."

11 IT IS FURTHER ORDERED, denying relief on the complaint
12 regarding the "Extrinsic Fraud Issue."

13 IT IS FURTHER ORDERED, denying relief on the complaint
14 regarding the "Fraud on the Court [Tribunal] Issue," without
15 prejudice.

16 IT IS FURTHER ORDERED, denying relief on the complaint
17 regarding the "Overall Inequitable Conduct of SRP Issue."

18 IT IS FURTHER ORDERED, that the Certificate of Environmental
19 Compatibility issued in Decision No. 54792 does not allow for the
20 construction of a 500 kV AC line, whether permanent or temporary.

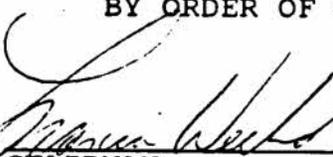
21 IT IS FURTHER ORDERED, pursuant to A.R.S. § 40-252, amending
22 Decision No. 54792 by adding the following:

23 This certificate of environmental compati-
24 bility does not authorize the construction of
25 the "500-kV AC transmission line with the
26 capability to be upgraded to \pm 500-kV DC when
warranted by increased demand for transmission
capacity" referenced in Record of Decision, 55
Fed. Reg. 36,864 (1990).

1 IT IS FURTHER ORDERED, that if SRP wishes to construct the 500
2 kV Mead-Phoenix Transmission Line as an AC line, SRP must file for
3 an amended Certificate of Environmental Compatibility or it must
4 file for a new Certificate of Environmental Compatibility for the
5 500 kV AC line.

6 IT IS FURTHER ORDERED, that this decision shall become
7 effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10  CHAIRMAN  COMMISSIONER  COMMISSIONER
11

12 IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secre-
13 tary of the Arizona Corporation Commission, have hereunto
14 set my hand and caused the official seal of the Commis-
15 sion to be affixed at the Capitol, in the City of Phoe-
16 nix, this 21 day of September, 1994.

15 
16 JAMES MATTHEWS
17 EXECUTIVE SECRETARY

18 DISSENT _____
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