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1 BE IT REMEMBERED that the above-entitled and  
 2 numbered matter came on regularly to be heard before the  
 3 Power Plant and Transmission Line Siting Committee, at The  
 4 Best Western Inn, 1100 North Central Avenue, Phoenix,  
 5 Arizona, commencing at 9:50 a.m. on the 15th day of  
 6 October, 2007.

7  
 8 BEFORE: LAURIE A. WOODALL, Committee Chairman

9 DAVID L. EBERHART, Arizona Corporation  
 Commission  
 10 PAUL W. RASMUSSEN, Department of Environmental  
 Quality  
 11 JACK HAENICHEN, Department of Commerce,  
 Energy Office  
 12 GREGG HOUTZ, Arizona Department of Water  
 Resources  
 13 A. WAYNE SMITH, Appointed Member  
 14 BARRY WONG, Appointed Member

15  
 16 APPEARANCES:

17 For the Applicant:

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 20

21 For Mohave County:

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25

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1 CHMN. WOODALL: We're going to go on the record  
2 at this time.

3 Good morning. At this time I will call to order  
4 these proceedings of the Arizona Power Plant and  
5 Transmission Line Siting Committee. My name is Laurie  
6 Woodall. I'm an Assistant Attorney General, and I'm the  
7 designee of Attorney General Terry Goddard who is the  
8 Chairman of this Committee.

9 I will now take the roll of our members and ask  
10 if they would like to introduce themselves.

11 David Eberhart.

12 (No response.)

13 CHMN. WOODALL: Paul Rasmussen.

14 MEMBER RASMUSSEN: Present. Representing the  
15 Department of Environmental Quality.

16 CHMN. WOODALL: Jack Haenichen.

17 MEMBER HAENICHEN: Present. Representing the  
18 Arizona Department of Commerce, Energy Office.

19 CHMN. WOODALL: Gregg Houtz.

20 MEMBER HOUTZ: Present. Designee for the  
21 Director of the Arizona Department of Water Resources.

22 CHMN. WOODALL: Wayne Smith.

23 MEMBER SMITH: Present. Just a public member.

24 CHMN. WOODALL: Joy Rich.

25 (No response.)

1 CHMN. WOODALL: Jeff McGuire.

2 (No response.)

3 CHMN. WOODALL: Mike Whalen.

4 (No response.)

5 CHMN. WOODALL: Mike Palmer.

6 (No response.)

7 CHMN. WOODALL: Mr. Palmer will not be here  
8 today. This is the first time in six-and-a-half years  
9 that he has been unable to be present at a Siting  
10 Committee meeting. He has some medical issues and will be  
11 undergoing a procedure today.

12 Barry Wong.

13 MEMBER WONG: Present. Representing the public.

14 CHMN. WOODALL: I'll now take appearances from  
15 the parties, starting with the Applicant.

16 MR. MOYES: Good morning, Madam Chairman, members  
17 of the Committee. My name is Jay Moyes with the Moyes  
18 Storey law firm. I represent the applicant, Northern  
19 Arizona Energy, LLC.

20 CHMN. WOODALL: Mr. Sundlof.

21 MR. SUNDLOF: Yes. Good morning, Chairman  
22 Woodall, members of the Committee. I'm Kenneth Sundlof  
23 with Jennings, Strouss & Salmon, and I represent Mohave  
24 County.

25 MS. SCOTT: Good morning, Chair Woodall, and

1 Committee members. Maureen Scott representing the  
2 Utilities Division Staff of the Arizona Corporation  
3 Commission.

4 CHMN. WOODALL: I see that Mr. Ehrhardt, who is  
5 appearing on his own behalf, is not here today. I do know  
6 that he was informed of the date.

7 Is it difficult to hear me?

8 MR. MOYES: I'm just asking Paul to crank the  
9 volume up a little bit. I'm having some difficulty.

10 CHMN. WOODALL: I do know Mr. Ehrhardt was  
11 informed of the date and the time of these proceedings.

12 I think at this point we will address a  
13 procedural matter that I had raised with the parties  
14 previously, and it related to my question regarding the  
15 definition of the term plant as it is used in the line  
16 siting statutes and as it may relate to these proceedings.

17 And in particular, I was referring to the  
18 definition contained in A.R.S. 40-360, Item No. 9, which  
19 reads as follows: Plant means each separate thermal,  
20 electric, nuclear, or hydroelectric generating unit with a  
21 nameplate rating of 100 megawatts or more for which  
22 expenditures or financial commitments for land  
23 acquisition, materials, construction, or engineering in  
24 excess of \$50,000 have not been made prior to August 13,  
25 1971.

1           As appears from the evidence that the generating  
2 units in this case are 45 megawatts each, totalling  
3 basically 175 megawatts for the entire project, I wanted  
4 to ask the parties a question about whether or not the  
5 Siting Committee would have jurisdiction over the CEC  
6 application for the plant.

7           As Mr. Eberhart had pointed out, because there is  
8 a transmission line that is a component of the project, we  
9 would, of course, have jurisdiction over that.

10           So I did ask for briefing from the parties and  
11 everyone has filed something except for Mr. Sundlof. I  
12 understand that your client has no position on this  
13 matter.

14           MR. SUNDLOF: That's correct, Your Honor.

15           CHMN. WOODALL: And I don't believe Mr. Ehrhardt  
16 filed anything as well.

17           So what I will do is I will ask Mr. Moyes and  
18 then Ms. Scott if they can briefly summarize their  
19 positions as it relates to that issue.

20           MR. MOYES: Thank you, Madam Chairman. I would  
21 refer you to the document which was docketed on October 2,  
22 2007, which has yet to be formally entered into the record  
23 as an exhibit for this proceeding. We are prepared to do  
24 that at an appropriate time, but copies of this were  
25 delivered to the Chairman and the Committee members. And

1 as part of that supplemental filing, Item No. 3 and  
2 response 3 is the full text of the Applicant's response to  
3 the Chairman's questions in connection with this issue.

4 In summary, the Applicant was aware of this  
5 question, aware of the definition to which the Chairman  
6 has referred, and in contemplating the proposal for NAEP  
7 and its relationship with the Griffith Energy facility was  
8 unsure of exactly how to proceed as it relates to this  
9 question.

10 In October of 2006, we, myself and Ms. Diller and  
11 Mr. Johnson on behalf of the Applicant, asked for and had  
12 a meeting with Commission Staff, including the Director of  
13 the Utilities Division, Mr. Ernest Johnson, and others, to  
14 discuss the circumstances factually of what we were  
15 proposing to do. And at that time we had available to us  
16 different options and alternatives as to the physical  
17 location of the number -- of a four-unit plant. The  
18 number of units, whether it be four or two or six, was yet  
19 undecided at that time. And in discussing the issue with  
20 Mr. Johnson and Staff, we were initially asked to put that  
21 information in writing, which we did do subsequent to the  
22 October meeting.

23 And then in response to our delivery to them of  
24 that letter, sometime later I was contacted by Chief  
25 Counsel for the Commission, Chris Kempley, and

1 Mr. Kempley, in essence, indicated to me that the Staff  
2 was prepared to write a letter to us but would prefer not  
3 to have to even write the response letter, but explained  
4 that their position was that they could not give us any  
5 direct guidance or any substantive input in response to  
6 our questions.

7           Consequently, we continued our own analysis of  
8 the issue. We considered essentially three factors, one  
9 being the fact that we did want to utilize the benefits  
10 that accrued from a location in close proximity to the  
11 Griffith project. Affiliates of NAE owned the 160-acre  
12 parcel that's at issue. They own the Griffith facility,  
13 as you have known from the proceedings previously in the  
14 record, the water treatment facilities, the wastewater  
15 disposal facilities, the opportunity to operate the  
16 facilities from the same control room as Griffith. The  
17 fact that the site itself had already been cleared  
18 environmentally for an electric generation facility. It  
19 was wholly owned and contained without involvement of any  
20 third parties or public lands or other such issues. All  
21 of those things strongly suggested that we locate this  
22 facility, these peaking units in close proximity to  
23 Griffith.

24           Having said that, we felt that it was probably an  
25 inescapable conclusion that this Committee and the

1 Commission would at some point in time likely reach the  
2 conclusion that at a minimum the Griffith CEC would need  
3 to be amended, or at least that that issue would certainly  
4 come to the front as one placed four more peaking units on  
5 the same site that was the subject of the Griffith CEC.

6 We looked at other cases where amendments were  
7 required for far less significant substantive deviations  
8 from the four corners of a previous CEC.

9 We also were very interested in the issue of  
10 public input and public disclosure and public  
11 participation. We felt that without the CEC process,  
12 which we have now been through, there would be much more  
13 limited, if any, real substantive opportunity for people  
14 like Mr. Ehrhardt or others to intervene or for the public  
15 to be a participant to the degree that they might want to,  
16 and that was an important issue for us.

17 We also believed that the CEC process affords  
18 certain benefits to an applicant. Specifically, it's our  
19 construction, our interpretation of the A.R.S. 40-360 in  
20 its totality that one of the important purposes of that  
21 statute is to provide, in essence, a single forum in which  
22 people who might protest or challenge or have issue with a  
23 proposal have an opportunity and, in fact, a requirement  
24 to come forward in that single forum if they choose to  
25 mount a challenge against a project. Without that, a

1 project or an applicant is left in a position where at any  
2 point in time someone could raise a challenge,  
3 theoretically even after substantially expends -- hundreds  
4 of millions of dollars have been expended in construction  
5 for a project.

6           It was my interpretation of the statute that the  
7 ability to have that single forum conducted and for those  
8 parties to have that opportunity and to be required to  
9 come forth if they wished as parties, and if they did not  
10 be barred by the statute from subsequent state court  
11 challenges at least against the project, was and is an  
12 important benefit from the CEC statute to an applicant and  
13 to a project.

14           And taking those three issues together, we  
15 concluded that the most prudent course of action was to  
16 make application as we did for a CEC separately for this  
17 project.

18           Why did we not just amend Griffith? I think the  
19 record reflects testimony from the Applicant with respect  
20 to that question, but the simple answer was that for  
21 financing and legal title and ownership issues, the  
22 projects are separate and distinct. They are separately  
23 owned and held, albeit by affiliated companies, but in  
24 different ownership structures under different financing  
25 structures. And it was important, and we think remains

1 important to the long-term life of these two assets and  
2 their ownership and operation, that each has its own  
3 certification and permitting structure that stands  
4 independent of the other.

5           Subsequently, we made the application as we did.  
6 And you will recall we had a requirement with respect to  
7 what I call the 90-day prefiling rule, which because of  
8 unavailability of the system impact study at that time we  
9 were not able to comply with and had wanted to proceed  
10 with an application as expeditiously as possible.

11           We therefore petitioned the Commission and did  
12 receive from them permission to proceed without having  
13 completed all of that 90-day prefiling as it relates to  
14 the system impact study component. And in exchange for  
15 that ruling, they added some time to the back end of the  
16 180-day statutory period for completion of this process  
17 under the normal time frames. If it was required in order  
18 for Staff to deal with the system impact study issues,  
19 that time was granted to them by order of the Commission.

20           That's really in the process of debating,  
21 deliberating, considering what we were going to build and  
22 where. We also had prefiling meetings with each of the  
23 Commissioners' offices, and the Commissioners themselves  
24 in most cases, to discuss the project, the 90-day rule  
25 issue, and the facts and figures associated with what we

1 were intending to do. We did not receive any  
2 contradictory direction or reaction from any of them as it  
3 might relate to whether or not a CEC was appropriate or  
4 applicable or mandated or available to this project.

5           Therefore, we exercised the best judgment that we  
6 could and proceeded as we have. And we're now here today  
7 having completed, you know, four days of hearings and a  
8 substantial amount of testimony with respect to this  
9 issue.

10           CHMN. WOODALL: Mr. Moyes, I'm not going to ask  
11 you about private discussions with the Commission that  
12 occurred before filing, but I did read your initial  
13 pleadings before the Commission about the 90-day rule, and  
14 I did not see anything in the pleadings or I can't recall  
15 anything that related to jurisdictional issues about the  
16 definition of plant. Did that come up at all in those  
17 initial proceedings?

18           MR. MOYES: No, and I don't wish to imply  
19 otherwise.

20           CHMN. WOODALL: Okay.

21           MR. MOYES: We did not --

22           CHMN. WOODALL: I didn't think you did.

23           MR. MOYES: We did not discuss that specific  
24 issue either in the pleadings or in those conversations.  
25 We did discuss the nature of the units that we intended to

1 build, that these were small LM6000 units akin to what was  
2 used at Sundance where there's a facility that employs 10  
3 of these units. And having been involved in that project,  
4 and the Commissioners all knowing that I was involved in  
5 it, as was Ms. Diller, they were familiar with those types  
6 of units, and we indicated that these were essentially the  
7 same units that would be built.

8 CHMN. WOODALL: Okay. Mr. Wong.

9 MEMBER WONG: Point of information. Was this  
10 issue -- the issues of the Line Siting Committee's  
11 jurisdiction on this application as well as its authority,  
12 was this issue raised by any of the parties or was it just  
13 the Chair?

14 CHMN. WOODALL: Sua sponte.

15 MEMBER WONG: Thank you.

16 CHMN. WOODALL: And I will say that having  
17 participated in other proceedings where the jurisdiction  
18 of the Committee had been brought into question, typically  
19 in what constitutes a line, is it a series of one or more,  
20 I mean, implying at least three structures, that issue has  
21 come up before whether or not a switchyard and a  
22 substation are the same because they come within the  
23 definition of line.

24 If there's a question about the jurisdiction of  
25 the Committee, since a decision of an administrative

1 agency, if they act without jurisdiction that decision can  
2 be attacked as being void, it seemed to me prudent to  
3 bring up the question in this context, because I know that  
4 there are other generating facilities that have a similar  
5 fact scenario. They have 45 units and they have not gone  
6 through a Committee proceeding. And it seems to me that  
7 we ought to make sure that the issue is laid out there for  
8 consideration of all of the parties so that we can have a  
9 consistent application and interpretation of the rules.

10 MEMBER WONG: Madam Chair, so therefore this --  
11 at least one opinion, the Commission's Legal Division has  
12 opined that the both issues -- since the short answer to  
13 both questions is yes, and those questions are, are the  
14 Line Siting Committee's jurisdiction as well as the Line  
15 Siting Committee's authority specific to these fact  
16 patterns, or would this opinion also apply broadly to  
17 future applications where this similar fact pattern, if  
18 taken separately of each plant may not be within the  
19 jurisdiction of the Committee, but taken in the aggregate  
20 of the entire application therefore it would be subject to  
21 the jurisdiction. Is that accurate interpretation?

22 CHMN. WOODALL: Well, I think we're going to have  
23 Ms. Scott characterize her position in that regard. So --

24 MEMBER WONG: I'll defer to Ms. Scott. Thank  
25 you.

1 CHMN. WOODALL: Okay. Mr. Houtz.

2 MEMBER HOUTZ: Do you intend to have this  
3 Committee make a finding that this is a plant under the  
4 definition?

5 CHMN. WOODALL: Let me just say one thing. There  
6 is a provision in the rules, in our rules, under  
7 administrative rule R14-3-203.D, which reads as follows:  
8 An application may be filed in the alternative in  
9 situations where the applicant is in doubt as to whether  
10 an application is required by law. In such instances, the  
11 application shall request a disclaimer of jurisdiction  
12 from the Committee, or, in the alternative, a certificate  
13 of environmental compatibility.

14 I think it's always possible for an  
15 administrative agency such as this to make a finding that  
16 some aspect is not jurisdictional, but my own thinking  
17 would be that we would not make such a finding in this  
18 case because there is the close nexus with Griffith.

19 I think there's been some argument made about  
20 whether or not we can determine if this is an amendment  
21 potentially to the Griffith CEC. While I don't know that  
22 those were raised in the application, they have come out  
23 in the proceedings. And so I, for one, would just like to  
24 have the issues out there for the Commission's  
25 determination about whether or not they want to take

1 action. But I'm certainly open to hear other parties'  
2 perspectives on that.

3 Do you have any thoughts?

4 MEMBER HOUTZ: Well, I was just thinking that if  
5 the Applicant has applied to us in the alternative, then  
6 we probably don't need to.

7 CHMN. WOODALL: They haven't.

8 MEMBER HOUTZ: They haven't. They just applied,  
9 leaving that open without any recommendation from them.

10 CHMN. WOODALL: Right. Right.

11 MEMBER HOUTZ: So is your reading of our rules  
12 that we could make the declaration that if there is a  
13 defect in jurisdiction, we took this as an alternative?

14 CHMN. WOODALL: No, not that. But I do know that  
15 there is case authority that indicates that the  
16 determination of jurisdiction is always something that an  
17 agency has. They always have that power to determine, you  
18 know, if they have jurisdiction in a particular matter. I  
19 don't know that we would need to exercise it in this case,  
20 but I can envision cases that might come up in the future  
21 where it certainly might be something that we would do if  
22 we had something that was filed in the alternative. So  
23 does that help?

24 MEMBER HOUTZ: Somewhat.

25 CHMN. WOODALL: Okay. Ms. Scott, did you want to

1 provide us with a short analysis? Thank you very much.

2 MS. SCOTT: Yes. It will be short. Thank you,  
3 Chair Woodall, Committee members.

4 Staff filed its brief on this issue on October 3,  
5 2007. And essentially it's the Legal Division's opinion  
6 that the Committee does not need to reach this issue in  
7 this proceeding given the aggregate of the facts here.

8 This project does present a unique set of facts,  
9 and what I'm referring to there is its close proximity and  
10 nexus to the Griffith plant.

11 As explained in our brief, the only reason that  
12 the Applicant has filed a separate CEC in this case is  
13 because of their desire for certain financing rights and a  
14 certain ownership structure. Otherwise, I think it  
15 appears to be clear that the Applicant would have probably  
16 filed an amendment to the existing Griffith CEC.

17 Because of the accommodation to the Applicant's  
18 desire for certain financing rights and a certain  
19 ownership structure with respect to both plants, we  
20 believe that the Committee should and does have  
21 jurisdiction over this CEC because, in the alternative, as  
22 I just explained, the Applicant would have filed an  
23 amendment to the Griffith CEC.

24 I can go through the nexus between the Griffith  
25 plant and the NAEP project, although I believe the

1 Applicant's counsel has done so in many respects.

2           There are many synergies and benefits to the  
3 Applicant of having the NAEP plant located in close  
4 proximity to the Griffith plant, and they are taking  
5 advantage of that by relying upon the Griffith plant in  
6 siting this plant. It's located on the same site. It's  
7 taking advantage of some of the environmental studies that  
8 have been done. It is being operated under the same  
9 control room, as the Applicant just mentioned.

10           So I think another important fact, a very  
11 critical fact for the Committee to consider is the  
12 Applicant's statement that their review of amendments to  
13 existing CECs with respect to this project, Mr. Moyes  
14 stated that amendments have been required for far less in  
15 terms of deviations from a proposed CEC. And therefore,  
16 again, that supports the notion that had the Applicant not  
17 filed the separate CEC, they would have been required to  
18 come in and amend the existing Griffith CEC.

19           And just to be clear, the Commission Staff  
20 commends the Applicant for coming forward with its  
21 application, and recognizing the unique set of  
22 circumstances here and the close proximity to the Griffith  
23 plant, and the Applicant's desire to work with the public,  
24 Mohave County, and the Commission to resolve concerns  
25 associated with this facility.

1 All in all, given the unique facts of this case,  
2 and its close proximity to the Griffith plant and the  
3 close nexus between the two, we believe that the Committee  
4 has jurisdiction on that basis. We don't believe that the  
5 Committee needs to make a finding in this case, for that  
6 reason, as to whether the plant meets the -- or the  
7 facility meets the definition of plant contained in  
8 40-369, and we believe that there may be more appropriate  
9 cases in the future for the Committee to make that  
10 finding. Thank you.

11 CHMN. WOODALL: Thank you, Ms. Scott.

12 Mr. Wong, did you have additional questions?

13 MEMBER WONG: No, Madam Chair. That clarified  
14 things. Thank you.

15 CHMN. WOODALL: Mr. Wayne Smith.

16 MEMBER SMITH: Not being an attorney, I'm going  
17 to ask maybe if -- through the simplicity of a nonlegal  
18 understanding, in my opinion it seems as though the  
19 Applicant was just asking for assurance to the fact that  
20 if they had to or didn't have to, they have gone through  
21 the process just to alleviate any problems or any  
22 concerns; is that correct?

23 CHMN. WOODALL: You can ask Mr. Moyes.

24 MEMBER SMITH: Is that correct? Excuse me.

25 She's my boss. I'm sorry. I have to get the right wink

1 here.

2 MR. MOYES: I think if I interpret the essence of  
3 your question, the answer is yes. No applicant is going  
4 to expend the kind of money that these projects require  
5 without as much legal certainty and compliance with every  
6 possible applicable law, and they know that they have to  
7 comply with the law in order to have these facilities  
8 built and withstand challenge. And that's, in essence,  
9 the analysis that they go through. And the analysis in  
10 this situation led to the conclusion that the prudent,  
11 appropriate course of action was to do what we did.

12 MEMBER SMITH: Well, I know it's a great joy and  
13 privilege for you to get to come before this Committee and  
14 go through this process, so we -- I don't blame you for  
15 wanting to get it done in the beginning rather than having  
16 to go through the process maybe under a different  
17 scenario. But thank you. I think that answers -- I just  
18 wasn't quite sure if that was what you were saying. But I  
19 do appreciate your comments. Thank you.

20 CHMN. WOODALL: And Mr. Moyes, I appreciate your  
21 comment about the need for business certainty when it  
22 relates to investments of this magnitude, and I think that  
23 would apply to the industry at large so that the industry  
24 -- you alluded to the fact that there were maybe third  
25 parties that you have discussed this issue with that are

1 seeking some kind of certainty or analysis with respect to  
2 do they or do they not have to file, and that's the reason  
3 that I'm bringing the issue up now in this hearing is so  
4 that the issues will have been teed up both for the  
5 Committee members and for the participants in the industry  
6 who may have this. That's the reason that I'm doing this.

7 Mr. Houtz.

8 MEMBER HOUTZ: Is there some concern that, say,  
9 if we should issue a CEC for this facility that there may  
10 be some collateral attack on it?

11 CHMN. WOODALL: I'm not so much concerned about  
12 that as I am the consistency of approach and whether or  
13 not other folks might be building facilities that are  
14 similar megawatts. But because they read the statute more  
15 restrictively, then you may have other folks that say,  
16 well, wait a minute, why do I have to file an application  
17 if they didn't do so? So it's more an industry-wide  
18 concern about how things are going to be handled by us and  
19 by the Commission.

20 MEMBER HOUTZ: Well, is this a proper -- is this  
21 application to tee up the issue by making a finding that  
22 four conjunctively used facilities that total over 100  
23 megawatts is a plant under the jurisdiction of the  
24 Committee, or is that something that we could just request  
25 the Commission to look at?

1 CHMN. WOODALL: I think it's going to be our call  
2 because of the rule that I read you that says that  
3 ultimately this is something that the Committee will  
4 disclaim jurisdiction, and I just want to make sure the  
5 Commission knows. I mean, we've heard from Staff. We  
6 haven't heard a legal pronouncement for legal counsel for  
7 the Commission itself. I just want to make sure that  
8 everyone understands that, and I want to make sure that --  
9 I'm sure the word is going to get out in the industry that  
10 the issue has come up here for that purpose.

11 I think we could make a finding, but I'm not  
12 recommending it because I would prefer to do so once  
13 everyone, in essence, has been put on notice of what the  
14 issues are. Because I'm aware of other facilities that  
15 have already been constructed where they -- perhaps using  
16 Mr. Moyes' analysis, perhaps they would have filed for a  
17 CEC. I just think it's important that we have some  
18 consistency.

19 MR. MOYES: Madam Chairman, may I make an  
20 additional point?

21 It does seem to me there are really two questions  
22 at issue here. One of them, I believe, is critical for us  
23 as an applicant. The other, I believe, is not critical to  
24 this proceeding.

25 It is important, I believe, having had the issue

1 raised sua sponte, as you had indicated, that we have a  
2 conclusion for purposes of this application on these  
3 facts, given the rationale that's been explained, that  
4 confirms that the Committee does assume and has assumed  
5 jurisdiction by its acceptance of this application, its  
6 conduct of this proceeding, and its ultimate determination  
7 in this proceeding as it applies specifically to these  
8 facts with this application and its unique  
9 characteristics. And we request such a determination  
10 given that the issue has now been raised and the question  
11 sort of -- at least, otherwise, leaving some suspicion  
12 about whether you think there was jurisdiction in whatever  
13 determination you made on these facts.

14           The second issue is really the heart of what I  
15 think Chairman Woodall's question is going to, which is  
16 what is the correct interpretation of the word plant as it  
17 applies to an LM6000 unit or other sub-100 megawatt  
18 individual units.

19           I don't believe a ruling of jurisdiction on the  
20 facts of this case answers that question or needs to  
21 answer that question, and I believe that's consistent with  
22 Staff's position. And we are not seeking an answer of  
23 that question, nor are we asserting a specific legal  
24 position as it relates to that narrow question.

25           What we are asserting and what we're asking for

1 confirmation of is that there is jurisdiction given the  
2 facts of this application, and that a ruling and  
3 determination by this Committee will be soundly grounded  
4 in a sound jurisdictional foundation by the Committee.

5 CHMN. WOODALL: Mr. Moyes, do you have such an  
6 explicit finding contained in your draft CEC?

7 MR. MOYES: No.

8 CHMN. WOODALL: You're talking about something  
9 new then.

10 MR. MOYES: We did not. I believe it would be  
11 implicit in a determination in a certificate issued by  
12 this Committee.

13 CHMN. WOODALL: I'm just asking whether you have  
14 some new language that you want us to approve --

15 MR. MOYES: No.

16 CHMN. WOODALL: -- to put in the CEC.

17 MR. MOYES: No.

18 CHMN. WOODALL: Or if you want some other more  
19 affirmative, explicit statement other than what is in the  
20 CEC. That's all I'm asking.

21 MR. MOYES: No. We are not seeking that at this  
22 time. I mean, frankly, we're a little bit puzzled at the  
23 position the raising of this issue has put us in. And we  
24 didn't raise it, and nor did we challenge or question the  
25 jurisdiction under these facts. But having come up now, I

1 think we want the record to reflect that it would be our  
2 position, and I believe we would appreciate some assertion  
3 by the Committee that as it makes its determinations in  
4 this case that it believes that it does so with  
5 appropriate jurisdiction.

6 CHMN. WOODALL: Well, if you have some language  
7 that is going to give you comfort, I suggest that you, you  
8 know, propose that at some point.

9 And then Mr. Houtz.

10 MEMBER HOUTZ: Let me just get a little  
11 clarification. What I heard you say is you're not  
12 necessarily thinking that the Committee needs to make a  
13 finding that this meets the definition of plant. You just  
14 want to have a finding that this Committee, in reviewing  
15 all of the evidence and the facts here, knows that it has  
16 jurisdiction over this case.

17 MR. MOYES: That's correct. That's as far as I  
18 think this needs to go for purposes of this application.

19 MEMBER HOUTZ: So you don't want us to tee up the  
20 definition.

21 MR. MOYES: We're not taking any position about  
22 whether you do or don't.

23 MEMBER HOUTZ: Okay. That helps.

24 CHMN. WOODALL: Ms. Scott, did you have anything  
25 that you wanted to add?

1 MS. SCOTT: Chair Woodall, Committee members, we  
2 agree with that. We don't think it's necessary to tee the  
3 issue up of whether this constitutes a plant under the  
4 statute.

5 CHMN. WOODALL: For this case.

6 MS. SCOTT: For this case.

7 CHMN. WOODALL: Does anyone object to my  
8 providing some additional thoughts on that issue on the  
9 record in this case?

10 MR. MOYES: No.

11 CHMN. WOODALL: Since you don't know what I'm  
12 going to say, it's kind of tough.

13 MR. MOYES: Dare I say otherwise.

14 CHMN. WOODALL: Well, no. If you prefer that I  
15 not, I won't.

16 MR. MOYES: No. I'm being facetious. I have no  
17 objection.

18 MS. SCOTT: No. No objection.

19 CHMN. WOODALL: Well, just so that the record is  
20 pretty clear so if the Commission wants to take a  
21 position, at the risk of summarizing the multitude of  
22 cases that are cited under A.R.S. 1-215 which relate to  
23 the interpretation of statutes and the construction  
24 thereof, it's axiomatic that the clearest idea of what a  
25 statute means is determined by the words used in the

1 statute. We presume that the legislature writes what it  
2 means, and the only time that we have to go to rules of  
3 construction as it may relate to ambiguity and the like is  
4 if the words are not clear.

5 So we do have an explicit definition of plant,  
6 and I wanted to ask Mr. Prem Bahl one question. You are  
7 familiar with the Edison Electric Institute, sir?

8 MR. BAHL: I am, thank you.

9 CHMN. WOODALL: And is it a generally recognized  
10 authoritative institute as it relates to electrical  
11 issues?

12 MR. BAHL: Exactly, it is, and it represents the  
13 electric utility industry as a whole.

14 CHMN. WOODALL: Okay. If I may, then, I would  
15 like to read into the record and take administrative  
16 notice of one page of a publication from the Edison  
17 Electric Institute glossary of electric industry terms,  
18 dated April 2005. And I have a copy of it here, and I'll  
19 just read the definition of nameplate rating into the  
20 record.

21 Nameplate rating: The full load continuous  
22 rating of a generator, prime mover, or other electrical  
23 equipment under specified conditions as designated by the  
24 manufacturers. It is usually indicated on a nameplate  
25 attached mechanically to the individual machine or device.

1 The nameplate rating of a steam electric turbine generator  
2 set is the guaranteed continuous output in kilowatts or  
3 kVA, and power factor at generator terminals when the  
4 turbine is clean and operating under specified throttle  
5 steam pressure and temperature, specified reheat  
6 temperature, specified exhaust pressure, and with full  
7 extraction from all extraction openings.

8           And the reason I read that into the record is I  
9 don't know that we have anything that explains what  
10 nameplate rating was. And it seems to me that looking at  
11 how the term is used in the industry might be helpful in  
12 understanding what the statute means.

13           I will also cite a couple of cases on the record.  
14 The first is Fund Manager Public Safety Personnel  
15 Retirement System versus Tucson Police Public Safety  
16 Personnel Retirement System Board, 137 Arizona 536, 672  
17 P.2d 201, 1983.

18           And I will just read a quote from that case: We  
19 start off with the basic proposition that the powers and  
20 duties of an administrative agency are to be measured by  
21 the statute creating it, citing Funding versus Pima  
22 County, Cox versus Pima County Law Enforcement.

23           A board or commission which is a creation by  
24 statute created for a special purpose has only limited  
25 powers and it can exercise no powers which are not

1 expressly or impliedly granted, citing Oracle School  
2 District No. 2 versus Mammoth High School District No. 88.

3 I'll read another excerpt from Oracle School  
4 District No. 2 versus Mammoth High School No. 88, 130  
5 Arizona 41, 633 P.2d 450, 1981. A board or commission  
6 which is a creation of statute created for a special  
7 purpose has only limited powers and it can exercise no  
8 powers which are not expressly or impliedly granted,  
9 citing Olmstead versus Galaylan (phonetic).

10 I wanted to also bring to the attention of folks  
11 the fact that the term plant is also used in  
12 A.R.S. 40-362.02, and in that under B. it reads: Each  
13 person contemplating construction of any plant within the  
14 state shall file a plan with the Corporation Commission  
15 90 days before filing an application for a Certificate of  
16 Environmental Compatibility as provided in  
17 A.R.S. 40-360.03.

18 And under C.4: Each plan filed pursuant to  
19 Subsection A or B of this section shall set forth the  
20 following information with respect to the proposed  
21 facilities to the extent such information is available.  
22 Four, the average and maximum power output measured in  
23 megawatts of each plant to be installed.

24 I cite this reference to plant because if it is  
25 determined that there is some ambiguity in the definition,

1 the next principle of statutory construction would be in  
2 pari materia, which means that you would try to determine  
3 what it means in the context of the whole statutory scheme  
4 that is generally relevant to that, and here is another  
5 description of plant.

6           There's one other citation that I want to read  
7 into the record, and it is R14-3-219, form of application  
8 for Certificate of Environmental Compatibility. And I  
9 will also note that there's a generally accepted  
10 proposition of law that an administrative agency's  
11 interpretation of the statutes which govern it is  
12 considered to be persuasive to courts when they're  
13 attempting to interpret what a statute might mean. And  
14 accordingly, I thought it might be worthwhile to provide  
15 some references regarding the administrative rules that  
16 relate to the plant.

17           And under R14-3-219.4, the requisite for the  
18 contents of the application includes, quote, description  
19 of the proposed facility, including (a) with respect to an  
20 electric generating plant, Roman numeral II, the number  
21 and size of proposed units, and under Roman numeral VII,  
22 dates for scheduled startup and firm operation of each  
23 unit.

24           So I think that having -- if it's required to  
25 interpret the statute or to construe it, I think it would

1 probably be worthwhile for a consideration of how that  
2 term is used in the rest of the statute and how it is used  
3 in the administrative rules might be helpful to the  
4 Commission and any other party who had some questions  
5 about this issue.

6 I don't have anything further on that unless  
7 there's any questions that the parties have.

8 (No response.)

9 CHMN. WOODALL: No. Okay.

10 Well, I think at this point then, Mr. Moyes,  
11 we're ready for you to give us your rebuttal case.

12 But first let me ask, is there any issues that  
13 any of the Committee members want addressed by the  
14 Applicant in its rebuttal case?

15 Mr. Houtz.

16 MEMBER HOUTZ: Mr. Moyes, and I'm going to refer  
17 to the drafts of the CEC, both the Staff and your own.  
18 There's a difference between the two on how reporting of  
19 water use will be accomplished. And what I would like to  
20 get is an understanding from the Applicant what is  
21 intended to be done on an annual basis for reporting water  
22 use, either by themselves or through another entity, and  
23 to whom, and whether that is something that needs to be  
24 required in the CEC as a condition or not. So just a  
25 better understanding of that.

1           And if permitted, I would almost like to -- I  
2 know it's his rebuttal case, but I would like to hear from  
3 Staff about how -- whether they agree with whatever  
4 interpretation he has of how they intend to do the  
5 reporting of the water use.

6           CHMN. WOODALL: Go ahead, Ms. Scott. Can you  
7 provide an answer to Mr. Houtz's question?

8           MEMBER HOUTZ: I guess I would rather --

9           CHMN. WOODALL: You said you wanted to know how  
10 Staff's varied, and so I thought you were directing your  
11 question to her.

12          MEMBER HOUTZ: No, no. I meant after Mr. Moyes'  
13 explanation.

14          CHMN. WOODALL: Okay. Certainly.

15          MEMBER HOUTZ: And it could be part of his  
16 rebuttal case or --

17          CHMN. WOODALL: Why don't we just get it up  
18 front. Why don't we just have the parties tell us.

19          MR. MOYES: That makes sense to me.

20                 Our intention was that the reporting that is now  
21 required by the Griffith facility provides all of the  
22 information that the department needs and wishes to have  
23 with respect to the amount of water that's withdrawn from  
24 the County well field, which is the water source for  
25 Griffith and will be the water source for NAEP, just

1 reminding us that the physical supply line will go from  
2 the well field to Griffith and there will be some  
3 pretreatment there, and then there will be a provision of  
4 water from that facility to the NAEP facility.

5           The reporting that's required under the Griffith  
6 certificate is the quantity of water that is withdrawn  
7 from the well field, a monitoring of the level of the  
8 water table at the well field, and then, in addition, a  
9 subsidence monitoring process.

10           A permanent monument was established and does  
11 exist near the well field site, and a surveyor goes out  
12 annually and shoots that site to make sure that there's no  
13 movement or to report whatever movement might be  
14 reflected. So that's the subsidence monitoring component.  
15 The well field water table is monitored on a realtime  
16 basis with a sensor at the monitoring well. That is  
17 reported and the quantity of water that is withdrawn is  
18 reported.

19           Our expectation and our preference would be that  
20 that process continue and that the NAEP certificate simply  
21 require that in the event that the Griffith plant is  
22 permanently terminated or operations are discontinued,  
23 that NAEP would have the duty to step up to exactly that  
24 same reporting requirement so that all of that same  
25 information is provided to ADWR and to the County in the

1 same manner as it is now provided by Griffith.

2 We think it would be somewhat confusing and  
3 duplicative to have that information coming in from both  
4 plants as long as both plants are operating, but we're not  
5 trying to avoid at all that reporting and the substantive  
6 information being provided.

7 MEMBER HOUTZ: Mr. Moyes, do you envision that  
8 the Griffith report would show a separate line for the  
9 incremental increase that would be attributed to NAEP? I  
10 mean, it's not anywhere in the CEC that you have put  
11 forward that that would be a separate line in that  
12 Griffith report.

13 Would that be useful to have that in there? I'm  
14 just wondering how that coincides with your contract with  
15 Mohave County and how the reporting requirements of Mohave  
16 County work as well.

17 MR. MOYES: Under our contract with the County,  
18 we are required to report that, I believe. But it is our  
19 intention that that amount that is provided from Griffith  
20 to NAEP would be separately identified and metered and  
21 reported.

22 CHMN. WOODALL: Did you have any questions of  
23 Ms. Scott?

24 MEMBER HOUTZ: Ms. Scott.

25 MS. SCOTT: Staff's position is contained in

1 Paragraph 12 of its proposed CEC. And essentially what  
2 Staff proposes is to impose an independent obligation on  
3 NAEP to do the reporting. I think actually what the  
4 Applicant just stated that it will be separately -- their  
5 water usage will be separately identified supports that.

6 And we believe that there is a need for NAEP to  
7 separately report as far as the incremental increase  
8 attributed to that project alone, and we believe this is  
9 further supported by NAEP's separate agreement with Mohave  
10 County relating to water usage.

11 CHMN. WOODALL: And you're referring to your  
12 revised No. 12, which was filed in a notice of errata.

13 MS. SCOTT: Thank you, Chair Woodall. That's  
14 correct.

15 CHMN. WOODALL: Thank you. Great. Anything  
16 else?

17 MR. MOYES: Madam Chair, Mr. Houtz, I do note  
18 that our proposed certificate does leave open the question  
19 of reporting of NAEP's separate use during the time that  
20 Griffith is in operation, and that's an oversight on our  
21 part. We do intend that that quantity figure be  
22 separately reported from the get-go during the time that  
23 Griffith is in operation, as well as thereafter. I just  
24 want to clarify that, and we would have no objection to a  
25 modification of the language to make sure that that's very

1 clear.

2 In our review of Sections 11 and 12 of Staff's  
3 proposed certificate, there's, it seems to us, an  
4 opportunity to meld those together in a way that covers  
5 the information about which you're concerned and make sure  
6 that it's all provided by someone.

7 CHMN. WOODALL: Mr. Houtz.

8 MEMBER HOUTZ: Associated with that is your  
9 Condition 11 and Staff's Condition 21 on self-  
10 certification letters are vastly different.

11 Was that an oversight as well about whether you  
12 planned to file a self-certification letter with various  
13 agencies other than the Commission Staff?

14 MR. MOYES: No. Our language there was  
15 intentional in that it seems to us that if there is an  
16 issue in what Staff sees in the filing, that it would then  
17 necessarily or at its option choose to consult with one of  
18 the other agencies. But it seems to us somewhat an  
19 overburden and overkill to have the same document filed  
20 with three or four different agencies who, frankly,  
21 without some initial determination by Staff, who has the  
22 primary jurisdiction over this question that there's an  
23 issue or a problem or a noncompliance, I'm not sure that  
24 the other agencies would do anything with it except stick  
25 it in a drawer somewhere and --

1 CHMN. WOODALL: Well, actually, Mr. Moyes, the  
2 genesis of this form of the condition has been from  
3 requests by members of the Committee on behalf of their  
4 agencies that they have copies of it. It's not something  
5 that -- I mean DEQ, the representative of DEQ asked in  
6 prior cases to have copies of these materials, as did  
7 Mr. Arwood.

8 And I know I do look at them. I mean, I do  
9 review them because it's helpful to me to have a sense of  
10 how the companies interpret compliance with a condition.  
11 Because I know what I had in my own mind about what was  
12 required, and it helps me in future proceedings if I need  
13 to be more specific or what have you. So I personally  
14 read every one of them, you know.

15 MEMBER HOUTZ: I do, too.

16 MR. MOYES: Well, it's obviously not an issue of  
17 serious concern for us. We simply chose an option that we  
18 thought was prudent for reasons that -- we're happy to go  
19 the other way if that's what is necessary.

20 CHMN. WOODALL: Okay. Thank you.

21 All right. Well, shall we start with your  
22 presentation for us? I know we had asked for some  
23 materials, and we appreciate your dredging them up.

24 MR. MOYES: Yes. Let me first refer to a filing  
25 that was made. I think I referred to it a few moments

1 ago. On October 2, 2007, we filed a document just called  
2 supplemental information. There was a cover sheet  
3 attached to that. Ms. Diller was primarily involved in  
4 assembling the information that constitutes responses to  
5 various questions by Committee members. We've already  
6 discussed the response that I provided there with respect  
7 to the question of the definition of plant, and also the  
8 question with respect to finding of need, which we assume  
9 we'll discuss yet today in this proceeding.

10 Also attached to that is a PowerPoint  
11 presentation that was made available to us originally  
12 prepared by General Electric, and it provides various  
13 technical information and data responsive to Commission --  
14 Mr. Ehrhardt's questions with regard to PC SPRINT and  
15 water use and so forth in connection with the technology  
16 of the units.

17 If it's acceptable, without laying more extensive  
18 foundation, we would propose that that document be marked  
19 as Applicant's Exhibit 17, I believe is the next number in  
20 our sequence, and proposed for admission.

21 CHMN. WOODALL: It will be so marked. Is there  
22 any objection to the introduction into evidence of  
23 Applicant's A-17?

24 MS. SCOTT: No objection.

25 CHMN. WOODALL: Hearing none, A-17 is admitted.

1 (Exhibit No. A-17 was received into evidence.)

2 CHMN. WOODALL: Thank you, Mr. Moyes.

3 MR. MOYES: Thank you. And I would just say that  
4 to the extent that any of the Committee members who did  
5 receive this and had opportunity to review it had any  
6 further question with respect to it, we're happy to try to  
7 address those today or otherwise, as you wish.

8 CHMN. WOODALL: Mr. Haenichen, I know that the  
9 supplemental materials did answer specific questions that  
10 you had. Did you have any further inquiry of the  
11 Applicant?

12 MEMBER HAENICHEN: Not at this time, no. Happy  
13 with the result.

14 CHMN. WOODALL: Thank you. And I just wanted to  
15 make sure.

16 And Staff, have you received copies of the  
17 documentation that you had wanted? Do you have any?

18 MS. SCOTT: Yes, we have, Chair Woodall.

19 CHMN. WOODALL: Okay. And then, Mr. Smith, I  
20 know that you had asked for some information as it relates  
21 to dry cooling. Did you want to have the Applicant  
22 address that in more detail? It's under No. 8. Did you  
23 need more information?

24 MEMBER SMITH: No. I think that's fine. Thank  
25 you very much.

1 CHMN. WOODALL: You're fine.

2 MR. MOYES: Thank you.

3 The next item that we filed with Docket Control  
4 in response to a specific request from the Chairman near  
5 the very end of the proceeding is the draft environmental  
6 assessment that was prepared under the direction of WAPA  
7 and was completed just within days of the time that we had  
8 the last sessions of hearings. That was likewise filed  
9 with Docket Control. I believe copies were distributed to  
10 each of the Committee members and to the Staff and to the  
11 other parties.

12 We would ask that the reporter mark that document  
13 as Applicant's Exhibit 18, and move for its admission if  
14 there are no objections.

15 CHMN. WOODALL: It will be so marked.

16 Are there any objections to the introduction into  
17 evidence of Applicant's A-18?

18 MS. SCOTT: No objection.

19 CHMN. WOODALL: Hearing none, Applicant's A-18 is  
20 admitted.

21 (Exhibit No. A-18 was received into evidence.)

22 CHMN. WOODALL: I did have a question about this  
23 document. Who could I direct those questions to,  
24 Mr. Moyes?

25 MR. MOYES: I think for today's purposes it will

1 need to be Ms. Diller. Although to be extent that they  
2 are beyond her ability to respond, we do have the ability  
3 to reach Mr. Randy Schroeder by telephone.

4 CHMN. WOODALL: I think this actually might be a  
5 Ms. Diller question. Would now be convenient?

6 MR. MOYES: That's fine, yes.

7 CHMN. WOODALL: I had a question on Page 1-5 of  
8 the Applicant's A-18, and it's at the top text there.  
9 Okay? In the last sentence of that text reads:  
10 Additionally, the Applicant may, at any time, pursue  
11 completion of an EIS to evaluate operation of the proposed  
12 action above the 50 average megawatt limit.

13 Can you tell me under what circumstances that  
14 would be the case, or what this is referring to, or how it  
15 might relate to the Applicant's future plans?

16 MS. DILLER: Yes, Chairman. I believe in our May  
17 hearings we had explained some of the different  
18 limitations that the various permits placed on the  
19 project. And as we have stated in these hearings and  
20 proceedings, when we evaluated what the need in the  
21 marketplace is for a peaking facility, how many hours per  
22 year that a peaking facility is typically asked to respond  
23 to the market and to operate, it can be anywhere in the --  
24 as low as 1,000 hours per year; on the high end it could  
25 be 2,500 hours per year. So we sought to use 2,500 hours

1 as sort of our benchmark expected case in doing an  
2 environmental assessment.

3 As you also know, we, for purposes of these  
4 proceedings, looked at an environmental worst case, what  
5 we called a theoretical worst case of 5,000 hours per  
6 year. Do we believe a peaking facility would ever be  
7 required, you know, to operate 5,000 hours per year over  
8 the life of the asset? No, we don't. There could have  
9 been some years during the California energy crisis; there  
10 could be some capacity shortage years where a peaking  
11 facility could be asked to operate more than an expected  
12 2,000 or 2,500 hours per year.

13 So all of that being said, when we looked at  
14 Western's interconnection policies, there were two  
15 options. You could seek a draft environmental assessment,  
16 or you could go with a full environmental impact  
17 statement. And the differentiation by Western for those  
18 two processes for a generation interconnection is this  
19 threshold of 50 average megawatt limit per year.

20 And the way that's interpreted, as Mr. Haenichen  
21 had pointed out, I believe, in our May hearings, is that  
22 you take the -- or 50 average megawatts is the same as  
23 437,991 megawatt hours per year. If you sort of use our  
24 175 megawatts and back calculate, that comes out just  
25 under the expected 2,500 hours per year or just about

1 right at the 2,500 hours per year of operation. So we  
2 really felt that that was adequate for what we foresaw the  
3 operation of these units, particularly when, you know, we  
4 could be looking at average across the four units.

5 So a couple of units may be designated to a  
6 certain utility that may have a little bit higher demand,  
7 and two of them could be, you know, sold into the  
8 marketplace or to another utility that would have slightly  
9 less demand.

10 Does that answer your question?

11 CHMN. WOODALL: Yes, it does. Thank you very  
12 much.

13 I don't know if this would be for your  
14 environmental witness or not, but as I read through the  
15 EA, the conclusion that I drew is they did not believe  
16 that there would be any impact on biological resources. I  
17 wasn't clear, though, about cultural resources. And I  
18 realize we're talking about land that has previously been  
19 disturbed and has previously been surveyed in connection  
20 with the Griffith case, because we're talking about the  
21 same 160 acres that was evaluated in that application.

22 But on Page 4-21 it does say: Within this  
23 context, cultural resources that may potentially be  
24 affected by the proposed action must be evaluated for  
25 eligibility for listing on the NHRP, and those which are

1 eligible or currently listed are deemed historic  
2 properties. Section 106 processing, or parallel  
3 processing under a separate programmatic agreement as  
4 permitted under 36 CFR Part 800, then proceeds to the  
5 identification of effects of historic properties and a  
6 further determination of whether potential adverse --  
7 excuse me -- potential effects to historic properties are  
8 categorized as no effect, no adverse effect, or adverse  
9 effect. If adverse effects are identified, avoidance or  
10 treatment plans may be developed. No historic properties  
11 have been identified that would be affected by the  
12 proposed action. There would be no damage to or loss of  
13 any known site of archeological, tribal, or historical  
14 value that is listed or eligible for listing on the NHRP.

15 I'm not quite clear as to what is implied here.  
16 And the only reason that I bring it up is because I do  
17 note that in Applicant's proposed form of CEC, they have  
18 not incorporated some of the more typical provisions that  
19 we have in our certificates as it relates to  
20 archaeological and cultural properties.

21 So I sort of wanted -- since you're not proposing  
22 to include those conditions, I just wanted to have a  
23 little more information on that.

24 I did read on the next page, 4-22, the Hualapai  
25 Tribe conducted a survey of the NAEP property during 2007.

1 No TCPs -- which I believe stands for traditional cultural  
2 properties -- or sacred sites have been identified by  
3 tribes within the NAEP property.

4           There's no formal cemetery or any known human  
5 remains within the NAEP property. Therefore, there is no  
6 known potential to disturb any human remains. However, if  
7 human remains are encountered during the proposed action  
8 all work would be halted and the tribe, SHPO, and Western  
9 would be notified.

10           Since we have that in the EA, I'm wondering if it  
11 would really be so difficult for the Applicant to include  
12 that as a condition in its form of CEC. And I just bring  
13 this into the record for that purpose, and you don't need  
14 to respond to me now.

15           And those are the only questions that I had on  
16 A-18, although I do note that there's an explicit  
17 statement in there that the generators would be air cooled  
18 on Page 2-9 of the EA, which I think was directly to  
19 Mr. Haenichen's points made at the last hearing about  
20 these could be described as dry cooling plant. So I have  
21 no other questions on that.

22           Does anyone else have a question on A-18?

23           (No response.)

24           CHMN. WOODALL: No. Thank you.

25           MR. MOYES: Madam Chairman, let me just clarify.

1 I'm sure I understood your last point, but I want the  
2 record to make it clear. When you're saying that they  
3 were going to be air cooled, you're confirming the  
4 discussion that the record previously reflects that these  
5 units are, in fact, air cooled. There is some water use  
6 in connection with the cooling of inlet air, but the  
7 cooling of the units themselves, as Mr. Haenichen pointed  
8 out, is air cooling, and you weren't drawing a  
9 contradiction by your reference to our information.

10 CHMN. WOODALL: Mr. Moyes, I'm a lawyer. You're  
11 not going to trap me with that one.

12 MR. MOYES: I'm only trying to clarify that you  
13 weren't implying something different.

14 CHMN. WOODALL: All I was saying was that it  
15 seemed to be supportive of a point that Mr. Haenichen had  
16 made, and there was no other significance one way or  
17 tother about it. Thank you.

18 MR. MOYES: Thank you.

19 CHMN. WOODALL: Nice try though.

20 MR. MOYES: Oh, no. I was -- you answered what I  
21 was looking for. Thank you.

22 CHMN. WOODALL: You're welcome. Go ahead,  
23 Mr. Moyes.

24 MR. MOYES: The only other document that we have  
25 filed at Docket Control that we would like to have added

1 to the record in this proceeding is the draft CEC to which  
2 many have alluded already today. That document has -- an  
3 amended version was filed on October 4, 2007, under cover  
4 of a notice of filing, and copies were likewise  
5 distributed to the parties, the Chairman, and Committee  
6 members.

7 And we would ask the reporter to mark that as  
8 Applicant's Exhibit A-19.

9 CHMN. WOODALL: It will be so marked.

10 MR. MOYES: And would offer that for admission,  
11 if there are no objections.

12 CHMN. WOODALL: Is there any objection to the  
13 introduction into evidence of A-19?

14 MS. SCOTT: There isn't, Your Honor. However, I  
15 would just note that Staff has also put together a  
16 proposed CEC, and if you would like us to mark ours --

17 CHMN. WOODALL: I would.

18 MS. SCOTT: Okay.

19 CHMN. WOODALL: But you had no objection to A-19?

20 MS. SCOTT: No.

21 CHMN. WOODALL: Hearing none, A-19 is admitted.

22 (Exhibit No. A-19 was received into evidence.)

23 CHMN. WOODALL: And thank you. And just for  
24 clarity of the record, I believe that you filed an amended  
25 version basically at the behest of my office to

1 incorporate the findings on pleading papers, for which I  
2 and my secretary are extremely grateful. So thank you  
3 very much for doing that.

4 MR. MOYES: Yes. And thank you for reminding us  
5 about that. As you had noted, in the past there's been an  
6 evolutionary process of these certificates over time and  
7 over the last 10 years, and we're happy to comply with  
8 any, you know, form, formatting --

9 CHMN. WOODALL: New and improved methodology.

10 MR. MOYES: That's right.

11 CHMN. WOODALL: Thank you very much.

12 MR. MOYES: And I believe we had misspelled  
13 Mr. McGuire's name, which we also corrected. We  
14 appreciate you pointing that out to us.

15 With respect to the EA, Applicant's Exhibit 18,  
16 then am I correct in my conclusion that we do not need to  
17 contact Mr. Schroeder for any further questions in regard  
18 to that?

19 CHMN. WOODALL: I don't think so. Unless, of  
20 course, you wish to confer with him to determine whether  
21 or not Staff's proposed condition as it relates to some of  
22 these archaeological historic funerary issues are going to  
23 be extraordinarily burdensome to the Applicant.

24 MR. MOYES: No. And let me just respond, if I  
25 may, to that. We felt like the record was abundantly

1 clear from Mr. Schroeder's earlier testimony, as well as  
2 the confirmation of the EA, that these simply were  
3 non-issues at this particular site given its facts. It's  
4 inside an industrial corridor, all of the reasons that you  
5 just recited a moment ago.

6 I guess our legal philosophy with respect to  
7 these certificates is to try to keep them as simple and  
8 straightforward as they can be. And I will just note that  
9 in both our and Staff's proposed form of certificates  
10 there is a generic condition of requiring compliance with  
11 all applicable federal and state regulations and  
12 standards. That shows as condition 1.g on our draft and  
13 2.g on Staff's. And --

14 CHMN. WOODALL: I take the point that it sounds  
15 like it could be repetitious and redundant and, besides,  
16 it says the same thing twice already. I understand the  
17 larger point that you're making there.

18 It does seem to me that there has been some value  
19 to having some explicit requirements in the CEC. And in  
20 view of current, more recent cases where the lack of  
21 specificity in CECs has created a level of ambiguity,  
22 personally, that's one of the reasons why we've included  
23 them.

24 I'm not suggesting, for example, that the on-site  
25 biological monitor would be necessary in this case. But

1 when you're talking about ground disturbing activities,  
2 you basically don't know what is under there. That's the  
3 only reason why I mention the historic archeological  
4 conditions. I did not mention the qualified biologist  
5 issue.

6 MR. MOYES: I appreciate that.

7 CHMN. WOODALL: Ms. Diller.

8 MS. DILLER: Chairman Woodall, if I understood  
9 your previous comments correctly, you're asking us if we  
10 could accept the specific condition that you read.  
11 Basically, if something is encountered during the proposed  
12 action --

13 CHMN. WOODALL: I'm just asking you to think  
14 about it so that if we get to deliberations and then I ask  
15 you about it, then you'll be in a position to tell me.

16 MS. DILLER: Yeah. And I think part of our  
17 deliberations over Staff's certificate language was really  
18 on a previously disturbed site where, in essence, three  
19 cultural resource surveys were conducted, one in 1998 as  
20 part of the Griffith project, a second one by the  
21 environmental consultant, and a third one with the  
22 Hualapai Tribe. Nothing was discovered of significance.

23 So then it just came down to does a site with  
24 these factual conditions warrant the cost of a full-time  
25 monitor? And, obviously, construction contracts and

1 construction contractors, those will provide language such  
2 that you read that if things are encountered there is a  
3 halt and the appropriate personnel are brought in. So  
4 it's a question of who needs to be there on the site  
5 observing and under what time frames.

6 CHMN. WOODALL: I understand the larger point  
7 there that you are going to be -- assuming a certificate  
8 issues, you would be required to do a self-certification  
9 letter, you would be required to report on compliance with  
10 each of the conditions, which would be relevant  
11 information for the Commission and would assist them in  
12 doing whatever enforcement they need to do.

13 I understand until recently the Commission Staff  
14 did not really have a person formally designated to  
15 address compliance issues with CECs. So that's another  
16 thing to consider.

17 But I take your point about the burdensome nature  
18 of some of these requirements. Perhaps we can discuss it  
19 in more detail when we get to deliberations.

20 Mr. Moyes.

21 MR. MOYES: Madam Chairman, other than to respond  
22 to any additional questions that Committee members or  
23 yourself may have, we do not have any additional rebuttal  
24 case per se. There is an important issue that we think is  
25 deserving of some more elaboration. And at the risk of

1 putting more into the record of something for which there  
2 was hours of discussion at the last hearing, it pertains  
3 to what we've come to call the RAS issue. And the  
4 substantive distinction between our proposed condition  
5 with respect to that issue and Staff's proposed condition  
6 with respect to that issue is really the inclusion of the  
7 term 450 megawatts or maximum output.

8 And if I may, I don't know what your pleasure is,  
9 whether we do this through question and answer of  
10 Ms. Diller or if I can just --

11 CHMN. WOODALL: I prefer that.

12 MR. MOYES: Then that would be our approach, and  
13 I would like to offer her as a witness for that purpose.  
14 She's been previously sworn in this proceeding.

15 CHMN. WOODALL: Go ahead, please.

16

17

DANA DILLER,

18 called as a rebuttal witness on behalf of the Applicant,  
19 having been previously duly sworn by the Certified  
20 Reporter to speak the truth and nothing but the truth, was  
21 examined and testified as follows:

22

23

DIRECT EXAMINATION

24

25 Q. (BY MR. MOYES) Ms. Diller, could you explain --

1 first of all, this issue arises out of the results of the  
2 system impact study and its modeling. Could you explain  
3 the concept of the two bookends, if you will, of the  
4 modeling that was done with respect to the interaction  
5 with the Liberty phase shifter and the impacts that its  
6 operation might have on full or partial operations of the  
7 NAEP facility.

8 A. Just to refresh everyone's memory from the  
9 September 18 hearing, there was only two conditions, or  
10 two scenarios, I should say, that required curtailment of  
11 Northern Arizona Energy generation under what is called a  
12 single contingency outage. That was when the Liberty  
13 phase shifter was operating in an atypical fashion -- so  
14 its typical fashion is bypassed or neutral -- when the  
15 Liberty phase shifter is operating northbound and one of  
16 two outages occurs, the Peacock to Mead 345 kV line outage  
17 or the Mead transformer, Mead 345/230 kV transformer  
18 outage.

19 So it takes a coincident occurrence of the  
20 Liberty phase shifter moving power northbound and one of  
21 those two events occurring that would require Northern  
22 Arizona Energy to curtail some generation in order to  
23 avoid an overload situation on the Davis to McConnico  
24 230kV line.

25 What Western did at this phase, or in the system

1 impact study, what we call -- we evaluated what we call a  
2 bookend. So that bypass mode was one bookend, neutral on  
3 the Liberty phase shifter. The other extreme was at its  
4 maximum output of 450 megawatts northbound. So under that  
5 extreme case and one of those two outages occur,  
6 75 megawatts of generation needed to be curtailed, or  
7 roughly two units.

8           What they didn't do -- they provided the formula  
9 for how they arrived at that in the study, but what they  
10 didn't do is say, okay, exactly how many megawatts would  
11 have to be curtailed if we were at 425 or 400 or 300? So  
12 they didn't do all of that detailed analysis at this  
13 point. That will be part of the operating studies that  
14 will be conducted prior to interconnection of the  
15 facility, and which will also let them know exactly how  
16 they need to set up all of the communication devices and  
17 parameters for the remedial action scheme, or RAS.

18           And I really want to thank Staff for how much  
19 they have worked with us on this issue and understood the  
20 extremely low probabilities, as you have heard in the  
21 testimony, and really have -- you know, saw this for what  
22 it is. That it's not a typical N-minus-1 condition. It's  
23 really an N-minus-1 or a single contingency outage under  
24 an extremely low operating condition.

25           Where we were unable to sort of have a meeting of

1 the minds was that Staff's language wanted to just specify  
2 that 450 megawatt northbound as part of the condition when  
3 it's really, you know, some northbound operation yet to be  
4 determined by the operating study that would define how  
5 much generation needs to be curtailed.

6 So hopefully that provides a little background to  
7 the issue, but what we felt is that just specifying  
8 450 megawatts northbound in the condition was something  
9 that we couldn't comply with, because we know if it's  
10 400 megawatts moving northbound there will be some  
11 generation curtailment and the RAS will have to be  
12 implemented and utilized.

13 CHMN. WOODALL: Ms. Diller, I can't recall  
14 whether it was in the technical study that was done, the  
15 system impact study, or whether it was in Mr. Amirali's  
16 testimony, but I recall that apparently the risk of this  
17 incident, the probabilistic risk of this occurring was  
18 something on the order of 6 seconds per year.

19 Where did that come from? Is that from the  
20 testimony or --

21 THE WITNESS: That was from Mr. Amirali's  
22 testimony. And he just made the assumption of one event  
23 per year of northbound operation at any level, when really  
24 for the last five years there has not been any occurrence  
25 of northbound operation. And I think, you know, there was

1 clearly a meeting of the minds with Staff that the  
2 remoteness and the low probability of this event is so, so  
3 small.

4 CHMN. WOODALL: Thank you.

5 Did you have some questions for Mr. Diller on  
6 this point, Ms. Scott?

7 MS. SCOTT: Yes, I have a few questions.

8

9

CROSS-EXAMINATION

10

11 Q. (BY MS. SCOTT) Ms. Diller, it's correct, isn't  
12 it, that with respect to the two bookends that you  
13 mentioned, which were considered in the SIS, that one of  
14 those bookends was with 450 megawatts northbound; correct?

15 A. Correct. That was the maximum case evaluated.

16 Q. And that intermediate megawattages northbound  
17 were not evaluated in that study?

18 A. They weren't evaluated to the extent that Western  
19 came to any specific conclusions. But as was mentioned on  
20 Pages 19 and 20 of the study, the formula was presented.  
21 And, therefore, you can plug in different megawatt numbers  
22 for the phase shifter operation and conclude different  
23 megawatts of curtailment. So the formula was provided,  
24 but not a specific table of, you know, at various levels  
25 of phase shifter operation you get this exact generation

1 curtailment.

2 Q. Okay. And has the Applicant ever used the  
3 formula before -- within the last couple of weeks after  
4 the last hearing to determine the impact with lower  
5 megawattages?

6 A. No, I have not specifically evaluated the  
7 formula. Mr. Amirali, I've had some conversations with  
8 him, and so we have a sense that somewhere at the 200 or  
9 250 megawatt would be the low end.

10 However, again, I think we were reticent to  
11 include that as a specific condition because, as the  
12 operating studies and detailed operating studies are  
13 conducted, various assumptions could change that may cause  
14 that number to be too limited or too incorrect.

15 And I guess where we keep coming down to as a  
16 conclusion is if even any operation northbound is so  
17 remote, you know, why be restrictive in the language if  
18 we've already concluded that the probability is so low.  
19 It just seems like it puts the Applicant at risk for  
20 needing to revisit or come back for an amendment of  
21 something when the probability is so low. If the  
22 operating studies conclude, you know, 225 and we put 250,  
23 we need to go through an amendment process, and I guess  
24 our feeling is for what purpose?

25 Q. But you would agree that at the hearings, prior

1 hearings, that the only N-1 contingencies that were  
2 discussed were with respect to the maximum 450 northbound  
3 megawatts; is that correct?

4 A. I don't think that's correct. I think the  
5 testimony reflected northbound operation and our table  
6 presented bypass southbound and northbound, and then we  
7 presented the various contingencies and where there were  
8 issues.

9 The only thing that was presented as a statement  
10 of fact is that for 450 megawatts of northbound operation,  
11 it required 75 megawatts of generation curtailment. But  
12 we didn't provide any statement of fact at various levels  
13 other than bypass.

14 Q. Well, there's nothing in the record, is there,  
15 with respect to any other megawattage northbound that  
16 would require a curtailment?

17 A. Well, the SIS is in the record, and I think that  
18 makes it clear. If nothing else, my testimony right now,  
19 I think, makes it clear as well.

20 Q. Right, your additional testimony today. But I'm  
21 saying that that's not based upon any findings in the SIS,  
22 is it?

23 A. Yes. Again, I would refer you to page -- as I  
24 did in my e-mail to Prem, I refer you to Pages 19 and 20  
25 of the SIS. I think that makes it clear that it's not

1 just one designated number that causes curtailment but  
2 that it's northbound operation as a whole, and those  
3 various levels will be determined in the operating study.

4 Q. Could you refer to Page 19, and let's take a look  
5 at that.

6 CHMN. WOODALL: You're referring to Staff's 5?

7 MS. SCOTT: Yes, That's correct.

8 THE WITNESS: Actually, Page 20 is where the  
9 generation curtailment calculation is done. And if you  
10 need a witness to go through this formula, I'm not your  
11 witness.

12 It does state right there under the formula that,  
13 therefore, for this particular example, a 75 megawatt  
14 reduction of NAEP generation will mitigate post  
15 contingency power flow overloads for the loss of Peacock/  
16 Mead 345kV line.

17 So I think, again, it was used as an example, the  
18 450. And Prem could probably help us out. If you plugged  
19 in different -- slightly lower megawatt numbers, there  
20 would still be some curtailment required, which means that  
21 the RAS would need to be implemented.

22 So again, I think -- I feel like we're getting a  
23 little bit into the detail when you go back to the higher  
24 level and say, under what conditions does a RAS need to be  
25 implemented? And I guess where I'm struggling is if Staff

1 has gotten comfortable with the RAS operating at 450  
2 northbound, why would they be uncomfortable with the RAS  
3 operating at 300 northbound or 350 northbound or 400? I  
4 mean, the number to me here is irrelevant. It's just that  
5 the RAS has to operate to protect the system under this  
6 very remote scenario, whether -- regardless of the  
7 megawatts moving north.

8 Q. (BY MS. SCOTT) Okay. I guess my question back  
9 to you would be why wasn't this raised in any of the prior  
10 hearings on this matter or in any of your filings?

11 A. Well, by raised I'm not sure what that means. I  
12 believe that our table -- and I can pull out the slide  
13 number from last time from our PowerPoint presentation and  
14 Mr. Amirali's testimony -- that we didn't designate any  
15 specific number. We basically said northbound operation  
16 of the phase shifter coincident with these two events  
17 would cause generation curtailment.

18 Q. So it's your testimony today that your expert's  
19 presentation at the last hearing did not refer to 400  
20 megawatt northbound only?

21 A. As the bookend of the study, his testimony did  
22 present 450 northbound and what the amount of generation  
23 curtailment would be. But what we're talking about here  
24 is when does the RAS need to be implemented at all to  
25 guard the system, and that needs to be implemented under

1 northbound operation of the phase shifter. And the  
2 operating studies will determine all of the details in and  
3 around that implementation.

4 Q. Had you ever discussed with Staff or presented to  
5 Staff the possibility of a lower megawatt northbound  
6 operation resulting in an N-1 contingency?

7 A. Yes. I mean, there's been a lot of discussion on  
8 the system impact study with Mr. Bahl -- between Mr. Bahl  
9 and Mr. Ali. I can't imagine that that suspected scenario  
10 would have been discussed. It had come through clearly.

11 MS. SCOTT: Chair Woodall, I guess at some point,  
12 since Staff considers this to be a new issue that's been  
13 raised by the Applicant, we would like to present some  
14 additional testimony by Mr. Bahl on the issue.

15 CHMN. WOODALL: Mr. Moyes, any position?

16 MR. MOYES: Madam Chairman, we really are not  
17 objecting to anything that the Staff wants to present on  
18 this, although I'm getting to the point of feeling like we  
19 are really straining at gnats here as it relates to this  
20 number when it's been made very clear that the probability  
21 which we're dealing with here that is so, so tiny,  
22 encompasses the full range of potential operation of the  
23 phase shifter, not just 450. It's operating at all  
24 northbound. And the presumptions that were made and even  
25 calculating that 6 seconds per year exposure were very

1 conservative in that they presumed an operation once a  
2 year and then matched that up with the probabilities of  
3 these other two outages that also have to occur  
4 simultaneously.

5 And so if we're taking it from the presumption of  
6 once a year northbound at any level to the question of  
7 actual operation at 450, that becomes just infinitesimally  
8 small as a probability, and we're all -- it seems we're --  
9 all parties are prepared to accept the concept that there  
10 is a solution here that should be implemented, and it's  
11 covering in either event, without regard to the 450  
12 number, an extremely extremely low probability.

13 We're not sure why we're arguing over this other  
14 than -- if Staff is concerned that somehow we misled them  
15 or that they --

16 CHMN. WOODALL: Let me just --

17 MR. MOYES: -- were surprised by this.

18 CHMN. WOODALL: Let me just ask one question.

19 Ms. Scott, under the Committee's rules, the  
20 standard for the introduction of evidence is that it's  
21 material and nonrepetitive. Please explain to me why  
22 Mr. Bahl's testimony on this point would be material to a  
23 resolution of this case.

24 MS. SCOTT: I believe it would be material  
25 because Mr. Bahl will explain what the Applicant has

1 presented to Staff in the past with respect to this. And  
2 as you can see by the proposed CEC that Staff has  
3 submitted, Staff in reviewing the matter came to the  
4 conclusion that 450 megawatts northbound with the Liberty  
5 phase shifter in operation was so remote of an occurrence  
6 with respect to an N-1 contingency that it was -- Staff  
7 was willing to recommend allowance of a RAS in that  
8 particular instance because of its remoteness.

9           What Mr. Bahl's testimony will do in addition to  
10 presenting his understanding of what the Applicant had  
11 represented to him throughout discussions with the  
12 Applicant, he will also identify what he believes to be  
13 potential problems if the Committee were to go with  
14 anything other than the 450 megawatt limitation.

15           CHMN. WOODALL: Okay. So you're saying that you  
16 would not be in a position to continue with the proposal  
17 that you have in the form of CEC as matters now stand?

18           MS. SCOTT: We would certainly be able to  
19 continue with our form, but --

20           CHMN. WOODALL: All right. Well, let's just cut  
21 to the chase, then, and you conduct a brief, focused  
22 examination of Mr. Bahl on this point, if you would,  
23 please.

24           MS. SCOTT: Thank you, Chair Woodall.

25           MR. MOYES: Madam Chairman, may I ask -- I heard

1 two points identified. With respect to the first point,  
2 we will concede that the materials, the discussion, all  
3 spoke in terms of 450 megawatts of northbound operation  
4 because that was the other parameter.

5 CHMN. WOODALL: Right. I don't want to hear a  
6 lot about that. I want to hear about why it matters.

7 MR. MOYES: That's my request as well, if we can  
8 focus on why it matters, not what we did or didn't say  
9 about it before.

10 CHMN. WOODALL: Ms. Scott, you can certainly ask  
11 one question of the witness about had this ever been  
12 presented to him before, but let's not beat a dead horse  
13 on that one. So why don't you go ahead.

14 MS. SCOTT: Thank you, Chair Woodall.

15

16

PREM BAHL,

17 called as a rebuttal witness on behalf of the Staff,  
18 having been previously duly sworn by the Certified  
19 Reporter to speak the truth and nothing but the truth, was  
20 examined and testified as follows:

21

22

DIRECT EXAMINATION

23

24 Q. (BY MS. SCOTT) Good morning, Mr. Bahl.

25 A. Good morning.

1 Q. You have been previously sworn before; correct?

2 A. Yes.

3 Q. You're familiar with the Applicant's proposed CEC  
4 Condition No. 5?

5 A. I am.

6 Q. And can you explain to the Committee members what  
7 Staff's concern with that is?

8 MS. SCOTT: Could we have one moment, please.

9 CHMN. WOODALL: You may.

10 (Brief pause.)

11 THE WITNESS: Madam Chair and other Committee  
12 members, I agree with the Applicant that the probability  
13 of that phase shifter operation northbound is very remote.  
14 It hasn't occurred in the last five years, certainly not  
15 at the 450 megawatt level as we understand.

16 I was at the Colorado River transmission planning  
17 group meeting the other day -- I think it was on Friday --  
18 and the subject was discussed at that meeting also. And  
19 it became abundantly clear to me that the phase shifter  
20 will not even operate very much because of the presence of  
21 a parallel phase shifter in the Mead to Perkins to -- what  
22 is the north end of this? Sorry. Mead is the north end.  
23 Mead to Perkins to 500kV line. So most of the flow is on  
24 a high voltage line with a lower impedance.

25 And after the meeting I also got hold of the

1 exact data for 2006 on a monthly basis, and up to date, I  
2 think, up to the end of August 2007 as to what were the  
3 flows on the Liberty to Mead 345kV line. It was very  
4 minimal, and a maximum was about 257 megawatts. So the  
5 whole flow on that line was at a very low level.

6 In my own mind I'm convinced that, first of all,  
7 the flow on that line is not going to be substantial  
8 because of other upgraded devices that have been installed  
9 in the system at other locations. The Mead 500kV line has  
10 a phase shifter, and this has been kind of sitting there  
11 idle for a number of years. From that point of view, I  
12 personally am comfortable with the fact that this is not  
13 going to operate.

14 However, the point that the Staff is making, that  
15 the Applicant in their earlier presentation to ACC Staff  
16 mentioned about the 450 megawatt level only. The system  
17 impact study also looks at only two scenarios, one is the  
18 bypass mode and the other is the 450 mode. And it's  
19 correct that one contingency, N-minus-1 contingency, that  
20 the other line is overloaded when the phase shifter is at  
21 its maximum limit of 450 megawatts.

22 The second contingency is just the same as the  
23 first contingency, because if the transformer 345kV --  
24 500/345kV transformer goes out, it also takes the Mead to  
25 Perkins line, which is the second contingency discussed in

1 the SIS. So from that standpoint, that was one example  
2 given in the study, and that's what was presented to  
3 Staff. That was presented at the last hearing.

4 I do not have Mr. Amirali's presentation that he  
5 made to the Committee, where I have pretty much the same  
6 that was presented to Staff on September 24, where he says  
7 that -- in fact, I believe the presentation that was made  
8 to the Committee had very clearly underlined that the only  
9 time that there is overloading on that line is when the  
10 phase shifter operation is 450 megawatt northbound.

11 Staff was a little bit taken aback by the fact  
12 that now the Applicant is mentioning other levels of  
13 northbound flow at which remedial actions may be needed.  
14 That is, I believe, the only part that Staff is sticking  
15 to in terms of Applicant's presentation earlier and kind  
16 of changing the perspective or the presentation of the  
17 perspective.

18 CHMN. WOODALL: Why does that purported  
19 difference now, why should that be of significance to the  
20 Committee in determining how to address this issue, if we  
21 do at all, in the form of CEC? In other words, why should  
22 we care?

23 THE WITNESS: I would definitely leave that to  
24 the Committee to determine that. But I have given you my  
25 personal opinion, which is that it is true that the

1 northbound flows have been very rare in the past. And  
2 having attended the CRT meeting on Friday, I am in my own  
3 mind convinced that this will not be a problem.

4 If you go strictly by the study, what the study  
5 indicated and the Applicant's presentation to Staff, other  
6 members of the Staff also, mentioning only the level of  
7 450, they do not say that that's just a bookend and other  
8 things could occur. Although the Applicant does state  
9 that the operational studies will be done in more detail  
10 later on, which might indicate the use of a RAS scheme.  
11 It does not typically use those words or other levels of  
12 phase shifter flow.

13 CHMN. WOODALL: Ms. Scott, do you have any more  
14 questions of Mr. Bahl on this topic?

15 MS. SCOTT: No. That's all, Chair Woodall.

16 CHMN. WOODALL: Any examination, Mr. Moyes?

17 MR. MOYES: Just briefly. And again, let me  
18 offer on behalf of the Applicant to Staff an apology.

19 THE WITNESS: May I be excused for a second? I  
20 need to break and get a little water.

21 MEMBER HAENICHEN: I'll get it for you, Prem.

22 CHMN. WOODALL: Off the record.

23 (Brief pause.)

24 CHMN. WOODALL: Back on the record.

25 THE WITNESS: I apologize. I'm ready.

## 1 CROSS-EXAMINATION

2

3 Q. (BY MR. MOYES) Mr. Bahl, I want to thank you for  
4 your testimony, because I think on the substantive  
5 question at issue it confirms our position, which has  
6 never been different than your position. And let me just  
7 ask to clarify it, to highlight that.

8 In your professional opinion, if 449 megawatts  
9 for some unforeseen reason ended up flowing northbound on  
10 the Liberty phase shifter, would the RAS be the  
11 appropriate response?

12 A. I would say yes.

13 MR. MOYES: Thank you. No further questions.

14 CHMN. WOODALL: No further questions.

15 All right. Is there anything else that you have  
16 for us? Because what I'm going to propose next, unless  
17 the Committee members have questions, is that we get  
18 closing arguments and then come back after lunch for  
19 deliberations, unless counsel wishes to ponder and muse  
20 and polish their closing arguments.

21 MR. MOYES: I would appreciate it if we could  
22 take perhaps an early lunch. There are a couple of other  
23 items that I think we want to follow up on very briefly  
24 with respect to rebuttal testimony.

25 CHMN. WOODALL: Can you do that now?

1 MR. MOYES: If I can have a brief recess, but it  
2 might be more feasible to --

3 CHMN. WOODALL: Okay. Let's take a brief recess.  
4 I would like to get as much as we can get done. So we'll  
5 take like a seven-and-a-half minute break.

6 (A recess was taken from 11:38 a.m. to  
7 11:44 a.m.)

8 CHMN. WOODALL: We'll go back on the record at  
9 this time.

10 Mr. Moyes, you had additional evidence for us?

11 MR. MOYES: Thank you for allowing us that brief  
12 break. I do have a couple of additional questions with  
13 respect to the filing that Staff made of its draft CEC.

14 CHMN. WOODALL: Did we get an exhibit number for  
15 that, Ms. Scott?

16 (An off-the-record discussion ensued.)

17 CHMN. WOODALL: Back on the record at this time.

18 We have had an off-the-record discussion, and  
19 Staff's Exhibit S-8 will consist of their notice of filing  
20 Staff's Certificate of Environmental Compatibility,  
21 together with its Notice of Filing Errata to Page 6. The  
22 two documents together will comprise Staff Exhibit S-8.

23 Did you want to move for its introduction at this  
24 time?

25 MS. SCOTT: Yes. We move for admission of S-8.

1 CHMN. WOODALL: Any objection?

2 MR. MOYES: Just a quick question, and that would  
3 be if Ms. Scott could identify for me the correction that  
4 was made by the errata filing on Page 6. I apologize, I  
5 haven't read it carefully enough to see what the  
6 difference is.

7 MS. SCOTT: Paragraph 12 was revised to take into  
8 account the new restated agreement between Mohave County  
9 and Griffith Energy, and also the new agreement between  
10 NAEP and Mohave County.

11 MR. MOYES: Thank you. I have no objection.

12 CHMN. WOODALL: Okay. Hearing none, Staff's S-8  
13 is admitted.

14 (Exhibit No. S-8 was received into evidence.)

15 CHMN. WOODALL: Go ahead, Mr. Moyes.

16

17

DANA DILLER,

18 called as a rebuttal witness on behalf of the Applicant,  
19 having been previously duly sworn by the Certified  
20 Reporter to speak the truth and nothing but the truth, was  
21 examined and testified as follows:

22

23

DIRECT EXAMINATION

24

25 Q. (BY MR. MOYES) Ms. Diller, again, you were

1 previously sworn.

2           In reviewing Staff's filing of its proposed CEC,  
3 I see a Condition No. 3 which refers to some proposed  
4 limitations with regard to air emissions. Could you  
5 discuss -- just by way of review, I believe all of this  
6 information is previously in the record, but would you  
7 review for us the current status with respect to the air  
8 permit from ADEQ under delegation of authority from the  
9 EPA, the contrast of the current permitting structure to  
10 what might have been the case had the Griffith proximity  
11 not been the facts of this case, and just explain for us  
12 sort of where that whole issue stands.

13       A. Yes. The draft air permit, which we had  
14 mentioned and provided to the Siting Committee as part of  
15 our supplemental filing in May, that process has concluded  
16 and we do have a final air permit. So we now know the  
17 structure under which we will be operating and also the  
18 limitations with respect to the emission profile.

19           One of the things that I think is important,  
20 Staff provided a proposed condition that dealt with lowest  
21 achievable emission rate. And as we have researched prior  
22 certificates of environmental compatibility, the only  
23 project that had that standard, emissions standard or air  
24 quality standard, was the San Tan project. And I think  
25 it's important to distinguish that project from this

1 project. San Tan sits in Maricopa County. It is  
2 non-attainment for various pollutants, and it is a major  
3 source from an emissions perspective.

4 If you will recall the testimony of  
5 Mr. Rubenstein, our air quality expert, he explained that  
6 this project, because of its proximity to Griffith, had to  
7 go through a regulatory process that is for a major  
8 modification -- a minor modification -- excuse me -- to a  
9 major source.

10 And that process or stepping into that  
11 environment or envelope, if you will, has some very  
12 stringent annual emission limitations. If you will  
13 recall, one of the questions that had been asked of  
14 Mr. Rubenstein was how does the emission profile of this  
15 project compare to another LM6000 project like this that  
16 may not be in close proximity to Griffith, maybe three  
17 miles away from Griffith.

18 And our response No. 9 in our supplemental  
19 package from May provided a chart that showed that  
20 distinction. And just for ease of -- rather than having  
21 everyone refer to it, I can just provide some of those  
22 data points. So for a --

23 Q. Let me, if I may, let's get a reference to the  
24 exhibits. I believe we can do that quickly.

25 So you're referring to that supplemental filing

1 that was made in May, and I believe that's Exhibit A-12,  
2 just for reference of the record, filed June 27, 2007.  
3 June 22. Thank you.

4 A. So again, for a minor source facility -- so let's  
5 say a two LM6000, a four LM6000 that was not in close  
6 proximity to Griffith that may be sited separately, the  
7 annual tons per year for all pollutants would be 250 tons  
8 per year.

9 For this project, our air permit, which is now  
10 final, allows us NOX limits of 39 tons per year, or  
11 roughly 15 percent of a standard minor source permit. A  
12 CO limit of 90 tons per year versus 250. SO<sub>2</sub> of 36 tons  
13 per year versus 250. VOC limit, annual limit of 36 tons  
14 per year versus 250. And PM10 of 14 tons per year versus  
15 250, or really less than 6 percent of the PM10 for a minor  
16 source.

17 So I guess the testimony that I wanted to provide  
18 is that we believe that we have already stepped into an  
19 extremely stringent air emissions profile for this project  
20 by virtue of the fact that we are a major source -- a  
21 minor source -- a minor modification to a major source.  
22 Sorry.

23 Q. Ms. Diller, the question or Condition No. 3, to  
24 which I have referred and you have testified some  
25 explanation, refers to a Mohave County Environmental

1 Services Department. To your knowledge, is there such a  
2 department in Mohave County?

3 A. No. Mohave County does not have jurisdiction on  
4 air quality matters. We are under the jurisdiction of the  
5 Arizona Department of Environmental Quality.

6 Q. And is it that Arizona Department of  
7 Environmental Quality that has issued the permit to which  
8 you're referring?

9 A. Yes.

10 CHMN. WOODALL: Ms. Diller, is it your testimony  
11 that to comply with the standard would require you to  
12 comply with standards in excess of those required by your  
13 air permit?

14 THE WITNESS: Could you rephrase that question?  
15 Would it be more limiting?

16 CHMN. WOODALL: Yes. Would it be more limiting?

17 THE WITNESS: Absolutely.

18 CHMN. WOODALL: I will bring to the attention of  
19 the parties the provisions of A.R.S. 360.06,  
20 notwithstanding -- C. Notwithstanding any other provision  
21 of this article, the Committee shall require in all  
22 certificates for facilities that the applicant comply with  
23 all applicable nuclear radiation standards and air and  
24 water pollution control standards and regulations, but  
25 shall not require compliance with performance standards

1 other than those established by the agency having primary  
2 jurisdiction over a particular pollution source.

3           And my recollection of the condition that Staff  
4 had proposed was that was something that had been proposed  
5 at the Commission level and had been accepted by the  
6 Applicant at that level. Because in my view, the  
7 Committee doesn't have the statutory authority to impose a  
8 condition that's in excess of those required by, for  
9 example, DWR or DEQ as it relates to air. So I just flag  
10 that issue for the parties' considerations.

11           Do you have anything else, Mr. Moyes?

12           MR. MOYES: One more quick question, and that's  
13 in reference to Condition No. 12 of the exhibit to which  
14 we're referring, Staff's proposed certificate.

15           And just again for factual foundation for  
16 clarification here. Condition 12 is dealing with the  
17 reporting of the water data. 12, small Roman numeral I  
18 has the phrase: The source of water for operation of the  
19 project -- the project being a reference to NAEP -- shall  
20 be a new well field.

21           Q. (BY MR. MOYES) Ms. Diller, is it your  
22 understanding that there would be a new well field drilled  
23 for this project?

24           A. No. The source of water is the Mohave County  
25 water system from which Griffith currently obtains its

1 water. It will be the source for NAEP. And not only will  
2 it not be a new well field, but there will not be the  
3 requirement for any new wells to support the project.

4 Q. So would I be correct, then, in assuming that  
5 this paragraph was taken as a quotation out of the  
6 Griffith certificate, but simply needs to be conformed to  
7 the fact that it will be using the same well field?

8 A. Correct.

9 MR. MOYES: Thank you. We have no further  
10 questions.

11 MEMBER HAENICHEN: Chairman Woodall.

12 CHMN. WOODALL: Yes, Mr. Haenichen.

13 MEMBER HAENICHEN: Ms. Diller, on Page 1 of your  
14 supplemental filing referring to the questions that I had  
15 asked about water, the NOX control consumes 40 percent of  
16 the plant's use.

17 Would it be your opinion that the NOX level that  
18 you're being allowed that you cited a minute ago could not  
19 be met if you did not use the water?

20 THE WITNESS: That's correct. The water brings  
21 the -- I guess the way I would say that is if there was no  
22 NOX, the NOX brings -- or the water brings the NOX level  
23 down to 25 PPM out of the engine. So if you had a higher  
24 level of emissions out of the engine and then applied the  
25 selective catalytic reduction to that higher level, what

1 you would have is a higher instantaneous rate of NOX,  
2 which under the 39 tons per year would severely limit your  
3 hours of operation.

4 MEMBER HAENICHEN: Thank you.

5 CHMN. WOODALL: Any other questions?

6 (No response.)

7 CHMN. WOODALL: Does it make sense for us to take  
8 our lunch break and resume at 1:15 for closings and  
9 deliberations?

10 MR. MOYES: That would be our preference.

11 CHMN. WOODALL: Ms. Scott?

12 MS. SCOTT: Yes, that's fine with Staff.

13 CHMN. WOODALL: Is that okay with the Committee  
14 members?

15 I see from nods it is. Very well. We will  
16 resume for closing arguments and deliberations at 1:15.  
17 Thank you.

18 (A recess was taken from 11:55 a.m. to 1:20 p.m.)

19 CHMN. WOODALL: We'll go on the record at this  
20 time.

21 This was the time set for closing arguments. So  
22 if there are no procedural matters that we need to take up  
23 on the record, I would propose that we start with those.

24 MR. MOYES: Madam Chairman, if I may, and this is  
25 really asking for your direction and preference. During

1 the lunch break we were able to meet with Staff and  
2 discuss in more detail the issue that we last addressed  
3 before we broke for lunch dealing with the 450 megawatt  
4 limitation. And we appreciate Staff's efforts to work out  
5 a solution for that, and we're pleased to report that we  
6 did work out a solution for it.

7 In connection with that, I think Ms. Scott may  
8 desire to ask Ms. Diller a couple of additional questions  
9 in that, and if it's acceptable to you and the Committee  
10 we would like to do that at this time --

11 CHMN. WOODALL: Sure.

12 MR. MOYES: -- as a continuation for that  
13 discussion.

14 CHMN. WOODALL: Certainly.

15 Ms. Scott.

16 MS. SCOTT: Yes. Thank you, Chair Woodall.

17

18 CROSS-EXAMINATION

19

20 Q. (BY MS. SCOTT) Good afternoon, Ms. Diller. With  
21 respect to the two N-1 contingencies that were identified  
22 by the system impact study which would occur with  
23 northbound operation with the Liberty phase shifter in  
24 operation, you recall the previous discussions about the  
25 bookend that utilized maximum megawatts northbound to be

1 450; correct?

2 A. Correct.

3 Q. And you also recall testimony on behalf of the  
4 Applicant that the probability of the occurrence of  
5 operation would be extremely remote; correct?

6 A. Correct.

7 Q. And can you identify for the record the  
8 remoteness of that possibility with 450 megawatt  
9 northbound?

10 A. I think the best way to address that is to  
11 perhaps clarify for the record Mr. Amirali's testimony.  
12 And if anybody wanted to refer to it, it was on Page 912  
13 and 913 of the transcript from September 18.

14 But he had walked through a series of  
15 calculations, and what his testimony was and still is, is  
16 that the coincident occurrence of the Liberty phase  
17 shifter operation. And if you recall, he had said it  
18 operates roughly six or seven times is year. Liberty  
19 phase shifter operating and one of the two contingencies  
20 occurring, that that represented the total probability in  
21 D. of Page 16 of our prior slide presentation, which was  
22 .000136 percent. And in his testimony he equated that to  
23 43 seconds, or roughly an exposure of 43 seconds per year.

24 He then went on to testify that if you narrow  
25 that further to just northbound operation, even though

1 there hadn't been northbound operation in the prior five  
2 years, he just made the assumption that one of those six  
3 or seven times per year was northbound operation. And his  
4 further assumption was that it was at a level that would  
5 cause the RAS to operate, or there was some requirement  
6 for generation curtailment.

7 That scenario, those set of facts combined with  
8 an outage of the Peacock/Mead transmission line or the  
9 Mead transformer had a rough exposure of -- or a  
10 calculated exposure of 6.1 seconds per year.

11 So I think where the clarification needs to occur  
12 is that that 6 second exposure per year wasn't just at a  
13 450 megawatt amount moving northbound. It was a  
14 probability calculated of any northbound operation that  
15 will cause an impact on the system, the need for the RAS  
16 to operate and curtail some of the NE generation.

17 MS. SCOTT: Okay. That's all I had, Chair  
18 Woodall. Thank you.

19 CHMN. WOODALL: Thank you.

20 Any other matters before we proceed to closing?

21 Yes, Mr. Eberhart. And the record should reflect  
22 that Mr. Eberhart was here this morning as well.

23 MEMBER EBERHART: Thank you, Madam Chair.

24 I did receive in the mail probably about a week  
25 ago a brief called Staff's brief on jurisdiction and need.

1 CHMN. WOODALL: Yes.

2 MEMBER EBERHART: And I wondered if that had been  
3 introduced or needs to be.

4 CHMN. WOODALL: It's a filing in the case. And  
5 Ms. Scott asked me about that, and I said I didn't think  
6 it was necessary to mark it as an exhibit since it is  
7 basically a legal brief. But it is in the record, and so  
8 we did have a discussion of it earlier this morning. I  
9 don't know --

10 MEMBER EBERHART: I was here, but I had  
11 forgotten.

12 CHMN. WOODALL: Thank you.

13 MR. MOYES: Chairman Woodall, in furtherance of  
14 this discussion with respect to the 450 megawatt, it  
15 raises the fact that we have agreed on new language for  
16 the condition in which that occurs. It leads me to ask  
17 what your preference is procedurally for how you would  
18 like us to address any other modifications to the filings  
19 that the two of us have made with respect to our draft  
20 CECs. We have had some discussions on other points, as  
21 well as having arrived at new language for that particular  
22 condition.

23 CHMN. WOODALL: Well, I will tell you that by  
24 tradition and custom, the way we start our deliberations  
25 is someone will move a form of certificate for discussion

1 purposes, and then the Committee typically goes through  
2 and proposes amendments which are voted on individually,  
3 and then we will vote for the entirety of the certificate  
4 up or down.

5           Since we have two versions in front of us, I  
6 don't know whether a Committee member is going to move for  
7 discussion of your version or Staff's version, but  
8 typically we have one version that is on the screen so we  
9 can do some editing during the scope of our deliberations.  
10 I don't know if you have that capability here today.

11           MR. MOYES: We do have that capability with  
12 respect to our version. I'm not sure if we do or don't --  
13 if Staff perhaps has the capability on their system to put  
14 theirs up as well, I'm not sure.

15           CHMN. WOODALL: Ms. Scott.

16           MS. SCOTT: Yes. We believe we would have that  
17 capability.

18           CHMN. WOODALL: Okay. So depending upon what is  
19 moved for discussion purposes, we can put one or the other  
20 up, and we can certainly import text from each other if we  
21 want to do that.

22           MR. MOYES: And presumably we will have  
23 opportunity to make commentary with respect to those  
24 discussions on any particular language or amendment or  
25 modification.

1 CHMN. WOODALL: Yes, that's normally what we do.

2 MR. MOYES: As opposed to me trying to do each of  
3 those now.

4 CHMN. WOODALL: Well, I guess what I would say is  
5 if you have some amendments that you can -- well, let's go  
6 off the record for a minute.

7 (An off-the-record discussion ensued.)

8 CHMN. WOODALL: Back on the record at this time.  
9 We just had an off-the-record discussion about  
10 which version it made sense to display on the screen of  
11 the CECs that have been proposed.

12 Do you have any other questions, or are you ready  
13 to give us your closing?

14 MR. MOYES: No, but my understanding was that we  
15 as the Applicant close last.

16 CHMN. WOODALL: Well, typically you have an  
17 opening and then you have a closing closing. So you get  
18 two shots. But if you would like to have Staff go first,  
19 I don't have a preference.

20 MR. MOYES: That was my expectation, but I'm  
21 happy to do whatever your preference is.

22 CHMN. WOODALL: Do you care?

23 MS. SCOTT: No, that's fine. Thank you, Chair  
24 Woodall, Committee members.

25 First of all, Staff would like to state that it

1 supports the project with the conditions identified in its  
2 proposed CEC, as modified in subsequent discussions with  
3 the Applicant over the lunch hour.

4           Addressing the jurisdictional issue first, the  
5 Committee has jurisdiction over the project because of its  
6 close nexus with the existing Griffith plant. The  
7 Applicant's counsel, in fact, stated today when addressing  
8 this issue that amendments have been required for far less  
9 in terms of deviations from an existing CEC.

10           But for the Applicant's desire for a separate  
11 ownership structure and financing rights, an amendment to  
12 the Griffith CEC would have been required. Accommodation  
13 of the Applicant's needs in this regard should not equate  
14 to an abdication of review under the statute.

15           Given the unique facts of this application, the  
16 Commission Staff does not believe it's necessary for the  
17 Committee to address its jurisdiction under 40-360 --  
18 excuse me -- A.R.S. 40-360, with respect to the definition  
19 of plant and whether this project meets the plant  
20 definition contained in 40-369.

21           It's Staff's opinion and recommendation to the  
22 Committee that it wait until it is presented with a clear  
23 case on this particular issue, and the issue needs to be  
24 resolved before addressing it, so that arguments regarding  
25 that particular portion of the statute can be addressed in

1 much more detail than has been presented to the Committee  
2 in our briefs.

3 Staff through its testimony and participation in  
4 this case and other cases like it, attempts to aid both  
5 the Committee and the Commission with respect to the  
6 factors set out in A.R.S. 40-360.06 and A.R.S. 40-360.07.  
7 Mr. Bahl's technical assessment of this project is that  
8 the Applicant has justified a need for the project.

9 With respect to the conditions in Staff's  
10 proposed CEC -- or let me please rephrase that. With the  
11 conditions in Staff's proposed CEC, as modified based upon  
12 discussions with the Applicant which I will address, Staff  
13 believes that the project meets the criteria of A.R.S.  
14 40-360.06 and is in the public interest, and it also meets  
15 the balancing test under Section 40 -- or A.R.S.  
16 40-360.07.

17 Chair Woodall, I'm wondering if you would like us  
18 to address the need issue in our closing statements.

19 CHMN. WOODALL: Yes, certainly.

20 MS. SCOTT: Okay. As discussed in Staff's brief,  
21 in the Grand Canyon Trust case, the Court of Appeals of  
22 Arizona held that A.R.S. 40-360.07.B does not govern the  
23 Committee proceedings. The court found in that regard  
24 that the balancing test is not required unless a party  
25 contests a decision of the Committee. Notwithstanding the

1 court's reasoning, the Commission does not issue an order  
2 until it finds that it is in the public interest and meets  
3 the balancing test. In that case the court also stated  
4 that the Committee could consider need should it choose to  
5 do so.

6           The Commission Staff believes that 40-360.06.A.9,  
7 which provides that the Committee shall consider any  
8 additional factors which require consideration under  
9 applicable federal and state laws pertaining to the site,  
10 as well as practical considerations relating to the  
11 Commission's review, in that the Commission must consider  
12 need in its balancing test. These together warrant the  
13 Committee's consideration of need.

14           We believe that at a minimum an evaluation or  
15 discussion of need before the Committee is warranted, even  
16 if the Committee does not make a specific finding thereon,  
17 since this would provide the evidentiary record for the  
18 Commission to consider.

19           However, Staff in the end believes that the  
20 findings of fact by the Committee with respect to need  
21 would assist the Commission in the discharge of its  
22 statutory obligations.

23           Staff, finally, again commends the Applicant for  
24 its willingness to work with the parties and resolve the  
25 issues raised in this case. The Applicant and its

1 affiliate have agreed to additional restrictions on water  
2 use with its new agreements with Mohave County.

3 The Staff and the Applicant have been able over  
4 the lunch hour to resolve some additional concerns, in  
5 particular the concern arising from the system impact  
6 study.

7 If you would like me to address any of the  
8 amendments that we have agreed upon, I can do that or --

9 CHMN. WOODALL: Are you suggesting that you would  
10 give us the benefit of the modifications that the parties  
11 have agreed to at this time?

12 MS. SCOTT: Yes, unless you prefer to wait  
13 until --

14 CHMN. WOODALL: We'll wait until we get to  
15 discussion, Ms. Scott. Thank you.

16 MS. SCOTT: Okay. In the end, I think Staff  
17 believes that with the conditions, the proposed conditions  
18 contained in its CEC, with the changes agreed upon with  
19 the Applicant that will be discussed later, we believe  
20 that the project is necessary, it meets the criteria set  
21 out in 40-360.06, and it's in the public interest.

22 Thank you.

23 CHMN. WOODALL: Thank you, Ms. Scott.

24 Mr. Moyes.

25 MR. MOYES: Thank you, Chairman Woodall.

1           Let me first express on behalf of the Applicant  
2 the appreciation of the Applicant and myself personally to  
3 you, Chairman Woodall, to each of the members of the  
4 Committee, to Staff and Mohave County, Mr. Ehrhardt who is  
5 not here, for the cooperative spirit and attitude that has  
6 prevailed in these proceedings. And especially we  
7 appreciate the time and effort that the Committee members  
8 take out of their lives to be here and participate in this  
9 process and donate their valuable expertise without  
10 remuneration for this service. And it is appreciated and  
11 we recognize the importance of it.

12           As I said earlier this morning in our discussion  
13 with respect to jurisdiction, we believe that there are  
14 benefits to this process for this particular application  
15 and on the facts of this case. Without elaborating  
16 further, we believe that jurisdiction appropriately  
17 applies on the facts of this case to this application, and  
18 that it is both legally and, I hope, from a public  
19 interest standpoint appropriate for the Committee to  
20 exercise that jurisdiction as it did when it received this  
21 application, when it heard it, and as it will be ruling  
22 upon it today.

23           With respect to the issue of need, we likewise  
24 believe that it is entirely appropriate and proper for  
25 this Committee to, having heard evidence with respect to

1 the need, reach findings or at least express its positions  
2 to the degree that it comes to any position on the  
3 question of need, and that such an expression would be of  
4 benefit to the Commission should the issue of need arise  
5 in the Commission's deliberations with respect to this  
6 project.

7 We indicated at the outset of our application and  
8 proceedings that this project will not be built in a  
9 speculative sense, but only pursuant to appropriate  
10 off-take contracts, or what we would call PPAs, power  
11 purchase agreements. Therefore, it would seem to be  
12 literally self-evident that if the project is constructed,  
13 it would be pursuant to a PPA from some utility that deems  
14 it needed for its purposes or it would not be entering  
15 into such contracts.

16 As I presented my opening statement, I cast this  
17 project in terms of simplicity. And I believe that the  
18 evidence that you have seen over the four-and-a-half days  
19 now of hearings and the materials that have been presented  
20 to you have confirmed to you the relative simplicity of  
21 this project compared to many others.

22 Without reiterating each of those points, the  
23 major ones are that it does not disturb public lands or  
24 third party private lands. It's entirety, including its  
25 transmission line, will be constructed within the four

1 corners of an existing parcel of land that has been  
2 previously determined to be compatible for such purposes.

3           The project itself is small. The units are small  
4 in size, and its operations will be intermittent through  
5 the course of the year. We have indicated that in a very  
6 worst case for environmental analysis purposes, 5,000  
7 hours for the whole project or 20,000 unit hours would be  
8 at the very worst case high side, but more likely 2,500 or  
9 less hours operation.

10           That hours reality has a number of beneficial  
11 byproducts. It necessarily limits the amount of water  
12 that the project could consume. It necessarily limits the  
13 amount of air emissions that the project will produce, in  
14 addition to the other components that do those same  
15 things. As a simple cycle as opposed to combined cycle  
16 project, its water use is very small. That water use has  
17 been deemed by the Department of Water Resources, the  
18 agency with ultimate expertise in this regard, to be  
19 insignificant in its impact on the local aquifer and,  
20 therefore, on the environment with respect to the water  
21 issues.

22           All of the existing -- all of the infrastructure  
23 that's necessary for this plant to be constructed is in  
24 place with respect to gas pipelines, transmission systems,  
25 roads, switchyards. And with only a minimal expansion of

1 the existing Griffith switchyard, this project will be  
2 able to interconnect into the Western Area transmission  
3 system. Therefore, it does not rely upon new transmission  
4 facilities. It does not necessitate construction of  
5 infrastructure outside the four corners of the site itself  
6 in order for it to not only be constructed, but for it to  
7 operate and deliver its power into the marketplace.

8 It does not give rise to special species and  
9 habitat issues, again, for reasons of its location. It  
10 does not give rise to serious sensitive cultural or  
11 archaeological resource issues because of its precise  
12 location on that site. There are no wetlands or other  
13 kind of biological sensitivities.

14 As we indicated, it has been the subject of a  
15 prior EIS, now a new environmental assessment, a private  
16 environmental evaluation. All of those studies and  
17 processes have concluded that it is indeed a site for  
18 which this facility would be compatible from an  
19 environmental analysis.

20 The air emissions from this project will be  
21 tightly restricted by a permit from the agency that has  
22 primary jurisdiction, namely the Arizona Department of  
23 Environmental Quality. It has issued that permit. Its  
24 standards and restrictions, because of its proximity to  
25 Griffith, will be much more stringent than they would be

1 if this same facility were sited even a distance of a few  
2 miles away from Griffith. Therefore, we believe that in  
3 the public interest, and with due regard for the  
4 environment, the emissions characteristics of this  
5 facility, again at this location, are particularly  
6 appropriate, and, as I said, more stringent than they  
7 might be at any other location apart from this one.

8 In sum, we believe the record in this case  
9 reflects environmental compatibility pursuant to the  
10 standards of A.R.S. 40-360. We believe that it will be a  
11 sound and wise move for the electric supply picture in the  
12 state of Arizona as well as the region for this project to  
13 be constructed and be available to meet that peak resource  
14 demand for which it is designed. And that all of the  
15 factors with respect to environmental impact have been  
16 duly addressed have been -- in the form of the conditions  
17 of the certificate that we have proposed would be  
18 appropriately addressed and identified, and that it is  
19 both legally and practically appropriate for this  
20 Committee to make a finding of jurisdiction, of need, and  
21 grant a Certificate of Environmental Compatibility to the  
22 Northern Arizona Energy Project.

23 Again, we thank you for your time and effort and  
24 serious energy in this regard, and would request that you  
25 do make such a finding and grant such a certificate.

1 Thank you.

2 CHMN. WOODALL: At this time I would declare the  
3 evidentiary portion of our proceedings as now closed.

4 This is the point where we enter into our deliberations.

5 And at this time I will ask my fellow Committee  
6 members if anyone has some preliminary remarks to make,  
7 and then I would entertain a motion to move one of the  
8 forms of certificate that we have before us, specifically  
9 A-19, which is the Applicant's, or Staff-8, which is  
10 Staff's.

11 So does anyone have any preliminary comments to  
12 make? Opening comments?

13 (No response.)

14 CHMN. WOODALL: No. Oh, pardon. Accordingly, I  
15 will entertain a motion to move one of the forms of  
16 certificate for discussion purposes.

17 Mr. Houtz, which version are you moving?

18 MEMBER HOUTZ: In all deference to the comments  
19 of the Chairman, I would move S-8 to be the vehicle for  
20 consideration of the CEC in this case.

21 CHMN. WOODALL: Is there a second?

22 MEMBER EBERHART: Second.

23 CHMN. WOODALL: Mr. Eberhart seconds. Okay.

24 Is there any Committee member that has any  
25 proposed modifications to make as it relates to Staff's 8?

1 Mr. Houtz.

2 MEMBER HOUTZ: Madam Chairman, I would like to  
3 inquire of the Staff and the Applicant of whether Staff's  
4 Recommendation No. 3 was one of those that you came to  
5 agreement on?

6 CHMN. WOODALL: Please.

7 MS. SCOTT: Yes. Chair Woodall, no, we did not  
8 come to agreement ourselves on Item No. 3. Rather, we  
9 felt it was a matter that should be left to the Committee  
10 to decide.

11 MR. MOYES: The Applicant's position with respect  
12 to Staff's proposed Condition No. 3 is that it is  
13 inapplicable to this project being located in an  
14 attainment area. And even as attainment areas go, one  
15 that is not in any potential status that would suggest it  
16 would be moving to non-attainment condition in the near  
17 term.

18 And in reference to the ADEQ permit and the  
19 stringent standards that are imposed by that permit, we  
20 deemed it unnecessary to address the air permit or the air  
21 quality standards any more stringently than will apply  
22 under the ADEQ permit.

23 MEMBER HOUTZ: Madam Chairman, hearing the  
24 discussion, I would move to strike Staff Condition No. 3.

25 CHMN. WOODALL: Is there a second?

1 MEMBER RASMUSSEN: I second that.

2 CHMN. WOODALL: Any further discussion?

3 Does anyone object to me just calling for a voice  
4 vote?

5 (No response.)

6 CHMN. WOODALL: All those in favor of the motion  
7 say aye.

8 (A chorus of ayes.)

9 CHMN. WOODALL: Any opposed?

10 (No response.)

11 CHMN. WOODALL: That motion carries. Thank you.

12 May I ask my fellow Committee members at this  
13 time if I may be empowered subsequently to make any  
14 technical and conforming language changes, if there are  
15 some?

16 MEMBER RASMUSSEN: So moved.

17 MEMBER HOUTZ: Unanimous consent.

18 CHMN. WOODALL: I see unanimous consent. Thank  
19 you very much.

20 Are there any other suggested modifications to  
21 the form of CEC?

22 Mr. Eberhart.

23 MEMBER EBERHART: Madam Chair, there was a  
24 question about the -- on Page 6, under Item No. 12(i)  
25 whether the water source was an existing well or, as

1 itemized, a new well. And I would like some confirmation  
2 one way or the other if that needs to be changed.

3 CHMN. WOODALL: Do you have some proposed  
4 language, Mr. Eberhart, or are you soliciting  
5 modification?

6 MEMBER EBERHART: Or striking the word "new". My  
7 understanding from the testimony over the course of time  
8 has been that the wells are already in place and the  
9 transmission -- the water transmission system is in place  
10 as well.

11 CHMN. WOODALL: Okay. The motion is to strike  
12 the word "new" under Condition No. 12. Is there a second?

13 MEMBER SMITH: Second.

14 CHMN. WOODALL: Second by Mr. Wayne Smith.

15 Any further discussion?

16 MEMBER HOUTZ: Could I inquire if this happens to  
17 be one of the conditions that Applicant and Staff worked  
18 out a substitute?

19 MS. SCOTT: Yes, it is.

20 MEMBER HOUTZ: I would like to listen to the  
21 substitute, and maybe my motion would have been a little  
22 different on this condition than Mr. Eberhart's. Just for  
23 the record, I would have struck this and replaced it. So  
24 I would like to listen, if it's okay with the mover, to  
25 inquire whether they've come to an agreement on language.

1 MEMBER EBERHART: Madam Chair, without objection  
2 I will withdraw my motion.

3 CHMN. WOODALL: And Mr. Smith, I'm assuming is  
4 that acceptable to you?

5 MEMBER SMITH: Yes.

6 CHMN. WOODALL: All right. Can the parties tell  
7 us what they've provided as it relates to this particular  
8 provision? Ms. Scott.

9 MS. SCOTT: Yes, Chair Woodall, Committee  
10 Members. We looked at Paragraphs 11 and 12 in conjunction  
11 with each other. The parties agreed to delete  
12 Paragraph 11 in its entirety and to make the following  
13 changes to Paragraph 12.

14 MEMBER HOUTZ: Do you have that for the screen?

15 MR. MOYES: May I ask, yes, is it possible to put  
16 it up on the screen and then we can --

17 MS. SCOTT: Sure.

18 MR. MOYES: -- input those changes as we go.

19 CHMN. WOODALL: Off the record for a little bit  
20 here.

21 (A recess was taken from 1:53 p.m. to 1:58 p.m.)

22 CHMN. WOODALL: Back on the record at this time.

23 We currently have displayed on the screen  
24 Staff's 8, which is their form of CEC. And you are going  
25 to be making some modifications to reflect the amendments

1 made by the Committee members, specifically striking out  
2 condition -- or excuse me -- Paragraph No. 3.

3 MR. BAHL: Can I delete this?

4 CHMN. WOODALL: Well, you can strike through it,  
5 if you can do that.

6 MR. BAHL: I believe that's what will happen.  
7 Let me try.

8 CHMN. WOODALL: Excellent.

9 MR. BAHL: I need to delete the word "three"  
10 also.

11 CHMN. WOODALL: Right. I can take care of that,  
12 assuming that something is issued.

13 And we were currently discussing the  
14 modifications that the parties had agreed to with respect  
15 to Paragraphs 11 and 12, I believe.

16 MS. SCOTT: Yes.

17 CHMN. WOODALL: And if you could display that  
18 section for Mr. Houtz, I believe this is a matter that he  
19 will be addressing.

20 And am I correct that the parties had agreed to  
21 eliminate Paragraph 11?

22 MS. SCOTT: That's correct.

23 CHMN. WOODALL: Okay. Well, I'm not going to  
24 have you do that now until someone from the Committee  
25 makes a motion to that effect.

1 But Mr. Houtz, you were following through on  
2 No. 12.

3 MEMBER HOUTZ: Well, as I understand it, they  
4 have agreed to strike 11 and then rewrite No. 12.

5 Is No. 12 up there rewritten the way you guys  
6 have agreed upon or is it --

7 MS. SCOTT: No.

8 MEMBER HOUTZ: What I was really asking for is if  
9 you had these agreed upon amendments that you can put up  
10 on the screen.

11 MS. SCOTT: We can do that now. However, Chair  
12 Woodall, I don't know if this is going to work, because in  
13 ours when we put on track changes, it's showing some of  
14 the changes that we made either through discussion --  
15 prior discussions with the Applicant or internally. So we  
16 really have to take --

17 MR. MOYES: Is there a clean version that you  
18 have? The version that you filed as your Exhibit S-8 was  
19 a clean version and incorporated whatever those changes  
20 were. Can you pull up that clean version and then --

21 MS. SCOTT: Right. Okay.

22 CHMN. WOODALL: Let's go off the record just  
23 while we're talking about this.

24 (An off-the-record discussion ensued.)

25 CHMN. WOODALL: We'll take like a five-minute

1 break to enable that. So we're off the record. Thank  
2 you.

3 (A recess was taken from 2:00 p.m. to 2:11 p.m.)

4 CHMN. WOODALL: All right. Let's go back on the  
5 record at this time. Thank you very much.

6 Ms. Scott, have you had an opportunity to make  
7 some of the changes that the parties had agreed to?

8 MS. SCOTT: Yes, we have. Paragraph 12, let's  
9 see, we struck the word "following".

10 I had not discussed that with Mr. Moyes, but it  
11 didn't pertain because we changed the conditions, so  
12 they're no longer as stated in Decision No. 61295. So we  
13 struck the word "following", and then these were the  
14 changes that were agreed upon.

15 The source of water for operation of the project  
16 shall be the existing well. We struck the word "new".

17 This is under (i). Under (ii), during the  
18 operating life of the project, the project's water usage  
19 and the water table at the well field shall be metered and  
20 measured at six month or shorter intervals and reported to  
21 ADWR and Mohave County annually, provided, however, that  
22 water table measurement may be reduced annually, comma,  
23 upon approval by ADWR, comma, if the more frequent  
24 measurements reflect a consistent trend.

25 MR. MOYES: Madam Chairman, if I might comment, I

1 believe, Ms. Scott, that we concluded that we needed to  
2 leave the word "to" in at the next to the last full line.  
3 It's referring to the frequency of measurement, calling  
4 initially for six month or shorter intervals, but  
5 providing that it may be reduced to annual intervals. If  
6 we say reduced annually, I think that doesn't track.

7 MS. SCOTT: Okay. You're correct.

8 MR. MOYES: So that "to" needs to come back in.

9 I guess I would also suggest that the word  
10 "following" up in the prefatory paragraph is still  
11 appropriate, because we are changing in these  
12 modifications the language of the conditions approved in  
13 Decision 61295.

14 I suppose my suggestion here might be, just to  
15 avoid having to make any cross-references and determine if  
16 there were differences, to simply delete the words  
17 "approved in Decision No. 61295". Because we're now  
18 approving them here as part of this certificate, I'm not  
19 sure we have the need for any cross-reference back.

20 CHMN. WOODALL: Just for my own review of the  
21 forms of CECs, this was an issue that I thought there was  
22 an ambiguity that was built in, and so personally I would  
23 be supportive of Mr. Moyes' most recent modifications to  
24 eliminate references to the prior decision. Because I  
25 don't think it's really relevant, and I think it could be

1 confusing.

2 MS. SCOTT: Okay. Staff would accept that. Yes.

3 CHMN. WOODALL: Yes, Mr. Wayne Smith.

4 MEMBER SMITH: I'm not sure, but -- Ms. Diller,  
5 did earlier you make a comment with reference to the new  
6 well that it was really not the well, but it was the  
7 Mohave County Water District that supplies water; is that  
8 correct?

9 MS. DILLER: I referenced the Mohave County water  
10 system, which is the existing well field.

11 MEMBER SMITH: Okay. Is that different, though,  
12 than -- I mean, wouldn't it be better just to say that  
13 they are the suppliers of water rather than trying to  
14 delineate "a" or "the" well, or is that not appropriate?

15 MS. DILLER: Well, I think given that we were  
16 using this language as a starting point, I think the  
17 existing well field was probably the easiest modification.  
18 If we wanted to rewrite the paragraph, we could talk about  
19 the water. I mean, really, Mohave County is just the  
20 transporter of the water from the well field in the  
21 Sacramento aquifer to the project.

22 MEMBER SMITH: And who is the owner of the well?

23 MS. DILLER: Mohave County owns the well.

24 MEMBER SMITH: So if anything happens to this  
25 well, they would be supplying water from another well,

1 wouldn't they?

2 MS. DILLER: No.

3 MR. MOYES: There are multiple wells in the  
4 existing well field.

5 MEMBER SMITH: That's why when I saw "a well" and  
6 then "the well".

7 MR. MOYES: This condition was written for  
8 Griffith prospectively before the wells were developed,  
9 and that's why, you know, we needed to make these  
10 modifications.

11 The focal point here was that the location of the  
12 well field had to be in this area south of Oatman Road,  
13 not that it was one well or two wells or whatever, and  
14 that's still an acceptable limitation for us.

15 The version that's up provides for NAEP's recent  
16 agreement, and the previous sentence says, "as was  
17 determined". The factual reality is that we have not yet  
18 received back the signed copies of that from the County.  
19 We're not sure why. It's just an administerial issue.  
20 But we would suggest changing that phrase to say, "as  
21 provided in the revised and restated agreement."

22 Does anyone object to that?

23 CHMN. WOODALL: Mr. Moyes, I think it might be  
24 helpful if we could get through Staff's first, and then we  
25 can go back to the Applicant's new changes. Because

1 otherwise, I think we are going to be hopelessly confused,  
2 or at least I will.

3 MR. MOYES: Fair enough.

4 MS. SCOTT: Do you want me to finish our changes?

5 CHMN. WOODALL: If you would, please.

6 MS. SCOTT: Under (iii), the existing procedure  
7 established to annually monitor and report to ADWR any  
8 reasonably measurable land surface subsidence as  
9 previously approved by ADWR shall be implemented for so  
10 long as the project is using material quantities of  
11 groundwater.

12 CHMN. WOODALL: And those are agreed upon by the  
13 Applicant; is that correct? Mr. Moyes?

14 MR. MOYES: Yes, to that point, subject to the  
15 point I just made about it in the prefatory clause.

16 CHMN. WOODALL: Let me ask, Mr. Houtz, do you  
17 have some questions about this?

18 MEMBER HOUTZ: Mr. Moyes, let me ask you on (ii)  
19 there. I'm reading that it doesn't necessarily say that  
20 NAEP will be reporting this. This could be Griffith  
21 reporting this as a separate line, but it would be  
22 required to be reported.

23 Am I reading that correctly, or are you  
24 acquiescing to a separate report.

25 MR. MOYES: Our intent would be that this report

1 would be prepared on behalf of both projects and submitted  
2 to both dockets. Our earlier preference was one does it  
3 until it stops and then the other one will, but we have no  
4 objection. The reality is that the water operations --

5 MEMBER HOUTZ: One location, one report.

6 MR. MOYES: Yes. It will be a duplicate copy of  
7 the same report, and it will reflect both Griffith's  
8 quantity of usage, NAEP's quantity of usage, and then the  
9 water table, the annual withdrawals, and the subsidence  
10 respectively on each.

11 MEMBER HOUTZ: Okay. And then I had a question  
12 since at the last hearing Ms. Diller took great umbrage  
13 with what I see as the last sentence of Paragraph 12. Is  
14 the Applicant agreeable to that 270 acre-foot limit?

15 MR. MOYES: We would prefer that it not be there,  
16 because we think, again, that this is going into a level  
17 of detail that's not necessary given the overall hours  
18 limitation on the project.

19 The reality is that the Department's analysis  
20 determined that we're dealing in insignificant quantities  
21 here that are well under the level of the error factor for  
22 calculation of recharge and impact on the system. And,  
23 therefore, we would prefer not to have to specify an exact  
24 acre-footage ceiling, but rather deal with the operational  
25 ceiling.

1 MEMBER HOUTZ: Well, I ask that because this is  
2 portrayed as an agreement between the Applicant and Staff.

3 MR. MOYES: Yes. And as Ms. Scott and I noted,  
4 this last sentence was one of the portions that we had not  
5 discussed or agreed upon mutually.

6 MEMBER HOUTZ: Okay.

7 CHMN. WOODALL: Now, Mr. Moyes, you indicated  
8 that you had some proposed modifications in the first part  
9 of this No. 12?

10 MR. MOYES: Yes. The first would be the one to  
11 which Mr. Houtz just alluded, the 270 acre-foot limit.  
12 The earlier one is in Line 2, reading: Generation and  
13 related uses, comma, as was determined.

14 We would prefer that to say "as provided in" or  
15 "provided by".

16 MS. SCOTT: And Commission Staff would not object  
17 to the use of "as provided by".

18 CHMN. WOODALL: Mr. Houtz.

19 MEMBER HOUTZ: Is Staff going to make us make the  
20 decision about the 270 acre-feet?

21 MS. SCOTT: Staff would prefer that that  
22 condition remain in. I thought, Chair Woodall and  
23 Committee members, that the Applicant's objection was  
24 actually to the use of GPMs and not to the use of the  
25 acre-foot restriction.

1 CHMN. WOODALL: Mr. Eberhart.

2 MEMBER EBERHART: Madam Chairman, is it  
3 appropriate for members to discuss that 270 acre-feet?

4 CHMN. WOODALL: Yes. I think what we're doing at  
5 this point is we're hearing what the parties have proposed  
6 as modifications and hearing what they don't agree with.  
7 So it's fine for us to go ahead and talk about it, and  
8 then at some point I'm hopeful that there will be a motion  
9 to amend the form of CEC to either reflect the changes  
10 that the parties have agreed to, and any other changes  
11 that a Committee member might do.

12 So please go ahead and discuss it.

13 MEMBER EBERHART: Thank you.

14 My thoughts on the groundwater or the water usage  
15 limitation is that for the most part that seemed to be the  
16 only objection of the residents in the area was a concern  
17 about water usage, and my opinion would be that there  
18 needs to be something in the agreement addressing that  
19 issue. Otherwise, it seems to me one of the most -- we're  
20 almost ignoring the local concerns, which I certainly  
21 don't want to do, and I think that that number seems to be  
22 a reasonable number. But I would like some guidance from  
23 Mr. Houtz if he has an opinion.

24 MEMBER HOUTZ: I wish Mr. Sundlof could have  
25 stayed for Mohave County.

1 CHMN. WOODALL: Well, Mr. Sundlof did actually  
2 inquire if I thought his presence would be necessary, and  
3 I indicated that I did not think that it would be. So  
4 that's my --

5 MEMBER HOUTZ: Well, I actually do think it's  
6 surplusage simply because the opening paragraph -- if you  
7 could just scroll up a little bit -- now has that  
8 limitation for Mohave County. Because it says: Provided  
9 by the revised and restated agreement between Mohave  
10 County, Griffith, and NAEP.

11 I would rather defer to the County's restriction  
12 here and not impose a secondary limit, but refer to their  
13 agreement.

14 And is that agreement -- you said it hasn't been  
15 fully signed, but has the draft of it been put into the  
16 record here?

17 MR. MOYES: Yes.

18 MEMBER HOUTZ: I thought it had. And I guess  
19 that's what I'm kind of relying on is that we're  
20 referencing an agreement that imposes conditions on water  
21 usage. And I would rather defer to the local water  
22 provider in doing that instead of having us put a limit on  
23 it. However, you know, it's more of a redundancy than  
24 anything else.

25 MEMBER HAENICHEN: Chair Woodall.

1 CHMN. WOODALL: Yes, Mr. Haenichen.

2 MEMBER HAENICHEN: May I ask the Applicant to  
3 refresh my memory?

4 CHMN. WOODALL: You may.

5 MEMBER HAENICHEN: The 270, does that allow 5,000  
6 hours of operation?

7 MR. MOYES: I believe that that was the figure  
8 that it was calculated based on that scenario, yes.

9 MEMBER HAENICHEN: Okay.

10 MR. MOYES: The difficulty here is these are all  
11 prospective studies, predictions based on good data,  
12 engineering analysis of the equipment, the water treatment  
13 program, and so forth.

14 But often in these situations, without any fault  
15 of anyone, surprises occur. And when we start specifying  
16 exact number limitations, then there's always the risk of  
17 a technical default, if you will. And in our view, as I  
18 said, we're so far below the radar screen of any magnitude  
19 of impact that we would prefer to not have the specific  
20 numerical limit but, as Mr. Houtz said, defer to the  
21 agreements with the County, which is really where the  
22 concern is cited. And the hours limitation creates  
23 another indirect limitation.

24 MEMBER HAENICHEN: My question is prompted by my  
25 recollection at a prior session of the chart that was

1 shown for Griffith and how dramatically much less water it  
2 used than what you were asking -- what they asked for. Is  
3 this as conservative as that?

4 MR. MOYES: To a limited extent in that, as I  
5 said, we're basing this on a high hour run. As Mr. Diller  
6 indicated this morning and in prior testimony, there could  
7 be some scenarios aberrationally based on factors of other  
8 generation in the region that could drive this up for  
9 brief periods of time into those ranges of hours.

10 The primary factor in the Griffith case was  
11 simply that Griffith's operational regime did not rise to  
12 the level of hours over time that would have been expected  
13 when it was permitted. It is gradually approaching that.  
14 And we depicted the fact that it hadn't operated for that  
15 period of time to show that there was a large delta of  
16 unused water, unused in the sense that everyone else's  
17 reliance on reports and data took it into account as if it  
18 had been used, but it, in fact, is still there in the  
19 aquifer, and that that six years of low usage from  
20 Griffith has created a bank of water there that will  
21 supply this plant's needs for its entire life if it never  
22 had any resource outside of that delta. So if that is  
23 answering your question.

24 MEMBER HAENICHEN: Yeah, it is, but it still  
25 occurs to me that the Applicant's prime concern would be

1 the GPM and not the average over the year, because those  
2 possibilities you refer to would be short-lived, probably,  
3 where you maybe had to operate it at 7,000 hours, but --

4 MR. MOYES: I can't dispute that.

5 MEMBER HAENICHEN: Thank you.

6 CHMN. WOODALL: Mr. Houtz.

7 MEMBER HOUTZ: Madam Chairman, I would move for  
8 further discussion of the amendment -- of the agreed upon  
9 paragraphs or Conditions 11 and 12 of S-8.

10 CHMN. WOODALL: Is there a second?

11 MEMBER HAENICHEN: I'll second it for that.

12 I have a suggestion.

13 CHMN. WOODALL: Certainly. A second by  
14 Mr. Haenichen.

15 Discussion.

16 MEMBER HAENICHEN: Yes. Just on 12(ii), I think  
17 that the wording is very vague at the end there, and here  
18 is what I would recommend: That water table measurement  
19 interval may be reduced to an annual interval.

20 I think that's a lot clearer.

21 MR. MOYES: Yes, it is.

22 MEMBER HOUTZ: I would agree with that.

23 CHMN. WOODALL: Ms. Scott, would you mind making  
24 that change on the screen for us?

25 MEMBER HOUTZ: Madam Chairman, I have a

1 suggestion in (i), I think in the second line the words  
2 "to be" could be eliminated since it already exists.

3 CHMN. WOODALL: Yes, I think I would have  
4 considered that to be a technical and conforming language  
5 change, but I think it's good that you bring it up now.

6 MEMBER HOUTZ: Okay.

7 MEMBER EBERHART: Madam Chair.

8 CHMN. WOODALL: Yes, Mr. Eberhart.

9 MEMBER EBERHART: I have a question. The last  
10 sentence in (iii), if they could scroll down. The words  
11 "material quantities of groundwater" seems to me vague  
12 terminology that could be interpreted by various parties  
13 different ways. I don't know if there's something more  
14 specific or quantifiable that could be suggested.

15 MEMBER HAENICHEN: 270 acre-feet.

16 MR. MOYES: It may be -- just as a suggestion, it  
17 seems to me that one could simply delete that issue by  
18 putting the period after the word subsidence. We have no  
19 objection to the requirement being in place whenever the  
20 project is required to be reporting.

21 If I'm recalling correctly, it's been almost 10  
22 years. These conditions were drafted on the fly in the  
23 course of a hearing, and we didn't have the benefit of  
24 this kind of technology. Everybody was writing different  
25 words and voting differently. And so these editorial

1 improvements are really appreciated.

2 MEMBER HOUTZ: I think Mr. Moyes' suggestion  
3 would be a good motion for you to change it to that or --

4 MEMBER EBERHART: I agree. So moved.

5 CHMN. WOODALL: Second?

6 MEMBER RASMUSSEN: Second.

7 CHMN. WOODALL: Second by Mr. Rasmussen.

8 Any discussion on that.

9 (No response.)

10 CHMN. WOODALL: Okay. Let's go ahead, then, and  
11 just make that change. And then I would propose that  
12 after we have all of them that we have talked about, we  
13 can just approve them all in one fell swoop, if that's the  
14 desire of the Committee.

15 MS. SCOTT: Could I see the clarification of that  
16 change? If you ended it at "subsidence" am I correct in  
17 assuming that we still want the change, "as previously  
18 approved by ADWR"?

19 MEMBER HOUTZ: I don't think so. They just have  
20 a requirement to enter into our program. We have a  
21 subsidence program. And if I understand correctly, the  
22 monument is already set, so in reality you're already in  
23 the program.

24 MR. MOYES: That's correct. The monument was set  
25 and that procedure was approved by the Department in

1 writing, and then we have been reporting annually the  
2 measurements that are taken by a surveyor against that  
3 monument. By way of information, there's been no movement  
4 detectable thus far in the multi-year period. But it is  
5 in operation now.

6 MEMBER HOUTZ: And just so the -- as a point of  
7 information, the Department does like a five-year check on  
8 these to make sure the reports are accurate. They go out  
9 with a GPS and various things and keep long records on  
10 this.

11 CHMN. WOODALL: Mr. Houtz.

12 MEMBER HOUTZ: I would then move a final change  
13 to this before we approve this condition, and that would  
14 be the deletion of the final sentence.

15 CHMN. WOODALL: Second?

16 MEMBER HOUTZ: I think that's something that  
17 needs to be seconded and discussed.

18 CHMN. WOODALL: Is there a second?

19 I'll second it.

20 Any discussion?

21 I don't think it's necessary myself, but I want  
22 to get a sense of the Committee members, how important is  
23 it to you that we retain that last sentence?

24 Mr. Eberhart.

25 MEMBER EBERHART: Madam Chair, again, my

1 perception from -- I don't know -- a political  
2 perspective, if we don't have something in the document  
3 that acknowledges there is a concern about groundwater  
4 usage, I feel like we're almost thumbing our nose at the  
5 people that showed up at the Committee hearings in  
6 Kingman.

7           So I would like to maintain something in the  
8 document that holds the Applicant's feet to the fire at  
9 the state level, not just punting and putting it on Mohave  
10 County.

11           CHMN. WOODALL: Does anyone else have any --  
12 Mr. Haenichen.

13           MEMBER HAENICHEN: I just agree totally with  
14 that. It is redundant, I'll agree, but I think if the  
15 citizens can look and see that the Committee felt strongly  
16 enough about their concerns to put a number in there, I  
17 think it would be a good thing.

18           CHMN. WOODALL: Any thoughts anybody? Let's take  
19 up Mr. Houtz's issue as it relates to the deletion of the  
20 last sentence.

21           MEMBER HOUTZ: Unless my second disagrees, I'll  
22 withdraw that motion.

23           CHMN. WOODALL: Okay. That's fine with me. All  
24 right.

25           MR. MOYES: Madam Chairman.

1 CHMN. WOODALL: Yes, Mr. Moyes.

2 MR. MOYES: The wording as used here, if it were  
3 to be adopted, would seem to me to be benefitted by some  
4 modification.

5 NAEP is going to receive its water from the  
6 Griffith facility, for one point. The second point is  
7 that the phrase first begins, "Withdrawing groundwater in  
8 connection with the project." NAEP won't per se be  
9 withdrawing the groundwater. The County will be  
10 withdrawing the groundwater and providing it pursuant to  
11 these agreements to the two projects.

12 We would think that if the numerical limitation  
13 is to remain, it might be better to read something to the  
14 effect: Additionally, when the NAEP facility is  
15 operating, it shall limit its water deliveries from the  
16 Griffith facility to no more than 270 acre-feet per year.

17 MEMBER HAENICHEN: That's good.

18 MEMBER HOUTZ: That's good.

19 CHMN. WOODALL: I see nods on the part of the  
20 Committee members.

21 Ms. Scott, can you have your assistant make those  
22 changes?

23 MS. SCOTT: Yes.

24 Mr. Moyes, could you please repeat that?

25 MR. MOYES: I'll try. I didn't write it all out.

1           Additionally, when the NAEP facility -- insert  
2 "is operating". Delete down through project, comma,  
3 Applicant's. And then insert, "it shall limit its  
4 deliveries of water from the Griffith facility to no more  
5 than 270 acre-feet per year."

6           CHMN. WOODALL: Is there any -- Mr. Eberhart.

7           MEMBER EBERHART: Madam Chair, just a point of  
8 clarification. We've removed the word groundwater from  
9 this paragraph now. Was there any water coming from  
10 Griffith that might have been recycled or reused water  
11 that would be going into NAEP that would --

12           MR. MOYES: No. We got into this with  
13 Mr. Ehrhardt. The recycling component of this is the way  
14 in which Griffith will take waste stream water and recycle  
15 it through its processes, but there is no return flow of  
16 recycled water back to NAEP.

17           MEMBER EBERHART: I just don't want you to  
18 accidentally constrain yourself more than you otherwise  
19 would have.

20           MR. MOYES: I appreciate that. And I think as  
21 worded this is an acceptable phrase, delivers the water  
22 from the Griffith facility.

23           CHMN. WOODALL: Okay. Any further discussion?

24           (No response.)

25           CHMN. WOODALL: Can you scroll back to the

1 beginning?

2           Okay. So the discussion on the floor, and I  
3 would entertain a motion for approval of the elimination  
4 of Condition No. 11 and the modification of Condition  
5 No. 12 would read as follows:

6           Applicant, comma, its affiliate, comma,  
7 successors and assigns, may withdraw groundwater for  
8 electrical generation and related uses, comma, as provided  
9 by the revised and restated agreement between Mohave  
10 County and Griffith Energy in NAEP's recent agreement with  
11 Mohave County, and according to the following conditions,  
12 which I think it just needs to end right there.

13           Roman numeral (i) The source of water for  
14 operation of the project shall be the existing well field  
15 located in only that portion of the Sacramento Valley  
16 Basin lying south of the Kingman-Oatman Road and west of  
17 Interstate 40, period. Any alternative long-term supply  
18 of groundwater for the project pumped from any different  
19 location must be preapproved by the Arizona Corporation  
20 Commission.

21           Roman numeral (ii) During the operating life of  
22 the project, the project's water usage and the water table  
23 at the well field shall be metered and measured at six  
24 month or shorter intervals and reported to ADWR and Mohave  
25 County annually, comma, provided, comma, however, comma,

1 that water table measurement -- the water table  
2 measurement interval may be reduced to an annual interval  
3 upon approval by ADWR if the more frequent measurements  
4 reflect a consistent trend period.

5 Roman numeral (iii) The existing procedure  
6 established to annually monitor and report to ADWR any  
7 reasonably measurable land surface subsidence -- you need  
8 to change that.

9 MR. MOYES: Shall be continued? We need a verb  
10 somewhere.

11 MEMBER HOUTZ: How about the applicant shall  
12 participate in the existing procedure?

13 MR. MOYES: That's fine.

14 CHMN. WOODALL: Applicant shall annually monitor  
15 and report to ADWR any reasonably measurable land surface  
16 subsidence, period.

17 MR. MOYES: That works.

18 CHMN. WOODALL: Okay. Proceeding forward.

19 Additionally, comma, when the NAEP facility is  
20 operating, it shall limit its deliveries of water from the  
21 Griffith facility to no more than 270 acre-feet per year.

22 I would entertain a motion to approve this  
23 modification as I have read it into the record.

24 MEMBER RASMUSSEN: So moved.

25 CHMN. WOODALL: Second?

1 MEMBER SMITH: Second.

2 CHMN. WOODALL: Any discussion?

3 MEMBER HAENICHEN: Madam Chair.

4 CHMN. WOODALL: Mr. Haenichen.

5 MEMBER HAENICHEN: I would just like to ask the  
6 Applicant, in the very beginning it says that Applicant  
7 may withdraw groundwater. Prior you objected to that  
8 language. Shouldn't it be -- you're going to use the  
9 water, but you're not physically withdrawing it.

10 MR. MOYES: You make a good point, and maybe just  
11 say may use water or may --

12 MEMBER HAENICHEN: Request groundwater or -- I  
13 don't know, but you're really not withdrawing it.

14 CHMN. WOODALL: Where are you at, Mr. Haenichen?

15 MEMBER HAENICHEN: At 12, right in the beginning.

16 MEMBER EBERHART: First sentence.

17 MR. MOYES: I believe that if we changed it to  
18 say withdraw and use, there is a scenario contemplated  
19 under our agreements with the County that if for some  
20 reason the County ceases operating its well field, we have  
21 the opportunity to withdraw groundwater ourselves.

22 I guess I wouldn't want to foreclose that  
23 potential ability, even though it seems to me it might be  
24 better to just put the -- use the word "use", may use  
25 groundwater, and then it doesn't go over the issue of, you

1 know, are you personally withdrawing it or is someone else  
2 withdrawing it for you. Does that suffice?

3 MEMBER HAENICHEN: I would be happy with that.

4 CHMN. WOODALL: Any objection from Staff?

5 MS. SCOTT: No, although we would ask for a  
6 clarification. I'm not sure what you want the exact  
7 language to be.

8 MEMBER HOUTZ: It's at the top.

9 CHMN. WOODALL: If you -- at the beginning of 12,  
10 I would propose to amend the -- well, actually, I think  
11 Mr. Rasmussen -- since it's Mr. Rasmussen's motion,  
12 Mr. Rasmussen would you agree to --

13 MEMBER RASMUSSEN: Absolutely.

14 CHMN. WOODALL: -- modify the phrase "may  
15 withdraw" in Paragraph 12 to "may use"?

16 MEMBER RASMUSSEN: Yes.

17 CHMN. WOODALL: And was that okay with your  
18 second, which I believe was Mr. Smith?

19 MEMBER SMITH: Yes.

20 CHMN. WOODALL: Is there any further discussion  
21 on that point?

22 MR. MOYES: Madam Chair, I apologize for  
23 interrupting you, but my client points out to me I think  
24 an important point with respect to (i), the first line.  
25 We deleted the word "new" in referring to the well field

1 and we inserted "existing".

2 We would prefer to just say "a well field" so  
3 that the inference isn't that somehow the well field that  
4 exists today is static and cannot change. Because again,  
5 the agreement contemplates the potentiality of additional  
6 wells or other adjustments or modifications in that well  
7 field that go beyond the intent and scope of this clause,  
8 which was to be sure the water is withdrawn south of  
9 Oatman Road.

10 CHMN. WOODALL: I'm not inclined to make that or  
11 suggest that that modification be made, Mr. Moyes. But if  
12 a member of the Committee wants to --

13 MR. MOYES: You think the term "well field" is  
14 broad enough?

15 CHMN. WOODALL: I'm not going to express a  
16 position on that, because, you know, I'm not going to  
17 interpret the instruments that you have in the record. I  
18 think if you have an argument, you can certainly make that  
19 argument.

20 And certainly any changes that we make that are  
21 not acceptable to either of the parties, you're more  
22 than -- you know, you have recourse before the Commission  
23 if it's important.

24 But does anyone here want to make those changes  
25 as proposed by Mr. Moyes?

1           MEMBER EBERHART: Madam Chair, personally I feel  
2 that the term well field encompasses an area that may or  
3 may not have one or more existing or future planned wells.  
4 So I think it covers it, personally.

5           CHMN. WOODALL: That's kind of my take on it,  
6 too, Mr. Eberhart.

7           Is there any further discussion?

8           Yes, Ms. Scott.

9           MS. SCOTT: Yes. I just wanted to raise a point  
10 regarding the first sentence of Paragraph 12, Applicant,  
11 its affiliates, successors and assignees, particularly the  
12 use of the term affiliates.

13           I'm wondering if the Committee would want to  
14 include an additional sentence that states that these  
15 conditions are in no way intended to change the reporting  
16 requirements now applicable to Griffith as a result of  
17 Decision No. 61295.

18           No? Okay.

19           CHMN. WOODALL: I wouldn't be.

20           MS. SCOTT: Thank you.

21           CHMN. WOODALL: Okay. Are there any further  
22 discussions with respect to the modifications as they  
23 relate to Paragraphs 11 and 12 as I have read them into  
24 the record?

25           (No response.)

1 CHMN. WOODALL: All those in favor of including  
2 those -- making those amendments to the form of CEC  
3 indicate by saying aye.

4 (A chorus of ayes.)

5 CHMN. WOODALL: Any opposed?

6 (No response.)

7 CHMN. WOODALL: Okay. Are there any other -- do  
8 any of the Committee members have any other proposed  
9 changes?

10 MEMBER WONG: Madam Chair, is that -- did you  
11 declare the vote on the record? You said that -- you  
12 voted all those in favor say aye.

13 CHMN. WOODALL: What I do when we vote for the  
14 final certificate is I take a roll call vote.

15 MEMBER WONG: So that was the vote on the  
16 amendment?

17 CHMN. WOODALL: Yes, just the amendment.

18 MEMBER WONG: But the amendment passed?

19 CHMN. WOODALL: Yes.

20 MEMBER WONG: Okay. I didn't hear that.

21 CHMN. WOODALL: Oh, I'm sorry.

22 MEMBER WONG: We just need it for the record.

23 CHMN. WOODALL: Correct. Thank you for that.

24 MEMBER WONG: You're welcome.

25 CHMN. WOODALL: I find that legislators are very

1 experienced in Robert's Rules of order, unlike lawyers in  
2 general.

3 MEMBER HOUTZ: I'm assuming that the Staff and  
4 the Applicant have an agreed upon Paragraph 6, or  
5 Condition 6?

6 MS. SCOTT: Yes, that's correct. Thank you.

7 CHMN. WOODALL: Would you like them to display  
8 that on the screen for us?

9 MEMBER HOUTZ: Yes, Madam Chair.

10 MS. SCOTT: So if you would like me to read that  
11 for you with the changes.

12 CHMN. WOODALL: Yes, please.

13 MS. SCOTT: Starting on Line 10: However,  
14 Applicant may rely upon a RAS to mitigate impacts of an  
15 outage of either (i) the Peacock/Mead 345kV line --

16 CHMN. WOODALL: Are you plugged in?

17 MR. BAHL: I thought it was plugged in, but  
18 obviously --

19 CHMN. WOODALL: Let's go off the record for just  
20 a minute. Let's just take a quick afternoon break.

21 (A recess was taken from 2:50 p.m. to 2:55 p.m.)

22 CHMN. WOODALL: We'll go back on the record at  
23 this time.

24 Mr. Houtz, you had asked about revised language  
25 for proposed Condition No. 6. And Ms. Scott, do you have

1 that for us?

2 MS. SCOTT: Yes. Starting at Line 10, however,  
3 Applicant may rely upon a RAS to mitigate impacts of an  
4 outage of either (i) the Peacock/Mead 345kV line, or (ii)  
5 the Mead 345/230kV transformer, coincident with an  
6 extremely low probability of operation of the Liberty  
7 phase shifter moving power in the northbound direction,  
8 period.

9 This is not a variance from Commission Staff's  
10 guidelines because of the remoteness of the possibility of  
11 the Liberty phase shifter operating northbound coincident  
12 with either of the two N-1 contingencies.

13 CHMN. WOODALL: Ms. Scott, I personally am not a  
14 big fan of the last sentence, because I don't think it's a  
15 condition. I mean, I can understand why Staff wants some  
16 memorialization of we're not being inconsistent as for  
17 future purposes, but I don't know that it needs to be in  
18 the CEC, because it's really not a condition.

19 I mean, it's basically Staff's position, and you  
20 have articulated that on the record. So I don't know why  
21 it needs to be in here. Can you tell me why it must be in  
22 here?

23 MS. SCOTT: We included it because I don't know  
24 if the record establishes that Staff doesn't believe this  
25 occurrence to not constitute a variance from its

1 guidelines, and I think Staff wanted this CEC to be clear  
2 that the requirement here would not constitute a variance  
3 because of the remoteness of it occurring.

4 MEMBER HOUTZ: Madam Chairman, I happen to agree  
5 with your comment there. It seems to be an editorial  
6 comment and not a condition.

7 CHMN. WOODALL: I mean, Ms. Scott, if this is  
8 important, isn't this something that the Commission could  
9 make a finding of and could include in any final decision?  
10 I'm just reluctant to include argumentation or advocacy in  
11 the form of the CEC.

12 MS. SCOTT: Mr. Bahl just suggested to me perhaps  
13 the use of a footnote.

14 CHMN. WOODALL: I'm not a big fan of a footnote  
15 either. I mean, I'm just one member up here, but I just  
16 don't see how this is helpful.

17 I mean, I certainly think you can go on the  
18 record when the matter is set before the Commission, and  
19 certainly if they want to put something in there with  
20 respect to the Commission's position and this not being  
21 inconsistent, and a specific finding. Certainly I think  
22 it would be more appropriate for the Commission to do that  
23 than for us to include a statement of Staff's position in  
24 here. So I mean -- but feel free to disagree and give me  
25 your reasons.

1 MS. SCOTT: Well, you know, Chair Woodall,  
2 Committee members, we would prefer that it remain. The  
3 only thing that I can offer is that Staff has, to the best  
4 of my knowledge, has not granted any variance before it  
5 takes -- it simply does not agree to implementation of  
6 RAS's. And so I think we were just trying to emphasize  
7 that we didn't even consider this to be a variance because  
8 it's so unlikely to occur. I can understand what you're  
9 saying also.

10 CHMN. WOODALL: I mean, you certainly have the  
11 opportunity to make that point with anyone who approaches  
12 you and says "aha", because you do have a rather replete  
13 record in that regard.

14 Mr. Moyes, any position on the inclusion of that  
15 last sentence?

16 MR. MOYES: Our initial reaction was consistent  
17 with yours, but we do not have any objection to it. We're  
18 not thrilled with having to address this exciting topic  
19 again, but if we need be, so be it.

20 CHMN. WOODALL: We like to leave the really hard  
21 stuff for the Commission.

22 So does any Committee member have any other  
23 questions or motions to make as it relates to Condition  
24 No. 6?

25 MEMBER WONG: Madam Chair, did somebody make a

1 motion to delete that last sentence?

2 CHMN. WOODALL: No, that's kind of what I --

3 MEMBER HOUTZ: You could do that, though.

4 CHMN. WOODALL: That's kind of what I'm getting at.

5 MEMBER WONG: Well, what I have heard so far is  
6 that it's more of a declaration of Staff's opinion and  
7 position --

8 CHMN. WOODALL: That's correct.

9 MEMBER WONG: -- rather than as a condition, and  
10 I understand Madam Chair's argument. So I think that's  
11 consistent with the other provisions, but what I would  
12 like to do is -- I'll support the deletion, but I would  
13 like to read this into the record of what Staff's intent  
14 and desire is and was. And, therefore, at least it's on  
15 the record and then they can make reference to that.

16 CHMN. WOODALL: You mean at this time?

17 MEMBER WONG: At this time.

18 CHMN. WOODALL: I think the evidentiary component  
19 has been closed.

20 Ms. Scott, do you believe that this has not been  
21 fully addressed in your case in chief?

22 MS. SCOTT: I believe that in coming to a  
23 resolution of the issue with the Applicant that this was a  
24 new position that we were advocating.

25 CHMN. WOODALL: Okay. Well, then, why don't you

1 at this time state on the record what Staff's position is  
2 as it relates to this condition and why Staff is  
3 supportive of it at this time.

4 MS. SCOTT: Okay.

5 MEMBER WONG: And before you do that, why don't  
6 you, as part of your explanation, if I may, Madam Chair,  
7 also just read verbatim this sentence that you specified  
8 earlier.

9 MS. SCOTT: Okay. Chair Woodall, Committee  
10 members, on item or Condition No. 6, Staff and the  
11 Applicant had come to an agreement to allow a RAS in the  
12 instance specified because of the extremely low  
13 probability of the occurrence or the operation of the  
14 Liberty phase shifter moving power in the northbound  
15 direction, and, thus, for either of the N-1 contingencies  
16 to occur.

17 The language that Staff had proposed be included  
18 as part of this condition is the following: This is not a  
19 variance from Staff guidelines because of the remoteness  
20 of the possibility of the Liberty phase shifter operating  
21 northbound coincident with either of the two N-1  
22 contingencies.

23 Again, I would just reiterate it's Staff's  
24 position that because of the Applicant's testimony on the  
25 remoteness of this occurring that Staff does not consider

1 the use of a RAS in this case to be a variance from its  
2 guidelines.

3 CHMN. WOODALL: Thank you.

4 MR. MOYES: May I add a comment just to the  
5 record in this respect? That Staff's own engineer's  
6 testimony was consistent with the Applicant's testimony  
7 with respect to the remoteness. Thank you.

8 CHMN. WOODALL: Yes, Mr. Wong.

9 MEMBER WONG: I move that Paragraph 6 of the  
10 conditions, the last sentence of that paragraph be  
11 deleted.

12 CHMN. WOODALL: Is there a second?

13 MEMBER HOUTZ: Second.

14 CHMN. WOODALL: Second by Mr. Houtz.

15 Any discussion.

16 (No response.)

17 CHMN. WOODALL: Okay. So all those in favor  
18 indicate by saying aye.

19 (A chorus of ayes.)

20 CHMN. WOODALL: Any opposed?

21 (No response.)

22 CHMN. WOODALL: Motion carries.

23 MEMBER HOUTZ: Madam Chairman.

24 CHMN. WOODALL: Mr. Houtz.

25 MEMBER HOUTZ: I would move Condition 6 as now

1 written into the CEC.

2 CHMN. WOODALL: Is there a second?

3 MEMBER RASMUSSEN: Second.

4 CHMN. WOODALL: Second by Mr. Rasmussen.

5 Any further discussion?

6 (No response.)

7 CHMN. WOODALL: All those in favor indicate by  
8 saying aye.

9 (A chorus of ayes.)

10 CHMN. WOODALL: Any opposed?

11 (No response.)

12 CHMN. WOODALL: Motion carries.

13 Are there any other amendments?

14 MEMBER HOUTZ: I had a question whether Staff and  
15 the Applicant have dealt with the self-certification  
16 issue.

17 CHMN. WOODALL: That would be Condition 21,  
18 Mr. Houtz?

19 MEMBER HOUTZ: Yes. Then I guess would -- does  
20 the Applicant have any objection to Staff Condition 21?

21 MR. MOYES: We would ask for two -- well, I would  
22 say three clarifications, one of which requires an  
23 addition, if I might identify those.

24 On Line 2, again, because this was borrowed from  
25 a prior certificate, the phrase "as amended" should be

1 deleted from this certificate as there has been no  
2 amendment thus far.

3 CHMN. WOODALL: Well, there might be amendments  
4 by the Commission. That's kind of --

5 MR. MOYES: Point well taken. I was looking at  
6 it in a historical context.

7 CHMN. WOODALL: Because I noted that, too,  
8 Mr. Moyes, and then I got to thinking, yes, but the  
9 Commission may have some amendments to make. So --

10 MR. MOYES: Okay. The second is on Line 11 --  
11 oh, let's see. Their version doesn't have lines. The  
12 fifth line: Shall be documentation explaining, comma, in  
13 detail, comma.

14 We would ask for the deletion of the words "in  
15 detail". I'm not sure what that really means. If it's a  
16 document that explains how compliance with each condition  
17 was achieved, that's the objective here.

18 And may I just say that my -- again, my  
19 philosophy about these is to try to, as much as possible,  
20 make these conditions susceptible to an objective  
21 determination of compliance or noncompliance as opposed to  
22 subjective phrases that do not lend themselves to prove  
23 that you did or didn't comply.

24 CHMN. WOODALL: Actually, I think to your point,  
25 I think adding the phrase "in detail" assists. Because if

1 you just submit something and then the Commission says,  
2 gee, it's really conclusory, you can say, well, gee, you  
3 didn't tell me that you wanted it to be in detail. I  
4 mean, I think -- but I understand your point.

5 MR. MOYES: Detail is in the eye of beholder.  
6 But supporting documentation explaining how compliance was  
7 achieved, if we filed a report and the Staff believes that  
8 it is not adequately supported, I'm sure they can let us  
9 know that whether it said in detail or not. I mean, the  
10 essence there is it needs to be supported by  
11 documentation. That's -- you know, that's all I'm going  
12 to say about it. I'm not wedded to that concern.

13 CHMN. WOODALL: Ms. Scott.

14 MS. SCOTT: I like the words "in detail". The  
15 only other option that I thought of would be "with  
16 sufficient detail". But I like the word "detail".

17 CHMN. WOODALL: Well, it will come as no surprise  
18 to anyone that I, too, like the word detail.

19 MR. MOYES: Let's move, then, to our third, which  
20 I really think is very important.

21 Our proposed -- what is their Condition 21 is our  
22 proposed No. 11, and it contains a clause that is in some  
23 of the other certificates. I'm not sure why Staff's  
24 version didn't have it. But in essence, if the condition  
25 is something that only calls for a single instance of

1 compliance and one has reported that compliance once, it  
2 shouldn't have to report it again. So we would offer the  
3 addition at the very end of this paragraph of the  
4 following:

5 Compliance with conditions that require only a  
6 single instance of compliance need not be recertified  
7 after the initial certification with such compliance.

8 CHMN. WOODALL: Mr. Houtz, do you have any  
9 thoughts?

10 MEMBER HOUTZ: I would like to hear from Staff,  
11 but I'm inclined to offer that as an amendment. But I  
12 would like to hear Staff, whether they have an objection  
13 to that.

14 MS. SCOTT: I don't believe Staff would have an  
15 objection to that language being added.

16 MEMBER HOUTZ: Then I would move that the -- is  
17 this identical to the language in your Condition 11?

18 MR. MOYES: Yes, that sentence is.

19 MEMBER HOUTZ: Then I would move that at the end  
20 of Condition 21 in S-8 that the following sentence be  
21 added: Compliance with conditions that require only a  
22 single instance of compliance need not be recertified  
23 after the initial certification of such compliance.

24 CHMN. WOODALL: Is there a second?

25 MEMBER EBERHART: Second.

1 CHMN. WOODALL: Any discussion?

2 (No response.)

3 CHMN. WOODALL: All those in favor of the motion  
4 indicate by saying aye.

5 (A chorus of ayes.)

6 CHMN. WOODALL: Any opposed?

7 (No response.)

8 CHMN. WOODALL: Motion carries.

9 MEMBER HOUTZ: Before I forget, Madam Chair, I  
10 noticed that in Applicant's 19 they have Exhibits A and B  
11 attached. It appears to me that S-8 references the  
12 exhibits, and I would move that the exhibits from  
13 Applicant's A-19 be included in S-8.

14 CHMN. WOODALL: Is there a second?

15 MEMBER SMITH: Second.

16 CHMN. WOODALL: Second by Mr. Wayne Smith.

17 Any discussion?

18 (No response.)

19 CHMN. WOODALL: All those in favor of the motion  
20 indicate by saying aye.

21 (A chorus of ayes.)

22 CHMN. WOODALL: Any opposed?

23 (No response.)

24 CHMN. WOODALL: Motion carries.

25 Mr. Moyes.

1 MR. MOYES: Just an editorial comment. Exhibit A  
2 is not the best quality of that particular electronic  
3 file, and we would offer to supplant it with the better --  
4 this was simply a copy of the PowerPoint slide.

5 CHMN. WOODALL: This will be a technical and  
6 conforming language change to make sure that we -- the  
7 final document is legible and can be reproduced. So yes,  
8 that will be fine.

9 MR. MOYES: Thank you.

10 CHMN. WOODALL: Okay. Are there any further  
11 changes that the parties have agreed to that they want to  
12 bring to the Committee's attention?

13 MR. MOYES: None that -- I don't think there are  
14 others that we have reached a specific mutual conclusion  
15 about.

16 MS. SCOTT: No.

17 MR. MOYES: I do have several others that I would  
18 like to address and request some consideration of either  
19 deletion or possible modification.

20 CHMN. WOODALL: Does any other Committee member  
21 have any proposed changes to this form CEC?

22 (No response.)

23 CHMN. WOODALL: If not, I have some. And I would  
24 like to articulate those on the record, and then perhaps  
25 entertain a motion from a member of the Committee whether

1 or not to follow through with my suggestions.

2 I would suggest that we eliminate Condition  
3 No. 22, which relates to a construction mitigation and  
4 restoration plan. I just don't think that that's relevant  
5 under these circumstances where we're talking about  
6 construction on a previously approved site.

7 And I also would propose that we eliminate  
8 Condition No. 23 and 24, because I don't think those are  
9 relevant either.

10 I do propose retaining Condition No. 25 and 26,  
11 because while I recognize there have been cultural studies  
12 out there, if you're doing digging you don't know what  
13 you're going to find. And so I would prefer to leave 25  
14 and 26 in.

15 MEMBER WONG: Madam Chair.

16 CHMN. WOODALL: Yes, Mr. Wong.

17 MEMBER WONG: Are you suggesting that these  
18 requirements are already part of a previous Commission  
19 order under the Griffith, therefore, that still applies to  
20 this particular one?

21 CHMN. WOODALL: No. I'm saying that I don't  
22 think they're relevant to this particular application  
23 because of where the construction is going to be taking  
24 place.

25 MEMBER RASMUSSEN: Madam Chair, on 24, I might

1 ask on the salvage of the trees, is that -- do we know  
2 whether that's relevant to this application or not?

3 MR. MOYES: I think we can assert from the  
4 studies that have been done that none of these  
5 specifically identified species occur on the site, but I  
6 would just also note that with or without this clause in  
7 the certificate, we simply would still be required to  
8 comply with the Arizona native plant law, certainly. And  
9 to the extent that it would apply to any of these or other  
10 species, our construction people will be well-trained and  
11 know that they have to comply with that.

12 MEMBER RASMUSSEN: That's fine.

13 CHMN. WOODALL: So I would entertain a motion to  
14 amend the form of CEC to delete Condition No. 22, 23, and  
15 24.

16 MEMBER HAENICHEN: So moved.

17 CHMN. WOODALL: Is there a second?

18 MEMBER RASMUSSEN: Second.

19 CHMN. WOODALL: Any further discussion?

20 (No response.)

21 CHMN. WOODALL: All those in favor say aye.

22 (A chorus of ayes.)

23 CHMN. WOODALL: Any opposed?

24 (No response.)

25 CHMN. WOODALL: Motion carries.

1 I have another comment and I will entertain an  
2 appropriate motion, and it relates to Page 2 of the form  
3 of CEC commencing at Line 24, which reads as follows: The  
4 Committee finds that there is a need for an adequate,  
5 economical, reliable supply of electric power within the  
6 Western Electric -- excuse me -- Western Electricity  
7 Coordinating Council, paren, WECC, close paren, and the  
8 State of Arizona, and that Applicant's proposed Northern  
9 Arizona Energy Project would contribute towards  
10 satisfaction of such need without causing material adverse  
11 impact to the environment, as mitigated by compliance with  
12 the conditions attached to the issuance of the CEC.

13 May I inquire, where did this language come from,  
14 Ms. Scott? Do you know? It sounds to me like it was  
15 something that the Commission issues when it typically  
16 approves a form of CEC.

17 MS. SCOTT: Could I ask Mr. Moyes? Is that your  
18 language?

19 MR. MOYES: I confess to not knowing for sure. I  
20 believe it's not language that I would have drafted in  
21 whole cloth, but it's possible.

22 CHMN. WOODALL: I mean, it's possible the  
23 Committee may have made such a finding. I don't believe  
24 so. But my concern is that it sounds awfully close to the  
25 balancing test that the Commission is supposed to do. And

1 accordingly, I would entertain a motion to modify that  
2 language to basically stop at: Would contribute towards  
3 satisfaction of such need, period.

4 Because that addresses the parties' concerns  
5 about having a finding with respect to need without  
6 getting into the balancing, which I think is really up to  
7 the Commission.

8 So do the parties have anything to say about  
9 that? So I would entertain a motion to make that.

10 Yes, Mr. Moyes.

11 MR. MOYES: I would -- I understand your point,  
12 and I have a suggestion for an additional component to  
13 this paragraph of findings, but we can reach that in a  
14 moment.

15 I guess my preference would be that the phrase  
16 stay in there in that the Committee is addressing various  
17 conditions here which it deems to be important and  
18 necessary in order for it to issue this certificate. And  
19 by so issuing it, implicit in that is a conclusion, it  
20 seems to me, that the project with that mitigation will,  
21 in fact, not cause material adverse impact to the  
22 environment.

23 And I now see that this was a phrase verbatim in  
24 the Committee's certificate for the Sundance project. And  
25 that by virtue of my involvement with that, that must have

1 been where I found it.

2 CHMN. WOODALL: I don't think that I was -- how  
3 long ago was that, Mr. Moyes?

4 MR. MOYES: I believe the last phrase was added  
5 by Staff, and that was in 2002.

6 CHMN. WOODALL: Well, I will just indicate that  
7 the question of the findings and the balancing that both  
8 the Committee and the Commission have as their respective  
9 charges is somewhat unclear as it relates to the law, and  
10 I would -- there's a very interesting Law Review article  
11 in Law and Social Order, 1973 entitled, "Power Plant and  
12 Transmission Line Siting - Improving Arizona's Legislative  
13 Approach." And there's an interesting discussion there  
14 about the various balancing that the Committee is supposed  
15 to do versus the Commission.

16 Now, there have been changes in the statute since  
17 then, but the issue on the balancing and the findings  
18 concerning need, I think, is still relevant. So my own  
19 reservation about making a finding which could be  
20 construed as somehow binding on the Commission as a  
21 factual finding, or it being elevated, is that I think  
22 personally that it's the Commission that does the  
23 balancing.

24 Now, it's never been clearly determined from a  
25 legal perspective one way or the other what the

1 Committee's balancing is supposed to do and, for example,  
2 how we weigh the factors. But I have typically stepped  
3 back from making such -- having the Committee make such a  
4 finding.

5 We did make specific findings with respect to  
6 need during the Palo Verde/Devers case because we were  
7 asked by the Commissioners to make findings regarding need  
8 or recommendations regarding need. But I don't know that  
9 we've had such a request here.

10 And so I have no concerns about the Committee  
11 making a finding with respect to their being a need for  
12 the project, but I do have concerns if it sounds like  
13 we're treading on the balancing, which I really think is  
14 the Commission's job.

15 And I understand your larger point. Obviously  
16 we're making some determination by the mere fact that  
17 we're issuing a CEC.

18 MR. MOYES: Would it alleviate your concern if we  
19 were to break that into two separate findings, one with  
20 respect to need?

21 CHMN. WOODALL: No.

22 MR. MOYES: Because the Committee has heard  
23 evidence and is reaching conclusions with respect to these  
24 topics, and is by the certificate offering up to the  
25 Commission its findings for whatever weight they may have

1 there, I guess, is sort of my opinion on this.

2 CHMN. WOODALL: Sure. That's just my  
3 inclination. And I know that the Commission, when they  
4 formally adopt a CEC, they explicitly make such a  
5 balancing.

6 Mr. Rasmussen.

7 MEMBER RASMUSSEN: Madam Chair, not being a  
8 lawyer, it would seem that the Commission would either  
9 accept, reject, or potentially amend the Committee's  
10 finding. As written, it seems to reflect what we've been  
11 through for the last four some odd days and not  
12 contradictory to that. So I'm not quite getting your  
13 point. I guess it's sort of a jurisdictional one, I  
14 guess.

15 But in my view, they take this under advisement  
16 and make their final decision. Is that not correct?

17 CHMN. WOODALL: Yeah. I guess it's because I  
18 think that -- personally, I think that that's the  
19 Commission's job is to do that balancing.

20 MEMBER RASMUSSEN: Doesn't this inform the  
21 Commission as to what position they should take, I guess,  
22 is where --

23 CHMN. WOODALL: That's a good point, too.

24 MEMBER RASMUSSEN: That's how I would look at it.  
25 It would be advice to them, which they then would consider

1 at the time of the final hearing and approval or  
2 disapproval.

3 CHMN. WOODALL: So if we were to include this,  
4 that the Committee recommends that the Commission find, or  
5 are you talking about us making an explicit finding?

6 MEMBER RASMUSSEN: Are you saying "recommends"  
7 would be better than the third word "finds"?

8 CHMN. WOODALL: No. I'm just trying to determine  
9 do you think that we should be making such a finding that  
10 there is a need and that it is going to contribute to that  
11 without causing material adverse impact to the  
12 environment?

13 MEMBER RASMUSSEN: Yes, I think so. Because a  
14 portion of this one was the need, and then the second one  
15 was focusing on water and its use and not depleting a  
16 scarce resource there, which really goes to that second  
17 part of the phrase. And the conditions that we've just  
18 discussed really relate very directly to that. So I would  
19 say yes, it does.

20 CHMN. WOODALL: Okay.

21 MEMBER WONG: Madam Chair, just a further comment  
22 on that, following up on Mr. Rasmussen's comment.

23 I think that I'm fine with this sentence because  
24 I think it describes what we just -- we as a Committee  
25 will be accomplishing once -- if we pass this CEC.

1 Because the referencing without causing material adverse  
2 impact to the environment, that's what we do is we -- a  
3 CEC by definition is an environmental impact. And then we  
4 have a litany of -- a list of conditions that we have here  
5 in multiple pages. So I think that just describes what  
6 the rest of this CEC order does.

7 And the order itself, this entire CEC is a  
8 recommendation to the Commission, and then they can take  
9 that however they wish and either accept it, reject it, or  
10 modify it. Even if we don't say recommending, it is a  
11 recommendation.

12 CHMN. WOODALL: It's not exactly a  
13 recommendation. It's really something separate than that.  
14 Until they changed the law, I think in the '80s, the  
15 Commission really didn't have the explicit statutory  
16 authority to deny it. They could either amend it or they  
17 could approve it. And one of the points of the Law Review  
18 article that I cited was there was no explicit thing.

19 So I think it stands as something more  
20 significant than a mere recommendation, which is one of  
21 the reasons why I have a hesitancy in doing something that  
22 could be construed as exceeding our statutory powers.

23 But based upon Mr. Rasmussen's analysis, I'm  
24 actually persuaded that I don't have as much of a problem  
25 with that language as I did initially in reading it.

1 Mr. Eberhart.

2 MEMBER EBERHART: Thank you, Madam Chair. I  
3 would recommend -- to address your concern about whether  
4 or not this paragraph or sentence addresses the balancing  
5 tact, I would agree with the Applicant that perhaps  
6 separating these into two distinct sentences takes away  
7 the balancing part and actually ends up this Committee has  
8 two separate findings, one of need and one of  
9 environmental compatibility, and it takes away the  
10 balancing concern that you have.

11 CHMN. WOODALL: Again, I'm persuaded by my fellow  
12 Committee member. I think that would be a good idea,  
13 actually.

14 And I know, Mr. Moyes, you floated it initially,  
15 but I think I understand it a little bit better now.

16 And further finds that it would not -- or would  
17 the Committee -- the Committee further finds that the  
18 construction of the project would not cause material  
19 adverse impact to the environment.

20 Would that be along your lines?

21 MEMBER EBERHART: Madam Chair, I would not use  
22 the word "further". I would make it two distinct  
23 findings.

24 CHMN. WOODALL: The Committee finds that  
25 construction of the project would not cause material

1 adverse impact to the environment, as mitigated by  
2 compliance with the conditions attached to the issuance of  
3 the CEC.

4 MEMBER HOUTZ: Could I inquire of Mr. Eberhart?  
5 Would you do that as a separate paragraph then?

6 MEMBER EBERHART: I think so, and then it's clear  
7 we're not trying to balance it.

8 CHMN. WOODALL: I like that.

9 MEMBER EBERHART: Then we have two separate  
10 findings.

11 CHMN. WOODALL: So I entertain a motion to amend  
12 the form of CEC as we have just articulated it.

13 MEMBER RASMUSSEN: I so move.

14 CHMN. WOODALL: Mr. Rasmussen moved it.

15 Is there a second?

16 MEMBER HOUTZ: Second.

17 CHMN. WOODALL: Mr. Houtz seconds.

18 Any further discussion?

19 (No response.)

20 CHMN. WOODALL: All those in favor of the  
21 amendment indicate by saying aye.

22 (A chorus of ayes.)

23 CHMN. WOODALL: Any opposed?

24 (No response.)

25 CHMN. WOODALL: Motion carries, thank you.

1 Mr. Houtz.

2 MEMBER HOUTZ: Since we're in the findings and we  
3 had the discussion before about finding of our  
4 jurisdiction, have the Staff or the Applicant come up with  
5 language of a finding that might be appropriate?

6 MR. MOYES: Yes, we have. We have discussed  
7 specific language. It's fairly simple. We had initially  
8 proposed it as a subsection within this paragraph, but I  
9 support the concept of separate paragraphs in this case.

10 I think, Ms. Scott, correct me if I misstate  
11 this, but I believe that the language that we agreed to  
12 would now be a separate paragraph reading:

13 The Committee finds that under the facts of this  
14 case, comma, as reflected by the record, comma, the  
15 Committee has jurisdiction to grant this Certificate of  
16 Environmental Compatibility, period.

17 And we would propose that as an addition, a  
18 separate paragraph that can occur --

19 MEMBER HOUTZ: Madam Chair, I would move that as  
20 a finding, a separate paragraph finding of the Committee.

21 CHMN. WOODALL: Is there a second?

22 MEMBER RASMUSSEN: Second.

23 CHMN. WOODALL: Second by Mr. Rasmussen.

24 Any discussion?

25 Mr. Eberhart.

1           MEMBER EBERHART: Madam Chair, just -- I'm not an  
2 attorney, but if we put that in this CEC, will this be a  
3 need that the Committee needs to find on all future CECs?

4           CHMN. WOODALL: No. The only reason that it's  
5 coming up is basically because I raised the issue. I  
6 raised this issue initially before the case was filed.  
7 And I did talk to the Utilities Division, and I said if  
8 the case is filed in this fashion, I will assume that you  
9 think that there is some jurisdiction and we will schedule  
10 hearings on it. But I did think it was important because  
11 I know the issue is going to come up again and a similar  
12 issue. So I don't think this will be necessary in the  
13 future.

14           And I am supportive of the motion, because I  
15 think it accurately reflects what we're doing here, and I  
16 do think there are very specific facts here. There's been  
17 an argument suggesting that this may actually have been  
18 initially construed as an amendment to the Griffith CEC.  
19 So I will be supporting that.

20           MEMBER EBERHART: Thank you.

21           CHMN. WOODALL: Any further discussion?

22           MEMBER HOUTZ: Madam Chair, I think that Staff is  
23 correct in the placement of where that finding would be,  
24 before the other findings as a first finding.

25           CHMN. WOODALL: Okay.

1 MR. MOYES: We would agree with that.

2 CHMN. WOODALL: I would consider that to be a  
3 technical and conforming change.

4 Is there any further discussion with respect to  
5 this modification.

6 (No response.)

7 MR. MOYES: Madam Chair, since we're on that  
8 area, I believe, Ms. Finical, if you look at the addition  
9 that you made -- down two paragraphs to the finding, I'm  
10 not sure the phrase, "under the construction". I think  
11 finds that the project would not or construction of the  
12 project would not. I'm not sure which phrase you used  
13 Madam Chair, but finds that the construction of the  
14 project would not.

15 MEMBER HOUTZ: I think that's what the Chair  
16 said.

17 MR. MOYES: Or just the project, I think, might  
18 be the better phrase, because it's not only its  
19 construction but its operation and its very existence  
20 given these mitigating conditions.

21 CHMN. WOODALL: The construction and the  
22 operation of the project would not cause material adverse  
23 impact to the environment.

24 MR. MOYES: That's fine, too.

25 CHMN. WOODALL: Okay.

1 MS. SCOTT: Mr. Moyes, could you please clarify  
2 the statement again on jurisdiction?

3 MR. MOYES: Yes. The Committee finds that under  
4 the facts of this case, comma, as reflected by the record,  
5 comma, the Committee has jurisdiction to grant this  
6 Certificate of Environmental Compatibility. Caps on those  
7 last three words.

8 CHMN. WOODALL: Well, actually, it would be to  
9 consider this application and to grant the CEC.

10 MR. MOYES: That's fine, too.

11 CHMN. WOODALL: Okay.

12 MR. MOYES: Consider the Application, capital A,  
13 and to grant this certificate? I'm not sure we used the  
14 phrase CEC as such.

15 CHMN. WOODALL: I'll fix that. That's going to  
16 be a technical and conforming change.

17 MR. MOYES: I think certificate is the defined  
18 term.

19 CHMN. WOODALL: Okay. So Mr. Houtz, did you want  
20 to amend your motion?

21 MEMBER HOUTZ: I would amend the motion to  
22 reflect the language that's been worked out. The  
23 Committee -- quote, the Committee finds that under the  
24 facts of this case, comma, as reflected by the record,  
25 comma, the Committee has jurisdiction to consider the

1 application and to grant the CEC.

2 CHMN. WOODALL: Any further discussion?

3 (No response.)

4 CHMN. WOODALL: All those in favor say aye.

5 (A chorus of ayes.)

6 CHMN. WOODALL: Any opposed?

7 (No response.)

8 CHMN. WOODALL: Motion carries.

9 Is there any -- I will entertain any comments  
10 from any of the other Committee members about any other  
11 amendments first, and then I will ask the Applicant if he  
12 has any concerns with respect to the conditions that are  
13 remaining, because I know that some were not reflected in  
14 the Applicant's draft.

15 But first, is there any further amendments by  
16 members of the Committee?

17 (No response.)

18 CHMN. WOODALL: Mr. Moyes, are there conditions  
19 that would still be remaining in the CEC that the  
20 Applicant wishes to argue about?

21 MR. MOYES: Your words, not mine. There are some  
22 on which we do have some comment and might request some  
23 consideration of possible amendment.

24 And just so that I'm sure that I have -- I'm not  
25 passing it over, I'll start with No. 17, which deals with

1 decommissioning. The Applicant has some extensive  
2 experience with these kinds of matters, and it's our  
3 experience that the decommissioning of a plant like this  
4 is something that arises, you know, well down the road  
5 after the plant has been in operation, and it is extremely  
6 difficult to predict the appropriate approach to  
7 decommissioning until one reaches much closer to that time  
8 frame. The notion of filing within a year of beginning  
9 construction how we would decommission the plant is  
10 problematic, we think, from a timing standpoint. It seems  
11 premature.

12 CHMN. WOODALL: Because it's going to be there  
13 for 40 years.

14 MR. MOYES: The concept is that you do have to  
15 appropriately deal with the site, and we believe that the  
16 notions with respect to rehabbing the site and the impacts  
17 on the site are appropriate. But in the context of an  
18 industrial park type setting here, we're looking, for  
19 example, at some plants in Texas where there are four or  
20 five different options being explored for decommissioning,  
21 mothballing or modifications or other approaches to the  
22 topic, that are simply unsusceptible to prediction a year  
23 from now.

24 CHMN. WOODALL: Okay, Mr. Moyes.

25 Ms. Scott, do you have any response? Why should

1 we keep it in?

2 MS. SCOTT: Well, I believe it's a worthwhile  
3 condition to leave in. I think if there is going to be a  
4 change, it should be to the period of time in which it is  
5 filed.

6 CHMN. WOODALL: And what would you propose?

7 MS. SCOTT: Maybe something to the effect within  
8 two years of its proposed shutdown and decommissioning,  
9 the Applicant shall file with the Commission's Docket  
10 Control a proposed plan.

11 MR. MOYES: If the substance of the issue is  
12 important to the Committee, we can live with that timing  
13 change.

14 CHMN. WOODALL: Okay. So the following wording  
15 would be acceptable to both parties: Applicant shall  
16 prepare a plan for shutdown, decommissioning, and cleanup  
17 of the plant site, which shall be filed with the  
18 Commission's Docket Control section at least two years  
19 prior to the actual shutdown, decommissioning, and  
20 cleanup.

21 MS. SCOTT: Yes.

22 CHMN. WOODALL: Is that okay?

23 MR. MOYES: And we would prefer to simply end it  
24 at that point and delete the balance since it's sort of  
25 ambiguous about what other local governing body or

1 jurisdiction -- I think the first sentence adequately  
2 covers it.

3 CHMN. WOODALL: I would entertain a motion to  
4 modify the CEC to reflect the changes that I have made to  
5 Paragraph 17 and to delete the last sentence of  
6 Paragraph 17.

7 MEMBER HOUTZ: So moved.

8 CHMN. WOODALL: Second?

9 MEMBER SMITH: Second.

10 CHMN. WOODALL: Second by Mr. Wayne Smith.  
11 Any further discussion?

12 MEMBER EBERHART: Madam Chair.

13 CHMN. WOODALL: Mr. Eberhart.

14 MEMBER EBERHART: Madam Chair, just looking at  
15 the wording of the first part of the sentence, it talks  
16 about a shutdown. And I don't know if they have to file a  
17 plan for shutdowns for maintenance purposes and things  
18 like that, or if this is talking about a final shutdown,  
19 or are there such circumstances that there would be a  
20 temporary shutdown for a year or two while market  
21 conditions come back? I'm just not sure.

22 CHMN. WOODALL: I see all of those as connected.  
23 I mean, I see all of those as occurring at the same time.  
24 But I understand your point that there could be an  
25 ambiguity there.

1 Can any of the parties suggest something? Final  
2 shutdown?

3 MR. MOYES: Permanent shutdown?

4 CHMN. WOODALL: Permanent shutdown.

5 MR. MOYES: I think that's an excellent  
6 suggestion, Mr. Eberhart. Appreciate that.

7 CHMN. WOODALL: And Mr. Houtz, is that  
8 acceptable?

9 MEMBER HOUTZ: That's acceptable to me.

10 CHMN. WOODALL: Mr. Smith, is that acceptable?

11 MEMBER SMITH: Acceptable.

12 CHMN. WOODALL: Acceptable to Mr. Smith.

13 Mr. Wong.

14 MEMBER WONG: I'm looking at the word shutdown.

15 It doesn't seem like -- is there a better word for

16 shutdown? It seems like -- is there room for --

17 MR. MOYES: Permanent cessation of operations.

18 MEMBER WONG: I think that's more descriptive.

19 CHMN. WOODALL: Let me first ask. Mr. Bahl, is  
20 the term shutdown a term of art?

21 MR. BAHL: That is true. That's the common  
22 terminology when you decommission a plant. It is shut  
23 down. It does not operate any longer. I believe that's  
24 the appropriate expression.

25 MEMBER WONG: That's a term of art.

1 MEMBER HAENICHEN: Especially with the word  
2 permanent.

3 MR. BAHL: Right, when you qualify it by the word  
4 permanent.

5 MEMBER WONG: As long as it's understood what the  
6 term shutdown is in the context of a power plant.

7 MR. BAHL: Exactly. That's what decommissioning  
8 is about. It is shut down.

9 MEMBER WONG: Okay. That's what I wanted to make  
10 sure.

11 MEMBER HOUTZ: It's not like the Diamondbacks.

12 MR. MOYES: Perhaps just permanent  
13 decommissioning.

14 CHMN. WOODALL: Any further discussion?

15 Mr. Rasmussen.

16 MEMBER RASMUSSEN: On the elimination of that  
17 second sentence, it would appear that obviously  
18 coordinating with Mohave County would -- they typically  
19 also -- would you coordinate with state agencies or other  
20 bodies in that? I mean, obviously it's a major thing to  
21 have occur to the local jurisdiction. And the  
22 elimination, I wonder whether -- what harm -- I mean, what  
23 is the objection to the coordination with Mohave County?

24 MR. MOYES: I think the only objection was sort  
25 of the ambiguity and uncertainty of what it is we're

1 supposed to do and how we would demonstrate that we had  
2 complied with it in the future. And so certainly to the  
3 extent that there are other jurisdictional entities who  
4 would have jurisdiction, we will be required, nonetheless,  
5 whether it's in here or not, to comply with those.

6 CHMN. WOODALL: I guess I had -- Mr. Rasmussen,  
7 the reason I proposed deletion is I don't know that we  
8 want to be giving advice to the Applicant about  
9 recommending that they do one thing or another. I think  
10 we can order them or require them to do certain specific  
11 things, but the recommendation that -- it didn't seem to  
12 me that this was really adding very much to it. So that's  
13 the reason that I proposed eliminating it.

14 Is there further discussion?

15 (No response.)

16 CHMN. WOODALL: All those in favor of the motion  
17 indicate by saying aye.

18 (A chorus of ayes.)

19 CHMN. WOODALL: Any opposed?

20 (No response.)

21 CHMN. WOODALL: Motion carries.

22 MR. MOYES: Again, very quickly, No. 18 appears  
23 to us to be relevant to transmission projects or to  
24 generation projects who don't know and can't predict at  
25 the time their CEC is granted exactly where their power is

1 going to go or over what transmission facilities.

2 This project does not require any new  
3 transmission facilities. Certainly, the Applicant is like  
4 others in the industry, happy to be a player in the  
5 context of these sorts of forums, but this goes beyond  
6 that to say to identify and encourage implementation of  
7 transmission enhancements. It talks about cost  
8 participation as appropriate.

9 It just seems to us, in the same spirit of the  
10 others that the Chairman felt should be treated as  
11 irrelevant, that this one is something that sort of is out  
12 of place here, at least certainly as stated.

13 CHMN. WOODALL: May I inquire? Mr. Bahl, would  
14 you please give us your rationale for why this should be  
15 included.

16 MR. BAHL: I would agree with the Applicant.  
17 This condition can be done away with.

18 CHMN. WOODALL: It can be eliminated?

19 MR. BAHL: Yes.

20 CHMN. WOODALL: And Ms. Scott, I'm assuming that  
21 you agree with that?

22 MS. SCOTT: Yes, I agree with Mr. Bahl.

23 CHMN. WOODALL: I would entertain a motion then.

24 MEMBER HOUTZ: Madam Chair, I would delete  
25 Condition 18.

1 MEMBER RASMUSSEN: Second.

2 CHMN. WOODALL: Any further discussion?

3 (No response.)

4 CHMN. WOODALL: All those in favor say aye.

5 (A chorus of ayes.)

6 CHMN. WOODALL: All opposed?

7 (No response.)

8 CHMN. WOODALL: Motion carries.

9 MR. MOYES: With respect to the sign requirements  
10 in No. 19, our problem here is with Subsection B, which  
11 calls for the expected date of completion of the project.  
12 And this contemplates a sign going up soon, 30 days after  
13 the Commission decision.

14 Our proposal was to put a sign up at some period  
15 prior to starting construction. We're not sure what the  
16 real focus or intent is here. I don't think we have any  
17 problem with putting the sign up at whatever point in  
18 time, but we won't know 30 days from now what the expected  
19 date of completion is other than, I suppose, to say that  
20 it has a time -- the certificate has a timeline on it.

21 We're susceptible to the pleasure of the  
22 Committee as to how to solve this problem, but it is a  
23 problem for us as it presently reads.

24 CHMN. WOODALL: I know that some of the  
25 Commission members are particularly fond of this

1 condition. So if you have a --

2 MR. MOYES: I'm familiar with its use in other  
3 settings, and they tend to be where there are residential  
4 developments nearby and wanting to be sure that everyone  
5 has this notice. This thing sits out in the middle of  
6 nowhere, so to speak, and --

7 CHMN. WOODALL: Ah, but today's nowhere is  
8 tomorrow's somewhere.

9 MR. MOYES: That's absolutely true. It's next to  
10 an existing generation facility.

11 CHMN. WOODALL: I understand.

12 MR. MOYES: And there's no development proposed  
13 within the next five years that certainly would approach  
14 this neighborhood. We have talked about some miles away,  
15 and we acknowledge that.

16 But as I say, we're really not opposed to this.  
17 We propose that prior to on-site mobilization of  
18 construction of the project, because then we would know  
19 when it's going to be completed and it would be some  
20 notice to folks that this is what we're doing here. You  
21 see some activity going on, this is what it's going to be.  
22 Again, I don't want to make more of this than it is,  
23 but --

24 CHMN. WOODALL: Well, Mr. Moyes, it seems to me  
25 that the gist of your concern is the fact that you

1 wouldn't have a date to put in the information; is that  
2 correct?

3 MR. MOYES: That's correct.

4 MEMBER RASMUSSEN: Isn't it the authorization of  
5 construction as the start time that you're concerned with?

6 MR. MOYES: No. It's the -- I suppose we could  
7 simply eliminate that requirement to be on the sign,  
8 because I'm not sure that really helps people. If they  
9 know that the site has been approved, then it's been  
10 approved and that gives them warning. And if they don't  
11 see anything happening there yet, they'll know it hasn't  
12 started.

13 But we're happy to put up a sign now or later,  
14 and I suppose it could have all of the requirements except  
15 B and be in compliance. So that's an acceptable approach.  
16 We could just delete the reference to D, or to B.

17 CHMN. WOODALL: Yes, Mr. Eberhart.

18 MEMBER EBERHART: In my opinion, Item B should  
19 have both the start and expected completion date of  
20 construction. I think that if we don't have some kind of  
21 time frame on a sign, people driving by are going to say,  
22 okay, it's been authorized. When are they going to start?  
23 When is it going to be going? And so they'll start making  
24 phone calls, and I'm sure the Commissioners downtown don't  
25 want a bunch of phone calls from Mohave County all of the

1 time, and Mohave County people don't want to be answering  
2 those kind of phone calls.

3 So I would like to see some kind of date. And it  
4 doesn't mean the dates on the sign can't change as more  
5 information or construction delays or something like that  
6 may occur, but it gives the public some idea of an  
7 expected time frame.

8 CHMN. WOODALL: Mr. Houtz.

9 MEMBER HOUTZ: I'm just -- what if B said that  
10 construction of -- completion of the project must be  
11 completed within five years from the date of  
12 authorization? It gives a five-year window for people to  
13 look at. That they could start and stop any time in that  
14 time frame.

15 MR. MOYES: I was about to suggest something  
16 similar to that. And it probably could just read that the  
17 site has been approved for construction of a 175-megawatt  
18 generating facility prior to, and that prior to date would  
19 be the date of expiration of the certificate since the  
20 next condition deals with notice that's required if you  
21 request an extension of that expiration date.

22 CHMN. WOODALL: Mr. Wayne Smith, did you have a  
23 question?

24 MR. MOYES: Oh, that's right, the five-year  
25 window is just to start construction.

1 MEMBER HOUTZ: That's not what it says here.

2 MR. MOYES: Yeah, that is what it says.

3 MEMBER HOUTZ: Oh, that's right.

4 MR. MOYES: But we could still say to be  
5 constructed -- to be under construction prior to whatever  
6 month of 2013, I guess.

7 CHMN. WOODALL: Excuse me. Mr. Wayne Smith. Did  
8 you have a comment?

9 MEMBER SMITH: The word is expected. It doesn't  
10 mean precise. So when you say expected, that doesn't mean  
11 it has to. It is just a generality, isn't it? So I don't  
12 think it makes much difference if you said specifically  
13 it's going to start on a date, then that would be -- I  
14 think it's just an expected date.

15 MR. MOYES: As I said, I'm not trying to make  
16 this more problematic than it is. And perhaps we would  
17 just put up our best guess of a date, and if that guess  
18 changes we would go white it out and paint another date on  
19 there. What I don't want to get into is some technical  
20 noncompliance or misleading of the public or something.

21 CHMN. WOODALL: Yes, Mr. Wong.

22 MEMBER WONG: On Paragraph C, it says phone  
23 number for public information. If a member of the public  
24 wants to know more about this project, wouldn't they call  
25 the phone number if they cared enough about the project?

1 And also, relative to the phone number, is this -- the  
2 question here would be is it a recorded message? Is there  
3 a live person? Should there be a contact name on it? I  
4 would like to discuss that.

5 MEMBER EBERHART: Mr. Moyes' cell phone number.

6 MR. MOYES: I had the Chairman's in mind.

7 The point is well-taken. And perhaps a better  
8 language here would be a reference to a website, because  
9 the project will be maintaining a website so long as there  
10 is a prospect of it actually happening. And that's in  
11 this day and age probably the more informative reference  
12 than a phone number here.

13 CHMN. WOODALL: How about phone number and/or  
14 website?

15 MR. MOYES: That works, too.

16 MEMBER WONG: What about the phone number?  
17 Because not everybody has access to a computer.

18 CHMN. WOODALL: Right. That's why I'm saying --

19 MEMBER WONG: Yes, but still with a phone number.

20 CHMN. WOODALL: And website.

21 MEMBER WONG: If somebody calls a phone number, I  
22 want to know who is going to answer it or what are they  
23 going to receive? Is there just going to be an endless  
24 bureaucracy or what?

25 CHMN. WOODALL: What did you anticipate? Because

1 typically it's the project manager.

2 MR. MOYES: It would be the project manager or  
3 the project's public information office.

4 CHMN. WOODALL: And who will that be? Do you  
5 know, Ms. Diller?

6 MS. DILLER: I don't know yet.

7 MR. MOYES: I don't know that we can designate.  
8 But we do have a person, David Hicks, who was in  
9 attendance at some of the hearings who is a public  
10 information officer for company, and it would be him or  
11 his successor. But there will be a live body that would  
12 respond to phone calls.

13 MEMBER WONG: I would like that to be stated that  
14 there will be a live person responding to phone calls.  
15 Because I know that, for example, the Maricopa County, the  
16 Environmental Services Division, they require all projects  
17 that have for a sign, the name of responsible party and  
18 phone numbers for air pollution control.

19 And we don't have to be that specific, but I just  
20 want to make sure that somebody that cares enough to call  
21 is not going to get the runaround and then throw their  
22 arms up in frustration.

23 CHMN. WOODALL: Do you have some language that  
24 you want to propose?

25 MEMBER WONG: I don't have any specific language.

1 I would like to work with Mr. Moyes. Maybe he could make  
2 a suggestion that would be, you know, not as onerous, but  
3 also give some assurances that there will be responsible  
4 parties answering calls.

5 MR. MOYES: This is language verbatim out of  
6 numerous other certificates. And again, we want to make  
7 it meaningful, and I support Mr. Wong's concern that it be  
8 meaningful and not just a road to performance. Perhaps --

9 CHMN. WOODALL: How about name and telephone  
10 number of representative for the Applicant to provide  
11 public information regarding the project?

12 MR. MOYES: I like that.

13 CHMN. WOODALL: Okay.

14 MEMBER WONG: And reference to a website.

15 CHMN. WOODALL: Yes. Name, telephone number, and  
16 website for contacts to provide public information  
17 regarding the project.

18 MEMBER WONG: I like that.

19 MR. MOYES: That's acceptable.

20 MEMBER RASMUSSEN: Madam Chair, and that would  
21 seem to obviate the concern about the expected date. If  
22 there is concern in the community two years down the road  
23 and it hasn't started, information to that effect could be  
24 relayed to individuals even if the date was premature or  
25 something like that.

1 CHMN. WOODALL: It would be name and telephone  
2 number of representative of the Applicant and website  
3 address for contact to provide public information  
4 regarding the project.

5 And since I just read that into the record, I  
6 would entertain a motion for that modification.

7 MEMBER WONG: So moved.

8 CHMN. WOODALL: Motion by Mr. Wong.

9 MEMBER HOUTZ: Second.

10 CHMN. WOODALL: Second by Mr. Houtz.

11 Any further discussion?

12 (No response.)

13 CHMN. WOODALL: All those in favor indicate by  
14 saying aye.

15 (A chorus of ayes.)

16 CHMN. WOODALL: Any opposed?

17 (No response.)

18 CHMN. WOODALL: Motion carries.

19 MR. MOYES: And the record will reflect that  
20 we'll just make our best guesstimate of that completion  
21 date to comply with B, and that will suffice. We will  
22 update it if we get better information.

23 CHMN. WOODALL: And so you're making a  
24 representation on behalf of the Applicant that you will be  
25 updating the information on the sign?

1 MR. MOYES: Yes.

2 CHMN. WOODALL: Thank you.

3 MR. MOYES: No. 20 needs a clarification on the  
4 second line. Applicant shall use reasonable means to  
5 directly notify all landowners and residents. We would  
6 ask the insertion of the phrase, "to attempt to directly  
7 notify".

8 As we have heard from Mr. Eberhart and others,  
9 there are some folks out there that are pretty hard to get  
10 ahold of by normal means. We would expect to make all  
11 reasonable attempts and use the reasonable means, but we  
12 can't -- I don't want to have to certify down the road  
13 that I have directly notified every landowner and resident  
14 out there if we have to ask for an extension of this  
15 certificate.

16 CHMN. WOODALL: I think you have a fudge factor  
17 just by the use of the term reasonable means. I don't  
18 know that you need to include attempt.

19 MEMBER HAENICHEN: I agree.

20 MEMBER RASMUSSEN: I agree.

21 CHMN. WOODALL: I don't think there's a lot of  
22 support for your proposed change.

23 MR. MOYES: Okay. Thank you. Having drilled  
24 through the bottom of the last well, I won't risk that  
25 here.

1           Finally -- and again, let me express appreciation  
2 for the other deletions that were made. We support those  
3 and we think they're appropriate.

4           No. 27, and maybe this is just the lawyer in me  
5 that -- there is a 27 on what I'm looking at. I'm sorry.

6           This remedy of the Commission imposing sanctions  
7 for a failure to comply with the conditions of this  
8 certificate, or frankly with any other order of the  
9 Commission, is something that is there. It is implicit,  
10 it exists, without regard to whether this certificate  
11 calls for it or not. And it seems to me that it would be  
12 unnecessary and duplicative of existing law, and as a  
13 personal preference I just think it's unnecessary and  
14 would like to see it removed.

15           CHMN. WOODALL: You know there was -- we recently  
16 had a case that addressed the conditions in the CEC, and,  
17 actually, the substance of this did come up and there was  
18 briefing on it because there was apparently -- it wasn't  
19 as well settled as you believe as it relates to the  
20 Commission's authority and appropriate sanctions.

21           So from my own perspective I think it's just a  
22 clarification, and I would not be supportive of the  
23 elimination of it. I mean, I understand. Why put  
24 something in there if you think it's already imposed by  
25 law, but this did come up in one of -- a recent case. So

1 I propose to keep it in.

2 Mr. Houtz.

3 MEMBER HOUTZ: I have one question about that  
4 provision, and it's the word shall, the Commission "shall  
5 impose". I guess it's modified by "appropriate  
6 sanctions".

7 But the Commission has the authority to say that  
8 the failure to comply is of such de minimis status as they  
9 would not impose. So I guess I would suggest maybe  
10 changing "shall" to "may".

11 CHMN. WOODALL: Ms. Scott.

12 MS. SCOTT: I don't have objection to that  
13 change.

14 MR. MOYES: If I may, again, I'm not trying to  
15 belabor or argue this. It would not be a surprising event  
16 to see the Commission put this back in if you took it out,  
17 but it doesn't seem to be consistent with some of our  
18 other discussions today about jurisdiction and everything  
19 else. That this is really like the Committee telling the  
20 Commission what it's going to do under a circumstance that  
21 comes before the Commission as opposed to coming before  
22 this Committee, and to me it just doesn't fit here.

23 CHMN. WOODALL: I do agree with you now. I have  
24 been persuaded. I mean, it does seem to me that this is  
25 something that I have seen in the form of decision when

1 the Commission has actually approved the CEC.

2 Ms. Scott, you will certainly have the  
3 opportunity to request review, is that not so?

4 MS. SCOTT: Yes.

5 CHMN. WOODALL: Okay. Anyway, in that case, at  
6 this time I would reverse myself as it is 4:00, and I  
7 would entertain a motion to delete Paragraph No. 27.

8 MEMBER HOUTZ: So moved.

9 CHMN. WOODALL: Mr. Wong.

10 MEMBER WONG: Just a comment is that I think this  
11 could be worded differently. I agree that the Commission  
12 makes the final decision, but I think we can put the  
13 Applicant on notice that if the Applicant fails to comply  
14 with any or some or all conditions herein, the Applicant  
15 may be subject to appropriate sanctions or may be subject  
16 to sanctions by the Commission, as appropriate.

17 CHMN. WOODALL: I guess I see that -- since I  
18 understand that Ms. Scott will probably be filing  
19 something, she will be asking the Commission to include  
20 that in the final form of the decision.

21 I guess my concern is sort of metaphorically  
22 being too big for our britches and saying what the  
23 Commission will and will not do. And so I don't know that  
24 by tinkering with the verbiage we're going to get past  
25 that. This is really the Commission that's going to

1 decide.

2 MEMBER WONG: Again, the Commission will  
3 ultimately put this type of language in its order, so I  
4 don't have a problem with deleting it. I was just trying  
5 to reword it, if you wanted to save it.

6 MEMBER HOUTZ: Madam Chair, I move that we delete  
7 Condition No. 27.

8 CHMN. WOODALL: Is there a second?

9 MEMBER HAENICHEN: Second.

10 MEMBER RASMUSSEN: Second.

11 CHMN. WOODALL: A chorus of seconds.

12 Is there any further discussion?

13 (No response.)

14 CHMN. WOODALL: All those in favor indicate by  
15 saying aye.

16 (A chorus of ayes.)

17 CHMN. WOODALL: Any opposed?

18 (No response.)

19 CHMN. WOODALL: Motion carries.

20 MR. MOYES: The Applicant thanks you for your  
21 patience and consideration of our concerns and changes.

22 CHMN. WOODALL: There's a presumption there that  
23 there was some patience.

24 MR. MOYES: Well, they're still here.

25 CHMN. WOODALL: Ms. Scott, do you have any last

1 minute proposals that you wish to bring to our attention?

2 MS. SCOTT: No, Chair Woodall.

3 CHMN. WOODALL: Does any of the Committee members  
4 have any other proposed modifications that they wish to  
5 make?

6 (No response.)

7 CHMN. WOODALL: Does any Committee member have  
8 any closing comments that they want to make before we  
9 vote?

10 Mr. Wayne Smith.

11 MEMBER SMITH: Thank you, Madam Chair. I would  
12 just like to thank the Staff, because it makes it so much  
13 easier, thinking back years ago how difficult it was to go  
14 through this process without their involvement. And it  
15 just makes it so much easier, and I thank them very much  
16 for their presence in helping us.

17 MS. SCOTT: You're welcome.

18 CHMN. WOODALL: Mr. Rasmussen.

19 MEMBER RASMUSSEN: And just a comment in terms of  
20 Mohave County working with the Applicant to reach  
21 agreement on the issue of water. That was really the key  
22 discussion for the two days that we were in Kingman, and I  
23 think that really helped resolve the major issue with  
24 this, and that was a very successful process and my  
25 compliments to everyone on that.

1 MR. MOYES: In that vein, may I volunteer on  
2 behalf of Mr. Sundlof, since he didn't come to make  
3 closing argument, he did authorize me to reaffirm the  
4 County's lack of any objection and the County's welcoming  
5 of this new project into the County.

6 CHMN. WOODALL: Well, I would entertain a motion  
7 to approve the certificate as we've amended it on the  
8 record.

9 MEMBER HOUTZ: Madam Chair, I would move that we  
10 approve the Certificate of Environmental Compatibility as  
11 we have amended it using the form of S-8 as our base.

12 CHMN. WOODALL: Is there a second?

13 MEMBER SMITH: Second.

14 CHMN. WOODALL: Second by Mr. Wayne Smith.

15 Any further discussion?

16 (No response.)

17 CHMN. WOODALL: Mr. Eberhart, how do you vote?

18 MEMBER EBERHART: Aye.

19 CHMN. WOODALL: Mr. Rasmussen.

20 MEMBER RASMUSSEN: Aye.

21 CHMN. WOODALL: Mr. Wayne Smith.

22 MEMBER SMITH: Aye.

23 CHMN. WOODALL: Mr. Houtz.

24 MEMBER HOUTZ: Aye.

25 CHMN. WOODALL: Mr. Wong.

1 MEMBER WONG: Aye.

2 CHMN. WOODALL: Mr. Haenichen.

3 MEMBER HAENICHEN: Aye.

4 CHMN. WOODALL: The Chair also votes aye, so the  
5 decision is unanimous.

6 I will next direct that the Applicant prepare a  
7 final form of CEC and electronically transmit it to me and  
8 to all of the other parties. And then once I have the  
9 transcript, I will review the transcript; I will make  
10 final technical and conforming language changes; I will  
11 sign it; and I will do a notice of filing form of CEC,  
12 which will be filed with Docket Control.

13 I will ask that prior to sending me the CEC that  
14 you confer with Staff and any of the other parties to make  
15 sure that what you're sending me is accurate, because I  
16 would just as soon have your keen eyes proofing it as well  
17 as mine. And then there will be proceedings that will be  
18 scheduled, assuming either of the parties have requests  
19 for review.

20 So is there any further -- do we need to take up  
21 any housekeeping matters?

22 MR. MOYES: Is there any need, Madam Chair, for  
23 expedited transcripts? We did not see any under these  
24 circumstances. But because of the expense that is  
25 involved, we would like to avoid that, if possible.

1 CHMN. WOODALL: I was going to say, I had  
2 forgotten. I know that our time frame for decision is  
3 sometime in November. Do you recall the date?

4 MR. MOYES: I'm not sure. It's late in the  
5 month. But we would hope to be able to complete the tasks  
6 necessary to have a decision issued prior to that date, if  
7 possible.

8 CHMN. WOODALL: I have November 27, 2007 is the  
9 final date.

10 MR. MOYES: That sounds accurate.

11 CHMN. WOODALL: As long as you are not going to  
12 present final form to me, you know, three days before the  
13 deadline.

14 MR. MOYES: Oh, no.

15 CHMN. WOODALL: So when do you think you would  
16 have it to me?

17 MR. MOYES: As quickly as we can prepare it. And  
18 I guess my point is the transcripts would typically be  
19 available to us, I believe, within 10 business days. Is  
20 that accurate?

21 CHMN. WOODALL: Okay.

22 MR. MOYES: If we could correspondingly file, and  
23 having conferred with Staff and making sure that we've  
24 proofed it all and think that it's accurate, and present  
25 you with the transcript and with the final order as we

1 believe it to be at the same time, and then we would again  
2 hope that as soon as possible after that we could --

3 CHMN. WOODALL: Let's just go off the record for  
4 a minute.

5 (An off-the-record discussion ensued.)

6 CHMN. WOODALL: We'll go back on the record at  
7 this time.

8 It is hereby ordered that the Applicant present  
9 to the Chairman a form of CEC that reflects the changes  
10 that we've made on the record, and by November 2, Friday,  
11 at the latest, and that it has been previously reviewed by  
12 the other parties. And then I will be able to get it out  
13 probably the next week.

14 MR. MOYES: That would be greatly appreciated.

15 CHMN. WOODALL: And so if there's no further  
16 business, the proceedings are adjourned. Thank you.

17 (The Hearing concluded at 4:05 p.m.)

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1 STATE OF ARIZONA )  
 )  
 2 COUNTY OF MARICOPA ) SS.

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I, MICHELE E. BALMER, Certified Reporter  
 No. 50489 for the State of Arizona, do hereby certify that  
 the foregoing printed pages constitute a full, true and  
 accurate transcript of the proceedings had in the  
 foregoing matter, all done to the best of my skill and  
 ability.

13

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WITNESS my hand this 18th day of October, 2007.

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MICHELE E. BALMER  
 Certified Reporter  
 Certificate No. 50489

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