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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Pursuant to A.R.S. §§ 40-253(A) and 40-360.07(C), Sierra Club respectfully submits this request for rehearing and reconsideration of the Arizona Corporation Commission's ("ACC" or "Commission") Decision No. 79388 in the above-captioned proceeding. Decision No. 79388 granted UNS Electric Company's ("UNS") application for disclaimer of jurisdiction for an expansion of the Black Mountain Generating Station ("BMGS"), overturning the Arizona Power Plant and Line Siting Committee's ("Siting Committee") 9-2 decision denying UNS's application.

The Commission's decision to overrule the Siting Committee and grant UNS's application for disclaimer is unlawful and unsupported by the record. Decision 79388 suffers from numerous legal and factual errors. The decision is unlawful because (1) it misinterprets the Arizona Line Siting Statute ("Line Siting Statute") by distorting the statute's plain meaning, ignoring the expressly stated intent of the Arizona legislature while wrongly claiming that legislative intent cannot be considered, (2) it would lead to absurd outcomes, (3) it arbitrarily overturns decades of Commission precedent without explaining the reasons for the reversal, (4) it contains numerous factual errors that contradict the evidentiary record developed at the Siting Committee, and (5) it improperly seeks to rewrite the Siting Statute, exceeding the scope of the Commission's authority. The statute's plain meaning, the legislature's declaration of policy, longstanding Commission precedent, and the evidentiary record all support the Siting Committee decision.

Sierra Club respectfully requests that the Commission grant rehearing, reconsider Decision 79388, and uphold the Siting Committee's decision to deny UNS's request for disclaimer of jurisdiction.

INTRODUCTION

In this proceeding, the Commission has radically reinterpreted the Line Siting Statute, enabling utilities to improperly evade the CEC requirement for power plants and overturning decades of Commission precedent. While the statute requires applicants to obtain CECs for plants with nameplate capacities over 100 MW, the Commission has chosen to accept UNS's argument that the 200 MW BMGS project should be considered four separate plants, because each of the four connected units is under 100 MW, and that UNS therefore need not obtain a CEC for the project. The Commission's Decision 79388 contradicts the factual evidence, distorts

the plain meaning of the Line Siting Statute, and defies common sense. The Commission should have upheld the Siting Committee's decision, which rejected UNS's application for disclaimer of jurisdiction by a 7-member margin.

Factual evidence from the Committee hearing demonstrates that the proposed BMGS units would not be separate plants under the plain meaning of the Line Siting Statute, but rather would be parts of one plant. The four units would be built on the same site, would rely on shared equipment and facilities, and would have physical connections to that shared equipment. The Commission's decision ignores this evidence and instead assumes without any support that the four units are "separate." Moreover, the four new BMGS units will be classified as a single plant in other regulatory settings, such as state air permitting and federal reporting. UNS itself has uniformly described the two existing BMGS units as part of the same plant, not two plants.

The Commission has routinely treated thermal generating facilities with multiple units as single power plants, not separate plants. In the decades since the Line Siting Statute's enactment, utilities have repeatedly applied for CECs for power plants or plant expansions with total capacities over 100 MW, even where the capacity of individual generating turbines were under 100 MW, and the Commission has issued those CECs. The Commission has never disclaimed jurisdiction over these plants. The Commission's decision suddenly and arbitrarily overturns this longstanding precedent. The Commission's decision parrots UNS's arguments, and directly contradicts Staff's position in previous cases[1] without explaining this sudden reversal.

The Commission's radical new interpretation of the Line Siting Statute disregards the plain language of the statute, defeats the legislature's intent and eliminates the Siting Committee's power to assess environmental impacts of most new power plants, thereby gutting

[1] *See* Docket No. L-00000FF-07-0134-00133, Staff Brief on Jurisdiction and Need (Oct. 3, 2007) (Ex. SC-34).

the CEC review process. No matter how large a new power plant or expansion, a utility can now evade CEC review by mischaracterizing the project as a collection of individual plants smaller than 100 MW. Under Decision 79388, there is now no limit on the overall size of thermal electric or nuclear projects that could circumvent CEC review, an absurd result. The Commission has improperly attempted to rewrite the Line Siting Statute, twisting the statute into something it is not.

The facts and the law clearly establish that the proposed BMGS project is a single plant, not four separate plants, and that the Line Siting Statute requires UNS to obtain a CEC. The Commission should therefore grant rehearing and reconsider Decision 79388, uphold the Siting Committee's decision and reject UNS's request for disclaimer of jurisdiction.

BACKGROUND

The existing BMGS consists of two gas-fired units which began operation in 2008. UNS never obtained a CEC nor a disclaimer of jurisdiction for the original BMGS plant. Commission decisions 70186 and 71914 and UNS's 2023 IRP all describe the existing BMGS as a single 90 MW generating facility.[2]

On March 8, 2024, UNS filed an application with the Siting Committee seeking a disclaimer of jurisdiction for BMGS, or in the alternative, a CEC. The proposed BMGS project would include four 50-MW units, with a total nameplate capacity of 200 MW.[3] All four new units would be located at the same site, adjacent to the existing BMGS units.[4] The four new

[2] Decision 70186 at 2, ¶ 5, Nos. G-04204A-07-0696 & E-04230A-07-0696 (Ariz. Corp. Comm'n Feb. 27, 2008) (excerpt provided as Ex. SC-29) [hereinafter "Decision 70186"]; Decision 71914 at 6:18-19, No. E-04204A-09-0206 (Ariz. Corp. Comm'n Sept. 30, 2010) (excerpt provided as Ex. SC-30) [hereinafter "Decision 71914"]; UNSE 2023 IRP, Appendix B at 4 (Ex. UNSE-15).

[3] Application for Disclaimer at ES-1.

[4] Apr. 24 Transcript Vol. I at 148:20-23, 187:15-18; Attachment to UNS Response to SC DR 1.3 titled "27-SC 1.3 General Arrangement Schematic and Site Layout.pdf" (Ex. SC-3).

generators and turbines would be physically connected to, and would rely on, at least 16 types of shared equipment and facilities.[5] Most of this shared equipment would be shared among all four of the new units, including an evaporation pond, water tanks, water pumps, and air compressors, among others.[6] A few items of shared equipment– LM6000 power control modules, chillers / cooling towers, generator step up transformers, and power distribution centers– would be constructed in pairs shared among two units each.[7] The entire expansion project would rely on a single external gen-tie line and a single external gas supply pipeline.[8] These units could not operate without the shared equipment.[9]

Sierra Club intervened in the Siting Committee proceeding on March 21, 2024. The Arizona Solar Energy Industries Association ("AriSEIA"), Western Resource Advocates ("WRA"), Southwest Energy Efficiency Project, and Commission Staff also intervened. The Committee held a two-day evidentiary hearing on April 24 and 25, 2024, which included testimony from Company witnesses as well as testimony from Sierra Club witness Cara Fogler and WRA witness Dr. Alex Routhier. At the end of the hearing, the Committee voted 9-2 to deny UNS's Application for Disclaimer of Jurisdiction. Five of the six Committee Members appointed by the Commissioners voted to deny the Application for Disclaimer of Jurisdiction.[10] The Siting Committee's written order was issued on May 2, 2024.

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[5] Transcript Vol. 1 at 150:3-25; Generating Unit Equipment List (Ex. UNSE-11); Ex. SC-3; UNS Response to SC DR 3.6 (Ex. SC-13).

[6] Ex. UNSE-11; Exs. SC-3, SC-13. The items of equipment that UNS identified as shared among all four units include the ammonia tank, air cooler skid, fuel gas coalescing skid, station service transformer, storage building, raw water tank, R.O. building, demineralized water tank, air compressor, raw water forwarding pump, evaporation pond, and well. Ex. UNSE-11.

[7] Ex. UNSE-11; Exs. SC-3, SC-13.

[8] UNS Response to SC DR 1.3 (including supplemental response) (Ex. SC-1); UNS Response to SC DR 1.12 (Ex. SC-4).

[9] *See* Transcript Vol. I at 185:8-186:7.

[10] Apr. 25, 2024 Transcript Vol. II at 461:9-463:9; Arizona Power Plant: Membership, ACC (last visited June 6, 2024), *available at* https://www.azcc.gov/arizona-power-plant/membership.

On May 16, 2024, UNS filed a request for Commission review of the Committee's decision. On May 31, 2024, Staff issued two sample orders, one overturning the Committee decision and one upholding the Committee decision. On June 7, 2024, Sierra Club filed exceptions to Staff's sample orders. AriSEIA and WRA also filed exceptions. At the Commission's June 11, 2024 open meeting, the Commission voted to overturn the Siting Committee's decision and grant UNS's application for disclaimer of jurisdiction. The written Decision 79388 was issued on June 20, 2024.

LEGAL STANDARDS

Parties may seek rehearing of a Commission decision within twenty days after that decision is entered pursuant to A.R.S. § 40-253(A). Upon rehearing, if "the commission finds that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify the order or decision." A.R.S. § 40-253(E). Any party to a CEC decision may request reconsideration of that decision within thirty days after the decision is issued. A.R.S. § 40-360.07(C). A request for reconsideration "shall set forth the grounds upon which it is based and state the manner in which the party believes the commission unreasonably or unlawfully applied or failed to apply the criteria set forth in [A.R.S.] § 40-360.06." *Id.*

The Commission's review of Siting Committee decisions "shall be conducted on the basis of the record" developed at the evidentiary hearing before the Committee. A.R.S. § 40-360.07(B). Commission decisions must be supported by substantial evidence, and cannot be arbitrary, capricious, or an abuse of discretion. *Sierra Club--Grand Canyon Chapter v. Ariz. Corp. Comm'n*, 237 Ariz. 568, 354 P.3d 1127, 1134 (Ct. App. 2015). Where an agency fails to articulate a rational basis for a decision, including a "rational connection between the facts found

and the choice made," that action is arbitrary and capricious. *Compassionate Care Dispensary, Inc. v. Ariz. Dep't of Health Servs.*, 244 Ariz. 205, 213 (Ct. App. 2018).

ARGUMENT

The Siting Committee properly interpreted the Line Siting Statute, correctly recognizing that the four proposed 50 MW gas-fired units comprising the BMGS expansion are a single 200 MW plant which requires a CEC. The Commission's reversal of the Committee and approval of UNS's application for disclaimer of jurisdiction in Decision 79388 is unreasonable and unlawful for six reasons: First, the plain meaning of the Line Siting Statute makes clear that a thermal generating facility composed of multiple connected units is a single plant as defined by A.R.S. § 40-360(9). Second, the legislature's express declaration of intent in enacting the Line Siting Statute reinforces the plain meaning of "plant," confirming that all units constructed as part of a single "major new facility" are subject to CEC review. Third, the Commission's new re-interpretation of the statute in Decision 79388 will result in absurd outcomes. Fourth, the Decision arbitrarily overturns decades of Commission precedent without explaining the reasons for the reversal. Fifth, the Decision contains numerous factual errors that contradict the evidentiary record developed at the Siting Committee. Finally, the Decision improperly seeks to rewrite the Siting Statute, exceeding the scope of the Commission's authority.

For all of these reasons, the Commission should reconsider Decision 79388 and uphold the Siting Committee's original decision. The Commission should instead adopt a version of the Sample Order No. 2 filed by Staff on May 31, 2024, including the amendments proposed by AriSEIA with its June 6, 2024 exceptions, which clarify and further outline the multiple independent grounds supporting the Siting Committee's decision.

Decision 79388 misstates the facts and the law. Critically, the decision fails to recognize that the new BMGS units would be physically interconnected via shared equipment and would rely extensively on that shared equipment.[11] It similarly fails to recognize that multiple units can make up a single larger thermal generating unit.[12] Decision 79388 also claims without support that the Committee exceeded its jurisdiction.[13] On the contrary, the Committee acted squarely within its existing, long-established jurisdiction over thermal power plant projects above 100 MW, which is conferred by the Line Siting Statute.

I. DECISION 79388 MISINTERPRETS THE SITING STATUTE.

Decision 79388 misinterprets the Siting Statute, distorting the statute's plain meaning and improperly ignoring the legislature's express declaration of purpose, which contradicts the Commission's new reading of the statute. First, the Siting Committee correctly interpreted the Siting Statute according to its plain meaning, independent of other considerations. Second, the legislature's express statement of purpose supports the Siting Statute's plain meaning, as the Siting Committee recognized. Third, the Commission's new reading of the statute would generate absurd results. Last, secondary interpretive devices—including Commission usage, industry-standard definitions, state permitting and federal reporting, and comparisons to other statutes —further affirm that connected units are part of a single plant or generating unit.

A. Under The Plain Meaning Of The Line Siting Statute, Multiple Connected Units At A Single Facility Comprise A Single Plant And Are Not "Separate."

The Line Siting Statute requires that "[e]very utility planning to construct a plant, transmission line or both in this state shall first file with the commission an application for a

[11] Decision 79388, ¶¶ 35-36.
[12] *Id*.
[13] *Id*. ¶¶ 39, 42, 44.

certificate of environmental compatibility." A.R.S. § 40-360.03. A.R.S. § 40-360(9) defines "plant" as "each *separate* thermal electric, nuclear or hydroelectric generating unit with a nameplate rating of one hundred megawatts or more . . ." (emphasis added). The statute is unambiguous in laying out that in order to qualify as a "plant," a unit must be "separate," and therefore that units which are not separate, i.e. connected, are not distinct "plants." Accordingly, where units are connected and not separate, they constitute a single plant, and a CEC is required if that plant's total nameplate rating is over 100 MW. The meaning of the terms "separate," "each," "generating unit;" and "nameplate rating" all reinforce this conclusion.

1. ***Interconnected generators and turbines at the same facility are not "separate" generating units under the plain meaning of "separate" in A.R.S. 40-360(9).***

Courts look first to the plain meaning of the statutory language, then to context and history. *State v. Slayton*, 154 P.3d 1057, 1060 (Ct. App. 2007). When interpreting statutes, courts give effect to the plain meaning unless the language is ambiguous, or would create an absurd result. *See Harper v. Canyon Land Dev., LLC*, 200 P.3d 1032, 1033 (Ariz. Ct. App. 2008). In order to determine the meaning of statutory terms, courts may refer to established dictionary definitions. *Planned Parenthood Arizona, Inc. v. Mayes*, 545 P.3d 892, 897 (Ariz. 2024), *Stout v. Taylor*, 311 P.3d 1088, 1091 (Ct. App. 2013). However, courts "recognize that a dictionary definition may not be conclusive and, because 'context gives meaning,' statutory terms should not be considered in isolation." *State v. Gray*, 258 P.3d 242, 245 (Ct. App. 2011) (quoting *United States v. Santos*, 553 U.S. 507, 512 (2008)).

Multiple dictionary definitions make clear that when applying the plain meaning of the term "separate," the BMGS units do not qualify as "separate" under the statute. Black's Law

Dictionary defines separate as "individual; distinct; particular; disconnected."[14] Here, the proposed BMGS units are not "distinct": they are part of a group of four, all part of the same facility and located on the same site.[15] Moreover, the units are certainly not "disconnected." UNS's site plans for the project and the testimony of Company witnesses confirmed that the four units would rely on 16 types of shared equipment and facilities,[16] and that the units are physically interconnected via much of that shared equipment through multiple systems of pipes and wires, including generation tie lines, power lines, water pipes, and gas pipelines.[17] The new units cannot be considered "separate" under this definition.

In its Application, UNS relied on the American Heritage dictionary, which defines separate as "[n]ot touching or adjoined; detached" and "existing or considered as an independent entity."[18] Again, the proposed BMGS units do not meet this definition. The four proposed units are not "detached," rather they are "adjoined" via connections to at least 16 different types of shared equipment.[19] Moreover, the units are not "considered as an independent entity." Undisputed evidence from the Siting Committee hearing–including testimony from Company witnesses –establishes that the units are *dependent* on shared facilities, and that the units could not operate without that equipment.[20] The new units would rely on shared water pumps, air compressors, cooling towers, and a shared evaporation pond, as noted above.[21] Furthermore, the

[14] *Black's Law Dictionary* (11th ed. 2019).
[15] Transcript Vol. 1 at 148:20-23, 187:15-18; Ex. SC-3.
[16] Transcript Vol. 1 at 150; Ex. UNSE-11; Exs. SC-3, SC-13.
[17] Transcript Vol. 1 at 151:2-152:8 (shared air compressor), 153:1-156:12 (shared cooling towers), 156:13-157:4 (shared demineralized water tanks and water pumps), 173:20-174:21 (shared evaporation pond), 175:16-176:3 (shared power distribution centers and power control modules), 176:21-24 (shared step-up transformers), 177:18-21 (shared gen-tie line), 178:22-179:8 (more than half of the shared equipment would have physical connections to two or more of the new units), 179:10-12 (shared gas pipeline); Exs. SC-1, SC-3, SC-4.
[18] *American Heritage Dictionary* (5th ed. 2022), *available at* https://www.ahdictionary.com/word/search.html?q=separate.
[19] Transcript Vol. 1 at 150; Ex. UNSE-11; Exs. SC-3, SC-13.
[20] *See* Transcript Vol. 1 at 185:8-186:7.
[21] *Id.* at 151:2-152:8, 153:1-156:12, 156:13-157:4, 173:20-174:21.

two existing BMGS units are considered together as a single entity in numerous contexts, as detailed below. Commission Decisions 70186 and 71914 do not treat the units as "independent," referring to BMGS as a single generating facility.[22] UNS's filings with the U.S. EIA and air permit applications also treat BMGS as a single plant.[23]

Regardless of which dictionary definition is used, the proposed BMGS units are not "separate" under the plain meaning of that term. Because the proposed units are not "separate" as required by A.R.S. § 40-360(9), they do not qualify as two distinct "plants" under the statute, but rather as a single plant, part of a single generating facility. This simple application of the facts in the record is by itself sufficient reason to deny UNS's request for disclaimer of jurisdiction.

The Commission's new interpretation of the Siting Statute in Decision 79388 renders key language in the statutory definition of "plant" meaningless and void. Each word and phrase of a statute must be given meaning so that no part of the statute is void or meaningless surplusage. *See Ariz. State Hosp./Ariz. Cmty. Prot. & Treatment Ctr. v. Klein*, 296 P.3d 1003, 1007 (Ariz. Ct. App. 2013). Here, the Commission's interpretation would make the statutory term "separate" in A.R.S. § 40-360(9) void and meaningless. The Decision characterizes the four proposed new units as "individual."[24] But even if the units could be described as "individual," that does not make them "separate." If two units are interconnected or part of the same project, they are not separate. The word "separate" in the definition of "plant" modifies the term "generating unit" and sets a criterion that must be satisfied: under A.R.S. § 40-360(9), a unit must be a *separate* unit in order to qualify as a "plant." Decision 79388 would eliminate this statutory criterion: under the Commission's new reading, all units would *automatically* qualify as separate, and it's

[22] Decision 70186 at 2, ¶ 5; Decision 71914 at 6:18-19.
[23] *See* Exs. SC-9, SC-10; 2022 BMGS Air Permit Application (excerpt provided as Ex. SC-22).
[24] *See* Decision 79388 at 10, ¶ 35.

not clear how any identifiable unit would ever *not* qualify as separate. The Commission's interpretation would impermissibly read the word "separate" out of the statute, rendering it meaningless surplusage and thus distorting the meaning of "plant."

The Committee Order concluded that "if individual generating units share the same site, they are not separate."[25] The Arizona legislature's declaration of policy in the bill enacting the Line Siting Statute clearly states that the CEC process is intended to review the "decision to locate a specific major facility at a specific site," as discussed further below. Laws 1971, Ch. 67, § 1. If multiple units comprise part of a single project at a single site, they are not "separate" as required by A.R.S. § 40-360(9) and therefore constitute a single "plant" under the Line Siting Statute. The Committee Order acknowledges that common-sense conclusion.

Seeking to avoid the plain meaning of the Line Siting Statute, Decision 79388 mischaracterizes the statute and the Committee Order. The Decision wrongly asserts that the Siting Committee attempted to rewrite the statute. On the contrary, nothing in the Committee Order changes the existing meaning of the Siting Statute. Rather, it is Decision 79388 that improperly seeks to rewrite the statute.

In an attempt to circumvent the plain meaning of "separate," the Commission argues that "the Arizona Legislature directed the Committee and the Commission to focus on the individual unit, exclusive of others."[26] But the word "individual" does not appear in the statutory definition of "plant." The Commission parrots UNS in trying to transform the term "separate" from a criterion that must be satisfied to a meaningless adjective that automatically applies to any units. The statute does not say that each generating unit is automatically deemed a separate unit. Rather, the statute

[25] Power Plant and Transmission Line Siting Committee's Order Denying Application for Disclaimer of Jurisdiction at 5 [hereinafter "Committee Order"]; UNS Request at 2.
[26] Decision 79388 ¶ 35:13-15.

requires the applicant to *demonstrate* that each generating unit is separate—only then can the units be considered individual and therefore separate plants.

a. Plants can and often do consist of multiple "units" and a single generating unit can also consist of multiple units.

The Commission and UNS argue that under the Line Siting Statute's definition, a "plant" consists of a single generating unit, and that the four units therefore cannot be considered part of one "plant" or generating facility.[27] This argument ignores the Commission's own definition of "generating unit" which makes clear that plants can, and often do, consist of multiple units. While the Line Siting Statute does not define "generating unit," the Commission's resource planning regulations define "generating unit" as "a specific device *or set of devices* that converts one form of energy (such as heat or solar energy) into electric energy, such as a turbine and generator or a set of photovoltaic cells." A.A.C. R14-2-701(19)(emphasis added). The phrase "set of devices" in the Commission's definition makes clear that a "generating unit" need not be singular, and can be composed of multiple components or units. Here, the BMGS project consists of four units, but because the units are not separate as required by A.R.S. § 40-360(9), the project is only a single plant, not four distinct plants. Notably, the Line Siting Statute also says that a "plant" constitutes a "facility," further supporting the Committee Order. *See* A.R.S. § 40-360(6) (defining "Facilities" as "a plant or transmission line, or both.")

b. The term "nameplate rating" can refer to an aggregate rating of multiple units.

Finally, the Commission and UNS argue that the phrase "nameplate rating" in the definition of "plant" cannot refer to an aggregate nameplate rating across multiple units.[28] On the contrary, the term "nameplate" often refers to the combined nameplate rating of multiple units.

[27] *See* UNS Request at 4; *see also* Decision 79388 at ¶¶ 35-36.
[28] *See* UNS Request at 5; Decision 79388 ¶¶ 4, 55.

For example, Arizona Public Service Company reports nameplate rating for multiple units at the same plant.[29] The term "nameplate rating" is not defined in the Line Siting Statute nor in Commission regulations. However, the Commission frequently uses the terms "nameplate" or "nominal" capacity to refer to the aggregated capacity of an entire generating facility. For example, just last year in Decision 79020, the CEC for the Coolidge Expansion Project, which included twelve generating units, described the project as having a "*total nameplate capacity* of approximately 575 megawatts."[30] Similarly, the Commission's rules for interconnection of distributed generation facilities refer to the "*total nameplate capacity* of the Generating Facility," and define "Generating Facility" to include "electrical generator(s), energy storage system(s), or any combination of electrical generator(s) and storage system(s)." A.A.C. R14-2-2601(20), (45). The same Commission rules also refer to the "aggregate maximum nameplate rating" of a "Generating Facility." A.A.C. R14-2-2623(B)(4). In short, it is well established that nameplate capacity can refer to an aggregate of multiple units.

2. ***Decision 79388 misinterprets the statute's plain meaning.***

Decision 79388 does not provide adequate support for the Commission's new interpretation of the Line Siting Statute, nor does it explain why the Commission believes the statute is unambiguous. The decision simply states that the Commission agrees with UNSE that "each separate generating unit with a nameplate rating" means that the capacity threshold comes from the rating stamped on each unit, not the aggregate capacity of the units.[31] The Decision does not grapple with the facts in the record that show that nameplate capacity often refers to

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[29] APS Ten-Year Transmission System Plan at 81, Docket No. E-99999A-23-0016 (Ariz. Corp. Comm'n Jan. 31, 2024) (labeling Coolidge expansion, which consists of 12 units, with a 575 MW nameplate rating).
[30] Decision 79020, No. L-00000B-21-0393-00197 (Ariz. Corp. Comm'n June 28, 2023), Attachment A (CEC) at 2:26-3:1 (emphasis added) [hereinafter "Decision 79020"].
[31] Decision 79388 ¶ 55.

combined capacity of multiple units part of one plant. Without providing any support for this conclusion, the Decision agrees with UNS that the four units "when viewed separately" "are exempt from the CEC requirement." Yet, interpreting whether the units are in fact separate is the factual issue at hand that determines whether BMGS is a plant or four separate plants. Instead of evaluating this question of separateness and interpreting the robust record showing the interconnectedness of the units, the Decision assumes separateness, failing to apply the statute to the facts. The Decision does not adequately explain why the Commission believes the units are separate, simply accepting UNS' conclusion that the units are separate. Moreover, the Decision's extremely brief discussion of the units' configuration misstates the factual record,[32] as discussed further below. If the Decision had actually interpreted the statute's plain meaning, it could not have determined that the BMGS expansion is four separate plants under the unambiguous meaning of the Line Siting Statute.

Decision 79388 further improperly concludes that the Committee rewrote the statute by attempting to divine "intent" and "absurdity," when in fact, the Committee simply agreed with the intervenors in finding that the *plain meaning* of the statute required denial of UNS' request for disclaimer of jurisdiction.[33] The Committee did *not* try to "create an ambiguity where none exists" but instead simply showed that the plain meaning of the statute dictates that the BMGS expansion is a plant, *and* that legislative intent and absurd consequences *further* demonstrate that the BMGS expansion is a plant.[34] The Commission misinterpreted the Committee Order's clear finding that regardless of whether the statute is considered to be unambiguous or ambiguous, plain meaning and legislative intent both indicate that the proposed BMGS units are a single

[32] *Id.*¶¶ 35-36.
[33] *Id.* at 15.
[34] *Id.* at 16.

plant. The Committee Order does what Decision 79388 fails to do: it explains the plain meaning of the Line Siting Statute and it applies that plain meaning to the factual record regarding the separateness of the BMGS units.

3. ***Controlling facts are in dispute and matter for applying plain meaning.***

Decision 79388 incorrectly declares that "controlling facts are not in dispute,"[35] revealing a fundamental misunderstanding of the Line Siting Statute and the record. It also wrongly declares that "there is no dispute that the four plants are well-below the 100MW threshold when viewed individually."[36] First, without explanation, the Decision summarily concludes that each BMGS unit is a plant. But the classification of the four proposed units as "plants" *is* a disputed conclusion, one that is governed by the definition of "plant" within the Line Siting Statute. The Decision asserts that the layout and configuration of the units is not in dispute, but mischaracterizes the factual record regarding the configuration of those units and their connections to shared equipment,[37] as explained below. The Decision, again, fails to grapple with the important factual questions that determine whether the four units are in fact separate plants: Are the units connected? Can they operate without shared facilities? Do they share the same site? Do they share supply contracts? Are they functionally separate or do they operate as the same plant? And where the Decision briefly gestures towards these questions, it misstates the record, wrongly claiming that all components are "individual to the generating unit," that each unit will have its "own set of controls," and that shared equipment will "not physically adjoin the units in any way."[38] All of these assertions in the Decision are incorrect and material to the separateness of the units.

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[35] *Id.* at 10.
[36] *Id.* ¶ 34.
[37] Decision 79388 ¶¶ 35-36.
[38] *Id.*

B. Arizona Law Does Not Exclude Legislative Intent From Statutory Interpretation.

As shown above, the plain language of the Line Siting Statute is unambiguous that multiple connected units at a single generating facility are one plant. However, even if the statute was ambiguous, legislative intent makes clear that the BMGS expansion is one plant. The Decision tries to dispense with legislative intent as a tool of statutory interpretation, relying on a concurrence in an opinion where the majority does not address the validity of legislative intent at all. *Stale ex rel. Ari; Dep't Revenue v. Tunkey,* 594 P.8d 817 (Ariz. 2023).[39] But just this year, the Arizona Supreme Court made clear that legislative intent is an appropriate tool of statutory interpretation: courts "may consider a statement of legislative intent . . . in discerning the meaning of a statute." *Planned Parenthood Arizona, Inc. v. Mayes*, 545 P.3d 892, 897 (Ariz. 2024). Courts "read a statute in the context of the law that grants it authority." *Id.* (citing *S. Ariz. Home Builders Ass'n* , 254 Ariz. at 286 ¶ 31); *see also State v. Regenold*, 227 Ariz. 224, 225 (Ct. App. 2011). "If the statutory language is ambiguous—if 'it can be reasonably read in two ways' —[courts] may use alternative methods of statutory construction, including examining the rule's historical background, its spirit and purpose, and the effects and consequences of competing interpretations." *Planned Parenthood*, 545 P.3d at 897 (citing *State v. Salazar -Mercado*, 234 Ariz. 590, 592 ¶ 5 (2014)). In contrast to these "alternative methods," *Planned Parenthood* does not say that express statements of legislative intent can be considered only if a statute is ambiguous or that such statements are to be used only as a secondary tool. The Decision's attempt to exclude legislative intent from this case misstates the law and is unsupported by Arizona precedent.

[39] *Id.* ¶ 50.

1. ***The legislature's express declaration of purpose confirms that connected units at a single facility must be considered together.***

While the plain language of A.R.S. § 40-360 is unambiguous, the Arizona legislature's declaration of policy puts any perceived ambiguity to rest. Because the legislature's own express statements regarding statutory purpose are clear evidence of legislative intent, Arizona courts use "declarations of policy" in enacted legislation to guide statutory interpretation. *See State v. Hussain*, 189 Ariz. 336, 338 (Ct. App. 1997); *Lueck v. United Dairymen of Arizona*, 162 Ariz. 232, 238–39 (Ct. App. 1989).

Here, the legislature's declaration of policy in the 1971 bill enacting the Line Siting Statute clearly articulates the legislature's intent. The legislature declared that the purpose of the Line Siting Statute is to "provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding." Laws 1971, Ch. 67, § 1. The legislature recognized that construction of "major new facilities" for electric generation has adverse environmental impacts, and found it "essential in the public interest to minimize any adverse effect upon the environment . . .which such new facilities might cause." *Id.* Accordingly, the legislature recognized the need to review "the decision to locate a specific major facility at a specific site." *Id.*

The declaration of policy conveys the legislature's intent for the Committee to evaluate the impacts of locating entire "major new facilities" at specific sites, not just the impacts of individual components within those facilities. A facility-wide scope is logical, because in order to understand a facility's environmental impacts, it is necessary to consider the combined effect of *all* of the components at the site, not just some of them in isolation. The legislature set the 100 MW minimum threshold in the statutory definition of "plant" to delineate the scope of these "major facilities" subject to the CEC process. The legislature's declaration makes clear that those

environmental impacts must be evaluated in a comprehensive "single proceeding" where affected stakeholders can participate, rather than evaluated piecemeal through multiple proceedings.

The Commission's new re-interpretation of the Line Siting Statute would undermine these core functions of the CEC process, impeding the statutory purpose clearly expressed by the legislature in the declaration of policy. If an applicant is allowed to evade environmental review by mischaracterizing a single major project as several smaller projects, that would undermine the legislature's intent that impacts of "major facilities" be evaluated in a "single proceeding." If a large project is artificially split up into little pieces in order to circumvent the threshold for CEC review, the environmental impacts of that project may go unreviewed, preventing the Committee from evaluating the impacts of the project and depriving affected stakeholders of the opportunity to have their voices heard, a concern raised repeatedly by the Committee.[40]

The Committee Order correctly recognized that the statutory purpose expressed by the legislature confirms the plain meaning of the Line Siting Statute, and that under that plain meaning, the BMGS project constitutes a plant subject to the CEC requirement.[41] Decision 79388 spends pages arguing that the Committee exceeded the scope of its jurisdiction by attempting to "rewrite" the statute, and contends that it was improper for the Committee to consider legislative intent.[42] On the contrary, the Committee acted squarely within its jurisdiction, applying the Line Siting Statute according to the statute's established meaning. The plain meaning of the statutory language is enough on its own to support the Committee's order, even without reference to legislative intent. The statute says that only "separate" generating units

[40] *See, e.g.,* Transcript Vol. I at 112:11-24.
[41] Committee Order at 4:17-5:16, 6:21-7:5.
[42] Decision 79388 ¶¶ 39, 42, 44, 45.

are plants. Moreover, as detailed above, courts have been clear that legislative intent is an appropriate tool in statutory interpretation. *Planned Parenthood*, 545 P.3d at 897.[43] The fact that the Committee's Order is also supported by the legislature's express statement of intent does not mean that the Committee has in any way expanded its jurisdiction. The Committee's Order properly exercised the Committee's jurisdiction, applying the statute's plain meaning consistent with legislative intent.

C. UNS's Proposed Reading of the Statute Would Generate Absurd Outcomes.

In addition to defying the plain meaning of the statutory language and defeating legislative intent, UNS's interpretation of the statute would also lead to absurd results. Statutory interpretations that lead to absurd outcomes must be avoided. *See State ex rel. Montgomery v. Harris*, 237 Ariz. 98, 101–02 (2014); *In re Est. of Zaritsky,* 198 Ariz. 599, 602–03 (Ct. App. 2000). Even where the plain meaning is unambiguous, absurd results may dictate a different interpretation. *See Harper v. Canyon Land Dev., L.L.C.*, 200 P.3d 1032, 1033 (Ariz. Ct. App. 2008) (noting that the court may use other principles of statutory construction where interpreting the plain meaning would lead to an absurd result).

The Committee Order correctly found that UNS' reading of the statute would lead to absurd outcomes.[44] Under Decision 79388, no CEC would ever be required for *any* thermal or nuclear power plant as long as each individual turbine had a nameplate rating under 100 MW. Absurd consequences will follow: a new power plant with one 100 MW turbine would be subject to CEC review while a new 500 MW power plant with ten 50 MW turbines would not be subject

[43] Decision 79388 argues that legislative intent cannot be considered (Decision ¶ 50), citing *State ex rel. Ariz. Dep't of Rev. v. Tunkey*, but ignores that the majority opinion in *Turnkey* endorses using legislative history as a "secondary" interpretative device. 524 P.3d 812, 817-18 ¶ 27.

[44] Committee Order at 6.

to CEC review. Decision 79388 effectively eliminates the Siting Committee's ability to review most new multi-unit gas-fired plants. The Committee noted that UNS's interpretation would "allow the construction of 1000 MW of small modular nuclear reactors in a residential neighborhood without going through the line siting process to obtain a CEC as long as each individual reactor had a nameplate rating less than 100 MW," a "transparently absurd result."[45]

Decision 79388 wrongly dismisses the Committee's concerns about absurd results.[46] UNS criticizes the Committee Order's small nuclear reactor example as unlikely and argues that such reactors would be subject to other regulations.[47] These arguments fail. First, the absurd results of the Commission's new reinterpretation are not limited to the nuclear reactor example cited in the Order–there are other concrete and immediate examples. The Commission's reinterpretation would allow a new 500 MW, ten-turbine gas peaker plant to escape environmental review while requiring review for a single-turbine 100 MW plant. This is not a remote or unlikely hypothetical: in fact, this year alone, two different applicants have announced plans to seek CECs for large gas-fired peaking plants of around 400-500 MW.[48]

Second, for many projects, CEC review is the only forum in which certain types of project impacts are evaluated. For example, when new generation projects are sited in unincorporated areas that do not have local ordinances governing project impacts on noise and views, CEC review may be the only forum where project-generated noise and visual impacts are evaluated. If CEC

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[45] *Id.* at 6.
[46] Decision 79388 ¶¶ 51, 57.
[47] UNS Request at 11-16.
[48] APS, CEC Application for Expansion of Redhawk Generating Station, Docket No. L-00000D-24-0156-00234 (Ariz. Corp. Comm'n July 8, 2024), *available at* https://edocket.azcc.gov/search/document-search/item-detail/412957; Seguro Energy Partners, CEC Application for Bella Energy Facility, Docket No. L-21314A-24-0144-00233 (Ariz. Corp. Comm'n June 28, 2024), *available at* https://edocket.azcc.gov/search/document-search/item-detail/412683.

review is eliminated, there would be no recourse for affected neighbors concerned about those impacts.

D. Arizona Law Explicitly Allows For Secondary Interpretive Devices If Plain Meaning Is Ambiguous.

As discussed above, under the plain meaning of the Line Siting Statute, it is unambiguous that multiple connected units at the same generating facility constitute a single "plant" because they are not "separate." The legislature's express declaration of intent confirms that the Siting Committee's reading of the statute is correct. If there were any ambiguity in the definition of "plant," secondary interpretive tools further support the Committee's reading of the statute. "If the statutory language is ambiguous—if 'it can be reasonably read in two ways' — [courts] may use alternative methods of statutory construction, including examining the rule's historical background, its spirit and purpose, and the effects and consequences of competing interpretations." *Planned Parenthood,* 545 P.3d at 897 (citing *State v. Salazar-Mercado*, 234 Ariz. 590, 592 ¶ 5 (2014)). Where plain language is ambiguous, both common usage and trade terms can be useful tools in determining statutory meaning. *State v. Reynolds*, 823 P.2d 681, 682 (Ariz. 1992). Here, Commission usage, industry-standard definitions, state permitting and federal reporting, and comparisons to siting statutes in other states all reinforce the Siting Committee's interpretation of the statute.

1. *Commission usage reinforces the plain meaning of "plant."*

The common-sense plain meaning of the statutory definition of "plant" in A.R.S. § 40-360(9) is further reinforced by the Commission's own usage of the word "plant" to refer to an entire facility that includes multiple gas-fired units. For example, Commission Decision 63552, which issued a CEC for the Gila River power plant, declares that Gila Bend Power Partners "is authorized to construct a natural gas-fired, combined cycle generating *plant* consisting of three

combustion gas turbines and one steam turbine producing a nominal 845 MW."[49] The Commission's language shows that for the purposes of CEC review, multiple connected turbines and ancillary facilities at the same site together make up a plant.

Consistent with this usage, the existing BMGS facility is treated as a single plant in ACC decisions and UNS filings at the Commission. Commission Decisions 70186 and 71914 refer to BMGS as a single generating facility. Decision 70186 describes BMGS as a single "90 megawatt simple cycle gas-fired electric generating station," not as two plants.[50] Decision 71914 similarly refers to BMGS in the singular, describing BMGS as "a two-unit peaking facility with a total capacity of 90 MW."[51]And in UNS's 2023 IRP, the Company states that BMGS "provides UNSE with 90 MW of combustion turbine capacity from two units," again treating BMGS as a single plant.[52]

2. ***Industry-standard definitions indicate that multiple units part of the same project are part of the same plant or generating unit.***

The US Energy Information Administration ("EIA") supplies definitions of "plant" and "generation unit" that represent accepted industry usage and that buttress the Siting Committee's reading of the Siting Statute. These widely-used E.I.A. definitions reinforce the conclusion that multiple units which are part of the same project are part of the same plant or generating unit.

The EIA defines an "[e]lectric power plant" as "[a] station containing prime movers, electric generators, and auxiliary equipment for converting mechanical, chemical, and/or fission energy into electric energy."[53] The word "station" is illustrative. In the hearing before the Siting

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[49] Decision 63552 at 2:16-18, Docket No. L-00000V-00-0106 (Ariz. Corp. Comm'n Apr. 12, 2001) *available at* https://edocket.azcc.gov/search/document-search/item-detail/90723 (emphasis added).
[50] Decision 70186 at 2, ¶ 5.
[51] Decision 71914 at 6:18-19.
[52] Ex. UNSE-15, Appendix B at 4.
[53] *See* U.S. Energy Information Administration Glossary (excerpts provided as Ex. SC-25).

Committee, UNS attempted to create a distinction between "generating station" and "plant." Yet as the EIA demonstrates, industry definitions treat "station" and "plant" as one and the same. The EIA definition makes clear that a plant is a locationally inclusive term, comprised of various interconnected parts, which can include multiple "prime movers, electric generators, and auxiliary equipment." [54] The definition is not limited to a singular prime mover or generator.

EIA definitions also directly contradict the argument that generating units cannot consist of multiple units. The U.S. EIA defines "generation unit" as "*any combination* of physically connected generators, reactors, boilers, combustion turbines, and other prime movers operated together to produce electric power."[55] Notably, the definition refers to "any combination" of elements, and each of those elements– including generators and turbines– is listed in the plural, not the singular. The EIA definition does not say that a generating unit can only consist of one generator, one turbine, or one prime mover. It contemplates combinations of units, just as the Line Siting Statute does by providing that a "thermal…generating unit" is only a "plant" if it is "separate."

3. ***BMGS and other multi-unit generating facilities are classified as single plants in state permitting and federal reporting.***

The Siting Committee's correct reading of the Siting Statute is reinforced by the way that multi-unit plants, including BMGS, are treated in state permitting and federal reporting. In these contexts, multiple units that are part of the same generating facility, project or expansion are considered part of a single plant. This is illustrated through the agencies' treatment of the two

[54] EIA supplies another definition, "power production plant", which is "[a]ll the land and land rights, structures and improvements, boiler or reactor vessel equipment, engines and engine-driven generators, turbo generator units, accessory electric equipment, and miscellaneous power plant equipment that are grouped together for each individual facility." Ex. SC-25. Again, plants are locationally comprehensive, that they typically include generators, turbines, and ancillary equipment, as well as the property and land use permits at one site.
[55] *See* Ex. UNSE-16 (emphasis added).

existing units at BMGS, which are also treated as a single plant in UNS's own filings with those agencies. These documents contradict UNS and Staff's claims that the two existing BMGS units are two separate plants, and the Commission's conclusion that the four proposed units should all be considered separate plants.

UNS' 2022 air permit application to the Arizona Department of Environmental Quality ("ADEQ") covers both existing BMGS units in one application.[56] The air permit subsequently issued by ADEQ covers the entire facility in a single permit, and describes BMGS as a "peaking power plant identified as the Black Mountain Generating Station."[57] Noticeably, ADEQ did not refer to BMGS as peaking power plant*s*, plural, nor did UNS in its application. Regarding the proposed BMGS expansion, a UNS witness confirmed that the Company plans to submit a *single* air permit application to ADEQ to cover the four new BMGS turbines.[58]

UNS also treats BMGS as a single plant in its filings with federal agencies. Federal law requires UNS to report plants to the EIA. 42 U.S.C. § 7135. By its own admission, UNS submits a single Form EIA 860 that reports both units at BMGS as a single plant, using one plant code.[59] Regarding the proposed expansion, a UNS witness confirmed that the Company plans to report all four new BMGS units on one Form EIA 860 as a single plant with a single plant code.[60]

In fact, a nationwide survey of EIA reporting reveals that multiple gas combustion units at the same site are almost always reported to the EIA as a single plant, unless they have different owners.[61] Witness Cara Fogler could not find one instance in the voluminous EIA database where

[56] *See* Ex. SC-22; Transcript Vol. I at 193:17-194:5.
[57] *See* 2023 BMGS Air Permit No. 96392 (excerpt provided as Ex. SC-21); Transcript Vol. I at 194:6-21.
[58] UNS Response to SC DR 1.17 (Ex. SC-7); Transcript Vol. I at 194:22-195:9.
[59] *See* Exs. SC-9, SC-10; Transcript Vol. I at 195:21-196:11.
[60] UNS Response to SC DR 1.19 (Ex. SC-8); Transcript Vol. I at 196:12-14, 199:10-17; Transcript Vol. II at 309:23-311:6.
[61] Transcript Vol. II at 311:7-312:10; 2022 Form EIA-860 Data (excerpt provided as Ex. SC-32).

units at the same site were reported as separate plants with separate plant codes, except in a single case where the units had different owners.[62] Notably, UNS has presented no contradictory evidence, and conceded that all the units at BMGS fall under the same EIA plant code.[63]

The Commission apparently accepts UNS's argument that the term "nameplate rating" can only apply to a single unit. Yet as Ms. Fogler described,[64] and as Committee members confirmed, nameplate ratings of multiple units are routinely aggregated for the purpose of EIA reporting.[65] The nameplate rating of a plant with multiple units is simply the total value of those units' individual nameplate ratings. The Committee Order acknowledged this fact: "[n]ameplate ratings of individual units located at the same site are routinely aggregated and reported by the U.S. Energy Information Administration as the total nameplate capacity for those plants."[66]

4. ***Analogous plant siting statutes in other states support the Committee's Order.***

Consistent with the longstanding application of Arizona's Line Siting Statute, power plant siting statutes in other states typically consider the collective MW capacity of all units that are part of the same facility or located at the same site to determine whether siting review is required. Statutes in Iowa,[67] Ohio,[68] Montana,[69] Minnesota,[70] North Dakota,[71] and Wisconsin,[72] among other states, set 25-100 MW thresholds for power plant siting. In these states, projects

[62] Transcript Vol. II at 312:1-10.
[63] Transcript Vol. I at 195:21-196:11, 196:12-14, 199:10-17.
[64] Transcript Vol. II at 312:11-313:6.
[65] *Id.* at 331:12-14.
[66] Committee Order at 6:1-3
[67] Iowa Code § 476A.5 (requires certificate of public convenience before constructing a "facility," which it defines as: "any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more...).
[68] Ohio Rev. Code § 4906.01 (requires certificate of environmental compatibility and public need for "major utility facilities," defined in part as "[e]lectric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more").
[69] Mont. Code Ann. § 75-20-102.
[70] Minn. Stat. § 216E.
[71] N.D. Cent. Code § 49-22.
[72] Wis. Stat. § 196.491(g).

consisting of units that are individually below the MW threshold but that together exceed the threshold are subject to environmental review and are required to obtain certifications from those states' regulatory bodies.[73]

UNS and Staff assert that Arizona is unique, and that in Arizona, multi-unit facilities can be built without environmental review, no matter how large the facility, as long as they use small turbines, unlike in other states. UNS attempts to contrast Arizona's line siting statute with Minnesota and Iowa's siting statutes, claiming that Arizona's law is unique because it does not explicitly include language about combining units to meet the MW threshold, while Minnesota and Iowa's statutes do include such language. There are two major flaws with UNS's argument.

First, the AZ line siting statute expresses the same principle as the Minnesota and Iowa statutes, using different language to achieve the same effect. While Minnesota's and Iowa's statutes say that combinations of units at one site are plants,[74] Arizona's statute says that a plant must be a "separate" generating unit.[75] This language has the same effect, because it means that if a group of units are not separate, they are one plant. Under all three statutes, a group of connected generating units constitute a single plant, not multiple plants: in Arizona because the units are not separate from each other, and in Minnesota and Iowa because the component units are combined together at the same site.

[73] *See e.g.* Ohio Power Siting Board, List of Approved Cases, *available at* https://opsb.ohio.gov/cases?caseType=Approved; Finding of Facts, Conclusions of Law and Recommendations regarding Blue Lake Plant Expansion Project Certificate of Need, Minn. Pub. Serv. Comm'n, *available at* https://mn.gov/oah/assets/250015828.rt_tcm19-160690.pdf; Findings of Facts, Conclusions of Law and Recommendations regarding Lakefield Junction Certificate of Need, Minn. Pub. Serv. Comm'n, *available at* https://mn.gov/oah/assets/250012107.rt_tcm19-159783.pdf.
[74] Iowa defines "facility" as: "any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more." Iowa Code § 476A.5.
[75] A.R.S. § 40-360(9).

Second, many other state statutes that treat connected generating units as one plant or facility do not expressly refer to "combination" or "aggregation," like Arizona. Wisconsin is one such example, where the siting statute applies to "electric generating equipment and associated facilities designed for nominal operation at a capacity of 100 megawatts or more." WI Stat § 196.491(g). A review of Wisconsin siting decisions shows that despite the absence of express statutory language calling for aggregation of the MWs of units in a single facility, Wisconsin regulators consider units that are part of the facility together for the purpose of siting.[76] Florida similarly requires environmental certification for projects that generate over 75 MW. Florida Statute § 403.501-503. Florida's statute is similar to Arizona in its simplicity, defining electric power plant as "for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity." *Id* at § 403.503(14). A review of certified facilities in Florida reveals many facilities comprised of individual units smaller than 75 MW.[77] There is nothing in the plain language of the Arizona line siting statute that makes it uniquely susceptible to a different interpretation from the many other siting statutes nationwide, many of which have similar language and which apply to multiple units at the same site.

II. DECISION 79388'S DEPARTURE FROM CEC PRECEDENT IS ARBITRARY AND CAPRICIOUS

The Siting Committee's interpretation of the Siting Statute is supported by many previous Commission CEC decisions. Since the Line Siting Statute's passage in 1971, Arizona utilities

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[76] Highlighted Construction Cases, Wis. Pub. Serv. Comm'n, *available at* https://psc.wi.gov/Pages/CommissionActions/HighlightedCases.aspx.

[77] Fla. Pub. Serv. Comm'n, List of Certified Facilities, *available at* https://publicfiles.dep.state fl.us/Siting/Outgoing/Web/Files_Web_Site/list_certified_facilities.pdf.

have routinely obtained CECs for gas-fired projects that include multiple units that cumulatively surpass 100 MW in nameplate capacity. The Committee Order cites five examples:[78]

- In 2001, Arizona Public Service Company (APS) obtained a CEC to construct the Sundance generating station, a "nominal 540 MW generating facility" with twelve 45 MW units.[79]
- In 2007, Northern Arizona Energy LLC obtained a CEC for the "Northern Arizona Energy Project" at the Griffith plant, which included four gas turbines with nameplate ratings of about 45 MW each, with a "nominal 175 MW" total capacity.[80]
- In 2008, a CEC was obtained for the Coolidge Generating Station, a project consisting of twelve 48 MW units with an "aggregate generating output" of up to a "nominal 575 MW."[81]
- In 2018, Tucson Electric Power Company–which has the same parent company as UNS– obtained a CEC to construct ten 20 MW RICE units at the Sundt plant, for a "total of 200 MW."[82]
- In 2023, Salt River Project (SRP) obtained a CEC for an expansion at Coolidge Generating Station that included twelve 51 MW units, with a "total nameplate capacity of approximately 575 megawatts."[83] Notably, the Coolidge expansion

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[78] Committee Order at 4, n.1.
[79]Decision 63863 at 2, Docket No. L-00000W-00-0107 (Ariz. Corp. Comm'n July 9, 2001) (excerpt provided as Ex. SC-19).
[80] Decision 70108, CEC at 3:11-15, Docket No. L-00000FF-07-0134-00133 (Ariz. Corp. Comm'n Dec. 21, 2007) (excerpt provided as Ex. SC-33).
[81] Decision 70636 at 3, Docket No. L-00000HH-08-0422-00141 (Ariz. Corp. Comm'n Dec. 11, 2008) (excerpt provided as Ex. SC-16).
[82] Decision 76638, CEC at 2:21-23, Docket No. L-00000C-17-0365-00177 (Ariz. Corp. Comm'n Mar. 29, 2018) (excerpt provided as Ex. SC-20).
[83] Decision 79020, Attachment A (CEC) at 2:26-3:1.

uses the same brand of gas-fired turbines that UNS proposes to use in the BMGS project: the LM6000.

Decision 79388 mentions these cases in passing, but fails to acknowledge that all of them consistently interpreted the Line Siting Statute in the same way.[84] The Commission has uniformly found that CECs are required for projects with total aggregate capacity over 100 MW. Neither UNS nor Staff has identified any contrary examples where the Commission reached a different conclusion.

UNS incorrectly claims that these CEC applications were submitted "voluntarily" and that past practice of other CEC applicants cannot "create jurisdiction."[85] On the contrary, each of these CECs were legally required. The applications were not voluntary, and nothing in the Commission decisions suggests that the CECs were anything other than mandatory. In fact, all five of the above-listed ACC decisions state in the titles that the CECs were granted "in conformance with the requirements of" the Line Siting Statute. Moreover, no party has argued that past Commission decisions "create jurisdiction"—rather, the Siting Statute gives the ACC jurisdiction over projects with total nameplate capacity over 100 MW, and the Commission has routinely acted within the proper scope of that jurisdiction in a series of decisions over decades.

The Commission's departure from long-established CEC precedent is arbitrary and capricious because Decision 79388 does not explain its abrupt reversal. Commission decisions cannot be arbitrary, capricious, or an abuse of discretion. *Sierra Club--Grand Canyon Chapter v. Ariz. Corp. Comm'n*, 237 Ariz. 568, 354 P.3d 1127, 1134 (Ct. App. 2015); *Hirsch v. Arizona Corp. Comm'n*, 237 Ariz. 456, 461–62 (Ct. App. 2015). Where an agency fails to articulate a

[84] Decision 79388 at ¶ 30:8-11.
[85] UNS Request at 7.

rational basis for a decision, that action is arbitrary and capricious. *See Compassionate Care Dispensary, Inc. v. Ariz. Dep't of Health Servs*., 244 Ariz. 205, 213 (Ct. App. 2018); *Sun City Home Owners Ass'n v. Ariz. Corp. Comm'n*, 248 Ariz. 291, 299 (Ct. App. 2020), *aff'd in part, vacated in part on other grounds*, 252 Ariz. 1 (2021).

When the Commission issues a final written order, the decision must include a reasoned explanation for the Commission's decision. This is particularly important when a Commission decision is inconsistent with, or departs from, the Commission's previous decisions. "An agency's decision is arbitrary and capricious if the agency fails to follow its own precedent or fails to give a sufficient explanation for failing to do so." *Andrzejewski v. F.A.A*., 563 F.3d 796, 799 (9th Cir. 2009) (citing *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade,* 412 U.S. 800, 807–08 (1973)). The Commission must justify departures from its own precedents, providing reasons for the reversal.

Here, Decision 79388 fails to provide a reasoned explanation for the Commission's sudden reversal of 50 years of its own CEC precedents. While the Commission puts forward a legal argument calling for the Line Siting Statute to be reinterpreted in an entirely new manner, the Decision fails to explain why the Commission has changed the position it took for the last 50 years. In summarizing the Siting Committee order, the Commission decision includes a single mention of "the Commission's issuance of CECs in Line Siting Cases 197, 177, 141, 133 and 107 (where the total capacities of the generating stations were greater than 100 MW. but each individual natural gas unit had a nameplate rating below 100 MW)." Decision 79388 ¶ 30. The Decision includes no further discussion of these Commission precedents, and it makes no attempt to explain why the new interpretation of the statute here differs from the Commission's conclusions in those earlier cases, several of which involved similar facts.

Moreover, Decision 79388 fails to note that Staff previously took the express position that a CEC is required for projects with aggregate capacity over 100 MW, directly contradicting Staff's position in this case.[86] In the 2007 Northern Arizona Energy, LLC proceeding (Case No. 133), Staff argued that a CEC was required because the applicant was proposing to build four 45 MW units as part of a 175 MW expansion of the Griffith plant, directly analogous to the BMGS expansion. Staff wrote that "the facts in the evidentiary record . . . demonstrate [that] four simple cycle gas fired generating units *as a whole* provide more than 100 MW of electric power to wholesale load" and that "[t]he four simple cycle gas-fired generating units considered together could be viewed as an addition to the existing Griffith Plant," given the "close nexus" between the existing plant and the new units.[87] Staff concluded that "[i]n light of the purpose of the Siting Statutes, it appears that the circumstances of this matter compel jurisdiction to consider the Application under ARS 40-360 et seq. To do otherwise would not appropriately recognize the public interest at stake in these proceedings and the close nexus to the Griffith plant."[88] The Commission ultimately adopted Staff's position in Decision No. 70108, treating the multi-unit expansion project as a single facility requiring a CEC.

Decision 79388 does not acknowledge that Staff took a directly contradictory position in the 2007 case, let alone explain the reason for Staff's reversal. Neither UNS nor Staff have provided any valid justification for the Commission to reverse its longstanding interpretation of the statute. Because Decision 79388 does not provide any explanation as to why the Commission is reversing 50 years of its own precedent, the decision is arbitrary and capricious.

[86] See Ex. SC-34.
[87] *Id.* at 2.
[88] *Id*. at 3-4.

III. DECISION 79388 IS FACTUALLY INCORRECT AND UNSUPPORTED BY THE EVIDENTIARY RECORD.

The Siting Statute requires that the Commission's review of Committee decisions "shall be conducted on the basis of the record" developed at the Committee evidentiary hearing. A.R.S. § 40-360.07(B). The parties developed a robust evidentiary record during the Siting Committee's two-day evidentiary hearing in this docket. The Committee heard testimony from multiple Company witnesses and multiple intervenor witnesses and considered dozens of exhibits. This evidentiary record clearly demonstrates that the four proposed BMGS units are physically interconnected, rely extensively on shared equipment, and form part of a single integrated generating facility, as Sierra Club explained in its June 7, 2024 exceptions.[89] Decision 79388 ignores this record, and contains multiple material factual errors which contradict the record.

As detailed in the Background Section and Section I.A.1., testimony from Sierra Club and Western Resource Advocate witnesses, admissions from UNS witnesses, discovery responses, and exhibits in the record all demonstrate that the BMGS units are not separate, physically or otherwise. This evidence demonstrates that the units are connected physically and also dependent on shared facilities. Instead of grappling with this evidence, the Decision ignores it in favor of a strained, inapt analogy, where UNS compares the units to cars in a garage that share washing and other facilities.[90] That analogy does not hold up to scrutiny. While cars in a garage can function when disconnected from shared facilities, units at BMGS *cannot* function if disconnected from shared gen tie lines and cannot operate if disconnected from shared power control modules. The Decision mentions that Sierra Club contends that units are connected by lines, wires, water pipes, and gas pipelines, but it does not explain how units are still separate

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[89] *See* Sierra Club Exceptions to Staff Sample Orders and Response to UNS Request for Commission Review (June 7, 2024) [hereinafter "Sierra Club Exceptions"].
[90] Decision 79388 at 11, ¶ 36.

despite these connections.[91] Nor does it rest on other evidence that disproves separateness. Instead, it assumes, without record support, that the units are separate. The Decision similarly fails to apply dictionary definitions of separate and unit to the factual record, instead ignoring this necessary application in favor of UNS' preferred assumptions.

The Siting Committee appropriately relied on the record in reaching its decision.[92] By contrast, Decision 79388 improperly ignores the robust evidentiary record developed before the Siting Committee, incorrectly asserting that the controlling facts are not in dispute and concluding without any evidentiary basis that the four units in the BMGS expansion are separate. The Decision is unsupported by the evidentiary record, which shows that the BMGS units are not separate, but rather physically connected to numerous items of shared equipment. Further, the Decision contains multiple material factual errors which contradict the record.

A. Decision 79388 Contains Material Factual Errors Regarding BMGS.

The Decision contains multiple factual errors and misrepresentations upon which it relies to either find that the facts are not in dispute or to support its conclusion that BMGS' units are separate. The Decision wrongly asserts that it is "undisputed" that all "components" of the units are "individual to the generating unit."[93] On the contrary, the record shows that the four new BMGS units would rely on at least 16 shared components that are not individual to the units.[94] Most of this shared equipment would be shared among all four new units, including an evaporation pond, water tanks, water pumps, and air compressors, among others.[95] Other items

[91] *Id.* at 6, ¶ 18.
[92] *See* Committee Order at 3.
[93] Decision 79388 at 10, ¶ 35.
[94] Transcript Vol. I at 150:3-25; Ex. UNSE-11; Ex. SC-3; Ex. SC-13.
[95] Transcript Vol. I at 150; Ex. UNSE-11; Exs. SC-3, SC-13.

of shared equipment, including chillers / cooling towers, generator step up transformers, and power distribution centers, would be in pairs shared among two units each.[96]

Further, the Decision wrongly asserts that each unit has "its own set of controls."[97] On the contrary, the record shows that "LM600 power control modules" would be shared between pairs of units.[98] And the Decision wrongly asserts that shared equipment does "not physically adjoin the units in any way."[99] The record shows the opposite: it shows there would be extensive physical connections between the units and shared equipment via pipes and wires.[100] In fact, UNS' witnesses admitted that there are physical connections between the units.[101]

These material factual errors demonstrate that the Decision was not supported by substantial evidence and fatally undermine the Commission's conclusions.[102] Each of the Commission's factual errors gives the false impression that the BMGS units will be separate, contradicting record evidence which shows the interconnectedness and interdependence of the BMGS units. The core issue at hand is whether the BMGS units are "separate" under the Line Siting Statute's definition of plant. The Commission's factual misstatements go directly to that key issue, and thus completely undermine the basis for the Commission's conclusion that the units are separate plants.

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[96] Ex. UNSE-11; Exs. SC-3, SC-13.
[97] Decision 79388 at 10, ¶ 35.
[98] Ex. UNSE-11; Exs. SC-3, SC-13.
[99] Decision 79388 at 11, ¶ 36.
[100] Transcript Vol. I at 150, 178:22-179:8 (more than half of the shared equipment would have physical connections to two or more of the new units).
[101] *Id.* at 178:22-179:8.
[102] *See Waltz Healing Ctr., Inc v. Ariz. Dep't of Health Servs*., 245 Ariz. 610, 613, ¶ 9 (App. 2018) (finding that Commission decisions receive deference unless not supported by substantial evidence).

B. Decision 79388 Inaccurately Characterizes Sierra Club's Position.

The Decision states that "Sierra Club maintains that the four proposed generator sets are adjoined by connections to various shared equipment and thus the nameplate ratings should be combined."[103] Sierra Club *actually* argued the four BMGS units are not "separate", as required by the statutory definition of "plant," because they are connected through and together dependent on shared equipment.[104] The Decision ignores this fundamental textual argument. The Decision again missteps by asserting that "Sierra Club also argues that it is possible for an operator to build an endless number of plants below the threshold for jurisdiction, but when viewed in totality exceed the jurisdictional limit."[105] Instead, Sierra Club argued that *UNS' interpretation of the statute* would make it possible for a utility to build a large *singular* plant with an unlimited number of *units* each less than 100 MW and thus circumvent the CEC requirement.[106]

C. Decision 79388's Factual Assertion About The Existing BMGS Units Is Unsupported.

Decision 79388 asserts that the nameplate capacity of the two existing units at BMGS is 61 MW each.[107] If correct, this would mean that the two existing units have a combined capacity of over 120 MW. However, UNS has made several inconsistent statements in its application, IRP, and air permit applications that characterize the two existing BMGS units as having a combined capacity of 90-96 MW, less than the 100 MW CEC threshold.[108] UNS points to three Commission decisions (70186, 71914, 72213) that reference BMGS, and argues those decisions

[103] Decision 79388 at 6, ¶ 19.
[104] Sierra Club Exceptions at 7-11.
[105] Decision 79388 at 6 at ¶ 19.
[106] Sierra Club Exceptions at 16.
[107] Decision 79388 ¶ 3:18-19.
[108] *See* Application for Disclaimer at 27, 75, 90 (two 48 MW turbines); Ex. UNSE-15, Appendix B at 4 (90 MW plant with two 45 MW turbines); Ex. SC-22 at 2 (same).

mean the Commission implicitly recognized the plant did not need a CEC.[109] But two of those Commission decisions (70186 and 71914) describe BMGS as a 90 MW plant, which would put it below the CEC threshold.[110] None of the three decisions describe BMGS as having a total capacity over 100 MW. Decision 79388 ignores this evidence.

This factual issue regarding the capacity of the existing BMGS units is material. UNS argues that because a CEC was not obtained for those existing BMGS units, no CEC is required for the proposed BMGS expansion.[111] But the fact that the original BMGS units were constructed without a CEC is not evidence that no CEC is required, rather it is evidence that, if the total combined nameplate capacity of the two existing units is in fact over 100 MW, BMGS was constructed in violation of the siting statute and has been operating illegally. No disclaimer of jurisdiction has ever been obtained for the existing BMGS units.[112] If UNS represented to the Commission that BMGS was a 90 MW plant, and never informed the Commission that the plant had a total capacity of over 100 MW, there is no reason that the Commission would have known a CEC was required. These prior ACC decisions regarding BMGS do not support UNS's argument that no CEC is required. And now that this evidence of the existing units' capacity is before the Commission, it should have been accurately reflected in Decision 79388.

IV. DECISION 79388 EXCEEDS THE SCOPE OF THE COMMISSION'S AUTHORITY.

Because it impermissibly seeks to rewrite the Line Siting Statute, Decision 79388 exceeds the scope of the Commission's authority. The scope of the Commission's jurisdiction is prescribed by the Arizona Constitution and statutes. *Walker v. De Concini*, 341 P.2d 933. 938

[109] Application at ES-2.
[110] Decision 70186 at 2:3-4; Decision 71914 at 6:18-19.
[111] *See* Request at 5:9-10; Application for Disclaimer at ES-2.
[112] Stipulation of Facts ¶ 10 (Ex. UNSE-17).

(Ariz. 1959). Commission actions that exceed the proper scope of the Commission's jurisdiction are voidable. *See, e.g., Southern Pacific Transp. Co. v. Ariz. Corp. Comm'n*, 845 P.2d 1125, 173 Ariz. 630 (Ariz. App. 1992); *Tucson Warehouse & Transfer Co. v. Al's Transfer, Inc.*, 77 Ariz. 323, 325, 271 P.2d 477, 478 (1954). The Commission is not a legislature or a court. The Commission does not have the constitutional or statutory authority to change statutes enacted by the Arizona legislature, or to reinterpret their established meaning. The Commission can only apply statutes according to their plain, established meaning.

Here, in Decision 79388, the Commission wrongly accuses the Siting Committee of trying to rewrite the Siting Statute,[113] when ironically it is the Commission, not the Committee, that is attempting to rewrite the statute. The Siting Committee faithfully applied the Siting Statute, consistent with the statute's plain meaning, the legislature's express declaration of purpose, and long-established CEC precedent. The Commission now seeks to distort the statute's meaning, ignore the legislature's purpose, and overturn 50 years of established CEC precedent because the current Commissioners do not agree with the statute as written, and would like to rewrite the statute to match their policy preferences. The Commission lacked the authority to rewrite the Line Siting Statute to fit its policy preferences, as it attempts to do in Decision 79388. Only the Arizona legislature can rewrite the Line Siting Statute. Because the Commission improperly acted outside the scope of its authority, Decision 79388 is void.

CONCLUSION

The plain language of the Line Siting Statute and the legislature's express declaration of policy demonstrate that power plant expansions with a total capacity over 100 MW, like BMGS, are subject to the Committee's jurisdiction and require a CEC. Commission CEC precedent and

[113] Decision 79388 ¶¶ 44, 45, 47.

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the factual record developed at the Committee hearing--including UNS' own admissions regarding the expansion--require treating the four proposed units at BMGS as one plant. Decision 79388's misinterpretation of the Line Siting Statute defeats the Legislature's intent and eliminates the Committee's power to assess environmental impacts of most new thermal power plants, gutting the CEC review process in the age of gas peaking plants. The Committee's Order Denying Application for Disclaimer of Jurisdiction is lawful and reasonable and should be upheld by the Commission. The Commission should grant rehearing and reconsider Decision 79388. The Commission should uphold the Siting Committee's decision and require UNS to obtain a CEC for this project.

RESPECTFULLY SUBMITTED this 10th day of July, 2024.

SIERRA CLUB

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