Clerk of the Superior Court
*** Electronically Filed ***
C. Nasui, Deputy
8/29/2024 10:00:56 AM
Filing ID 18423552

Patrick Woolsey *(Pro Hac Vice)*
Nihal Shrinath *(Pro Hac Vice)*
Sierra Club Environmental Law Program
2101 Webster Street, Ste 1300
Oakland, CA 94612
patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org

Chanele N. Reyes - AZ Bar No. 034898
Arizona Center for Law in the Public Interest
352 E. Camelback Rd. Suite 200
Phoenix, AZ 85012
chanele@aclpi.org

Attorneys for Sierra Club

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SIERRA CLUB, Plaintiff, vs. ARIZONA CORPORATION COMMISSION; JIM O'CONNOR, in his official capacity as a member of the Arizona Corporation Commission; NICK MYERS, in his official capacity as a member of the Arizona Corporation Commission; KEVIN THOMPSON, in his official capacity as a member of the Arizona Corporation Commission; LEA MÁRQUEZ PETERSON, in her official capacity as a member of the Arizona Corporation Commission; and ANNA TOVAR, in her official capacity as a member of the Arizona Corporation Commission, Defendants.	No. CV2024-023695 **COMPLAINT** (Appeal pursuant to A.R.S. § 40-254) **Tier 3**

Plaintiff Sierra Club makes the following allegations against Defendant Arizona Corporation Commission ("Commission"):

INTRODUCTION

1. Pursuant to A.R.S. § 40-254, Sierra Club appeals the Commission's decision to grant UNS Electric Company's ("UNS") application for a disclaimer of jurisdiction for an expansion of the gas-fired Black Mountain Generating Station ("Black Mountain").

2. Arizona's Power Plant and Transmission Line Siting Statute ("Siting Statute") requires that a utility seeking to construct a thermal power plant with a nameplate generating capacity of 100 megawatts ("MW") or larger must obtain a Certificate of Environmental Compatibility ("Certificate") for the project from the Commission. A.R.S. §§ 40-360(9), 40-360.07. The purpose of this requirement is to ensure that the environmental impacts of power plant projects are reviewed, that the public and affected stakeholders have an opportunity for input, and that impacts are mitigated where appropriate.

3. In March 2024, UNS applied to the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") seeking a disclaimer of jurisdiction over UNS's proposal to construct a 200 MW expansion ("Project") including four new gas-fired generating turbines at the existing Black Mountain facility. UNS sought to avoid environmental review of the Project, asking the Siting Committee to determine that the 200 MW Project was not a "plant" over 100 MW under the Siting Statute and thus did not require a Certificate.

4. At a hearing in April 2024, the Siting Committee heard extensive evidence and testimony showing that the Project is a plant over 100 MW and requires a Certificate. After the hearing, the Siting Committee voted 9 to 2 to reject UNS's application, issuing an order ("Siting Committee Order") finding that the Project was subject to Commission jurisdiction and required a Certificate pursuant to A.R.S. § 40-360.07.

5. The Commission subsequently overturned the Siting Committee's decision, unlawfully concluding in Decision No. 79388 ("Decision") that the Project was not subject to Commission jurisdiction and as a result, that no Certificate was required. Under the Commission's unprecedented Decision, no gas-fired power plant over 100 MW would require a Certificate, no matter how large the plant, as long as each individual generator within that plant is less than 100 MW. This would exempt most large gas-fired power plants being built in Arizona today from any environmental review by the Commission, as larger plants typically consist of multiple smaller units, for the purpose of flexible energy dispatch, or "peaking."

6. The Commission's decision to grant a disclaimer of jurisdiction is unlawful and unreasonable because (1) it misinterpreted the Siting Statute, distorting its plain meaning and ignoring the expressly stated intent of the Arizona Legislature, (2) it contained numerous factual errors that contradict the evidentiary record developed at the Siting Committee hearing, and (3) it arbitrarily overturned decades of Commission precedent without explanation or record support.

7. Sierra Club therefore respectfully requests that this Court vacate the Commission's unlawful grant of a disclaimer of jurisdiction in Decision No. 79388 and affirm that the Project is a "plant" subject to Commission jurisdiction and requires a Certificate of Environmental Compatibility, consistent with the Siting Committee Order.

PARTIES, JURISDICTION, AND VENUE

8. Sierra Club is a nonprofit corporation organized and existing under the laws of the state of California, with offices in many states including Arizona.

9. Sierra Club is dedicated to the protection of the environment, the climate, and human health.

10. Sierra Club has over 13,000 members in the state of Arizona, including approximately 200 members who live in Mohave County. Approximately 250 Sierra Club members are residential utility customers of UNS.

11. Sierra Club's Grand Canyon Chapter has its principal office in Phoenix, Arizona.

12. Sierra Club has been a party to multiple Siting Committee proceedings regarding the siting of proposed thermal power plant projects, including a recent Siting Committee proceeding regarding Salt River Project's Coolidge Expansion Project. Sierra Club intends to intervene as a party in similar Siting Committee proceedings in the future.

13. Defendant Arizona Corporation Commission is a five-member, publicly-elected body created under Ariz. Const. art. 15. Defendants Jim O'Connor, Nick Myers, Kevin Thompson, Lea Márquez Peterson, and Anna Tovar are Commissioners of the Arizona Corporation Commission and are named solely in their official capacities.

14. The Commission is an agency of the State of Arizona under A.R.S. § 41-1001.

15. The Commission's principal office is located in Maricopa County, Arizona.

16. The actions of the Commission and its members that are the subject of this Complaint occurred in Maricopa County, Arizona.

17. Jurisdiction and venue are proper in this Court pursuant to, inter alia, A.R.S. §§ 40-254(A) and 40-360.07(C).

LEGAL BACKGROUND

The Siting Statute and Commission Jurisdiction

18. Arizona's Power Plant and Transmission Line Siting Statute was originally enacted in 1971. A.R.S. § 40-360 *et seq*. The law which enacted the Siting Statute includes a legislative declaration of policy, which states that the statute's purpose 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's declaration of policy also states that construction of "major new facilities" for electric generation has adverse environmental impacts, and concludes it is "essential in the public interest to minimize any adverse effect upon the environment . . . which such new facilities might cause." *Id.* Accordingly, the Legislature recognized a need for environmental review of "the decision to locate a specific major facility at a specific site." *Id*.

19. To achieve these goals, the Siting Statute requires that in order to construct a thermal power plant with a nameplate capacity of 100 MW or larger, a utility must obtain a Certificate from the Commission. A.R.S. §§ 40-360(9), 40-360.07.

20. A.R.S. § 40-360.03 requires that "[e]very utility planning to construct a plant . . . in this state shall first file with the commission an application for a certificate of environmental compatibility." A.R.S. § 40-360.07(A) requires that "[n]o utility may construct a plant . . . within this state until it has received a certificate of environmental compatibility from the committee with respect to the proposed site, affirmed and approved by an order of the commission."

21. 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 for which expenditures or financial commitments for land acquisition, materials, construction or engineering exceeding $50,000 have not been made before August 13, 1971." (emphasis added).

22. Nameplate capacity rating is the maximum output of electricity that generating equipment can produce under specific conditions designated by the manufacturer.

23. Certificate applications are reviewed by the Siting Committee, which holds hearings and receives evidence. A.R.S. §§ 40-360.03, 40-360.04. The Siting Committee must evaluate whether a proposed project is environmentally compatible with the proposed site, and must consider a project's impacts on the "total environment of the area," "[n]oise emission levels," visual impacts, the "estimated cost of the facilities," and other factors. A.R.S. § 40-360.06(A).

24. When the Commission reviews the Siting Committee's decision to grant or deny a Certificate, it must consider the factors in A.R.S. § 40-360.06 and "balance, in the broad public interest, the need for an adequate, economical and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state." A.R.S. § 40-360.07(B).

Commission Precedent Applying the Siting Statute

25. Since the Siting Statute's enactment in 1971, Arizona utilities have routinely applied for Certificates for multi-unit power plant projects with total nameplate capacities over 100 MW, including when those projects were made up of individual units of less than 100 MW.

The Commission has uniformly issued Certificates for such projects, including in Commission Decision Nos. 63863 (2001), 70108 (2007), 70636 (2008), 76638 (2018), and 79020 (2023).

26. In 2007, in Case No. 133, Commission Staff concluded that a 175 MW gas-fired power plant expansion project consisting of four 45 MW units required a Certificate because the total nameplate capacity of those units exceeded 100 MW, considering the units together as a whole. The Commission ultimately required a Certificate for the project in Decision No. 70108.

27. The Commission's rules provide that a Certificate application "may be filed in the alternative in situations where the applicant is in doubt as to whether an application is required by law" and that "[i]n such instances the application shall request a disclaimer of jurisdiction from the Committee or, in the alternative, a certificate of environmental compatibility." A.A.C. § R14-3-203(D).

28. Prior to UNS's application in this case, there is no record of any utility applying to the Committee for a disclaimer of jurisdiction over the siting of a multi-unit thermal generating project, or of the Siting Committee or Commission ever granting such a disclaimer.

29. Given the Siting Statute's clear language, the many Commission decisions consistently applying the Statute, and the absence of prior applications for disclaimer, no published Arizona court decision has considered the novel arguments regarding the scope of Certificate review put forward by UNS and newly endorsed by the Commission in Decision No. 79388.

GENERAL FACTUAL ALLEGATIONS

The Existing Black Mountain Generating Station

30. Black Mountain Generating Station is a gas-fired electric generating facility owned and operated by UNS. The plant is located in Mohave County, Arizona. The existing Black Mountain facility consists of two gas-fired units which began operation in 2008. UNS never obtained a Certificate nor a disclaimer of jurisdiction for the existing Black Mountain facility. Commission Decisions 70186 and 71914 describe the existing Black Mountain plant as a single 90 MW generating facility.

31. The existing Black Mountain facility's two units are treated as a single plant in the Arizona Department of Environmental Quality's ("ADEQ") air permitting process for the facility, including in UNS's air permit application and in the air permit issued by ADEQ.

32. Likewise, the existing two-unit Black Mountain facility is classified as a single plant in reports filed by UNS with the United States Energy Information Administration ("EIA"). UNS's filings with the EIA report both units at Black Mountain on one form using a single plant code.

The Proposed Black Mountain Expansion Project

33. On March 8, 2024, UNS filed an application with the Siting Committee seeking a disclaimer of jurisdiction for a proposed expansion of Black Mountain. The Project would construct four new 50-MW gas-fired units as part of a single plant, with a total nameplate capacity of 200 MW. The Project's four new units would be located at the same site, adjacent to the existing Black Mountain units.

34. The Project's four new units would form a single integrated generating facility. The units would rely on at least sixteen types of shared equipment and facilities, and would be physically connected to most of this shared equipment. All four new units would share an evaporation pond, ammonia tank, air cooler skid, fuel gas coalescing skid, station service transformer, storage building, raw water tank, reverse osmosis building, demineralized water tank, air compressor, and raw water forwarding pump. Other shared equipment, including power control modules, chillers / cooling towers, generator step up transformers, and power distribution centers, would be built in pairs serving two new units each. In short, the Project's four new units would make up a single integrated power plant.

35. The entire expansion Project would rely on a single external electric line connecting it to the power grid, and a single external pipeline supplying gas to the new units.

36. UNS has indicated that it will submit a single air permit application to ADEQ covering all four of the proposed Black Mountain units as a single plant. UNS has also stated that it plans to report all four of the proposed Black Mountain units to the EIA on one form, as a single plant, using a single plant code.

37. Although the Project would consist of four connected units, located at the same site and relying on shared equipment, and would be treated as a single plant in filings with state and federal agencies, UNS's application claimed that the Project should be considered four separate power plants, each with a nameplate capacity of 50 MW, rather than a single plant, thereby avoiding Siting Committee jurisdiction. UNS's application argued that because each of the 200 MW Project's four connected units would be individually under 100 MW, no Certificate was required for the Project.

Siting Committee Review of UNS's Application

38. 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 ("SWEEP"), and Commission Staff also intervened.

39. The Siting Committee held a two-day evidentiary hearing on April 24 and 25, 2024. The hearing included testimony from UNS witnesses, as well as testimony from Sierra Club witness Cara Fogler and WRA witness Dr. Alex Routhier, who holds a Ph.D. in electrical engineering.

40. The evidence and witness testimony showed that the Project constituted a single integrated thermal power plant over 100 MW. Evidence and testimony established that each of the four new units would rely extensively on numerous types of shared equipment, and would be physically connected to that shared equipment via pipes, wires, and lines. Ms. Fogler showed that the existing Black Mountain units are treated as a single plant, not multiple plants, in Arizona's air permitting process and in UNS's reporting to the EIA.

41. At the end of the hearing, the Siting Committee voted 9 to 2 to deny UNS's application for disclaimer of jurisdiction, concluding that the Project was subject to Committee jurisdiction and required a Certificate. Five of the six Siting Committee members appointed by Commissioners voted to reject UNS's application.

42. On May 2, 2024, the Siting Committee issued a written order denying UNS's application. A true and correct copy of the Siting Committee Order is attached as Exhibit 1. The Order concluded that the Project is a plant with a nameplate capacity greater than 100 MW, and

therefore required a Certificate. The Committee's Order found that where several units share the same site and are not *separate* units, the aggregate nameplate rating of those units determines whether a Certificate is required. *See* Siting Committee Order at 5.

43. The Siting Committee Order also emphasized the Legislature's intent that the Certificate process apply to "major new facilities," and that the Committee review the impacts of a "specific major facility at a specific site." *Id*. at 4-5. The Committee concluded that UNS's proposed reading of the Siting Statute would generate absurd results, because it would require a Certificate for a single 100 MW gas unit but allow the construction of 1000 MW of small modular nuclear reactors without a Certificate, as long as each individual reactor had a nameplate rating of less than 100 MW. *Id.* at 6.

Commission Review of UNS's Application

44. On May 16, 2024, UNS filed a request for Commission review of the Committee's decision. On June 3, 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, WRA and SWEEP also filed exceptions.

45. At the Commission's June 11, 2024 open meeting, the Commission voted 4 to 1 to overturn the Siting Committee Order and grant UNS's application for disclaimer of jurisdiction.

46. On June 20, 2024, the Commission issued Decision No. 79388, granting UNS's application. A true and correct copy of Decision No. 79388 is attached as Exhibit 2.

47. Decision No. 79388 included numerous misstatements of law and fact. The Commission misinterpreted the plain language of the Siting Statute, incorrectly finding that

multi-unit thermal power plant projects over 100 MW do not require Certificates as long as each individual unit within those projects is less than 100 MW.

48. The Commission unlawfully concluded that it lacked jurisdiction over the Project and that no Certificate was required on the ground that the Project was four power plants under the Siting Statute, rather than a single power plant. Specifically, the Decision inaccurately found that the Project's four units would be separate rather than interconnected, contradicting the factual record and mischaracterizing the units' reliance on shared equipment. The Decision ignored abundant facts in the evidentiary record which demonstrated that the four new units would be physically connected as a single integrated power plant.

49. On July 10, 2024, Sierra Club filed a timely request for rehearing and reconsideration of Decision No. 79388 pursuant to A.R.S. §§ 40-253(A) and 40-360.07(C). A true and correct copy of Sierra Club's rehearing request is attached as Exhibit 3.

50. Sierra Club's rehearing request showed that the Siting Committee had correctly interpreted the Siting Statute and that the evidentiary record supported the Committee's denial of UNS's request for disclaimer of jurisdiction. Sierra Club explained that the Commission's decision to grant the disclaimer was unlawful, unreasonable, and unsupported by the evidentiary record. WRA and the State of Arizona also filed rehearing requests.

51. The Commission did not act on Sierra Club's request for rehearing and reconsideration within twenty days of its filing, and the request was therefore deemed denied pursuant to A.R.S. § 40-253(A).

52. Sierra Club therefore files this timely complaint within 30 days of the date on which its request for rehearing and reconsideration was deemed denied. A.R.S. § 40-254(A).

COUNT I

Unlawful Determination: Misinterpretation of Siting Statute; Action in Excess of Commission Jurisdiction and Legal Authority

53. Sierra Club incorporates the foregoing allegations as if set forth fully herein.

54. A Commission decision must be vacated if clear and satisfactory evidence shows that it is unreasonable or unlawful. A.R.S. § 40-254.

55. Decision No. 79388 is unlawful because it fundamentally misinterpreted the plain language of the Siting Statute. Specifically, the Commission misinterpreted the definition of "plant" in A.R.S. § 40-360(9), and therefore incorrectly identified the circumstances in which a Certificate is required under A.R.S. §§ 40-360.03 and 40-360.07.

56. Decision No. 79388 unlawfully concluded that thermal power plants over 100 MW do not require Certificates as long as each unit within those projects is less than 100 MW. *See* Decision No. 79388 at 18, ¶¶ 55-56. The Commission incorrectly found that the Project constituted four distinct power plants and therefore did not require a Certificate under the Siting Statute. *Id.* at 18, ¶ 56.

57. Decision No. 79388 misinterpreted the Siting Statute's plain meaning. Under the statute, multiple connected generators or units within a single generating facility or generating unit comprise one "plant" under A.R.S. § 40-360(9), not multiple separate plants. To qualify as a "plant," a unit must be "separate" from other units. Units at the same facility that are connected and rely on shared equipment are not "separate," and therefore constitute a single plant or generating unit.

58. Decision No. 79388 failed to acknowledge that multiple connected, integrated units can make up a single larger generating unit. If a multi-unit thermal power plant has a total nameplate capacity over 100 MW, that plant requires a Certificate, regardless of the capacity of the individual units or generators that make up the plant.

59. Decision No. 79388 also ignored the express intent of the Arizona Legislature. The declaration of policy in the law enacting the Siting Statute expressed the Legislature's intent for the Siting Committee to evaluate the environmental impacts of "major new facilities" at specific sites, and for those impacts to be evaluated in a single comprehensive proceeding. Laws 1971, Ch. 67, § 1. This declaration of policy shows that the Legislature intended for environmental impacts of major facilities to be evaluated as a whole, not for individual parts of those facilities to be considered separately. Accordingly, the Legislature set the 100 MW minimum threshold in the statutory definition of "plant" to delineate what constitutes a "major new facility" subject to the Certificate process. *See id*.; A.R.S. § 40-360(9).

60. The Commission's misinterpretation of the Siting Statute flies in the face of the Legislature's purpose in enacting the statute, and would enable "major facilities" to avoid environmental review by mischaracterizing them as several smaller plants.

61. Decision No. 79388 also ignored principles of statutory interpretation, incorrectly claiming that legislative intent cannot be considered when interpreting the Siting Statute. *See* Decision No. 79388 at 16, ¶ 50. On the contrary, the Arizona Supreme Court has made clear that courts "read a statute in the context of the law that grants it authority" and that 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).

62. The Commission's misinterpretation of the Siting Statute would result in absurd outcomes. If Decision No. 79388 were upheld, a Certificate would not be required for any thermal or nuclear power plant, regardless of the plant's total capacity or the number of units within the plant, as long as each individual unit had a nameplate rating under 100 MW. A new thermal power plant with one 100 MW turbine would be subject to Certificate review, while a new 500 MW thermal power plant with ten 50 MW turbines would not be subject to Certificate review. This is not what the Legislature intended. The Commission ignored these absurd results.

63. The Commission does not hold the constitutional or statutory authority to change statutes enacted by the Arizona Legislature. It cannot unilaterally rewrite the Siting Statute. In Decision No. 79388, the Commission exceeded its jurisdiction and legal authority by attempting to change the meaning of the Siting Statute in order to achieve a policy result.

64. Commission Decision No. 79388 is unreasonable and unlawful because it misinterpreted the Siting Statute and thus incorrectly concluded that the Project did not require a Certificate.

COUNT II

Unlawful and Unreasonable Determination: Not Supported by Substantial Evidence

65. Sierra Club incorporates the foregoing allegations as if set forth fully herein.

66. Decision No. 79388 is unlawful and unreasonable because it is not supported by the evidentiary record.

67. The Commission's 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).

68. Commission 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).

69. Decision No. 79388 misstated material facts, contradicting and ignoring the factual record developed at the Siting Committee hearing. The Decision falsely declared that "Controlling Facts Are Not in Dispute," and that the physical layout of the units and the nature of the unit components is undisputed. Decision No. 79388 at 10:8, 10:17-18. On the contrary, there are material disputed facts regarding the physical configuration of the Project's units and the connections between those units.

70. Decision No. 79388 wrongly found that the Project's four units would be separate rather than interconnected, contradicting the factual record. *See id.* at 10-11, ¶¶ 35-36. The Commission also mischaracterized the units' reliance on shared equipment, again contradicting the record developed in the Siting Committee hearing. *Id.* The Commission incorrectly asserted that all Project components would be "individual to the generating unit." *Id*. at 10:18. The Decision correctly acknowledges that the units would share some equipment, but incorrectly asserts that the shared equipment would "not physically adjoin the units in any way." *Id*. at 11:3.

71. Contrary to the Commission's assertions, the record shows that the Project's units would rely extensively on shared equipment that is not individual to each unit, and that there would be extensive physical connections between the units and shared equipment. The record shows that the units would be physically integrated, not separate.

72. Decision No. 79388 does not address this evidence from the Siting Committee record.

73. This same evidence supports the Siting Committee's decision to deny UNS's application for disclaimer of jurisdiction and its conclusion that a Certificate is required.

74. The Commission's decision to grant UNS's application for disclaimer of jurisdiction is not supported by substantial evidence and was not "conducted on the basis of the record" developed before the Siting Committee. Decision No. 79388 is therefore unlawful and unreasonable.

COUNT III

Unlawful and Unreasonable Determination: Failure to Explain Reversal of Prior Decisions

75. Sierra Club incorporates the foregoing allegations as if set forth fully herein.

76. Decision No. 79388 is unlawful and unreasonable because it reverses decades of Commission precedent without a reasoned explanation or supporting evidence for the reversal.

77. The Commission's decisions cannot be arbitrary, capricious, or an abuse of discretion. *Sierra Club--Grand Canyon Chapter v. Ariz. Corp. Comm'n*, 237 Ariz. at 1134. Where an agency fails to articulate a satisfactory explanation for a decision, including a "rational connection between the facts found and the choice made," 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).

78. An agency's decision is arbitrary and capricious if the agency fails to follow its own precedent without providing a sufficient explanation justifying that reversal. *Andrzejewski*

v. F.A.A., 563 F.3d 796, 799 (9th Cir. 2009). The Commission must justify departures from its own precedents, providing a reasoned explanation for the reversal.

79. In the decades since the Siting Statute's enactment, the Commission has repeatedly issued Certificates for multi-unit thermal generating projects that are larger than 100 MW but consist of multiple units of less than 100 MW, including in Commission Decisions Nos. 63863 (2001), 70108 (2007), 70636 (2008), 76638 (2018), and 79020 (2023). Decision No. 79388 makes no attempt to explain why its new interpretation of the Siting Statute differs from the Commission's conclusions in those earlier cases, nor does it attempt to differentiate the facts.

80. Decision No. 79388 does not address the 2007 brief filed by Commission Staff in Case No. 133, which found that a multi-unit gas-fired power plant project required a Certificate because the combined total capacity of the project's units exceeded 100 MW, or the Commission's issuance of a Certificate for that project in Decision No. 70108.

81. No party has identified any previous case in which an applicant obtained a disclaimer of jurisdiction for the siting of a multi-unit generation project similar to the Black Mountain proposal.

82. Decision No. 79388 overturns decades of Commission precedent in Certificate cases without explaining why the Commission has changed the position it took for the last fifty years.

83. Decision No. 79388 is arbitrary and capricious because it does not provide a reasoned explanation for the Commission's sudden reversal of its own long-established precedent.

PRAYER FOR RELIEF

WHEREFORE, Sierra Club requests that this Court grant the following relief:

A. Vacate, set aside, and reverse Commission Decision No. 79388 as unlawful, unreasonable, or both.

B. Remand the matter to the Commission with instructions to (1) affirm the Siting Committee's Order denying UNS's application for disclaimer of jurisdiction and (2) affirm the Siting Committee's finding that UNS's proposed Black Mountain Project is subject to Commission jurisdiction and requires a Certificate of Environmental Compatibility.

C. Issue a temporary restraining order and preliminary injunction prohibiting any construction at the Project site until this case is resolved and UNS obtains a Certificate of Environmental Compatibility for the Project.

D. Enter judgment in favor of Sierra Club.

E. Award Sierra Club its costs and attorneys' fees pursuant to A.R.S. § 12-348 and other applicable statutes or doctrines.

F. Grant such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 29th day of August, 2024.

/s/ Patrick Woolsey

Patrick Woolsey (*Pro Hac Vice)*
Nihal Shrinath *(Pro Hac Vice)*
Sierra Club Environmental Law Program
2101 Webster Street, Ste 1300
Oakland, CA 94612
patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org

/s/ Chanele Reyes

Chanele N. Reyes - AZ Bar No. 034898
Arizona Center for Law in the Public Interest
352 E. Camelback Rd. Suite 200
Phoenix, AZ 85012
chanele@aclpi.org

COUNSEL FOR SIERRA CLUB

EXHIBIT 1

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF UNS ELECTRIC, INC, IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. § 40-360, ET SEQ., FOR A DISCLAIMER OF JURISDICTION, OR, IN THE ALTERNATIVE, A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE EXPANSION OF BLACK MOUNTAIN GENERATING STATION, A NATURAL GAS-FIRED, COMBUSTION TURBINE POWER PLANT NEAR KINGMAN, ARIZONA IN MOHAVE COUNTY.	Docket No. L-00000F-24-0056-00230 Case No. 230 **ORDER DENYING APPLICATION FOR DISCLAIMER OF JURISDICTION**

INTRODUCTION

Pursuant to notice given as provided by law, the Arizona Power Plant and Transmission Line Siting Committee ("Committee") held public hearings on April 24 and 25, 2024, in Phoenix, Arizona, in conformance with the requirements of A.R.S. § 40-360 *et seq.* for the purpose of receiving evidence and deliberating on the Application of UNS Electric, Inc. ("UNSE" or "Applicant") for a Disclaimer of Jurisdiction for the Black Mountain Expansion Project ("Project").[1] The Project will add 200 megawatts ("MW") of natural-gas-fired generation, comprised of four individual natural gas units (each with a nameplate capacity rating of approximately 50 MW), to the existing Black Mountain Generating Station ("BMGS"), a natural-gas-fired power plant near Kingman, Arizona in Mohave County. BMGS currently has two natural gas units, each with a nameplate capacity rating of approximately 61 MW, that have been in operation since 2007. Both the Project and BMGS will be located at the same site.

[1] Pursuant to A.A.C. R14-3-203(D), UNSE filed an Application for Disclaimer of Jurisdiction or, in the alternative, a Certificate of Compatibility ("CEC"). The scope of the hearing was limited to the Application for Disclaimer of Jurisdiction.

The following members and designees of members of the Committee were present at one or more of the hearing days for the evidentiary presentations, public comment, oral argument, and/or for the deliberations:

Adam Stafford	Chairman, Designee for Arizona Attorney General Kris Mayes
Gabby Mercer	Designee of the Chairman, Arizona Corporation Commission ("Commission")
Nicole Hill	Designee for Director, Governor's Energy Office
Leonard Drago	Designee for Director, Arizona Department of Environmental Quality
David French	Designee for Director, Arizona Department of Water Resources
Scott Somers	Appointed Member, representing cities and towns
Roman Fontes	Appointed Member, representing counties
David Kryder	Appointed Member, representing agricultural interests
Margaret "Toby" Little	Appointed Member, representing the general public
Jon Gold	Appointed Member, representing the general public
David Richins	Appointed Member, representing the general public

The Applicant was represented by Meghan H. Grabel and Elias Ancharski of Osborn Maledon, P.A. and in-house counsel for UNSE, Megan C. Hill. The following parties were granted intervention pursuant to A.R.S. § 40-360.05, and each appeared through counsel: Commission Staff, represented by Maureen Scott and Samantha Egan; Sierra Club, represented by Louisa Eberle, Patrick Woolsey, and Nihal Shrinath; Arizona Solar Energy Industries Association, represented by Autumn Johnson; Western Resource Advocates, represented by Emily Doerfler; and Southwest Energy Efficiency Project, represented by Chanele Reyes of the Arizona Center for Law in the Public

Interest.

At the conclusion of the hearing, the Committee, after considering the (i) Application, (ii) evidence, testimony, and exhibits presented by the Applicant and Intervenors, (iii) Stipulations of Facts adopted by the Applicant and Intervenors;[2] (iv) comments of the public; and (v) legal arguments of the parties, upon motion duly made and seconded, voted 9 to 2 to deny UNSE's Application for Disclaimer of Jurisdiction.

DISCUSSION

A.R.S. § 40-360.03 requires "[e]very utility planning to construct a plant, transmission line or both in this state" to "first file with the commission an application for a certificate of environmental compatibility." UNSE's Application for Disclaimer of Jurisdiction for the Project is based on its interpretation of A.R.S. § 40-360(9), which defines "plant" as "each separate thermal electric, nuclear or hydroelectric generating unit with a nameplate rating of one hundred megawatts or more. . . ." According to the Applicant, "[b]ecause each of the generating units that UNSE is constructing has a nameplate rating under that 100 MW threshold, UNSE is not legally required to obtain a CEC to construct the Project."[3] UNSE argued that the "Legislature's use of 'each separate . . . generating unit with a nameplate rating' makes clear that the capacity threshold for a 'plant' is determined by looking at the capacity rating stamped on each single, individual generating unit rather than the aggregate capacity of the overall generating station."[4] The Applicant further argued that because the statute is clear and unambiguous, the Committee and the Commission should look only to the plain language of the statute to interpret it.

The Arizona Supreme Court instructs us that "[w]hen interpreting a statute, our primary goal is to give effect to the legislature's intent." *J.D. v. Hegyi,* 236 Ariz. 39, 40, 335 P.3d 1118, 1119 (2014). "Although we first examine a statute's language in

---

[2] Exhibit UNSE-17, attached as Exhibit A and incorporated by reference.
[3] Exhibit UNSE-1, Application at ES-2.
[4] Exhibit UNSE-13, Proposed Form of Order at 4.

attempting to discern legislative intent, when the language is susceptible to differing reasonable interpretations we interpret the statute **as a whole, and consider the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose.**" *Lewis v. Debord*, 238 Ariz. 28, 30–31, 356 P.3d 314, 316–17 (2015) (internal quotes and citations omitted) (emphasis added).

Contrary to the Applicant's assertions, the definition of "plant" in A.R.S. § 40-360(9) is susceptible to different interpretations, as evidenced by 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)[5] compared to UNSE's interpretation of "plant" in its Application for Disclaimer of Jurisdiction, as well the fact that BMGS was constructed without a CEC or a disclaimer from the Commission. Based on the evidence in the record in this proceeding, BMGS is the only thermal electric generating station operating in Arizona with an aggregate nameplate rating greater than 100 MW that has not received a CEC and this Application for Disclaimer of Jurisdiction is the first time anyone has sought a disclaimer of jurisdiction for a plant.

When the legislature passed the line siting statutes[6] in 1971, it included a Declaration of Policy, which states: "The legislature hereby finds and declares that there is at present and will continue to be a growing need for electric service which will require the construction of **major new facilities**." Laws 1971, Ch. 67, § 1, (emphasis added).[7] A.R.S. § 40-360(9) makes it clear that "a nameplate rating of one hundred megawatts or more" is where the legislature drew the line for what constitutes a major new facility. It is apparent that the legislature chose "nameplate rating" as the measure of the size of a plant instead of the plant's actual output because the actual output can

[5] Official/administrative notice was taken of Decision Nos. 79020, 70636, 79189, 63863, 76638, and 70108 at the hearing.
[6] A.R.S. Title 40, Chapter 2, Article 6.2.
[7] Attached as Exhibit B and incorporated by reference.

vary depending on ambient conditions, such as temperature and elevation, whereas the nameplate rating is set by the manufacturer, is constant, and will always be greater than the actual output of the plant.

The Declaration of Policy also recognizes "that such facilities cannot be built without in some way affecting the physical environment where the facilities are located" and "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 facilities might cause." Laws 1971, Ch. 67, § 1. The legislature also found "that present practices, proceedings and laws relating to the location of such utility facilities may be inadequate to protect environmental values and take into account the **total effect** on society of such facilities." *Id.* (emphasis added).

The legislature further explained the need for the creation of the Committee and the siting process stating "that existing law does not provide adequate 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**." *Id.* (emphasis added).

The definition of "plant" in A.R.S. § 40-360(9) is "each **separate** . . . generating unit," not each **individual** generating unit. The only logical interpretation of the statute is that if individual generating units share the same site, they are not separate. It is the aggregate of the nameplate ratings of the individual units that determines whether or not a CEC is required. Once the total amount of "thermal electric, nuclear or hydroelectric" nameplate capacity at a specific site reaches 100 MW, regardless of whether it is one 100 MW unit or four 50 MW units, a CEC is required. If an existing facility has less than 100 MW of "thermal electric, nuclear or hydroelectric" nameplate capacity and additional thermal electric generating units are added to that site, raising the aggregate nameplate rating to 100 MW or more, a CEC is required. This interpretation does not render the term "nameplate rating" in the statute meaningless.

Nameplate 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.

Assuming for a moment the validity of Applicant's argument that the statute is clear and unambiguous, that does not foreclose the use of other methods of statutory construction as the Applicant claims. Our analysis must continue if the plain text leads to absurd results. As stated by the Arizona Supreme Court, "If the language is clear, the court must apply it without resorting to other methods of statutory interpretation **unless application of the plain meaning would lead to impossible or absurd results**." *Bilke v. State*, 206 Ariz. 462, 464, 80 P.3d 269, 271 (2003) (internal quotes and citations omitted) (emphasis added). "A result is absurd if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion." *State v. Estrada*, 201 Ariz. 247, 251, 34 P.3d 356, 360 (2001) (internal quotes and citations omitted). The Applicant's interpretation of A.R.S. § 40-360(9) would require a CEC for a single natural gas unit with nameplate capacity rating of 100 MW but 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. This is a transparently absurd result.

CONCLUSION

When the legislature created this Committee and the line siting process, it declared "that it is the purpose of this article to provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding to which access will be open to interested and affected individuals, groups, county and municipal governments and other public bodies to enable them to participate in these decisions." Laws 1971, Ch. 67, § 1. The Applicant's interpretation of A.R.S. § 40-360(9) would circumvent the

manifest purpose of the line siting statutes and deprive the people of Arizona who are affected by the construction of these major facilities of their ability to participate in the process to mitigate the adverse impacts on the environment and their quality of life. The Committee finds that under the facts of this case, as reflected by the record, the Project is a "plant" as defined by A.R.S. § 40-360(9).

IT IS HEREBY ORDERED DENYING UNSE's Application for Disclaimer of Jurisdiction pursuant to A.A.C. R-14-3-203(D).

ORDERED this 2nd day of May, 2024.

Adam Stafford, Chairman
Arizona Power Plant and
Transmission Line Siting Committee
Assistant Attorney General

CERTIFICATE OF MAILING

Pursuant to A.A.C. R14-3-204, the **ORIGINAL** of the foregoing and 25 copies were filed this 2nd day of May, 2024 with:

Utilities Division – Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

COPIES of the above emailed/mailed this 2nd day of May, 2024:

Maureen A. Scott
Samantha Egan
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007
mscott@azcc.gov
seagan@azcc.gov
Counsel for Legal Division Staff

Meghan H. Grabel
Elias Ancharski
OSBORN MALEDON, P.A.
2929N. Central Ave. Ste. 2 100
Phoenix. AZ 85012
mgrabel@omlaw.com
eancharski@omlaw.com
Counsel for Applicant

Megan Hill
88 E. Broadway Blvd. HQE91 0
Tucson, AZ 85701
megan.hill@tep.com
Counsel for Applicant

Britton Baxter and Ranelle Paladino
Directors, Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
utildivservicebyemail@azcc.gov

Louisa Eberle
Patrick Woolsey
Nihal Shrinath
SIERRA CLUB
2101 Webster Street. Ste. 1300
Oakland, CA 94612
patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org
maddie.lipscomb@sierraclub.org

Autumn T. Johnson
AriSEIA
7144 E. Stetson Dr., Suite 300
Scottsdale, Arizona 85251
autumn@ariseia.org

Emily Doerfler
WESTERN RESOURCE ADVOCATES
1429 N. 1st Street, Suite 100
Phoenix, Arizona 85004
emily.doerfler@westernresources.org

Chanele N. Reyes
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
352 E. Camelback Rd. Suite 200
Phoenix, Arizona 85012
chanele@aclpi.org

Lisa L. Glennie
Glennie Reporting Services, LLC
1555 East Orangewood
Phoenix, Arizona 85020
admin@glennie-reporting.com
Court Reporter

By _____

Exhibit A

CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6.2.

Be it enacted by the Legislature of the State of Arizona:

Section 1. DECLARATION OF POLICY

The legislature hereby finds and declares that there is at present and will continue to be a growing need for electric service which will require the construction of major new facilities. It is recognized that such facilities cannot be built without in some way affecting the physical environment where the facilities are located. The legislature further 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 ~~effect~~ such new facilities might cause. The legislature further finds that present practices, proceedings and laws relating to the location of such utility facilities may be inadequate to protect environmental values and take into account the total effect on society of such facilities. The lack of adequate statutory procedures may result in delays in new construction and increases in costs which are eventually passed on to the people of the state in the form of higher electric rates and which may result in the possible inability of the electric suppliers to meet the needs and desires of the people of the state for economical and reliable electric service. Furthermore, the legislature finds that existing law does not provide adequate 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 legislature therefore declares that it is the purpose of this article to provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding to which access will be open to interested and affected individuals, groups, county and municipal governments and other public bodies to enable them to participate in these decisions.

Sec. 2. Title 40, chapter 2, Arizona Revised Statutes, is amended by adding article 6.2, sections 40-360 and 40-360.01 to 40-360.12, inclusive, to read:

ARTICLE 6.2. POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

40-360. DEFINITIONS

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AREA OF JURISDICTION" MEANS THE STATE, A COUNTY OR AN INCORPORATED CITY OR TOWN WHICH EXERCISES CONCURRENT OR EXCLUSIVE JURISDICTION OVER A GEOGRAPHICAL AREA.

Exhibit B

ORIGINAL

0000210931

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF UNS ELECTRIC, INC., IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. § 40-360, ET SEQ., FOR A DISCLAIMER OF JURISDICTION, OR, IN THE ALTERNATIVE, A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE EXPANSION OF BLACK MOUNTAIN GENERATING STATION, A NATURAL GAS-FIRED, COMBUSTION TURBINE POWER PLANT NEAR KINGMAN, ARIZONA IN MOHAVE COUNTY.	Docket No. L-00000F-24- 0056-00230 Case No. 230 **JOINT STIPULATION TO ADMISSION OF FACTS**

Arizona Corporation Commission
DOCKETED
APR 17 2024
DOCKETED BY

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2024 APR 17 P 2:18

OSBORN MALEDON ATTORNEYS AT LAW

UNS Electric, Inc. ("UNSE") and Proposed Intervenors Sierra Club, Arizona Solar Energy Industries Association, Western Resource Advocates, Southwest Energy Efficiency Project, and Arizona Corporation Commission Staff hereby stipulate to the following facts. This stipulation is without prejudice to any party's ability to argue the application of these facts to the law.

1. On March 8, 2024, UNSE filed an Application for Disclaimer of Jurisdiction or, in the alternative, a Certificate of Environmental Compatibility ("CEC"). The disclaimer filing was made pursuant to A.A.C. R14-3-203(D). The Application requests that the Arizona Power Plant and Line Siting Committee disclaim jurisdiction over the addition of four new gas turbine generator sets (which term, as used in this Stipulation, includes a gas-fired turbine, a generator, and auxiliary equipment), each with an individual nameplate rating of under 100 MW, at the Black Mountain Generating Station ("BMGS") under A.R.S. § 40-360 *et seq.* (Title 40, Chapter 2, Article 6.2).

2. BMGS is located in Mohave County, Arizona.

3. BMGS currently consists of two gas turbine generator sets.

4. BMGS is currently owned by UNSE.

5. BMGS has been in operation for approximately 16 years.

6. "Nameplate rating" is the maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer. Installed generator nameplate rating is commonly expressed in megawatts (MW) and is usually indicated on a nameplate physically attached to the generator.

7. Generators and turbines are distinct equipment that can have different nameplate ratings. Because the generator and the turbine must operate together to produce electricity, the lowest rated piece of equipment, in addition to auxiliary equipment and other factors, impact the output.

8. The two existing generators at BMGS each have equivalent nameplate ratings. The nameplate rating on the existing generators is expressed in kilovolt-amperes ("kVA"), which requires a conversion to MW. That conversion is accomplished by the following formula: $MW = kVA * \text{power factor}/10^3$.

9. UNSE anticipates that the nameplate rating for each of the new generators to be added to BMGS will be under 100 MW.

10. No CEC nor disclaimer of jurisdiction has ever been obtained for BMGS.

11. UNSE's anticipated configuration of the new gas turbine generator sets at BMGS is shown on the schematic attached as Appendix 1 to this Stipulation.

12. The new gas turbine generator sets at BMGS will use some shared facilities in common with each other. Some of the shared facilities will also be shared with the existing generating sets at BMGS.

13. The new equipment and facilities that UNSE anticipates will be shared, and the facilities that will be specific to each new gas turbine generator set, are set forth on Appendix 2 to this Stipulation.

///

RESPECTFULLY SUBMITTED this 17th day of April, 2024.

OSBORN MALEDON, P.A.

Meghan H. Grabel

Meghan Grabel
Timothy J. Sabo
Elias Ancharski
2929 N. Central Ave 20th Floor
Phoenix, Arizona 85012
mgrabel@omlaw.com
tsabo@omlaw.com
eancharski@omlaw.com

and

Megan C. Hill
UNS Energy Corporation
88 E. Broadway Blvd.,
MS HQE910
Tucson, AZ 85702
Megan.Hill@tep.com

Attorneys for UNS Electric, Inc.

ARIZONA CORPORATION COMMISSION

s/ Maureen Scott (w/ Permission)

Maureen Scott
Samantha Egan
1200 W. Washington Street
Phoenix, Arizona 85007
legaldiv@azcc.gov

Attorneys for the Arizona Corporation Commission Staff

SIERRA CLUB

s/ Louisa Eberle (w/ Permission)

Louisa Eberle
Patrick Woolsey
Nihal Shrinath
Sierra Club Environmental Law Program

210 I Webster Street, Ste 1300
Oakland, CA 94612
louisa.eberle@sierraclub.org
patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org
maddie.lipscomb@sierraclub.org
Attorneys for Sierra Club

AriSEIA

s/ Autumn T. Johnson (w/ Permission)

Autumn T. Johnson
7144 E. Stetson Dr., Suite 300
Scottsdale, Arizona 85251
autumn@ariseia.org
Attorney for AriSEIA

WESTERN RESOURCE ADVOCATES

s/ Emily Doerfler (w/ Permission)

Emily Doerfler, Attorney
1429 N. 1st Street, Suite 100
Phoenix, Arizona 85004
emily.doerfler@westernresources.org
Attorney for Western Resource Advocates

SOUTHWEST ENERGY EFFICIENCY PROJECT

s/ Chanele N. Reyes (w/ Permission)

Chanele N. Reyes
Arizona Center for Law in the Public Interest
352 E. Camelback Rd., Suite 200
Phoenix, Arizona 85012
chanele@aclpi.org
Attorney for Southwest Energy Efficiency Project

ORIGINAL of the foregoing and 25 copies were filed this 17th day of April, 2024 with:

Utilities Division-Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing emailed this day to:

Adam Stafford
Chairman, Arizona Power Plant and
Transmission Line Siting Committee
15 South 15th Avenue
Phoenix, Arizona 85007-2926
Adam.Stafford@azag.gov

Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007
legaldiv@azcc.gov

Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007
utildivservicebyemail@azcc.gov

Glennie Reporting Services, LLC
1555 East Orangewood
Phoenix, AZ 85020
admin@glennie-reporting.com

COPIES of the foregoing e-mailed/mailed this day to:

Louisa Eberle
Patrick Woolsey
Nihal Shrinath
SIERRA CLUB
Sierra Club Environmental Law Program
210 I Webster Street, Ste 1300
Oakland, CA 94612
louisa.eberle@sierraclub.org

patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org
maddie.lipscomb@sierraclub.org
Attorneys for Sierra Club

Autumn T. Johnson
AriSEIA
7144 E. Stetson Dr., Suite 300
Scottsdale, Arizona 85251
autumn@ariseia.org
Attorney for AriSEIA

Emily Doerfler, Attorney
WESTERN RESOURCE ADVOCATES
1429 N. 1st Street, Suite 100
Phoenix, Arizona 85004
emily.doerfler@westernresources.org
Attorney for Western Resource Advocates

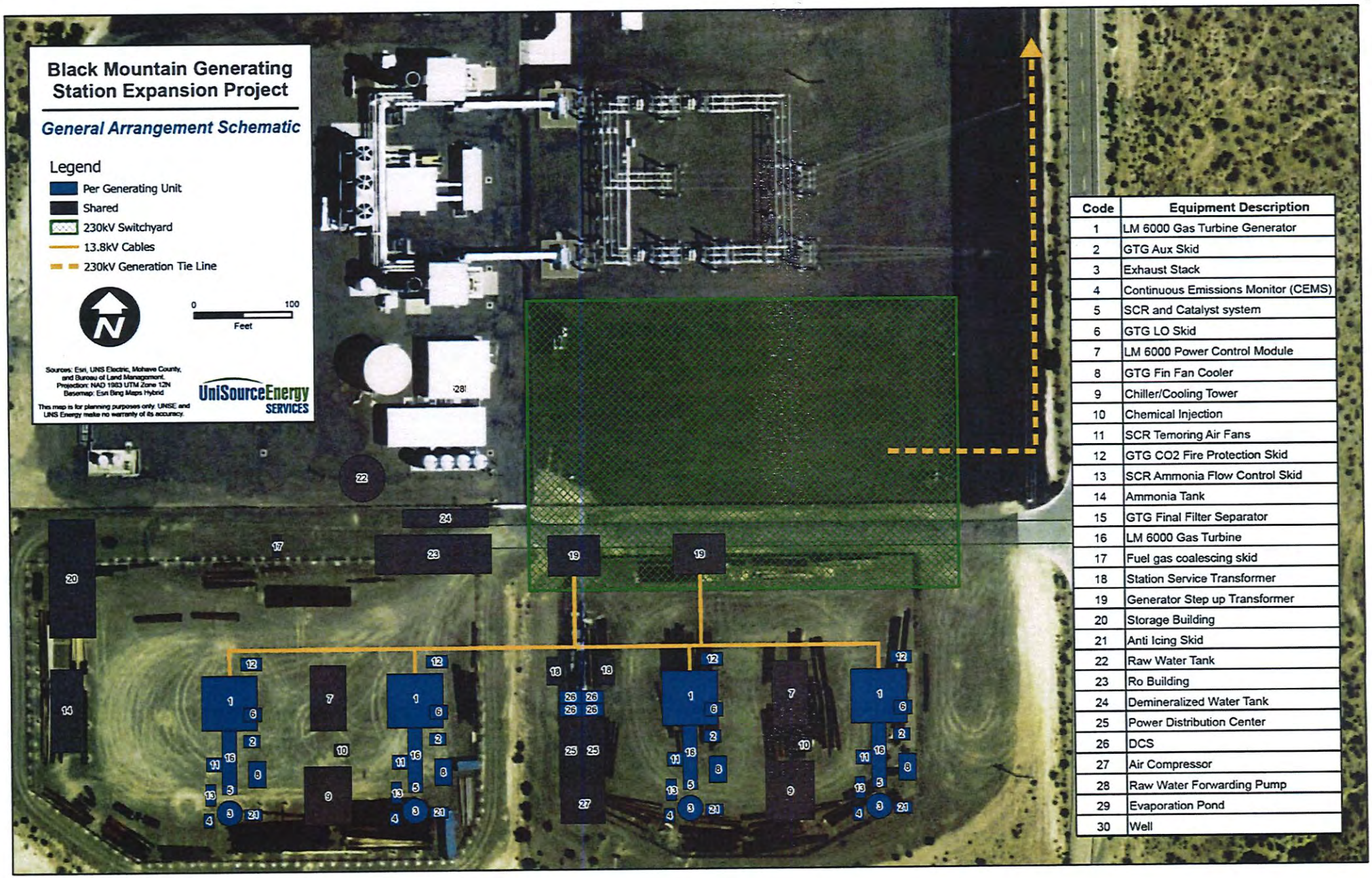
Chanele N. Reyes
Arizona Center for Law in the Public Interest
352 E. Camelback Rd., Suite 200
Phoenix, Arizona 85012
chanele@aclpi.org
Attorney for Southwest Energy Efficiency Project

Maureen A. Scott, Chief Litigation & Appeals
Samantha Egan, Staff Attorney
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
mscott@azcc.gov
segan@azcc.gov
Attorneys for ACC Legal Division Staff

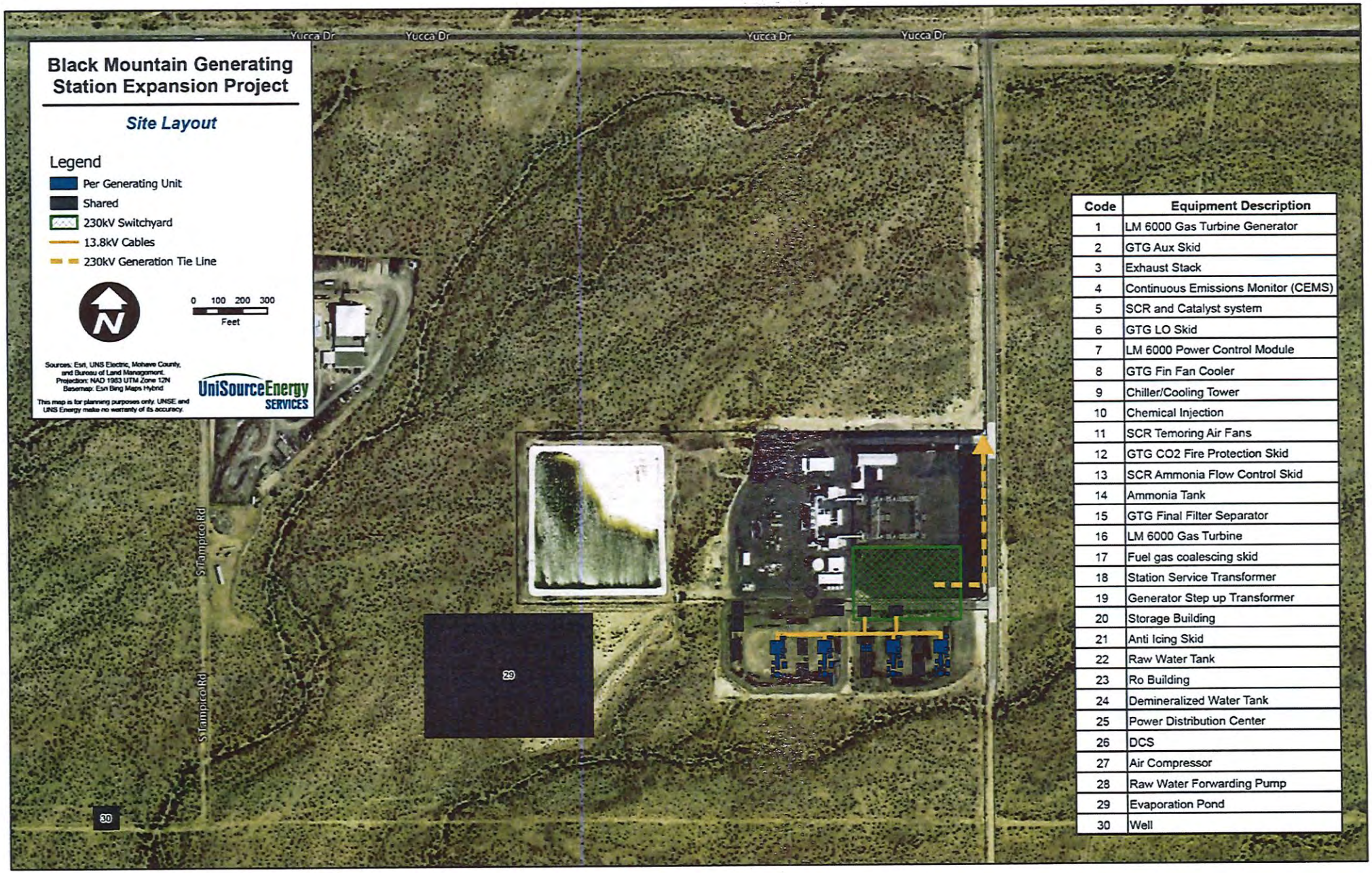
By: Patricia D. Palmer

10348558

Appendix A



Code	Equipment Description
1	LM 6000 Gas Turbine Generator
2	GTG Aux Skid
3	Exhaust Stack
4	Continuous Emissions Monitor (CEMS)
5	SCR and Catalyst system
6	GTG LO Skid
7	LM 6000 Power Control Module
8	GTG Fin Fan Cooler
9	Chiller/Cooling Tower
10	Chemical Injection
11	SCR Temoring Air Fans
12	GTG CO2 Fire Protection Skid
13	SCR Ammonia Flow Control Skid
14	Ammonia Tank
15	GTG Final Filter Separator
16	LM 6000 Gas Turbine
17	Fuel gas coalescing skid
18	Station Service Transformer
19	Generator Step up Transformer
20	Storage Building
21	Anti Icing Skid
22	Raw Water Tank
23	Ro Building
24	Demineralized Water Tank
25	Power Distribution Center
26	DCS
27	Air Compressor
28	Raw Water Forwarding Pump
29	Evaporation Pond
30	Well



Code	Equipment Description
1	LM 6000 Gas Turbine Generator
2	GTG Aux Skid
3	Exhaust Stack
4	Continuous Emissions Monitor (CEMS)
5	SCR and Catalyst system
6	GTG LO Skid
7	LM 6000 Power Control Module
8	GTG Fin Fan Cooler
9	Chiller/Cooling Tower
10	Chemical Injection
11	SCR Temoring Air Fans
12	GTG CO2 Fire Protection Skid
13	SCR Ammonia Flow Control Skid
14	Ammonia Tank
15	GTG Final Filter Separator
16	LM 6000 Gas Turbine
17	Fuel gas coalescing skid
18	Station Service Transformer
19	Generator Step up Transformer
20	Storage Building
21	Anti Icing Skid
22	Raw Water Tank
23	Ro Building
24	Demineralized Water Tank
25	Power Distribution Center
26	DCS
27	Air Compressor
28	Raw Water Forwarding Pump
29	Evaporation Pond
30	Well

Appendix B

Number	Description	Answer
1	LM 6000 Gas Turbine Generator	Per Turbine Unit
2	GTG aux skid	Per Turbine Unit
3	Exhaust stack	Per Turbine Unit
4	Continuous Emissions Monitor (CEMS)	Per Turbine Unit
5	SCR and Catalyst system	Per Turbine Unit
6	GTG LO skid	Per Turbine Unit
7	LM 6000 Power Control Module	Per two Turbine LM 6000 units
8	GTG fin fan cooler	Per Turbine Unit
9	Chiller/Cooling tower	For 4 LM 6000 Turbines
10	Chemical injection	For 4 LM 6000 Turbines
11	SCR temoring air fans	Per Turbine Unit
12	GTG CO2 fire Protection Skid	Per Turbine Unit
13	SCR ammonia flow control skid	Per Turbine Unit
14	Ammonia tank	For 4 LM 6000 Turbines
15	GTG final filter separator	Per Turbine Unit
16	LM 6000 Gas Turbine	Per Turbine Unit
17	Fuel gas coalescing skid	For 4 LM 6000 Turbines
18	Station Service Transformer	For 4 LM 6000 Turbines
19	generator Step up transformer	1 GSU per 2 gas turbines LM 6000
20	Storage Building	Common for 4 gas turbines
21	Anit icing skid	Per Turbine unit
22	Raw water tank	For 4 LM 6000 Turbine
23	Ro Building	For 4 LM 6000 Turbines
24	Demineralized water tank	For 4 LM 6000 Turbines
25	Power Distribution Center	1 PDC per 2 Gas Turbine units LM 6000
26	DCS	1 Per turbine unit LM 6000
27	Air Compressor	For 4 LM 6000 Turbines
28	Raw water forwarding pump	For 4 LM 6000 Turbines
29	Evaporation Pond	For 4 LM 6000 Turbines

EXHIBIT 2

0000211303

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JIM O'CONNOR – CHAIRMAN
LEA MÁRQUEZ PETERSON
ANNA TOVAR
KEVIN THOMPSON
NICK MYERS

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

CASE NO. 230

DECISION NO. 79388

Order Reversing Line Siting Committee and Granting Application for Disclaimer of Jurisdiction

Arizona Corporation Commission
DOCKETED
JUN 20 2024
DOCKETED BY

June 11, 2024
Open Meeting
Phoenix, Arizona

BY THE COMMISSION:

Before the Commission is a request by UNS Electric, Inc. for an Order Disclaiming Jurisdiction by the Commission and Arizona Power Plant and Transmission Line Siting Committee ("LS Committee" or "Committee") over an expansion project at the Black Mountain Generating Station ("BMGS") and UNSE's timely request for review of the LS Committee's May 2, 2024, Order Denying Application for Disclaimer of Jurisdiction ("Order"). For the reasons set forth below, the LS Committee's Order is reversed. Because of the importance of this issue, a detailed explanation of the Commission's decision is warranted.

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders as follows:

I. FINDINGS OF FACT.

A. Procedural History.

1. On March 8, 2024, the above-captioned docket was opened when UNSE filed an Application for a Disclaimer of Jurisdiction, or, in the Alternative, a Certificate of Environmental Compatibility Authorizing the Expansion of Black Mountain Generating Station ("BMGS"), a Natural Gas-Fired Combustion Turbine Power Plant (hereafter "CEC Application" or "Application"). The CEC Application was filed, as required by law, before the LS Committee.

2. The Power Plant is located near Kingman, Arizona in Mohave County. (CEC Application at ES-1). According to UNSE, the Project is necessary and required to meet future load growth across UNSE's service territory, maintain reliability for both existing and future customers, and reduce reliance on wholesale market purchases to meet retail demand. (CEC Application at ES-1).

3. The Black Mountain Expansion Project ("Project") will add a combined total of an additional 200 megawatts ("MW') of natural-gas-fired generation, comprised of four individual natural gas units, referred to as "plants." It is undisputed that each plant has a nameplate capacity rating of approximately 50 MW. The site currently has two natural gas units (each with a nameplate capacity rating of approximately 61 MW). (CEC Application at ES-1).

4. The term "nameplate rating" is not defined in Arizona statutes or the Commission rules, but it is well-established in the power industry and known by manufacturers of power equipment and industry users and regulators. For example, "nameplate rating" is defined by the Edison Electric Institute's (EEI) Glossary of Electric Industry Terms as the "full-load continuous rating of a generator prime mover or other electrical equipment under specified conditions as

designated by the manufacturers. It is usually indicated on a nameplate attached mechanically to the individual machine or device."[1] Additionally, the U.S. Energy Information Administration defines a "nameplate" as: "A metal tag attached to a machine or appliance that contains information such as brand name, serial number, voltage, power ratings under specified conditions, and other manufacturer supplied data."[2] In addition, the parties stipulated that nameplate rating means "the maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer. Installed generator nameplate rating is commonly expressed in megawatts (MW) and is usually indicated on a nameplate physically attached to the generator."[3]

5. UNSE filed the Application pursuant to Arizona Revised Statutes ("A.R.S.") § 40-360, et. seq. and Arizona Administrative Code ("A.A.C.") R14-3-203(D) A.A.C. R14-3-203(D) allows for an application to be filed in the alternative in order to get a formal decision disclaiming jurisdiction.

6. In the interest of preserving time and resources, the Applicant asked that the focus of the initial LS Committee hearing to be on the legal argument underpinning its request for a disclaimer of jurisdiction. (CEC Application, ES-1). A.R.S. §40-360 et seq. requires "every utility planning to construct a plant, transmission line or both to first file with the Commission an application for a certificate of environmental compatibility." A.R.S. § 40-360.03.

7. The line siting statutes at A.R.S. § 40-360 et. seq, require "every utility planning to construct a "plant," transmission line or both to file with the Commission an application for a certificate of environmental compatibility." At issue in this case is the meaning of "plant" which is defined in A.R.S. § 40-360(9) as "each separate thermal electric, nuclear or hydroelectric generating unit with a nameplate rating of one hundred megawatts or more for which expenditures or financial

[1] Edison Electric Institute, Glossary of Electric Industry Terms, 2005 p. 99.
[2] https://www.eia.gov/tools/glossary/index.php?id=N (last accessed May 31, 2024).
[3] Stipulation of Facts, Stipulation No. 6.

commitments for land acquisition, materials, construction or engineering exceeding $50,000 have not been made before August 13, 1971."

8. Notice of the LS Committee hearing was provided in accordance with legal requirements.

9. Intervention status was granted to Sierra Club, the Arizona Solar Energy Industries Association ("AriSEIA"), Western Resource Advocates ("WRA") and the Southwest Energy Efficiency Project ("SWEEP"). The Utilities Division Staff ("Staff") was also a party to the case.

10. A public hearing before the LS Committee was held on April 24 and 25, 2024, consistent with the requirements of A.R.S. § 40-360 et seq. and A.A.C. R14-3-201 et seq. for the purpose of receiving evidence and deliberating on the Application.

11. UNSE presented two witnesses in support of its position and submitted exhibits. Intervenor Sierra Club presented one witness in support of its position opposing a disclaimer of jurisdiction. Intervenor WRA presented one witness in support of its position opposing a disclaimer of jurisdiction. Sierra Club, WRA, and AriSEIA also presented exhibits. Sierra Club. WRA, SWEEP and AriSEIA also submitted written filings on June 6 and 7. Commission Staff also participated in the hearing in support of UNSE's Disclaimer request by virtue of a written memorandum, cross-examination of various witnesses, and participation in oral argument. Staff, however, did not present testimony at the hearing.

12. The Committee also considered oral and written comments submitted by the public.

13. On May 2, 2024, Chairman Adam Stafford of the LS Committee docketed on behalf of the LS Committee an Order Denying Application for Disclaimer of Jurisdiction. A copy of the Committee's Order Denying Application for Disclaimer of Jurisdiction is attached as Exhibit A.

14. According to the LS Committee's Order, after considering the (i) Application, (ii) evidence, testimony, and exhibits presented by the Applicant and Intervenors, (iii) Stipulations of

Facts adopted by the Applicant and Intervenors, (iv) comments of the public; and (v) legal arguments of the parties, upon motion duly made and seconded, the LS Committee voted 9 to 2 to deny UNSE's Application for Disclaimer of Jurisdiction. (Exhibit A).

15. On May 16, 2024, UNSE timely filed a Request for Commission Review of Order Denying Application for Disclaimer of Jurisdiction.

16. On May 21, 2024, Sierra Club filed a Request for Briefing Schedule and Oral Argument. On May 23, 2024, UNSE filed a Response to Sierra Club's Request for Briefing Schedule and Oral Argument.

B. Position of the Parties.

1. UNSE.

17. UNSE contends that A.R.S. § 40-360.03 provides that every utility planning to construct a "plant," as defined under Arizona law needs to file for a CEC unless it is exempt jurisdictionally. A "plant" is defined in the statute as "each separate thermal electric, nuclear, or hydroelectric generating unit with a name plate rating of 100 megawatts or more."[4] UNSE asserts that neither the Committee nor the Commission have jurisdiction to require a CEC under this law since the nameplate ratings of each plant are less than 100 MW.

2. Intervenors.

18. The intervenors assert that because the project, in total, has four generator sets, each plant nameplate rating should be added together, and in that event, the combined or total plant power exceeds 100 MW, thus conveying jurisdiction to the Committee and the Commission, and further

[4] 1. UNSE further notes that other states, as well as the federal government, have statutes that expressly combine or aggregate nameplate ratings if more than one plant is involved in a project. Cf. Iowa: a permit is required to construct "Any electric power generating plant ***or combination of plants at a single site*** owned by any person with a total capacity of 25 megawatts of electricity or more." [CEC Application at ES-3]. Minnesota: requires a permit before "any electric power-generating plant or ***combination of plants at a single site with a combined capacity*** of 50,000 kilowatts or more." [*Id.* at ES-4]. The obvious point being, if the Arizona Legislature wanted to combine nameplate ratings at a single site, it would have done so, and the absence of this language is compelling in concluding that aggregation should not be done under Arizona law.

triggering the requirement for a CEC. For example, Sierra Club states that the proposed units are not distinct but are part of a group of four. [TR. at 397:4-5]. It contends that the generator sets are interconnected through multiple systems of pipes and wires, including generation tie lines, power lines, wires, water pipes and gas pipelines all located at the same site. [*Id.* at 6-11].

19. 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. Sierra Club argues that the four units are dependent and rely extensively on a set of facilities that they share with each other. [TR. at 397:24-398:2]. Sierra Club argues further that the focus of the statute was on environmental impacts, which are necessarily contiguous and cumulative, rather than particular to one turbine or generator. [TR. at 401:6-9]. 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.

20. In addition, AriSEIA's contends that the Federal Public Utilities Regulatory Policies Act ("PURPA") should be applied, or at least used as guidance, which requires any facilities within one mile of each other be presumed to be the same site for the purposes of its 80-megawatt threshold. UNSE counters that A.R.S. § 40-360 et seq. does not incorporate the PURPA definition, and that this matter is governed exclusively by state law, not federal law.

21. AriSEIA contends that prior Commission orders, including Decision No. 76638 (TEP's Rice Units) and Decision No. 79020, entertained CEC applications from applicants seeking to build a project with a cumulative capacity in excess of 100 megawatts, even though each individual turbine included as part of the project was under 100 megawatts. [TR. at 418:15-21]. AriSEIA asserts that interpreting the statute as it is written would render the Commission's work obsolete and would require a review of a plant with one turbine at 100 megawatts, but not review of a plant with ten 99-megawatt turbines. [*Id.* at 421:14-18].

22. AriSEIA states that the statue was enacted to provide a single forum for the resolution of all matters concerning the location of electric generating plants and transmission lines. AriSEIA asserts that it is unlikely the Legislature meant to exclude large expansion projects from the meaning of major new facilities. [*Id.* at 416:14-17].

23. WRA argues that granting the request for disclaimer over BMGS and facilities like it, will have a detrimental effect on Arizona's population, environment, and its utilities. WRA argues that CECs address community concerns with land use conflicts, noise levels, and the possible damage to historic and scenic sites, which can affect local economies. WRA further contends that CECs address technical and practical aspects of a utility's plan and the cost of that plan to customers. WRA states that other large-scale projects could be built without a CEC if the statute is applied as written.

24. SWEEP joins in the statutory interpretations presented by the other intervenors. It contends that the Legislature created the CEC process to ensure governmental oversight of major investments for power generation in the state. SWEEP argues that if jurisdiction is disclaimed, the hands of Arizona regulatory bodies including the Committee to perform their duty to the public to consider critical factors associated with the CEC will be compromised.

25. SWEEP is also concerned with the potential for unnecessary costs. SWEEP states the Committee's CEC process is one of the very few legal and regulatory proceedings an Arizona that an energy provider must obtain before a project is built and that the process should apply to all plants.

3. <u>Staff.</u>

26. Commission Staff concluded that the Committee had no jurisdiction to require a CEC because the plant nameplate rating for each unit was less than 100 MW. Applying the plain and unambiguous meaning of the statute, Staff recommended the issuance of the disclaimer of jurisdiction. Staff disagrees with the Intervenors that applying the law as written would create a "loophole" that other companies could utilize in "evading" the statute. Staff asserts that the

Legislature set the threshold for jurisdiction at 100MW per nameplated plant, that the Legislature did not direct the Committee or Commission to aggregate plants under that threshold, and construction of facilities under that threshold is not a "loophole" or "evasion," but to the contrary, that is compliance with the law as written. Staff further concluded that discussion about "loopholes" and aggregating individual plants are policy discussions that are suitable for the Legislature, but not for regulators charged with enforcing and applying the law equally, fairly and in conformity with Legislative dictates.

27. Staff stands by its original conclusion, as contained in its April 16, 2024, letter. Staff also found no evidence that UNSE structured this expansion by utilizing four 50-megawatt capacity generating units in an effort to subvert the statute. Finally, Staff concludes, like UNSE, that much of what was debated by the Committee is a policy issue and is in the hands of the Arizona Legislature.

C. <u>The Committee Order.</u>

28. The Committee denied the Application and concluded it had jurisdiction over the project, that would then require a CEC. The Committee found the meaning of A.R.S. § 40-360 (9) to be ambiguous and susceptible to different interpretations. It relied on *Lewis v. Debord*, 238 Ariz. 28, 30-31 (2015) for the proposition that the plain language of the statute is first examined to determine legislative intent, and when the language is susceptible to different reasonable interpretations, the statute is interpreted as a whole, and the statute's context, subject matter, historical background, effects and consequences and spirit and purpose must be considered.

29. The Committee interpreted the statute to include an aggregating provision, that if individual generating units share the same site, they are not separate and the individual plant nameplate ratings would be combined. [LS Order at 5]. Then, the Committee determined that the aggregate of the induvial nameplate ratings determines whether a CEC is required. [*Id.*]. Thus, the Committee concluded that once the total amount of "thermal electric, nuclear or hydroelectric"

nameplate capacity at a specific site reaches 100 MW, regardless of whether it is one 100 MW unit or four 50 MW units, a CEC is required. [*Id.*].

30. The Committee further found that if an existing facility has less than 100 MW of "thermal electric, nuclear or hydroelectric nameplate capacity" and additional thermal electric generating units are added to that site, raising the aggregate nameplate rating to 100 MW or more, a CEC is required. [*Id.*]. In reaching these conclusions, the Committee found instructive the U.S. Energy Information Administration's use of aggregated information from the same site as the total nameplate capacity for those plants. In addition, the Committee found that 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) demonstrates that the statute is subject to different interpretations and that the Commission has interpreted it differently in the past. [*Id.*].

31. Lastly, the Committee found that even if the language of a statute is clear and unambiguous, as is the case here, if the plain text leads to "absurd results" the Committee or the courts must resort to other methods of statutory interpretation, citing *Bilke v. State*, 206 Ariz. 462, 464 (2004). The Committee created a hypothetical to prove that absurd results could occur, including the possibility that a series of small modular nuclear reactors could be built in a residential neighborhood without going through the line siting process to obtain a CEC. [*Id.* at 6].

32. For these reasons, and others as contained in its Order issued on May 4, 2024, the Committee, by a vote of 9-2, recommended denial of UNSE's request for a disclaimer of Committee and Commission jurisdiction.

33. The Commission, in reaching its Decision to reverse the Order Denying Application for Disclaimer of Jurisdiction issued by the Committee and grant UNSE's request for a Disclaimer of Jurisdiction, reviewed the record in this case, including the stipulation of facts agreed to and signed

by the parties, the testimony and slide presentations of UNSE and the intervenors in this case, the position of Staff, and the exhibits filed by Staff and the parties. The Commission further reviewed the comments and questions made by the Committee members. The Commission also considered public comment that was filed or presented orally at the hearing. The Commission finds and concludes that based upon the record in this case, the Order denying Application for Disclaimer of Jurisdiction issued by the Committee should be and hereby is reversed.

II. DISCUSSION AND RESOLUTION.

A. The Controlling Facts Are Not in Dispute.

34. As a preliminary matter, the Commission recognizes the Stipulation of Facts entered into by the Applicant and the Intervenors. There is no dispute here that the four plants are well-below the 100MW threshold when viewed individually. Nor is there any dispute that the four plants exceed the 100MW if the individual nameplate ratings are combined.

35. Unlike other states that expressly aggregate plant ratings when at a single site, the Arizona Legislature directed the Committee and the Commission to focus on the individual unit, exclusive of others. The existing two units each have a nameplate rating of 61 megawatts, which is less than the 100-megawatt threshold that must be met for Committee and Commission jurisdiction. The layout of the new generating units at the site is also undisputed as is the nature of the components of the units, which are individual to the generating unit. Each of the four units will have its own turbine and its own generator. Each has its own monitor, its own set of controls, its own auxiliary skids, containing instrumentation needed to run that singular unit. Each will have its exhaust stack and emissions monitoring equipment, and each will have its own set of switch gear and cable to deliver the energy produced by that unit to the grid. There is no dispute that the units will be individually dispatched and do not depend on one another to generate electricity.

36. The plants will share certain facilities, such as the evaporation pond, water tanks, and cooling tower, because it makes economic sense to do so. UNSE argues that the shared facilities do not render the units any less separate. They do not physically adjoin the units in any way and the use of the shared equipment does not make one unit dependent upon the other. Each unit will continue to exist as an independent producer of power. UNSE asserts that the argument that the shared equipment somehow turns four units into one unit is disingenuous. UNSE compares the configuration to two cars housed in the same garage. The cars may be washed with the same hose, fueled at the same gas station, and serviced by the same mechanic, but this does not make cars one car with one engine, or that the engine horsepower can be combined. The cars can still be driven at different times and at different speeds. This argument is persuasive.

B. <u>The Statute At Issue Sets the Threshold for Committee Jurisdiction.</u>

37. Critical to the Commission is whether it has jurisdiction to mandate a CEC. The Commission has broad constitutional and statutory powers to regulate public service corporations. *Campbell v. Mountain States Tel. & Tel. Co.*, 120 Ariz. 426, 431, 586 P.2d 987, 992 (App. 1978). "[I]t has full and exclusive power in the field of prescribing rates which cannot be interfered with by the courts, the legislature or the executive branch of state government." *Qwest Corp. v. Kelly*, 204 Ariz. 25, 30, ¶ 12, 59 P.3d 789, 794 (App. 2002); Ariz. Const. art. 15, § 3; Ariz. Rev. Stat. ("A.R.S.") § 40-203 (2011). But that broad jurisdiction is not unlimited.

38. The Legislature created the Line Siting Committee. It is a creature of statute, and its jurisdiction therefore is limited by statute. It cannot expand its jurisdiction, even for well-intentioned reasons. The Legislature can grant jurisdiction—and it can also expressly limit jurisdiction. *See* ARS 45-1720 ("The rates, services and practices relating to the generation, transmission, distribution and sale of power or to the distribution and sale of water pursuant to this chapter shall not be subject to regulation by or the jurisdiction of the Arizona corporation commission or any successor agency or

department."). The limits of jurisdiction are debated at times. *See Trico Elec. Coop. v. Ralston*, 67 Ariz. 358, 365, 196 P.2d 470, 474 (1948) (concluding the Commission has no jurisdiction to adjudicate contract rights). For example, the Commission recognized that a superior court should decide "traditional civil law claims" by a customer against a utility based on "common law theories." *Rattlesnake Pass, L.L.C. v. Tucson Electric Power Co.* Docket No. E-01933A-10-0125, Decision No. 73561, at 15-16, ¶¶ 43-44, (Ariz. Corp. Comm'n Oct. 17, 2012).

39. But there is no real debate here. The statute could not be clearer. While A.R.S. §40-360.03 requires every "utility planning to construct a plant, transmission line or both in this state to file an application for a CEC, the term "plant" is a specifically defined term. Under the statute, "plant" means "each separate thermal electric, nuclear or hydroelectric generating unit with a nameplate rating of one hundred megawatts or more…" A.R.S. § 40-360(9).[5] Contained within the Arizona Power Plant and Transmission Line Siting Committee website is this statement: "In general, the Committee has jurisdiction on: Proposed plants generating 100 megawatts or more…." https://www.azcc.gov/arizona-power-plant (last accessed May 28, 2024). Thus, the Committee itself recognizes the legal constraints that provide it jurisdiction, and its decision in this case is contrary to its own statement of limitation.

40. The reasoning of *Menderson v. City of Phoenix*, 51 Ariz. 280, 76 P.2d 321 (Ariz. 1938), is enlightening. In *Menderson*, the court addressed the express Constitutional and legislative jurisdiction conveyed to the Commission relative public utilities and evaluated an express withdrawal of jurisdiction over public utilities operated by municipalities. The Court explained:

> It will be seen thereby that all corporations which are engaged in carrying passengers for hire, and all corporations operating as common carriers, are deemed public service corporations within the meaning of the Constitution, with the express and specific exception of municipal corporations. ***We think that no plainer language could have been used by the makers of the Constitution to state that the constitutional powers conferred upon the Corporation Commission, in regard to the government and***

[5] The Commission will review the interpretation of statutes by the Line Siting Committee de novo.

> ***regulation of public utilities, were not intended to, and did not, include those owned and operated by municipal corporations of any character.*** Indeed, while plaintiff presents an argument which might well have been addressed to the discretion of the Constitutional Convention, pointing out the terrible consequences which he believes will result to the public in case the Corporation Commission is not allowed to regulate municipal corporations operating public utilities, his contention that such constitutional power does exist is not very strenuous. We think it too clear for extended discussion that the Constitution not only does not expressly authorize the Corporation Commission to regulate municipal corporations which are operating public utilities, but that it, by necessary implication, forbids such regulation.

Menderson v. City of Phoenix, 51 Ariz. 280, 283-284; 76 P.2d 321, 322-23 (Ariz. 1938) (emphasis added). The *Menderson* court teaches the Commission that where there is no jurisdiction, even if there is a contention that "terrible consequences" will result if jurisdiction is not asserted, where "no plainer language" exempting jurisdiction has been implemented by law, no jurisdiction can exist.

41. The Commission has explored the boundaries of its jurisdiction in prior cases, and it has learned that orders issued without jurisdiction are voidable. In *Southern Pacific Transp. Co. v. Arizona Corp. Com'n*, 845 P.2d 1125, 173 Ariz. 630 (Ariz. App. 1992), the court affirmed a trial court order voiding a Commission order where the Commission lacked jurisdiction to issue the order because it did not follow due process. The *Southern Pacific* court reasoned:

> We also agree that, lacking an agreement, the failure to hold a hearing is a jurisdictional defect that voids both the first decision and the second decision based on the first decision. *See Gibbons v. Arizona Corp. Comm'n*, 95 Ariz. 343, 346-347, 390 P.2d 582, 585 (1964); *cf. Tucson Warehouse and Transfer Co. v. Al's Transfer*, 77 Ariz. 323, 325, 271 P.2d 477, 478 (1954) (a Commission decision which goes beyond its power as prescribed by constitution and statutes is vulnerable for lack of jurisdiction).

Southern Pacific Transp. Co. v. Arizona Corp. Com'n, 845 P.2d 1125, 1128; 173 Ariz. 630, 633 (Ariz. App. 1992).

42. The Committee's efforts to expand the jurisdiction of the Commission to aggregate individual plants to then exceed the jurisdictional threshold of 100MW is an improper exercise of

jurisdiction and would likely be voidable by any reviewing court. We will save the courts the effort in this case by reversing the exercise of jurisdiction here.

43. The Commission is created by the State Constitution, and the Line Siting Committee is created by statute via the Legislature. There is nothing in the State Constitution nor in any statute that prohibits or restricts the Legislature from establishing the boundaries for jurisdiction of the Line Siting Committee—a committee it created. It is recognized that "[t]he Legislature is vested with the whole of the legislative power of the state and may deal with any subject within the scope of civil government unless it is restrained by the provisions of the Constitution, and the presumption that the Legislature is acting within the Constitution holds good until it is made to appear in what particular it is violating constitutional limitations." *Earhart v. Frohmiller*, 65 Ariz. 221, 224 (1947). In the absence of an express or implied constitutional limitation, "the legislature of this state may in the exercise of the sovereign powers of the state, enact any law its discretion may dictate." *Roberts v. Spray*, 71 Ariz. 60, 69 (1950).

44. Actions that expand jurisdiction, in excess of either Constitutional or statutory grants, are disfavored if not voidable as noted above. The Committee exercise of jurisdiction under these circumstances runs counter to ARS 41-1001.01(A)(7) as well. That statute provides that an applicant before a state agency:

> Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements ***that are not specifically authorized by statute, rule*** or state tribal gaming compact as provided in section 41-1030, subsection B.

ARS 41-1001.01(A)(7) (emphasis added). The Commission finds that the Line Siting Committee violated this law by, in effect, rewriting a facially clear statute that required "100 MW or more" per name plated plant to mean "100 MW or less." Arizona has long followed "the rule that the legislature is presumed to express its meaning in as clear a manner as possible." *Mendelsohn v. Super. Ct. in & for Maricopa Cnty.*, 76 Ariz. 163, 169 (1953). This Commission, like the courts,

should "assum[e] that the legislature has said what it means" and apply the law as written. *Cundiff v. State Farm Mut. Auto. Ins.*, 217 Ariz. 358, 360 ¶ 8 (2008).

C. <u>The Plain Meaning of the Statute Controls.</u>

45. The Committee's exhaustive effort to rewrite an otherwise plain statute in an effort to either divine "intent" or create an "absurdity" misses the mark: "The intent of the Legislature can only be determined by the language used, aided by the canons and rules of construction founded upon reason and experience." *Golder v. Dep't of Rev., State Bd. of Tax Appeals*, 123 Ariz. 260, 265 (1979).

46. The Committee relied on secondary tools of interpretation to craft a construction that the statutory text does not support. As explained by Justice Bolick, the Committee and the Commission should focus on the text itself, not "what [the legislature] meant to say" or what the "legislature could have said" and stick to "what the legislature said through the words it enacted." *State ex rel. Ariz. Dep't of Rev. v. Tunkey*, 524 P.3d 812, 817-18 ¶ 27 (Ariz. 2023) (Bolick, J., concurring).

47. Neither the Committee nor the Commission can vary from the provisions of the law, and searching for hidden intent or ambiguities to redraft a law is reversible error. This rewrite was "not specifically authorized by statute" and to the contrary, the statute clearly limits the Commission's, and the Committee's jurisdiction, to "100 MW or more."

48. As do the courts, we will interpret the statutes and rules that come before us in accordance with the intent of the drafters, and we start by reading the plain language of the statute. *See Kellin v. Lynch,* 247 Ariz. 393, 449 P.3d 719 (Ariz. App. 2019) "We interpret statutes and rules in accordance with the intent of the drafters, and we look to the plain language of the statute or rule as the best indicator of that intent."

49. After looking at the plain meaning of the statute, if it is unambiguous, it will be applied as written. *See Fragoso v. Fell*, 210 Ariz. 427, 430, ¶ 7, 111 P.3d 1027, 1030 (App. 2005).

"If the language of a statute or rule is unambiguous, 'we apply it as written." *Gutierrez v. Fox*, 242 Ariz. 259, 267, ¶ 28, 394 P.3d 1096, 1104 (App. 2017). Whether we follow the plain meaning rule, or the legislative intent rule (both approaches typically reach the same result) of statutory construction, in either application the result here is that the Commission has no jurisdiction over plants with nameplate ratings under 100MW. *SolarCity Corp. v. Ariz. Dep't of Revenue*, 243 Ariz. 477, 480 ¶ 8, 413 P.3d 678, 681 (2018) ('The best indicator of that intent is the statute's plain language").

50. The concurrence in *State ex rel. Ariz. Dep't of Revenue v. Tunkey*, 524 P.3d 812 (Ariz. 2023), rejected using legislative intent, and instead reasoned that the job of the courts, and in this case, the Commission, is to simply apply "the law." As explained therein, "the words of a statute are not 'evidence' of anything. They are the law. Our oath as judges does not send us on a cosmic search for legislative intent. It requires us to 'support the ... Constitution and laws of the State of Arizona.'..." *State ex rel. Ariz. Dep't of Revenue*, 524 P.3d at 818. The Commission now formally adopts this statutory construction approach when construing statutes that govern Commission and Committee operations.

51. The Committee went through great effort to create an ambiguity where none exists, even so far as to create a hypothetical absurdity. That type of exercise is appropriate for policy makers and legislators, but not for regulators, whose job is to provide a consistent application of the law. The plain meaning of the statute, that clearly provides that the Commission has jurisdiction on plants with name plate ratings in excess of 100MW, is that the Commission has jurisdiction over plants with name plate ratings over 100MW. Plants under 100MW are outside Commission jurisdiction. Nothing in the statute authorizes the Commission to expand its jurisdiction to include plants under 100MW by tying smaller plants together until the ratings exceed 100MW.

52. If the Legislature wants the Commission to have that jurisdiction, it can easily make that change. Until then, we will apply the law as written. *Callender v. Transpacific Hotel Corp.*, 179 Ariz. 557, 561 (App. 1993) ('we presume the legislature expressed its meaning in as clear a manner as possible").[6]

53. Further, the Commission does not have the implied power to expand its jurisdiction where the statute is clear. "The Arizona Supreme Court has consistently held that the Corporation Commission has no implied powers." *Rural/Metro Corp. v. Arizona Corp. Commission*, 629 P.2d 83, 129 Ariz. 116 (Ariz. 1981) *citing Southern Pacific Co. v. Arizona Corporation Commission*, 98 Ariz. 339, 345, 404 P.2d 692, 696 (1965). "Specifically, this court has stated that such powers as the Commission may exercise do not exceed those to be derived from a ***strict construction of the constitution and implementing statutes."*** *Rural Metro*, 629 P.2d at 84; 129 Ariz. at 117 (emphasis added) (citing *Williams v. Pipe Trades Industry Program of Arizona*, 100 Ariz. 14, 17, 409 P.2d 720, 722 (1966). The Committee's expansive application of the jurisdictional statute and its creative efforts to read "100MW or more" to mean "100MW or less" is not consistent with a "strict construction" of this statute.[7]

54. It cannot be overstated that the issue here is jurisdictional: "The Corporation Commission's jurisdiction is limited to those powers given it by the Constitution and the statutes of this state." *Walker v. De Concini*, 341 P.2d 933, 938 (Ariz. 1959). Here, the legislature conferred mandatory jurisdiction on the Commission only where the nameplate rating exceeds 100 MW. Anything less and the Commission has no jurisdiction. As discussed in *Rural/Metro*, "Jurisdiction,

[6] It is well-settled that an agency cannot expand its jurisdiction beyond what the legislature has created for it (or what the Constitution has created). *Cf. Sibbach v. Wilson & Co.*, 312 U.S. 1, 10 (1941) (an agency's rules cannot "extend or restrict the jurisdiction conferred by statute*"); see also EEOC v.Lutheran Soc. Servs.*, 186 F.3d 959, 963 (D.C. Cir. 1999) ("[I]n the absence of a statute clearly depriving courts of jurisdiction to hear issues not first presented to the agency, we know of no principle of administrative law . . . that would permit an agency to do so on its own.").

[7] In order to come to its conclusion, the Line Siting Committee ignored the statute's use of the terms "each separate" and "with a nameplate rating." Instead, it relied on the Declaration of Policy to find that aggregation was appropriate. But interpreting the statute to require aggregation of all units at a single site, erroneously imposes language in the statute that was not included by the Legislature to achieve a policy outcome that cannot be reconciled with the actual text of the statute. We agree with UNSE that the rules of statutory interpretation do not support such an outcome.

then, when used to refer to the authority of a particular governmental body, refers to subject matter, whereas power relates to administrative and enforcement characteristics of a particular governmental body or agency." *Rural/Metro*, 629 P.2d at 84, 129 Ariz. at 117 (Ariz. 1981). The Applicant sought a disclaimer of jurisdiction, as was its right, and the Committee erred in not issuing that disclaimer.

55. The new generating units will require a CEC only if they meet the statutory criteria set out above and are a jurisdictional "plant" under the statute. We agree with UNSE that each separate. generating unit with a nameplate rating makes clear that the capacity threshold for a "plant" is determined by looking at the capacity rating stamped on each single, individual generating unit and not the aggregate capacity of all the units being sited.[8]

56. UNSE asserts that its four "plants" when viewed separately are all individually under the 100 megawatts specified by the statute and, therefore, are exempt from the CEC requirement. UNSE also points out that unlike statutes in other jurisdictions, there is no language in the Arizona statute allowing the Commission to combine or aggregate capacity of all the units thus triggering the CEC requirement. UNSE is correct in this regard.

57. Whether the statute should be changed, updated, modified or left alone is a matter for the Legislature, not the Commission nor the Committee. The Commission acknowledges that this statute was enacted in 1971. Nevertheless, the Commission must abide by the law as written, and it cannot expand its jurisdiction unilaterally. The Committee Order also urges the Commission to reject the plain text of the statute because it produces an "absurd" result. If the language of the statute is clear, there is no need to progress further and create hypotheticals. Further, the Committee

[8] 3. UNSE's interpretation also adheres to the Commission's definition of "generating unit" which focuses on the devices that convert one form of energy into electric energy, and which specifically uses the turbine and generator as an example of such a set of devices. The shared equipment is not involved in the conversion process. The cooling towers are not required to generate electricity and are only used seasonally. The generation tie line brings the electricity to the grid and is not involved in the conversion process. The evaporation ponds that collect the byproduct from the generation process, are necessary for the units to comply with regulatory requirements and transmit electricity to the grid. Again, they are not devices that convert one form of energy into electric energy, as does the turbine and generator. UNSE states that if there is a concern about the exemptions in the statute in today's energy environment, the solution lies with the legislature. We agree.

erred in its application of the absurdity doctrine. The doctrine is used when application of the plain meaning of the statute actually results in an absurdity.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over UNS Electric, Inc., and the subject matter of its Application pursuant to A.R.S. § 40-360 *et seq*. and A.A.C. R14-3-203(D).

2. Notice of this proceeding has been given in the manner provided by law. The matter is ripe and fully briefed with a complete record before the Commission.

3. UNS Electric, Inc.'s Request for Disclaimer of Committee and Commission jurisdiction is consistent with A.R.S. § 40-360 *et. seq*., and it is therefore reasonable and in the public interest to approve the request.

4. The Line Siting Committee erred in re-writing the jurisdictional statute to include "plants" under 100MW or to combine plants with individual name plate ratings under 100MW.

5. The Line Siting Committee erred in denying the Application for Disclaimer of Jurisdiction.

6. The Application for Disclaimer of Jurisdiction should be granted.

7. The Committee Order is reversed in its entirety and the Commission holds that the Disclaimer of Jurisdiction should issue, and the Application is hereby **GRANTED**.

...

...

...

...

...

...

ORDER

IT IS THEREFORE ORDERED that the Request of UNS Electric, Inc. for a Disclaimer of Commission and Committee Jurisdiction is hereby **GRANTED** and the Committee Order of May 2, 2024, is **REVERSED**, with instructions to the Committee to adopt the rules of statutory construction set forth herein in future hearings and decisions.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN O'CONNOR COMMISSIONER MARQUEZ PETERSON

DISSENT

COMMISSIONER TOVAR COMMISSIONER THOMPSON COMMISSIONER MYERS

IN WITNESS WHEREOF, I, DOUGLAS R. CLARK Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 20th day of June 2024.

DOUGLAS R. CLARK
EXECUTIVE DIRECTOR

DISSENT Anna Tovar

DISSENT _____

EXHIBIT A

ORIGINAL

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF UNS ELECTRIC, INC, IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. § 40-360, ET SEQ., FOR A DISCLAIMER OF JURISDICTION, OR, IN THE ALTERNATIVE, A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE EXPANSION OF BLACK MOUNTAIN GENERATING STATION, A NATURAL GAS-FIRED, COMBUSTION TURBINE POWER PLANT NEAR KINGMAN, ARIZONA IN MOHAVE COUNTY.	Docket No. L-00000F-24-0056-00230 Case No. 230 **ORDER DENYING APPLICATION FOR DISCLAIMER OF JURISDICTION** Arizona Corporation Commission DOCKETED MAY - 2 2024 DOCKETED BY

INTRODUCTION

Pursuant to notice given as provided by law, the Arizona Power Plant and Transmission Line Siting Committee ("Committee") held public hearings on April 24 and 25, 2024, in Phoenix, Arizona, in conformance with the requirements of A.R.S. § 40-360 *et seq.* for the purpose of receiving evidence and deliberating on the Application of UNS Electric, Inc. ("UNSE" or "Applicant") for a Disclaimer of Jurisdiction for the Black Mountain Expansion Project ("Project").[1] The Project will add 200 megawatts ("MW") of natural-gas-fired generation, comprised of four individual natural gas units (each with a nameplate capacity rating of approximately 50 MW), to the existing Black Mountain Generating Station ("BMGS"), a natural-gas-fired power plant near Kingman, Arizona in Mohave County. BMGS currently has two natural gas units, each with a nameplate capacity rating of approximately 61 MW, that have been in operation since 2007. Both the Project and BMGS will be located at the same site.

[1] Pursuant to A.A.C. R14-3-203(D), UNSE filed an Application for Disclaimer of Jurisdiction or, in the alternative, a Certificate of Compatibility ("CEC"). The scope of the hearing was limited to the Application for Disclaimer of Jurisdiction.

The following members and designees of members of the Committee were present at one or more of the hearing days for the evidentiary presentations, public comment, oral argument, and/or for the deliberations:

Adam Stafford	Chairman, Designee for Arizona Attorney General Kris Mayes
Gabby Mercer	Designee of the Chairman, Arizona Corporation Commission ("Commission")
Nicole Hill	Designee for Director, Governor's Energy Office
Leonard Drago	Designee for Director, Arizona Department of Environmental Quality
David French	Designee for Director, Arizona Department of Water Resources
Scott Somers	Appointed Member, representing cities and towns
Roman Fontes	Appointed Member, representing counties
David Kryder	Appointed Member, representing agricultural interests
Margaret "Toby" Little	Appointed Member, representing the general public
Jon Gold	Appointed Member, representing the general public
David Richins	Appointed Member, representing the general public

The Applicant was represented by Meghan H. Grabel and Elias Ancharski of Osborn Maledon, P.A. and in-house counsel for UNSE, Megan C. Hill. The following parties were granted intervention pursuant to A.R.S. § 40-360.05, and each appeared through counsel: Commission Staff, represented by Maureen Scott and Samantha Egan; Sierra Club, represented by Louisa Eberle, Patrick Woolsey, and Nihal Shrinath; Arizona Solar Energy Industries Association, represented by Autumn Johnson; Western Resource Advocates, represented by Emily Doerfler; and Southwest Energy Efficiency Project, represented by Chanele Reyes of the Arizona Center for Law in the Public

Interest.

At the conclusion of the hearing, the Committee, after considering the (i) Application, (ii) evidence, testimony, and exhibits presented by the Applicant and Intervenors, (iii) Stipulations of Facts adopted by the Applicant and Intervenors;[2] (iv) comments of the public; and (v) legal arguments of the parties, upon motion duly made and seconded, voted 9 to 2 to deny UNSE's Application for Disclaimer of Jurisdiction.

DISCUSSION

A.R.S. § 40-360.03 requires "[e]very utility planning to construct a plant, transmission line or both in this state" to "first file with the commission an application for a certificate of environmental compatibility." UNSE's Application for Disclaimer of Jurisdiction for the Project is based on its interpretation of A.R.S. § 40-360(9), which defines "plant" as "each separate thermal electric, nuclear or hydroelectric generating unit with a nameplate rating of one hundred megawatts or more. . . ." According to the Applicant, "[b]ecause each of the generating units that UNSE is constructing has a nameplate rating under that 100 MW threshold, UNSE is not legally required to obtain a CEC to construct the Project."[3] UNSE argued that the "Legislature's use of 'each separate . . . generating unit with a nameplate rating' makes clear that the capacity threshold for a 'plant' is determined by looking at the capacity rating stamped on each single, individual generating unit rather than the aggregate capacity of the overall generating station."[4] The Applicant further argued that because the statute is clear and unambiguous, the Committee and the Commission should look only to the plain language of the statute to interpret it.

The Arizona Supreme Court instructs us that "[w]hen interpreting a statute, our primary goal is to give effect to the legislature's intent." *J.D. v. Hegyi*, 236 Ariz. 39, 40, 335 P.3d 1118, 1119 (2014). "Although we first examine a statute's language in

[2] Exhibit UNSE-17, attached as Exhibit A and incorporated by reference.
[3] Exhibit UNSE-1, Application at ES-2.
[4] Exhibit UNSE-13, Proposed Form of Order at 4.

attempting to discern legislative intent, when the language is susceptible to differing reasonable interpretations we interpret the statute **as a whole, and consider the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose.**" *Lewis v. Debord*, 238 Ariz. 28, 30–31, 356 P.3d 314, 316–17 (2015) (internal quotes and citations omitted) (emphasis added).

Contrary to the Applicant's assertions, the definition of "plant" in A.R.S. § 40-360(9) is susceptible to different interpretations, as evidenced by 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)[5] compared to UNSE's interpretation of "plant" in its Application for Disclaimer of Jurisdiction, as well the fact that BMGS was constructed without a CEC or a disclaimer from the Commission. Based on the evidence in the record in this proceeding, BMGS is the only thermal electric generating station operating in Arizona with an aggregate nameplate rating greater than 100 MW that has not received a CEC and this Application for Disclaimer of Jurisdiction is the first time anyone has sought a disclaimer of jurisdiction for a plant.

When the legislature passed the line siting statutes[6] in 1971, it included a Declaration of Policy, which states: "The legislature hereby finds and declares that there is at present and will continue to be a growing need for electric service which will require the construction of **major new facilities**." Laws 1971, Ch. 67, § 1, (emphasis added).[7] A.R.S. § 40-360(9) makes it clear that "a nameplate rating of one hundred megawatts or more" is where the legislature drew the line for what constitutes a major new facility. It is apparent that the legislature chose "nameplate rating" as the measure of the size of a plant instead of the plant's actual output because the actual output can

[5] Official/administrative notice was taken of Decision Nos. 79020, 70636, 79189, 63863, 76638, and 70108 at the hearing.
[6] A.R.S. Title 40, Chapter 2, Article 6.2.
[7] Attached as Exhibit B and incorporated by reference.

vary depending on ambient conditions, such as temperature and elevation, whereas the nameplate rating is set by the manufacturer, is constant, and will always be greater than the actual output of the plant.

The Declaration of Policy also recognizes "that such facilities cannot be built without in some way affecting the physical environment where the facilities are located" and "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 facilities might cause." Laws 1971, Ch. 67, § 1. The legislature also found "that present practices, proceedings and laws relating to the location of such utility facilities may be inadequate to protect environmental values and take into account the **total effect** on society of such facilities." *Id.* (emphasis added).

The legislature further explained the need for the creation of the Committee and the siting process stating "that existing law does not provide adequate 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**." *Id.* (emphasis added).

The definition of "plant" in A.R.S. § 40-360(9) is "each **separate** . . . generating unit," not each **individual** generating unit. The only logical interpretation of the statute is that if individual generating units share the same site, they are not separate. It is the aggregate of the nameplate ratings of the individual units that determines whether or not a CEC is required. Once the total amount of "thermal electric, nuclear or hydroelectric" nameplate capacity at a specific site reaches 100 MW, regardless of whether it is one 100 MW unit or four 50 MW units, a CEC is required. If an existing facility has less than 100 MW of "thermal electric, nuclear or hydroelectric" nameplate capacity and additional thermal electric generating units are added to that site, raising the aggregate nameplate rating to 100 MW or more, a CEC is required. This interpretation does not render the term "nameplate rating" in the statute meaningless.

Nameplate 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.

Assuming for a moment the validity of Applicant's argument that the statute is clear and unambiguous, that does not foreclose the use of other methods of statutory construction as the Applicant claims. Our analysis must continue if the plain text leads to absurd results. As stated by the Arizona Supreme Court, "If the language is clear, the court must apply it without resorting to other methods of statutory interpretation **unless application of the plain meaning would lead to impossible or absurd results**." *Bilke v. State*, 206 Ariz. 462, 464, 80 P.3d 269, 271 (2003) (internal quotes and citations omitted) (emphasis added). "A result is absurd if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion." *State v. Estrada*, 201 Ariz. 247, 251, 34 P.3d 356, 360 (2001) (internal quotes and citations omitted). The Applicant's interpretation of A.R.S. § 40-360(9) would require a CEC for a single natural gas unit with nameplate capacity rating of 100 MW but 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. This is a transparently absurd result.

CONCLUSION

When the legislature created this Committee and the line siting process, it declared "that it is the purpose of this article to provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding to which access will be open to interested and affected individuals, groups, county and municipal governments and other public bodies to enable them to participate in these decisions." Laws 1971, Ch. 67, § 1. The Applicant's interpretation of A.R.S. § 40-360(9) would circumvent the

manifest purpose of the line siting statutes and deprive the people of Arizona who are affected by the construction of these major facilities of their ability to participate in the process to mitigate the adverse impacts on the environment and their quality of life. The Committee finds that under the facts of this case, as reflected by the record, the Project is a "plant" as defined by A.R.S. § 40-360(9).

IT IS HEREBY ORDERED DENYING UNSE's Application for Disclaimer of Jurisdiction pursuant to A.A.C. R-14-3-203(D).

ORDERED this 2nd day of May, 2024.

Adam Stafford, Chairman
Arizona Power Plant and
Transmission Line Siting Committee
Assistant Attorney General

CERTIFICATE OF MAILING

Pursuant to A.A.C. R14-3-204, the **ORIGINAL** of the foregoing and 25 copies were filed this 2nd day of May, 2024 with:

Utilities Division – Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

COPIES of the above emailed/mailed this 2nd day of May, 2024:

Maureen A. Scott
Samantha Egan
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007
mscott@azcc.gov
seagan@azcc.gov
Counsel for Legal Division Staff

Meghan H. Grabel
Elias Ancharski
OSBORN MALEDON, P.A.
2929N. Central Ave. Ste. 2 100
Phoenix. AZ 85012
mgrabel@omlaw.com
eancharski@omlaw.com
Counsel for Applicant

Megan Hill
88 E. Broadway Blvd. HQE91 0
Tucson, AZ 85701
megan.hill@tep.com
Counsel for Applicant

Britton Baxter and Ranelle Paladino
Directors, Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
utildivservicebyemail@azcc.gov

Louisa Eberle
Patrick Woolsey
Nihal Shrinath
SIERRA CLUB
2101 Webster Street. Ste. 1300
Oakland, CA 94612
patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org
maddie.lipscomb@sierraclub.org

Autumn T. Johnson
AriSEIA
7144 E. Stetson Dr., Suite 300
Scottsdale, Arizona 85251
autumn@ariseia.org

Emily Doerfler
WESTERN RESOURCE ADVOCATES
1429 N. 1st Street, Suite 100
Phoenix, Arizona 85004
emily.doerfler@westernresources.org

Chanele N. Reyes
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
352 E. Camelback Rd. Suite 200
Phoenix, Arizona 85012
chanele@aclpi.org

Lisa L. Glennie
Glennie Reporting Services, LLC
1555 East Orangewood
Phoenix, Arizona 85020
admin@glennie-reporting.com
Court Reporter

By _____

Exhibit A

CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6.2.

Be it enacted by the Legislature of the State of Arizona:

Section 1. DECLARATION OF POLICY

The legislature hereby finds and declares that there is at present and will continue to be a growing need for electric service which will require the construction of major new facilities. It is recognized that such facilities cannot be built without in some way affecting the physical environment where the facilities are located. The legislature further 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 ~~effect~~ such new facilities might cause. The legislature further finds that present practices, proceedings and laws relating to the location of such utility facilities may be inadequate to protect environmental values and take into account the total effect on society of such facilities. The lack of adequate statutory procedures may result in delays in new construction and increases in costs which are eventually passed on to the people of the state in the form of higher electric rates and which may result in the possible inability of the electric suppliers to meet the needs and desires of the people of the state for economical and reliable electric service. Furthermore, the legislature finds that existing law does not provide adequate 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 legislature therefore declares that it is the purpose of this article to provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding to which access will be open to interested and affected individuals, groups, county and municipal governments and other public bodies to enable them to participate in these decisions.

Sec. 2. Title 40, chapter 2, Arizona Revised Statutes, is amended by adding article 6.2, sections 40-360 and 40-360.01 to 40-360.12, inclusive, to read:

ARTICLE 6.2. POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

40-360. DEFINITIONS

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AREA OF JURISDICTION" MEANS THE STATE, A COUNTY OR AN INCORPORATED CITY OR TOWN WHICH EXERCISES CONCURRENT OR EXCLUSIVE JURISDICTION OVER A GEOGRAPHICAL AREA.

Exhibit B

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF UNS ELECTRIC, INC., IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. § 40-360, ET SEQ., FOR A DISCLAIMER OF JURISDICTION, OR, IN THE ALTERNATIVE, A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE EXPANSION OF BLACK MOUNTAIN GENERATING STATION, A NATURAL GAS-FIRED, COMBUSTION TURBINE POWER PLANT NEAR KINGMAN, ARIZONA IN MOHAVE COUNTY.	Docket No. L-00000F-24- 0056-00230 Case No. 230 **JOINT STIPULATION TO ADMISSION OF FACTS**

OSBORN MALEDON ATTORNEYS AT LAW

UNS Electric, Inc. ("UNSE") and Proposed Intervenors Sierra Club, Arizona Solar Energy Industries Association, Western Resource Advocates, Southwest Energy Efficiency Project, and Arizona Corporation Commission Staff hereby stipulate to the following facts. This stipulation is without prejudice to any party's ability to argue the application of these facts to the law.

1. On March 8, 2024, UNSE filed an Application for Disclaimer of Jurisdiction or, in the alternative, a Certificate of Environmental Compatibility ("CEC"). The disclaimer filing was made pursuant to A.A.C. R14-3-203(D). The Application requests that the Arizona Power Plant and Line Siting Committee disclaim jurisdiction over the addition of four new gas turbine generator sets (which term, as used in this Stipulation, includes a gas-fired turbine, a generator, and auxiliary equipment), each with an individual nameplate rating of under 100 MW, at the Black Mountain Generating Station ("BMGS") under A.R.S. § 40-360 *et seq.* (Title 40, Chapter 2, Article 6.2).

2. BMGS is located in Mohave County, Arizona.

3. BMGS currently consists of two gas turbine generator sets.

4. BMGS is currently owned by UNSE.

5. BMGS has been in operation for approximately 16 years.

6. "Nameplate rating" is the maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer. Installed generator nameplate rating is commonly expressed in megawatts (MW) and is usually indicated on a nameplate physically attached to the generator.

7. Generators and turbines are distinct equipment that can have different nameplate ratings. Because the generator and the turbine must operate together to produce electricity, the lowest rated piece of equipment, in addition to auxiliary equipment and other factors, impact the output.

8. The two existing generators at BMGS each have equivalent nameplate ratings. The nameplate rating on the existing generators is expressed in kilovolt-amperes ("kVA"), which requires a conversion to MW. That conversion is accomplished by the following formula: MW = kVA * power factor/10^3.

9. UNSE anticipates that the nameplate rating for each of the new generators to be added to BMGS will be under 100 MW.

10. No CEC nor disclaimer of jurisdiction has ever been obtained for BMGS.

11. UNSE's anticipated configuration of the new gas turbine generator sets at BMGS is shown on the schematic attached as Appendix 1 to this Stipulation.

12. The new gas turbine generator sets at BMGS will use some shared facilities in common with each other. Some of the shared facilities will also be shared with the existing generating sets at BMGS.

13. The new equipment and facilities that UNSE anticipates will be shared, and the facilities that will be specific to each new gas turbine generator set, are set forth on Appendix 2 to this Stipulation.

///

RESPECTFULLY SUBMITTED this 17th day of April, 2024.

OSBORN MALEDON, P.A.

Meghan H. Grabel

Meghan Grabel
Timothy J. Sabo
Elias Ancharski
2929 N. Central Ave 20th Floor
Phoenix, Arizona 85012
mgrabel@omlaw.com
tsabo@omlaw.com
eancharski@omlaw.com

and

Megan C. Hill
UNS Energy Corporation
88 E. Broadway Blvd.,
MS HQE910
Tucson, AZ 85702
Megan.Hill@tep.com

Attorneys for UNS Electric, Inc.

ARIZONA CORPORATION COMMISSION

s/ Maureen Scott (w/ Permission)

Maureen Scott
Samantha Egan
1200 W. Washington Street
Phoenix, Arizona 85007
legaldiv@azcc.gov

Attorneys for the Arizona Corporation Commission Staff

SIERRA CLUB

s/ Louisa Eberle (w/ Permission)

Louisa Eberle
Patrick Woolsey
Nihal Shrinath
Sierra Club Environmental Law Program

210 1 Webster Street, Ste 1300
Oakland. CA 94612
louisa.eberle@sierraclub.org
patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org
maddie.lipscomb@sierraclub.org
Attorneys for Sierra Club

AriSEIA

s/ Autumn T. Johnson (w/ Permission)
Autumn T. Johnson
7144 E. Stetson Dr., Suite 300
Scottsdale. Arizona 85251
autumn@ariseia.org
Attorney for AriSEIA

WESTERN RESOURCE ADVOCATES

s/ Emily Doerfler (w/ Permission)
Emily Doerfler, Attorney
1429 N. 1st Street, Suite 100
Phoenix, Arizona 85004
emily.doerfler@westernresources.org
Attorney for Western Resource Advocates

SOUTHWEST ENERGY EFFICIENCY PROJECT

s/ Chanele N. Reyes (w/ Permission)
Chanele N. Reyes
Arizona Center for Law in the Public Interest
352 E. Camelback Rd., Suite 200
Phoenix, Arizona 85012
chanele@aclpi.org
Attorney for Southwest Energy Efficiency Project

ORIGINAL of the foregoing and 25 copies were filed this 17th day of April, 2024 with:

Utilities Division-Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing emailed this day to:

Adam Stafford
Chairman, Arizona Power Plant and
Transmission Line Siting Committee
15 South 15th Avenue
Phoenix, Arizona 85007-2926
Adam.Stafford@azag.gov

Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007
legaldiv@azcc.gov

Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007
utildivservicebyemail@azcc.gov

Glennie Reporting Services, LLC
1555 East Orangewood
Phoenix, AZ 85020
admin@glennie-reporting.com

COPIES of the foregoing e-mailed/mailed this day to:

Louisa Eberle
Patrick Woolsey
Nihal Shrinath
SIERRA CLUB
Sierra Club Environmental Law Program
210 I Webster Street, Ste 1300
Oakland, CA 94612
louisa.eberle@sierraclub.org

patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org
maddie.lipscomb@sierraclub.org
Attorneys for Sierra Club

Autumn T. Johnson
AriSEIA
7144 E. Stetson Dr., Suite 300
Scottsdale, Arizona 85251
autumn@ariseia.org
Attorney for AriSEIA

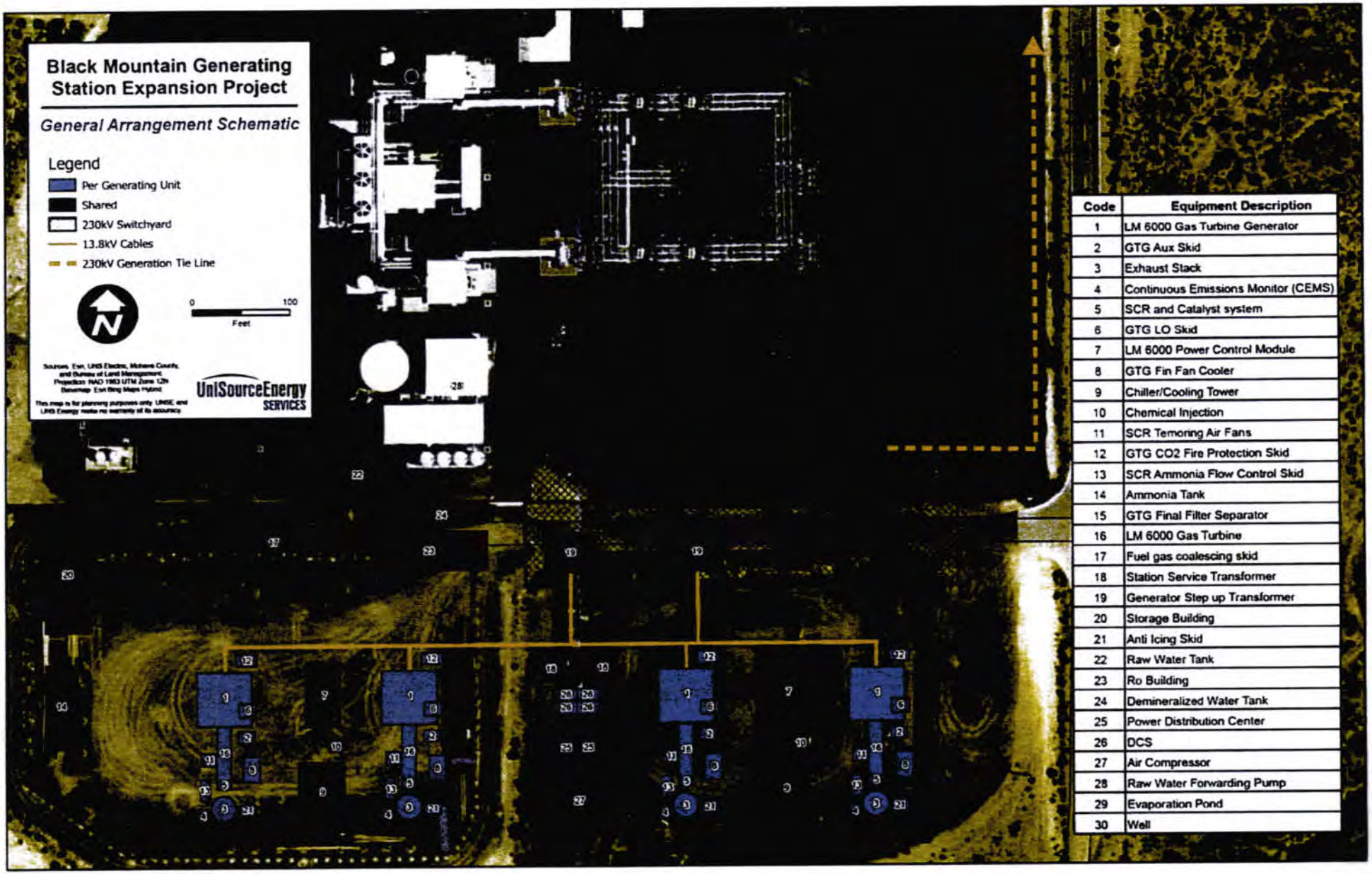
Emily Doerfler, Attorney
WESTERN RESOURCE ADVOCATES
1429 N. 1st Street, Suite 100
Phoenix, Arizona 85004
emily.doerfler@westernresources.org
Attorney for Western Resource Advocates

Chanele N. Reyes
Arizona Center for Law in the Public Interest
352 E. Camelback Rd., Suite 200
Phoenix, Arizona 85012
chanele@aclpi.org
Attorney for Southwest Energy Efficiency Project

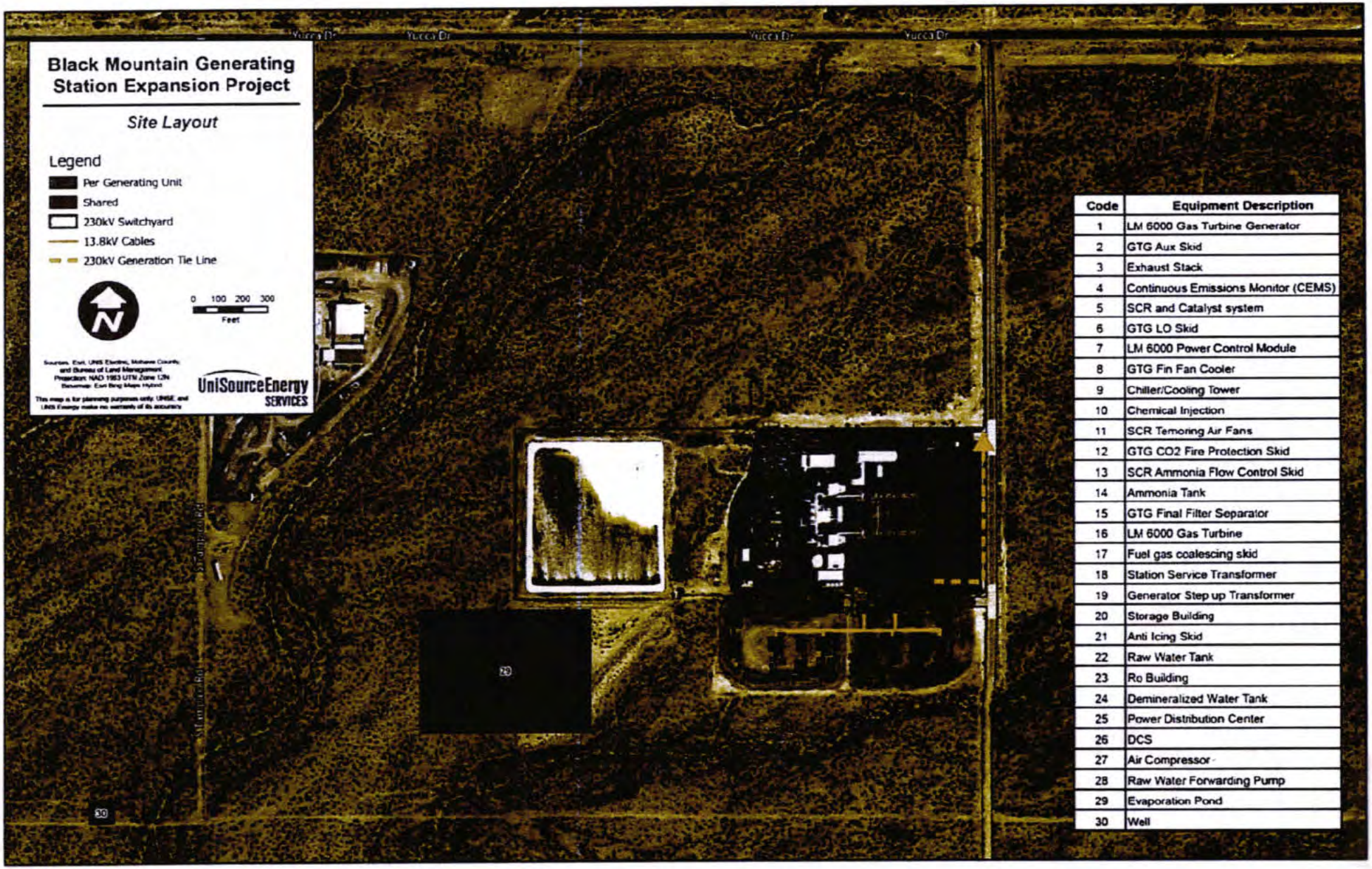
Maureen A. Scott, Chief Litigation & Appeals
Samantha Egan, Staff Attorney
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
mscott@azcc.gov
segan@azcc.gov
Attorneys for ACC Legal Division Staff

By: Patricia D. Palmer
10348558

Appendix A



Code	Equipment Description
1	LM 6000 Gas Turbine Generator
2	GTG Aux Skid
3	Exhaust Stack
4	Continuous Emissions Monitor (CEMS)
5	SCR and Catalyst system
6	GTG LO Skid
7	LM 6000 Power Control Module
8	GTG Fin Fan Cooler
9	Chiller/Cooling Tower
10	Chemical Injection
11	SCR Temoring Air Fans
12	GTG CO2 Fire Protection Skid
13	SCR Ammonia Flow Control Skid
14	Ammonia Tank
15	GTG Final Filter Separator
16	LM 6000 Gas Turbine
17	Fuel gas coalescing skid
18	Station Service Transformer
19	Generator Step up Transformer
20	Storage Building
21	Anti Icing Skid
22	Raw Water Tank
23	Ro Building
24	Demineralized Water Tank
25	Power Distribution Center
26	DCS
27	Air Compressor
28	Raw Water Forwarding Pump
29	Evaporation Pond
30	Well



Code	Equipment Description
1	LM 6000 Gas Turbine Generator
2	GTG Aux Skid
3	Exhaust Stack
4	Continuous Emissions Monitor (CEMS)
5	SCR and Catalyst system
6	GTG LO Skid
7	LM 6000 Power Control Module
8	GTG Fin Fan Cooler
9	Chiller/Cooling Tower
10	Chemical Injection
11	SCR Temoring Air Fans
12	GTG CO2 Fire Protection Skid
13	SCR Ammonia Flow Control Skid
14	Ammonia Tank
15	GTG Final Filter Separator
16	LM 6000 Gas Turbine
17	Fuel gas coalescing skid
18	Station Service Transformer
19	Generator Step up Transformer
20	Storage Building
21	Anti Icing Skid
22	Raw Water Tank
23	Ro Building
24	Demineralized Water Tank
25	Power Distribution Center
26	DCS
27	Air Compressor
28	Raw Water Forwarding Pump
29	Evaporation Pond
30	Well

Appendix B

Number	Description	Answer
1	LM 6000 Gas Turbine Generator	Per Turbine Unit
2	GTG aux skid	Per Turbine Unit
3	Exhaust stack	Per Turbine Unit
4	Continuous Emissions Monitor (CEMS)	Per Turbine Unit
5	SCR and Catalyst system	Per Turbine Unit
6	GTG LO skid	Per Turbine Unit
7	LM 6000 Power Control Module	Per two Turbine LM 6000 units
8	GTG fin fan cooler	Per Turbine Unit
9	Chiller/Cooling tower	For 4 LM 6000 Turbines
10	Chemical injection	For 4 LM 6000 Turbines
11	SCR temoring air fans	Per Turbine Unit
12	GTG CO2 fire Protection Skid	Per Turbine Unit
13	SCR ammonia flow control skid	Per Turbine Unit
14	Ammonia tank	For 4 LM 6000 Turbines
15	GTG final filter separator	Per Turbine Unit
16	LM 6000 Gas Turbine	Per Turbine Unit
17	Fuel gas coalescing skid	For 4 LM 6000 Turbines
18	Station Service Transformer	For 4 LM 6000 Turbines
19	generator Step up transformer	1 GSU per 2 gas turbines LM 6000
20	Storage Building	Common for 4 gas turbines
21	Anit icing skid	Per Turbine unit
22	Raw water tank	For 4 LM 6000 Turbine
23	Ro Building	For 4 LM 6000 Turbines
24	Demineralized water tank	For 4 LM 6000 Turbines
25	Power Distribution Center	1 PDC per 2 Gas Turbine units LM 6000
26	DCS	1 Per turbine unit LM 6000
27	Air Compressor	For 4 LM 6000 Turbines
28	Raw water forwarding pump	For 4 LM 6000 Turbines
29	Evaporation Pond	For 4 LM 6000 Turbines

Anna Tovar
COMISSIONER

(602) 542-3935 OFFICE
Tovar-Web@azcc.gov

ARIZONA CORPORATION COMMISSION
OFFICE OF COMMISSIONER ANNA TOVAR

June 14, 2024

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Re: 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. (L-00000F-24-0056-00230)

Dear Commissioners and Parties:

I was compelled to vote no on this matter and offer this Dissent. I am very disappointed in my fellow Commissioners who voted to approve UNS Electric's Application seeking a disclaimer of jurisdiction from the Power Plant and Transmission Line Siting Committee ("the Committee"). I am also disappointed in what I believe is incorrect legal advice that I received from the Director of the Legal Division. In voting to approve UNS Electric's application, the Commission essentially threw out more than 50 years of how these statutes have been interpreted and applied. While there are likely circumstances where a Certificate of Environmental Compatibility ("CEC") may not be required. For example, if a utility were only constructing a single thermal generating unit that falls below the 100-megawatt threshold. Those however were not the facts of this case.

It is also troubling, that when the Commission voted to approve UNS Electric's application, it completely disregarded overwhelming determination, by a 9 to 2 vote of the Committee that both the Committee and the Commission had jurisdiction over this matter based on the facts and evidence presented. It is also problematic how this matter was placed on the agenda where only Sample Order 1 could be discussed and voted on. It seemed as if the Commission had already predetermined the outcome.

It is equally troubling that the Legal Division, who participated in the proceeding in front of the Committee also prepared and docketed the sample orders. Normally, this is not an issue because sample orders very simply either approve the CEC, modify the CEC, or Deny the CEC. The sample orders in this case provide in depth legal analyses with Sample Order 1 that just happens to match the Legal Division's position when it argued in front of the Committee. It has also been my experience, that agendas for line siting matters only reference a sample order if it is on the

consent agenda so that the Commissioners, and more importantly the public know what order is being voted on by the Commission on the consent agenda. For those matters on the regular agenda which typically includes more complex and controversial matters, like this case which had multiple intervenors and a hotly contested issue the agenda language does not reference a sample order.

Finally, in voting to approve UNS Electric's application, I believe the Commission abdicated its responsibility to evaluate and approve, modify, or deny certificates of environmental compatibility for what I believe will be the vast majority of plants that are being or will be constructed in Arizona. While utilities wanting to construct plants like that at issue here will still be required obtain permits and approvals from other agencies that in no way replaces the rigorous evaluation and balancing that is performed by the Committee and ultimately the Commission through the line siting process. While I believe the damage is already likely done, it is my true hope that this Commission will work to have the legislature update these statutes in the coming year and in doing so clarify what size and types of plant require a CEC before construction. It is for these reasons that I voted no and offer this Dissent.

Sincerely,

Anna Tovar

Anna Tovar
Commissioner

EXHIBIT 3

Louisa Eberle - AZ Bar No. 035973
Patrick Woolsey *(Admitted Pro Hac Vice)*
Nihal Shrinath *(Admitted Pro Hac Vice)*
Sierra Club Environmental Law Program
2101 Webster Street, Ste 1300
Oakland, CA 94612
louisa.eberle@sierraclub.org
patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org
Attorneys for Sierra Club

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.

---

[5] Transcript Vol. I 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

[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.

---

[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

---

[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

---

[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

---

[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

---

[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

[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.

---

[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.

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

/s/ *Patrick Woolsey*
Louisa Eberle - AZ Bar No. 035973
Patrick Woolsey *(Admitted Pro Hac Vice)*
Nihal Shrinath *(Admitted Pro Hac Vice)*
Sierra Club Environmental Law Program
2101 Webster Street, Ste 1300
Oakland, CA 94612
louisa.eberle@sierraclub.org
patrick.woolsey@sierraclub.org
nihal.shrinath@sierraclub.org
Attorneys for Sierra Club

Original plus 25 copies filed on this 10th day of July, 2024 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Copies of the foregoing emailed or mailed on this 10th day of July, 2024 to:

Maureen A. Scott
Samantha Egan
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
mscott@azcc.gov
segan@azcc.gov
legaldiv@azcc.gov
utildivservicebyemail@azcc.gov

Britton Baxter and Ranelle Paladino
Directors, Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
utildivservicebyemail@azcc.gov

Meghan H. Grabel
Elias Ancharski
OSBORN MALEDON, P.A.
2929 N. Central Ave., Ste. 2100
Phoenix, AZ 85012
mgrabel@omlaw.com
eancharski@omlaw.com
Counsel for Applicant

Megan Hill
88 E. Broadway Blvd., HQE910
Tucson, AZ 85701
megan.hill@tep.com
Counsel for Applicant

Adam Stafford, Chairman
AZ Power Plant and Line Siting Cmte.
Office of the Arizona Attorney General
2005 N. Central Ave
Phoenix, AZ 85004-2926
adam.stafford@azag.gov

Autumn Johnson
AriSEIA and SEIA
7144 E. Stetson Drive
Scottsdale, AZ 85251
autumn@ariseia.org

Emily Doerfler
Western Resource Advocates
1429 N. 1st Street, Suite 100
Phoenix, AZ 85004
emily.doerfler@westernresources.org

Chanele N. Reyes
Arizona Center for Law in the Public Interest
352 E. Camelback Rd. Suite 200
Phoenix, AZ 85012
(602) 258-8850
chanele@aclpi.org

By: /s/ *Maddie Lipscomb*