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1 BEFORE THE ARIZONA CORPORATIC

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3 IN THE MATTER OF THE APPLICATION)
4 OF ARIZONA PUBLIC SERVICE COMPANY,)
5 IN CONFORMANCE WITH THE)
6 REQUIREMENTS OF ARIZONA REVISED)
7 STATUTES §§ 40-360, et seq., FOR A)
8 CERTIFICATE OF ENVIRONMENTAL)
9 COMPATIBILITY AUTHORIZING THE TS-5)
10 TO TS-9 500/230kV TRANSMISSION)
11 LINE PROJECT, WHICH ORIGINATES AT)
12 THE FUTURE TS-5 SUBSTATION,)
13 LOCATED IN THE WEST HALF OF)
14 SECTION 29, TOWNSHIP 4 NORTH,)
15 RANGE 4 WEST AND TERMINATES AT THE)
16 FUTURE TS-9 SUBSTATION, LOCATED IN)
17 SECTION 33, TOWNSHIP 6 NORTH,)
18 RANGE 1 EAST, IN MARICOPA COUNTY,)
19 ARIZONA.)

Docket No. L-00000D-08-0330-00138

Case No. 138

SPECIAL OPEN MEETING/
ORAL ARGUMENTS

12

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At: Phoenix, Arizona

14

Date: February 19, 2009

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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 Arizona Corporation Commission, at 1200 West Washington
4 Street, Phoenix, Arizona, commencing at 2:00 p.m. on the
5 19th day of February, 2009.

6

7 BEFORE: KRISTIN K. MAYES, Chairman
8 GARY PIERCE, Commissioner
9 PAUL NEWMAN, Commissioner
10 SANDRA D. KENNEDY, Commissioner
11 BOB STUMP, Commissioner

12 DWIGHT D. NODES, Assistant Chief Administrative
13 Law Judge

14

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MICHELE E. BALMER
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25

1 ACALJ NODES: Let's get started. Good afternoon.
2 Welcome to the Arizona Corporation Commission. As I'm
3 sure you all know, this is scheduled this afternoon for an
4 oral argument of the Line Siting Case No. 138. My name is
5 Dwight Nodes. I'm with the Hearing Division of the
6 Commission. And the Commissioners have asked the Hearing
7 Division to conduct this oral argument today, of course
8 with the input and questions that may be expressed by the
9 Commissioners themselves.

10 I think it was laid out in the procedural order
11 of what the format would be today. And before we get to
12 that, let me first take appearances on behalf of all of
13 the parties, and there are a number of parties, that you
14 can feel free to, if you would like, come up to the table,
15 speak into the microphone, or if you would like to just
16 come up individually to the podium.

17 But first let me take the appearances, and I'll
18 start with the Applicant, APS.

19 MR. CAMPBELL: Thank you, Mr. Hearing Officer.
20 This is Tom Campbell of the law firm of Lewis and Roca for
21 the Applicant, APS. With me as counsel also are Lynne
22 Adams and Bert Acken.

23 ACALJ NODES: Okay. And on behalf of DLGC?

24 MR. WAKEFIELD: Good afternoon, Judge Nodes and
25 Commissioners. I'm Scott Wakefield from Ridenour,

1 Hienton, Kelhoffer & Lewis on behalf of DLGC and LP Group.

2 ACALJ NODES: Thank you.

3 On behalf of Quintero Golf Club and community
4 association?

5 MR. KAFFER: Good afternoon, members of the
6 Commission. Chad Kaffer from the Davidson Law Firm on
7 behalf of Quintero Community Association, as well as
8 Quintero Golf and Country Club, LLC.

9 ACALJ NODES: Could you say your last name and
10 spell it again?

11 MR. KAFFER: Yes. It's Kaffer, K-A-F-F-E-R.

12 ACALJ NODES: Thank you.

13 And on behalf of Peoria, Diamond Ventures, and
14 Vistancia?

15 MR. BURG: Good afternoon. I'll go first.
16 Stephen Burg, B-U-R-G, on behalf of the City of Peoria.

17 ACALJ NODES: Okay. I grouped them together,
18 Mr. Robertson, because you had filed a joint brief, but it
19 sounds like the individual attorneys are here as well; is
20 that right?

21 MR. ROBERTSON: That's correct, Judge Nodes. Let
22 me defer to my two other co-counsel, and then I'll enter
23 my appearance.

24 ACALJ NODES: That's fine. Okay.

25 MR. DRAZEK: Good afternoon. Joe Drazek with

1 Quarles & Brady representing Vistancia, LLC.

2 ACALJ NODES: Thank you. And the community
3 associations?

4 MR. WENE: Yes, Your Honor, Commissioners. Steve
5 Wene with the law firm of Moyes, Sellers and Sims
6 representing the Vistancia Associations.

7 ACALJ NODES: And then, finally, Diamond?

8 MR. ROBERTSON: To round out the group, thank
9 you, Judge Nodes, and members of the Commission. My name
10 is Lawrence V. Robertson, Junior, appearing on behalf of
11 Diamond Ventures, Inc. Thank you.

12 ACALJ NODES: Thank you.

13 On behalf of the Arizona State Land Department?

14 MR. HAYS: Good afternoon, Your Honor, Chairman,
15 Commissioners. Garry Hays representing the Arizona State
16 Land Department.

17 ACALJ NODES: And on behalf of Surprise Grand
18 Vista?

19 MR. BIRNBAUM: Good afternoon. My name is Gary
20 Birnbaum with the law firm of Mariscal, Weeks, McIntyre &
21 Friedlander. My partner Jim Braselton is here with me.
22 We're appearing on behalf of Surprise Grand Vista, and
23 another group of parties referred to as the Sunhaven
24 entities. So I assume that's going to come up on the roll
25 in the near future, so that will cover both.

1 ACALJ NODES: All right. And then 10,000 West,
2 LLC?

3 MR. NADEAU: Good afternoon, Mark Nadeau,
4 N-A-D-E-A-U, and Shane Gosdis of the law firm of DLA Piper
5 appearing on behalf of 10,000 West.

6 ACALJ NODES: Thank you.
7 On behalf of the City of Surprise?

8 MR. GRUBER: Good afternoon. I'm James Gruber,
9 Assistant City Attorney with the City of Surprise.

10 ACALJ NODES: Thank you.
11 On behalf of Staff of the Commission?

12 MR. HAINS: Thank you. Good afternoon, Your
13 Honor, Commissioners. Charles Hains on behalf of Staff.

14 ACALJ NODES: Okay. Let me briefly explain the
15 ground rules before we get started with the arguments.
16 The parties who have filed requests for review of the CEC,
17 as indicated in the procedural order, will be given
18 20 minutes each. And those parties, according to my
19 records, are APS, DLGC, the Arizona State Land Department,
20 10,000 West, and Staff. And then the other parties will
21 be given 10 minutes apiece.

22 Now, in saying that, as I think you are probably
23 all aware, to the extent that there are questions, we may
24 expand the time limits as needed on a case-by-case basis.
25 And so we'll try to accommodate everyone to allow the

1 Commissioners to have their questions answered.

2 Actually, there are some other parties. I only
3 called those parties so far that had filed briefs, but let
4 me ask if there is anyone here representing the other
5 intervenors who did not file briefs?

6 Yes, sir. If you would come forward.

7 MR. McCOY: Thank you. Judge, Chairman, members
8 of the Commission, for the record, my name is Scott McCoy
9 of Earl, Curley & Lagarde representing Elliott Homes,
10 Incorporated.

11 ACALJ NODES: And your name again? I'm sorry.

12 MR. McCOY: Scott McCoy.

13 ACALJ NODES: McCoy. Okay.

14 Is there anyone here on behalf of Woodside Homes?

15 (No response.)

16 ACALJ NODES: Anderson Land and Development?

17 (No response.)

18 ACALJ NODES: Sunhaven, I guess, is already
19 incorporated.

20 MR. BIRNBAUM: Yes, Your Honor. Gary Birnbaum
21 and Jim Braselton for Sunhaven as well.

22 ACALJ NODES: And then Warrick 160, Lake Pleasant
23 5000?

24 MR. RICH: Your Honor, Chairman, members of the
25 Commission, my name is Court Rich from the Rose Law Group

1 on behalf of those two entities.

2 ACALJ NODES: Thank you. And the other parties,
3 even if you didn't file a brief, you'll be given an
4 opportunity to make your arguments as well.

5 And then we have LP107, LLC. Is there anyone
6 here representing that entity?

7 (No response.)

8 ACALJ NODES: Okay. And then the Town of Buckeye?

9 (No response.)

10 ACALJ NODES: All right. Are there any other
11 parties' attorneys here on behalf of parties that I did
12 not call?

13 (No response.)

14 ACALJ NODES: Well, as you can see, we have a
15 number of parties to this proceeding. We're going to try
16 to proceed in an orderly fashion. Obviously, given the
17 lateness of the day, I think it's very likely that we're
18 going to be back tomorrow. That was contemplated.

19 We will again try to give everyone a fair
20 opportunity to present their positions, and Commissioners
21 will have a full chance to ask any questions they may have
22 of any of the attorneys. I would ask of the
23 Commissioners, just because I'm running things, to push in
24 your buttons as normal, and then I will call on you in
25 that order, with your permission.

1 Okay. Let's get started. And with the first
2 20 minutes for argument, you may be interrupted,
3 Mr. Campbell, but on behalf of APS, if you'll begin.

4 MR. CAMPBELL: Thank you, Your Honor.

5 Your Honor, Chairman Mayes, and Members of the
6 Commission, as I said before, my name is Tom Campbell.
7 I'm here representing the Applicant, APS.

8 We have handed out to each of -- to the Judge and
9 to the Commissioners and to the parties this handout
10 packet, which I'll be using during my comments, and it
11 might be helpful for you to follow along. We'll also have
12 the pictures on the screen.

13 This project, the TS-5 to 9 project, completes an
14 additional 500kV transmission path from the very important
15 Palo Verde hub into the Phoenix area. The map on the
16 screen shows you the extra high voltage transmission
17 system around Phoenix right now. The solid lines are
18 actually built transmission lines. The dashed and dotted
19 lines have been approved by this Commission but are either
20 not built or are in the process of being built. These
21 extra high voltage transmission lines are, in a sense, the
22 superhighways that bring the power from the remote
23 generation sources into the city, into the load pocket.

24 The purpose for this project is to complete a
25 path from the Palo Verde hub to the -- across into

1 Phoenix. You'll see right now that there's a path from
2 the Palo Verde hub that runs up to the TS-5 substation.
3 That's a line that this Commission has already approved
4 and a substation that this Commission has already
5 approved. There's also a large TS-9 substation and a
6 line, a 500 line that runs to Pinnacle Peak substation.
7 This completes that path.

8 If you look at the next slide, you'll see what
9 this case is about. It's that line right there that
10 completes and creates an additional path into the city
11 from Palo Verde.

12 As most of you probably know, the Palo Verde hub
13 is a very important, in a sense, receiver and sender of
14 power. You have the nuclear plant there, but you also
15 have gas plants, and that will also be a major, in a
16 sense, recipient and point of departure into Phoenix for
17 the solar projects that are going to be built in western
18 Arizona. So this will provide an additional path for APS
19 and others to bring power in from this hub into the
20 Phoenix area. It is a project that has been the subject
21 of 10-year plans, the 500 portion, since 2003. You have
22 seen it in your BTA reports that you reviewed in 2004 and
23 2006.

24 There are some other benefits to this line in
25 addition to completing this path. Both SRP and the

1 Central Arizona Project filed letters in this case
2 explaining how it benefited them to have this additional
3 path. They had, in addition to some of the same benefits
4 as APS, they talked about benefits for them completing a
5 path, helping them bring the power in from the north, wind
6 power in SRP's case and hydro, I believe, in CAP's case.

7 In addition to that, there's some reliability
8 benefits of this project. It makes the system more
9 reliable in a number of ways.

10 CHMN. MAYES: Counsel, if I could interrupt
11 quickly.

12 MR. CAMPBELL: Sure.

13 CHMN. MAYES: Is the notion -- and I've read the
14 arguments that this line will help the companies bring in
15 renewables. Is the notion that it would help you
16 transport renewables that are developed directly around
17 that Palo Verde hub, or that might conceivably some day be
18 brought in via a potential Devers line and bidirectional
19 rights on that line? I mean, is it both, one, or the
20 other?

21 MR. CAMPBELL: Your Honor, Chairman Mayes, it is
22 both. Obviously, there may be some plants around there.
23 The idea is that some -- there will be some number -- we
24 don't know -- solar plants that will be developed in
25 western Arizona, even pretty far out in western Arizona,

1 that will eventually be brought -- the power will be
2 brought back, at least some of it, into this Palo Verde
3 hub area. It will help with that power.

4 In addition to the reliability, the benefits of
5 the new path or the reliability benefits that I just
6 wanted to mention to you briefly, you'll see this TS-5
7 substation right here is going to be an important
8 substation to feed the northwest Valley.

9 Right now it has one 500 source from Palo Verde
10 that comes -- this source right here. This project would
11 give it a second source. So if something happened to this
12 line, to this flow of power, power could be flowed into
13 the TS-5 substation this way.

14 This project also provides Phoenix some
15 protection in what are called extreme contingency outages,
16 and let me just briefly mention that. APS was asked as
17 part of the BTA to study what are called extreme
18 contingency outages, and those are outages where multiple
19 parts of the system were to go down at the same time.
20 They are events that don't happen very often, but when
21 they happen they can have major effect. Probably the best
22 example would be the multiple lines that come through the
23 forest in northern Arizona. If a forest fire wiped out
24 several of those elements, we test the system to see what
25 we can do to keep people's power on line.

1 And that sensitivity analysis in this case showed
2 that this line, in 11 of the 15 extreme contingencies we
3 studied, this line allows us to keep the power on so we
4 don't have to block customers. In the worst-case scenario
5 without this line, I think one of our witnesses testified
6 that up to 300,000 homes could lose power during an
7 extreme contingency outage.

8 There is another benefit to this line, and that
9 is that it offers the Commission an opportunity to do
10 consolidation of facilities. As we were studying this
11 project, the City of Peoria and others said, look, if
12 you're going to build a 500 line up here, take a look and
13 see if there are any 230 lines that you might be able to,
14 in a sense, join, collocate, so you only have to have one
15 set of poles in one route. Because 230 lines, as you may
16 know, are the next step down. They're the lines that tend
17 to feed the regions. So if the 500 lines are the
18 superhighways to bring the power in from the remote
19 sources, the 230 lines feed large regions of the city.

20 In looking at this project and seeing that there
21 were 60 planned area developments in this part of town, we
22 saw an opportunity to collocate this with a 230. So the
23 project changed from just being a 500kV project to a
24 500/230kV project. And, in fact, during the course of
25 these hearings, of the 60 planned area developments, 14 of

1 them were represented in the hearing, 10 of them
2 testified, and just those 10 indicated that there would be
3 175,000 new residents in this area ultimately. So there's
4 an opportunity for a consolidation here that we encourage
5 you to take advantage.

6 The Siting Committee, having heard all of that
7 evidence, voted nine to nothing that this project was
8 needed by the state of Arizona.

9 ACALJ NODES: Mr. Campbell, can I interrupt just
10 briefly? How do you respond to 10,000 West's assertion
11 that APS did not adequately address the need part of the
12 equation? I understand your argument that the committee
13 determined there was need, but they make the argument that
14 this extreme contingency position that I guess that you
15 have taken is not really necessary and you haven't really
16 shown the need.

17 MR. CAMPBELL: Well, the extreme contingency is
18 one of a number of benefits. The purpose for this is to
19 complete this path. We get the extreme contingency
20 benefit from that.

21 What 10,000 West argued is that you should only
22 build a system to an N-1 contingency. That's kind of the
23 bear minimum that national standards are set. And what
24 that means is simply that you stop damage to the system if
25 one line went out.

1 In this case, what 10,000 West doesn't address in
2 that extreme contingency argument, they don't address the
3 fact that this creates this additional path. Their
4 argument is, on that score they say, look, we've looked at
5 all of the lines out of Palo Verde and looked at the
6 generation, and we think there are enough lines out of
7 Palo Verde already.

8 But our response to that was: Those are not APS
9 lines. APS doesn't have rights on those lines. Some of
10 those lines are owned by California utilities; some of
11 them are owned by New Mexico utilities; some of them in
12 southern Arizona. So we just simply, Your Honor,
13 disagreed with them on the need for the line in that
14 respect.

15 With respect to the extreme contingencies, our
16 view is that maybe if extreme contingency was the only
17 thing you got from this line, the Commission would want to
18 look long and hard about whether they wanted to build a
19 line for that sole purpose. But in this case, there are
20 multiple purposes served, and this is an important
21 additional benefit for that line.

22 ACALJ NODES: So in a nutshell, is it your
23 position that there are directional limitations on APS's
24 current capacity moving towards the east, and also you
25 don't own all of the transmission lines that are currently

1 in existence, and, therefore, you need the additional
2 capacity for your customers?

3 MR. CAMPBELL: Your Honor, in a nutshell, I think
4 that is correct. I think if you look at the SRP and CAP
5 letters, they indicate that they can benefit from the
6 additional capacity as well.

7 Let me move to a different topic, if I can. I
8 think it's important that we talk about the process that
9 was followed in this in siting this case. As you can
10 tell, there are a lot of intervenors. It has generated a
11 lot of interest.

12 The first thing we did -- and now I'm going to
13 turn to the third page of your handout -- is we defined a
14 study area. And the study area on this map that's on the
15 screen is the black line. That's -- it looks like my
16 pointer is dead, but it's the black line.

17 And to orient you on the map to the -- this is
18 Grand Avenue. This is Lake Pleasant up to the upper
19 right-hand corner. If you went off the screen just to the
20 right, you would have Highway 17.

21 This is a very important part of this project.
22 It's the Luke auxiliary field. The Air Force field is
23 right there, and part of these other hatched areas are
24 what are called the accident potential zones where planes
25 come in and then take off. This is a training ground for

1 the Luke Air Force Base.

2 This is the CAP canal. This is the White Tank
3 Mountains.

4 This study area is about 390 square miles. It's
5 probably the largest study area that APS has ever studied
6 on a per mile of transmission line basis. And the reason
7 we had to study such a large area is pretty simple. It's
8 this Luke auxiliary field right here. We can't put the
9 transmission line directly from TS-5 to TS-9, because we
10 go right through the Luke auxiliary field. So we have to
11 go around the Luke auxiliary field one way or the other,
12 either south or north. Therefore, it was necessary to
13 have this very large study area.

14 And also, it's important to have a large study
15 area in this case because there are scattered existing
16 residential homes in this area. You don't have big
17 developments quite so much in this hearing, but you do
18 have scattered homes.

19 So we had a very large study area. We start with
20 that, and we then -- and if you can turn to the next page,
21 you'll see that we then identified all of the potential
22 opportunities in that study area, and they are marked by
23 the green lines here. And there are, you know, section
24 lines and existing utility features like the CAP and
25 transmission lines and big roads like Grand Avenue. State

1 Highway 74 is up here. We're going to talk about that
2 more later on. We identify all of the potential
3 opportunities in the area, and you can see there are many,
4 many, many areas.

5 And then, just to explain this map in a little
6 more detail, this again is Luke. These hatched areas here
7 are existing buildings and homes. So that's an area that
8 we mark as an area that we would like to try to avoid if
9 we can. So there are existing homes here, there's Luke
10 here, and we start with all of these possibilities.

11 And then we began an analysis that includes a
12 variety of factors. And if you go to your next slide, I
13 think you'll -- these are the factors that we looked at.
14 Can we acquire the land? What is it going to cost?
15 Engineering issues, environmental issues, public comment,
16 regulatory approvals. It's a very extensive process.

17 This, which is Exhibit B-1 to the application, is
18 part of that analysis. It's in your record. It's heavily
19 the environmental analysis. It's quite extensive as we go
20 through and look at all of these opportunities.

21 We also, as Chairman Mayes and Commissioner
22 Pierce from prior cases know, APS does an extensive public
23 process. This public process has been in place for 18
24 months. We started it in July of 2007 with enumerable
25 meetings. We had five open houses. We sent newsletters

1 to tens of thousands of people. We wrote letters. We had
2 follow-up meetings.

3 This thick document right here, which is Exhibit
4 B-2 to the application, is a record of the public process,
5 the record of the meetings we had, the letters that were
6 sent, the newsletters that were sent, the signs that were
7 posted. We do an extensive job of getting public input.

8 As we go through and look at all of these factors
9 and get this public input, we begin to narrow down the
10 number of alternatives. For instance, if you turn the
11 page to the next overhead, this is about the midpoint of
12 the analysis. And this was a map that went out, I think,
13 in the second of four newsletters. And you can see we've
14 limited the opportunities down to -- I think this was
15 about roughly 300 miles of possible routes.

16 We then continued to do a study. We send these
17 newsletters out and do more public process, we do more
18 study, and eventually we get to a proposal that we make to
19 the siting committee for their consideration. And that
20 proposal is on the next slide in your packet.

21 And what we did is we brought forth several
22 alternatives for the siting committee to consider, along
23 with some corridors, and let me explain. We brought
24 forward a preferred route, which started right here at
25 TS-5, heads north, then east -- you can see it's purple on

1 the map -- and then down south and then across over to
2 TS-9. That's what we called our preferred route. We felt
3 that was the one that was the most environmentally
4 compatible, the most buildable.

5 But we also brought forth some alternatives that
6 we also thought would work and were environmentally
7 compatible for consideration by the siting committee.
8 There's an Alternative 1 right here. There's an
9 Alternative 2, this blue line right here. And then
10 there's Alternative 3, this kind of pink line up along
11 State Route 74. So we bring some alternatives.

12 The other thing we do to give the committee some
13 flexibility with which to work is we provide a notice, and
14 we create corridors that are wider than we will ultimately
15 need. And the corridors range anywhere from 1,000 to
16 3,000, sometimes even more feet. What this does is it
17 gives the committee some flexibility. And then, assuming
18 they approve some corridors, it gives APS some flexibility
19 when they do their engineering and design work. If they
20 need to go around a mountain here or avoid something here,
21 or they have trouble buying land in one area of the
22 corridor but can get land in another area of the corridor,
23 it provides us an ability to work with it.

24 We also in this case brought in corridors
25 because, as you will see, as you probably saw from reading

1 the briefs, one of the issues here is you place this on
2 public or private land. We brought corridors to the
3 committee that often cases included both public and
4 private lands so the committee had an opportunity to
5 decide either to keep the corridors all on public, all on
6 private, or some on both. So that's what we brought and
7 filed with the committee.

8 Despite this long process and all of the work
9 that APS did and that you see in Exhibit B-2, this was a
10 project, because, frankly, it's on the edge of an urban
11 area, where we couldn't come to the siting committee and
12 say, here's a project that everybody in the area agrees
13 with. The best we could do is come to them with
14 alternatives that we thought made the most sense, that we
15 thought were environmentally compatible, and then let
16 these folks participate in the hearing, which they did.

17 We had a lot of intervenors. We had 16 days of
18 evidentiary hearing. At the end of that, what the siting
19 committee did was they kind of did some picking and
20 choosing of what we brought forward. They approved a part
21 of the preferred route, but they also selected this
22 Alternative 1. And then they selected the preferred route
23 here in Segment 3, but then they also picked
24 Alternative 3. So the route that they ultimately approved
25 that's before you today is a combination of the different

1 alternatives that we brought forth to APS -- excuse me --
2 to the siting committee.

3 One of the other things that they did in their
4 order is that they changed -- they adjusted the corridors.
5 Sometimes they narrowed corridors from what we had asked.
6 They wanted us to focus more in one case on, for instance,
7 they wanted us to focus more on state land than private
8 land in this area right here, so they narrowed the
9 corridors.

10 If you turn to the next page, you will see this
11 is the map that's attached to the CEC that's before you
12 today, and this is the actual route with corridors that
13 was approved by the siting committee, also by a 9/0 vote.
14 And you can see the corridors vary some, but it's
15 basically the preferred route up 275th, and then it
16 becomes Alternative 1, Segment 3, and then Alternative 3.
17 Those are references that you saw in the brief.

18 We are here before you today with a request for
19 review really just to focus you, from APS's perspective,
20 on this portion of the route approved by the siting
21 committee. We don't have any issues with the rest of the
22 route.

23 And to explain our issue, I would like you to
24 look at the next sheet that you have in your packet. And
25 to put this in context, this is along State Route 74.

1 State Route 74 is this line right here. This is 163rd
2 Avenue. This is 99th Avenue. This is TS-9, which is the
3 termination point for the line.

4 What the siting committee did was that in this
5 area they chose to put the route entirely on public land.
6 This yellow land here is BLM land, the white land is
7 private land, and the blue land is state land. And as you
8 can see, the route they selected was on BLM land for quite
9 a few miles here, and then it goes into state land, and
10 then finally into TS-9.

11 And I think their preference seemed to be that
12 they preferred that public land in this area have the
13 route rather than the private land. Private land parties
14 said, we bought the land, we've invested money, we have
15 some plans, and the siting committee seemed to be
16 persuaded by that.

17 Here's our concern and why we bring this up.
18 This route does a couple of things. First of all, it puts
19 us heavily on BLM land in an area where the about-to-
20 be-finalized BLM resource plan doesn't create a utility
21 corridor. It creates a transportation corridor, but not a
22 utility corridor. Therefore, with this route it will be
23 necessary for APS to apply to the BLM both for a permit of
24 their land use -- excuse me -- an amendment to their land
25 use plan and a right-of-way with BLM.

1 And as you may know, the BLM, when they get those
2 kind of joint or coincident applications, must start a
3 NEPA process, a National Environmental Protection Act
4 process, and they'll do public meetings and they'll go
5 through a whole environmental analysis.

6 Our concern is that because this corridor -- and
7 the corridor they selected was within our noticed
8 Alternative 3 corridor. They just shrunk it down to just
9 the public land portion of our corridor for the most part.
10 It's 500 feet off State Route 74 here and here, and we're
11 concerned that both State Land and the BLM may prefer that
12 this line, if they let it on their property, may prefer
13 that it be along State Route 74 rather than up into their
14 property.

15 And the other thing we're concerned about is that
16 the BLM might prefer, if they're going to let us be on
17 their land along 74, they may prefer that it be on the
18 south side because there's less BLM land on the south side
19 than the north side. And the north side, I think under
20 their resource plans, is deemed open space.

21 So our proposal -- if you turn to the next slide
22 you'll see our proposal -- is in a sense to ask this
23 committee to widen the corridor here back to what we had
24 originally asked for in this area. It's not identical to
25 our original application because we've deleted a part of

1 the corridor that was -- that was here on the east side,
2 but it would widen the corridor. What this does is if the
3 BLM is not willing to let the line be put up here and they
4 prefer it along 74, or they prefer it on the south side,
5 it gives us that opportunity.

6 Now, it really raises two issues for you as
7 Commissioners to think about. There are two ways we can
8 do this. We could leave it like the siting committee does
9 now and, if the BLM says no, come back to you and have a
10 new process and ask for it to be wherever the BLM tells us
11 they would let us be. So that's one possibility. Do that
12 through what is called a 40-252 action or something like
13 that. Things may have changed, it will be hard to know,
14 but that's one possibility. We had asked the siting
15 committee just to create this contingency where we could
16 automatically go back, and they didn't want to do that, as
17 you probably read in the record.

18 ACALJ NODES: Mr. Campbell, let me interrupt you
19 just for a moment. Let me ask one quick question, and
20 then Commissioner Mayes has a question as well.

21 One of the things that you filed just in the last
22 couple of days is a letter from the BLM, and it's a little
23 difficult to understand exactly what they're saying. It
24 seems like it's a little vague. But I kind of read it to
25 state that the BLM essentially does not appear inclined to

1 grant access on their land. Is that the way that you read
2 the letter? And if so -- well, I'll leave it at that.

3 MR. CAMPBELL: Let me try to address that. I
4 agree with you. I can't tell you precisely, of course,
5 what the BLM -- and I think the BLM's position would be,
6 well, they have to see the application before they can
7 make a ruling.

8 I think what the letter says is that the City of
9 Peoria asked, when they saw the draft BLM plan, asked --
10 filed a protest and asked for it to be denominated a
11 utility corridor, and they denied that protest. So that
12 does have a negative connotation. I agree with you.

13 It is not clear to us from the letter whether
14 they would react different to the north side, to the south
15 side. It does clearly indicate to us that BLM -- and BLM
16 did not participate in this siting case. This is the
17 first formal -- we got letters. We met with BLM a number
18 of times, as you probably saw in Exhibit B-2, had letters
19 back and forth from BLM, but in terms of a document, they
20 didn't -- excuse me -- they didn't appear in the siting
21 committee. We got this letter and felt it was important
22 for us to provide it to the committee as a posthearing
23 public comment. So there is some concern there, but, you
24 know, we're willing to go through the process, and that
25 does raise, obviously, concerns.

1 ACALJ NODES: What about the section between
2 131st and 115th Avenues? It still goes through BLM land
3 even under your alternative proposal.

4 MR. CAMPBELL: Right. Under -- if you would like
5 this line on State Route 74, which was the siting
6 committee's judgment, we will need to get BLM approval no
7 matter -- that's absolutely true. Our perception, but
8 it's not -- BLM has made no commitment -- is that the
9 thing about the south is that it's over less of their land
10 than it is the north side. And there's some hills there,
11 but we don't know what they would do. We have to go
12 through BLM either way under Route 74.

13 ACALJ NODES: Okay. Well, Commissioner Mayes has
14 a question for you, if you would.

15 CHMN. MAYES: Thank you, Judge.

16 In terms of the timing, Mr. Campbell, what is --
17 when does -- and this sort of -- there's some interplay
18 here with the BLM, this issue of the BLM's decision-making
19 process. When does APS anticipate this segment of the
20 line will actually be built?

21 MR. CAMPBELL: Under the 10-year plan, Your Honor
22 and Chairman Mayes, under the 10-year plan that was filed
23 this year, the in-service date here is 2016. That's our
24 best estimate right now. That is a little bit of a
25 push-out from last year's 10-year plan because, obviously,

1 the economic changes and growth, growth changes. So
2 that's our best estimate as to when the line would be
3 operational.

4 CHMN. MAYES: When it will be operational,
5 meaning -- well, when do you anticipate beginning
6 construction?

7 MR. CAMPBELL: Yeah. That is -- really, what
8 happens is we need to know -- we will need to know whether
9 we can build the line here before we can start. We don't
10 want to buy a lot of land other places and start a lot of
11 engineering drawings other places until we know we can
12 build a line and get through this point.

13 So I think that once we know we can get through,
14 once we have that approval, the construction and
15 engineering -- I'm going to turn around, if I may, and
16 just get an answer from my folks that actually know this.
17 I'm assuming it would take a couple of years.

18 They keep turning around. The guy against the
19 wall, he can't turn around anymore.

20 CHMN. MAYES: A couple of years?

21 MR. CAMPBELL: Yeah. Mr. Smith in the back there
22 against the wall says a couple of years. So you do the
23 BLM process, and then take a couple of years to do the
24 rest of the building.

25 CHMN. MAYES: So APS's decision to push it out to

1 2016 -- and I read this in one of the intervenor's briefs,
2 I think it was 10,000 West raised it -- that was caused by
3 the decline in growth in the service territory, or was it
4 part of APS's capital expenditure push-off that it
5 announced in one of its last earnings calls? You have
6 pushed off some capital projects in order to preserve
7 cash, as I understand it. Which one is it?

8 MR. CAMPBELL: Your Honor, Chairman Mayes, the
9 testimony in this case was that both were factors. You
10 have a slowdown in growth over what the anticipated growth
11 was going to be.

12 And as you know, and as you mentioned, there is a
13 slowing down or a deferral of certain capital expenses. I
14 think it's in the next three years. I think it's maybe
15 '08, '09, '10, something like that. But I believe both
16 were factors is what the record in this case would
17 reflect.

18 CHMN. MAYES: Okay. But was that addressed in
19 the record in the case or -- I mean, did that change
20 between the time you filed the application and the time
21 that the decision was rendered?

22 MR. CAMPBELL: Your Honor, Chairman Mayes, yes,
23 it did. Because the 10-year plans, as you know, are filed
24 January 31 of each year. So this case was filed in July.
25 We started the hearings in August and they went through

1 early December. That's exactly the same time period that
2 the transmission planning folks are preparing the 10-year
3 plans for the next year and looking at and making
4 projections. And I believe all of those things happened
5 while we were in the midst of hearing.

6 So that I know that we had Mr. Lucas, our
7 transmission planning witness on this score, testify -- I
8 forget. He testified in September, I believe in the
9 September hearings. At that point, based on the
10 preliminary work for the 10-year plans, he thought it
11 would be 2014 to 2016. Since the hearing record has
12 closed, though, we filed the actual 10-year plan this past
13 month and it was 2016.

14 ACALJ NODES: Okay. Commissioner Newman.

15 COM. NEWMAN: Thank you, Judge. You stated that
16 the BLM -- and they're not here today, so you're going to
17 have to answer them, you know, from your knowledge, I
18 guess. And, of course, as a new case -- a case of first
19 impression on me.

20 But I'm confused about -- you stated that it was
21 a transportation -- perceived to be a transportation
22 corridor from BLM, and, of course, it goes through
23 Highway 74. And so what do you know about BLM's intention
24 of this area being a transportation corridor?

25 MR. CAMPBELL: Judge Nodes, Commissioner Newman,

1 what we know is that there are plans to widen -- I think
2 it's the state's plan to widen Highway 74. There was
3 testimony in this record about -- different testimony, but
4 all of them agree it's going to be widened. I assume that
5 that is what BLM was reflecting when they denominated a
6 transportation corridor, because they knew there were
7 plans by the state to widen Highway 74. That's about the
8 best I know.

9 COM. NEWMAN: That would be my guess just looking
10 at 74 there. And that's part of their plan for -- that
11 they have published, right, I take it?

12 MR. CAMPBELL: Judge Nodes, Commissioner Newman,
13 that's right. The plan, just to be technically correct, I
14 believe that the draft plan has been circulated for
15 comment. And the actual record decision, which will be
16 the final plan, I think is not anticipated to come out
17 until this summer, but I believe the process is pretty
18 much done except finalizing the plan.

19 And if I can, just to anticipate a question here
20 that will undoubtedly come up, which is why not a utility
21 corridor. To a certain extent, just to give you --

22 COM. NEWMAN: Yes, that was my question.

23 MR. CAMPBELL: Thank you. The process, the BLM
24 planning process started in about 2003, and the public
25 comment portion of it ended about April 2006. During that

1 time -- and there's also a similar and overlapping process
2 dealing with the National Energy Corridor Studies.

3 During that time, APS explained to the BLM that
4 while we need to connect TS-5 to TS-9, but we don't know
5 where it's going to be. We haven't gone through the
6 siting process yet. So we told them there would be a
7 connection. We encouraged them to identify routes on BLM
8 land, particularly along linear features, but that's about
9 all we could tell them until July of '07 when we started
10 the siting process.

11 From July of '07 through the siting process, the
12 kickoff of the hearings, we had a number of meetings with
13 BLM, sent them letters. They kind of knew where things
14 were headed, but they didn't pick a utility corridor. And
15 their perspective -- and again, I can't really speak for
16 them. Their perspective may have been that the public
17 comment ended April 2006, and we didn't start our siting
18 process until after that, and that was -- I don't know,
19 but I'm just -- I just wanted you to understand the timing
20 and what APS did.

21 Because in the hearing, frankly, APS was
22 criticized by some of the parties for not doing more with
23 the BLM back in 2003, 2004, 2005. But at that point we
24 knew we were going to connect these two points, but we
25 didn't have a site. There was nothing, other than to tell

1 them we need to connect those two points.

2 COM. NEWMAN: Well, I'm sure you anticipated this
3 question, but I'm just trying to figure out is there
4 anything preventing you now from having intensive
5 conversations with BLM regarding this issue now that
6 you're this close?

7 MR. CAMPBELL: Judge Nodes, Commissioner Newman,
8 the BLM, of course, is now aware of what the siting
9 committee decided. They are the one -- they have
10 explained to us that we would have to file -- confirmed
11 what we already suspected -- we would have to file a plan
12 amendment and a right-of-way application.

13 And so, yes, we've had those discussions, but, of
14 course, there's no application pending. That wouldn't be
15 appropriate for us to apply until you tell us where you
16 want the line and then we would apply, but that's -- can I
17 raise one other issue about -- I'm sorry.

18 ACALJ NODES: Hold on a minute. Your time is
19 actually quite a bit past, but as long as Commissioners
20 have questions, we're going to continue on. And let
21 Commissioner Newman finish his line of questioning, if you
22 would.

23 MR. CAMPBELL: Sure.

24 COM. NEWMAN: And the second part of my question
25 was -- I read the State Land's brief, and they are

1 represented, so I'll let them speak when they come up, but
2 it's -- you're anticipating where they're coming from.
3 The State Land, also, the corridor is similar to 74, is
4 it, or is it off of 74?

5 MR. CAMPBELL: Judge Nodes, Commissioner Newman,
6 it is -- in fact, it might be helpful to go back to the
7 slide that's maybe Slide 3 to address your question on
8 state land in a fuller way. Slide 3 is the study area
9 slide. Richard, can we do that?

10 Okay. That's good. All of the blue is state
11 land in the study area. This is the portion of state land
12 along Highway 74 that we were looking at on a blowup just
13 a moment ago.

14 What APS did is they brought to the committee --
15 and now if we can go to the -- not that one. Two more.
16 What we did was bring to the committee corridors that
17 contained both state land and private land, because State
18 Land had told us they were concerned about too much of
19 this line going on state land. So we brought forth the
20 corridors that had some private and some state land where
21 we could -- it's not always possible, but where we could.
22 We brought in Alternative 2, which is this blue
23 alternative, which is an alternative that of the
24 possibilities they said was more acceptable to them than
25 the others, and the siting committee didn't go that

1 direction.

2 COM. NEWMAN: Right.

3 MR. CAMPBELL: But that just gives you a little
4 history on the state land.

5 With respect to -- if you go back to the slide
6 that we were on, the specific area, we do have to get a
7 right-of-way from State Land wherever we're on state land.

8 The really large difference between the BLM point
9 and the state land point is that BLM, generally and in
10 this case, will have to do a NEPA process, scoping, a
11 really full-orbed process. A state land process is really
12 more an economic process. It's more a, "if you want a
13 right-of-way, you've got to pay us a fair value for that
14 right-of-way," which APS has done a lot. And the evidence
15 in this case was that they get fair market value. And so
16 it's somewhat -- it's similar in the sense that we have to
17 get their approval, too, but the issues are a little
18 easier, a little more direct than the BLM issues.

19 COM. NEWMAN: But according to the brief, they're
20 opposing this corridor.

21 MR. CAMPBELL: Judge Nodes, Commissioner Newman,
22 that's correct. That is their position. That was their
23 position before the siting committee as well.

24 COM. NEWMAN: Okay. Thank you for your answers.
25 Thank you, Judge.

1 ACALJ NODES: You're welcome.

2 Okay. Chairman Mayes.

3 CHMN. MAYES: Thank you, Your Honor.

4 Counsel, I'm a little confused about why -- and,
5 obviously, the BLM, as an autonomous agency of the federal
6 government, can choose or not choose to be involved in our
7 process. But they knew in 2003 that this was a
8 possibility, I take it, and then at all times during the
9 siting process and when you filed the applications, the
10 application, BLM land was a possible candidate for siting,
11 correct?

12 MR. CAMPBELL: Judge Nodes, Chairman Mayes, in
13 2003, they knew that we had to connect TS-5 to 9, but we
14 had to start the siting process.

15 CHMN. MAYES: Right.

16 MR. CAMPBELL: When we filed our CEC application,
17 they knew that Alternative 3 went along State Route 74 and
18 had a corridor through their land. So those are the two
19 times. That would have been summer of 2008 when we filed
20 the application. That's when the final decision was made
21 as to which alternatives to bring forth.

22 CHMN. MAYES: And when you -- did APS attempt to
23 contact them and encourage them to be a part of the
24 process when you saw that they were not engaging?

25 MR. CAMPBELL: We filed -- APS filed this

1 application, I believe, like July 1. We had a meeting
2 with BLM in June, just a week or two before it was filed,
3 just to go over what was going to happen. I think there
4 was one other contact during the hearing like in
5 September, so they were very well aware.

6 I don't know -- I personally can't say that we
7 went to BLM and said you've got to come down here, nor did
8 the siting committee. Sometimes the siting committee, as
9 you know, has subpoenaed third-party witnesses. They
10 didn't in this case. I think everybody just figured BLM
11 would do what BLM wanted to do.

12 ACALJ NODES: I have one final legal question,
13 and then if there are any other Commissioner questions.

14 You had mentioned the 40-252 process. If, in
15 fact, the Commission were to approve the CEC as currently
16 issued and not grant you the expanded corridor that you're
17 seeking in your request for review, is it sufficient for
18 APS, if BLM refuses to honor the CEC, for you, APS, to
19 come in under 40-252, as opposed to filing an entirely new
20 CEC in order to get an amendment?

21 MR. CAMPBELL: Judge Nodes, we would hope that
22 that would be the process that we could use. I will say
23 that the major concern I have with that -- another major
24 concern I have with that process is that -- is public
25 notice. If just this corridor that the siting committee

1 approved is all that the Commission approves, without a
2 contingency, the people in this room will understand
3 there's a possibility of a 40-252 that may move the line,
4 but the public really won't understand that because the
5 order won't have that contingency in it. So I would be
6 concerned about the notice issue. But our thought would
7 be that if you approve what the siting committee approved,
8 we will apply and diligently work to try and get a
9 right-of-way in the corridor that you approve.

10 And if at some point -- and we suggest it's three
11 years. And the reason we suggested three years is that
12 the intervenors' testimony was they thought the BLM
13 process would take 18 months to three years. We're not as
14 optimistic as they were, but we used their outside number.
15 And again, at some point, if the BLM is still processing,
16 we may need to come back and say we need an adjustment
17 here to be able to meet the timelines.

18 So I do have some concerns about 40-252, but I do
19 think that's the most likely process to be used.

20 ACALJ NODES: Okay. Thank you.

21 Any other Commissioner questions?

22 (No response.)

23 ACALJ NODES: Okay. Thank you, Mr. Campbell.

24 MR. CAMPBELL: Your Honor, if you can indulge me
25 just one thing, because it changes our request for review,

1 and I think it's probably important that the Commission
2 know that. It won't take but 60 seconds.

3 ACALJ NODES: Go ahead.

4 MR. CAMPBELL: We had two other requests for
5 review. One is a very small one dealing with overhangs,
6 which is really clarifying language, and I think even
7 Diamond Ventures agrees with us on that. I'll let them
8 speak to it.

9 But we had another request dealing with widening
10 of the corridor and a finding of no substantial change by
11 this Commission to make construction a little easier and a
12 little less expensive. However, we've read the Staff's
13 brief and their concern about procedurally doing that in
14 this context. And based on that concern, we are going to
15 withdraw that portion of our request for review.

16 So we're only really asking two things: One, to
17 widen the corridor between 163rd and 99th; and two, to
18 give us the right to overhang the commercial, the Diamond
19 Venture commercial property so we can get across State
20 Route 74.

21 ACALJ NODES: Thank you.

22 MR. CAMPBELL: Thank you.

23 ACALJ NODES: Okay. Next, I would like to have
24 counsel for 10,000 West come forward, and I'm doing it
25 because I think 10,000 West, I think, is probably in the

1 most contentious opposition, I guess, to put it mildly.
2 And so I think that we're going to want to hear from you
3 on your arguments next. So if you would, your name is
4 Mark Nadeau?

5 MR. NADEAU: Nadeau. Just think "no doe" and you
6 have it right.

7 ACALJ NODES: Very well.

8 MR. NADEAU: Your Honor, members of the
9 Commission, 10,000 West is adamantly opposed to this
10 application and to the certification of this line.

11 I'll start out by telling you it's for three
12 reasons. Number one, under this state's constitution,
13 there needs to be a need for the taking of private lands,
14 and we do not believe that the need test is met simply
15 because there are a number of private property owners who
16 show up and contest the need for a line. The fact that
17 there are potential developments in an area, depending
18 upon the length of the line, doesn't demonstrate need.
19 The need we're talking about is a technical need for
20 power. And we don't believe this case will demonstrate
21 that to you, and I'll tell you why in just a moment.

22 Number two, we object because this line is not
23 environmentally compatible. If the Commission is to do
24 anything, if the Line Siting Committee is to do anything,
25 it is to try and find a route that is most sensitive

1 environmentally in the context of the need. So one does
2 not just draw lines with a crayon in the desert to put
3 lines wherever they want to go. One stops and says: In
4 light of the need, how could we best supply the power
5 where we want to go and have the least environmental
6 impact? That's not this case.

7 Thirdly, we believe there's been a violation of
8 the open meeting laws on at least two separate occasions.
9 And they're fundamental, they cannot be cured, and they
10 make the entire proceeding defective.

11 Now, let me first turn, if I might --

12 ACALJ NODES: Let me start with the last thing
13 that you just mentioned on the procedural irregularities
14 that you have raised.

15 Given your assertion that there's no way to cure
16 the alleged procedural problems, is the only solution --
17 short of starting the process over with an entirely new
18 siting committee, I mean, is there any solution other than
19 that? Because it seems like you're saying that you
20 can't -- the siting members can't unknow what was
21 allegedly improperly communicated to them. But if that's
22 the case, how can -- even if it's sent back for a new
23 process to start over, how can that problem ever be cured,
24 short of replacing the entire siting committee?

25 MR. NADEAU: I don't know that you need to

1 replace the entire Line Siting Committee. You cannot cure
2 it by watching over it as you suggest, whether or not you
3 would have other members on the Line Siting Committee.
4 And as you'll appreciate, even while we were in this
5 hearing, some were replaced, others came along.

6 But it's our view, fundamentally under the
7 statutes, that you cannot simply say they will unknow
8 something. In the context of criminal cases in this
9 state, once the jury is contaminated by knowing something
10 or doing something, you cannot simply say, well, disregard
11 it. That happens on immaterial things.

12 Here we have two instances, I think, of
13 violations of the open meeting laws. Number one is the
14 tour. The tour occurred and involved only members of the
15 Line Siting Committee and representatives of APS, so far
16 as we're aware. We asked if there would be a second bus
17 to take the intervenors along on this tour. We were told,
18 no, there would not be.

19 APS suggested the route; the members of the Line
20 Siting Committee went on the tour. We were not there.
21 This is the equivalent, in our view, of saying, well,
22 we'll hold hearings out at the Marriott, and we'll have
23 them in a nice room for APS and the Line Siting Committee,
24 but the rest of you can rent rooms down the hall and we'll
25 call you when we need you. That's not open meeting.

1 If the members on the bus step off in the
2 accompaniment of APS to look at various sites along the
3 way, you can appreciate because you have done it
4 yourselves in this state, you can approach a point in a
5 certain way with scrub or whatever, you can look in a
6 certain direction and you can see mountains, or you cannot
7 look in a certain direction.

8 There was no one there to record it, and on that
9 score that also violates, Your Honor, another statute,
10 A.R.S. 40-360.04, that requires that the committee or the
11 hearing officer shall receive under oath and before a
12 court reporter the material evidence and comments of the
13 parties.

14 ACALJ NODES: Okay.

15 MR. NADEAU: Here, there was no court reporter on
16 that tour either.

17 ACALJ NODES: But let me ask you this. If the
18 record independently supports approval of the CEC, and the
19 members relied solely on the record as it existed outside
20 of any allegedly improper communications, doesn't that
21 constitute substantial compliance for purposes of the open
22 meeting and ex parte rules?

23 MR. NADEAU: No. You make a legal argument that
24 others may make here, certainly. But the open meeting
25 laws are designed to protect all of us from considerations

1 and meetings of people charged with making decisions that
2 are done in private. Here, there's no question, none,
3 zero, that these people were on the bus together and that
4 they were the line siting members. It was an entire day
5 tour. It's beyond callous, really belief, to think that
6 they didn't talk to each other and didn't see things
7 presented, and did it with APS, without the intervenors
8 present.

9 ACALJ NODES: Well, let's assume --

10 MR. NADEAU: That's fundamental.

11 ACALJ NODES: Let's assume everything that you're
12 saying is true. What is the remedy? Is the remedy for
13 the Commission to send the matter back to the Line Siting
14 Committee, send it back to APS and say start the process
15 all over from scratch, and then the committee members will
16 again go through the process and eventually come up with a
17 CEC? Is that what you're suggesting? Is that your
18 argument?

19 MR. NADEAU: No. That is an excellent and
20 legitimate point you're making. But as you'll appreciate,
21 the other issue in this case is that the chief counsel of
22 the Corporation Commission met separately, ex parte, with
23 the Chairman of this Line Siting Committee to talk about
24 the potential violation of the open meeting laws on the
25 tour, and did it -- if I may finish.

1 ACALJ NODES: Yes, go ahead.

2 MR. NADEAU: And did it because it had occurred
3 in other line siting cases. That was news to us, but it
4 was revealed during the hearings that they had had this
5 hour-and-a-half ex parte meeting to talk about the tour
6 problems. One, that's a violation. It shouldn't have
7 occurred ex parte. But number two, I do not know as I
8 stand here today what exactly happened on the other tours
9 and whether there was a cure offered in those.

10 My view would be that this Commission cannot go
11 forward in light of the current record. Whether we could
12 keep the case open and go back and do a tour with
13 intervenors and others present, or something to that
14 effect, it may be possible, it may be reasonable, but we
15 have to proceed as it is now.

16 ACALJ NODES: Well, the remedy, I guess that's
17 the bottom line. You know, you still haven't answered the
18 question. What are the asking for the Commission to do?
19 Are you asking for the Commission to send it back and
20 start the process all over again? Is that what you're
21 asking?

22 MR. NADEAU: Correct.

23 ACALJ NODES: Okay. Now, that brings up the
24 first question I had. Let's assume that happens and the
25 siting committee is still the same, or the same members or

1 substantially the same members. How are they going to
2 unknow the allegedly improper communications any more in
3 that next proceeding than they do right now with the
4 curative, you know, actions that have been taken here
5 before by the committee and -- well, that's the question.

6 MR. NADEAU: It's a good question, but it's
7 Socratic. It's like a law school question asking me to
8 decide what happens if it's all the same people. It may
9 not be. What happens, can they cure it by doing certain
10 other activities? They may be able to.

11 But presently, I do not need to hypothecate about
12 how it would go below, or how we could cure it, or how I
13 might work with Staff counsel to fix this and the other
14 intervenors so there's a satisfied group and the public
15 satisfied.

16 Presently, this Commission simply has to conclude
17 that the way it happened doesn't work. That does not
18 work. Therefore, the Commission can say to the Line
19 Siting Committee, to APS, to Corporation Commission
20 counsel, we cannot approve this record as it is.

21 You don't have to decide exactly how they should
22 cure it at this point, nor should 10,000 West, who didn't
23 violate the law, be asked to say exactly how it should be
24 cured now. The idea is that the current record doesn't
25 work.

1 ACALJ NODES: Well, it's interesting that you
2 point that out, because didn't you, in fact, respond to
3 some of the e-mails of the Line Siting Chairman and --
4 well, and in addition to that, did you at any time during
5 the hearing process after becoming aware of the tour
6 issues and the e-mails, did you raise it before the siting
7 committee that you were objecting to approval at that
8 point of any CEC given these procedural problems?

9 That's a two-part question. First of all, didn't
10 you respond to the Chairman? And secondly, why didn't you
11 raise the issue during the course of the hearing rather
12 than letting it move forward, and now, after the CEC is
13 issued, you're saying, wait a minute. There's no remedy
14 other than to completely throw out all of the work that
15 the committee has undertaken.

16 MR. NADEAU: Two responses to that. One, so far
17 as I know, with respect to responding to the Chairman, the
18 only e-mail that I ever sent to him was regarding
19 mediation and potential mediators at his request. So
20 otherwise, there was collective e-mails from all of the
21 group about timing and schedules and things of that sort,
22 and I was on the circular for that, but nothing at all
23 that I can think of that was individual in context.

24 As to the question of what happened at the
25 hearing, that's one of those things where you can read the

1 transcript, and we cited it to you. But it was clear that
2 the Corporation Commission counsel raised the issue.
3 Everybody was sitting there. It was clear that it was an
4 objection. The Chairman said, well, we'll cure it by my
5 instructing everybody not to take it into account, a full
6 day's bus tour.

7 I don't think that either 10,000 West or any one
8 of the intervenors being confronted with that colloquy and
9 the objection being made by this Commission's counsel was
10 required, in order to preserve an objection, to stand then
11 and say, well, in light of all of this, we're done; it's
12 over. I think we all at that point took it under
13 advisement.

14 And our ability to raise the objection now, I
15 think, is not precluded simply because I did not rise in
16 the context of a chairman and committee, who, by the way,
17 had certain power over me with respect to how the hearing
18 was going and the questions that I could ask, et cetera,
19 et cetera, and berate them at that moment or contest it.
20 The issue clearly was made in the hearing, and all there
21 knew and understood it.

22 ACALJ NODES: Okay. Chairman Mayes.

23 CHMN. MAYES: Thank you, Your Honor.

24 Counsel, in terms of the bus tour, it's my
25 understanding from hearing this very same issue in a

1 previous case that in the past, the chairman of the Line
2 Siting Committee, these bus tours have occurred in the
3 past.

4 MR. NADEAU: Right.

5 CHMN. MAYES: It's my understanding they're not
6 uncommon. But in the past, the line siting chairman has
7 instructed those attending the tour -- and I don't know if
8 in the past they included intervenors or not. I didn't
9 ask that question. But in the past, they were instructed
10 not to discuss the case. They, in fact, were instructed
11 to sit in silence and just look.

12 And so is there any evidence in the case that
13 that didn't happen? That they did not sit in silence on
14 this particular bus tour?

15 MR. NADEAU: I don't think there's any evidence,
16 as you would call it. I think the fact was that the
17 Corporation Commission counsel, when identifying the
18 problem, was confronted with a very angry chairman and
19 some members of the committee who said, What are we
20 supposed to do? Are we supposed to sit here now and tell
21 everybody in the room what we talked about or didn't talk
22 about on the bus tour which took a day?

23 For those of us who are reasonable people, first
24 of all, we know that APS was there. And second of all,
25 you had committee members, all of whom are adults, and

1 able to speak and many opinions. So to suggest that they
2 quietly sat as if on a school bus and said nothing, at
3 least on the school bus I rode on in the old days, we all
4 talked, too. So the point of the story is you cannot
5 know, we cannot know. Speculation runs rampant. That's
6 the precise reason there's an open meeting law.

7 CHMN. MAYES: Your problem is that the tour was
8 not transcribed and you weren't invited to be there, so
9 you just don't know; is that correct?

10 MR. NADEAU: To the contrary, in my view, we were
11 excluded.

12 CHMN. MAYES: Did you know the tour was taking
13 place?

14 MR. NADEAU: Sure. And we asked if there would
15 be a bus for the intervenors or if we would all travel
16 along together, and we were told no. And my analogy is to
17 say, you can't do that if you're required to have a full
18 room for the sessions of the Line Siting Committee.

19 You know, you get to take -- Commissioner, you
20 get to take your four-wheel drive CJ, I get to take my
21 Wrangler, and somebody else tries to get to do it in their
22 whatever. I guess I could have begun on my ATV.

23 But the point is, that's not -- you know, that's
24 not how this should be handled. It was handled
25 improvidently. It is unfortunate. It has come up in

1 other settings here. I do recognize -- I'm not trying to
2 point fingers at people, but I do understand that
3 historically the tours occurred. The problem is we have a
4 statute that says you've got to do it in a certain way.

5 CHMN. MAYES: And I want to be clear. It has not
6 come up in many other cases, just two others to my
7 knowledge. And obviously, as you know from reading the
8 record, it concerned me then and I think it's an issue
9 that we have to address in this case.

10 But to the Judge's point, I guess I don't
11 understand your argument that we don't need to -- that we
12 shouldn't be asking you what the cure is. Because, you
13 know, in effect, if the Commission were to turn back the
14 case and just say -- or to deny the CEC, we would, you
15 know, effectively be telling the Applicant they either
16 have to not build the line or refile an application. I
17 mean, it's --

18 MR. NADEAU: Or you keep the case open and you
19 see what happens next, and that's what I think could
20 occur. I mean --

21 CHMN. MAYES: What do you mean by that?

22 MR. NADEAU: Well, the denial of this application
23 doesn't end it all, particularly if APS is willing to
24 waive its timelines in order that things can go back. It
25 doesn't have to all start again. That's within their

1 control.

2 But it seems to me all that the Commission really
3 needs to find -- it doesn't need to resolve the cure here.
4 It needs to resolve that what's happened here doesn't work
5 as it is. And we can adjourn this, we can come back, you
6 can keep the case open. It doesn't have to all end.

7 But I'm unwilling, certainly without further
8 consult with my client and even the other intervenors
9 here, some of whom, as you recognize, have substantial
10 experience before this Commission and on these kind of
11 issues, to unilaterally give you the answer on what I
12 think fixes all of this.

13 ACALJ NODES: Well, that's -- I mean, that's why
14 we asked for briefs, I think, so that you would be aware
15 of -- I mean, what your argument is going to be as to what
16 the Commission needs to do to remedy the problems that you
17 have raised.

18 And that's why I still am trying to -- I think
19 you're saying there's nothing short of simply sending it
20 back for the process to begin over again in some form,
21 there's no other remedy that the Commission could
22 undertake with respect to the CEC that is currently before
23 it in this proceeding, and I just want to make clear that
24 that is your position as I understand it.

25 MR. NADEAU: That is true. That with an ex parte

1 hour-and-a-half conversation with counsel and the Chairman
2 about tour issues, coupled with a bus tour for an entire
3 day which was a violation of the open meeting laws and the
4 statutes about having a court reporter available, you
5 cannot, in our view, approve it on this basis and it must
6 be either declined or sent back.

7 ACALJ NODES: Okay. But as a practical matter,
8 you do recognize that if this is sent back and the same
9 siting committee exists, that they cannot -- they can't
10 unknow the information that they learned during the bus
11 tour or through any communications.

12 MR. NADEAU: And under that hypothetical, with
13 that being the only fact you mentioned, I agree.

14 ACALJ NODES: Okay. Commissioner Newman.

15 COM. NEWMAN: Yeah. Let me take a third bite at
16 the apple. You're making two arguments here. You're
17 actually saying to even all of the Commissioners today
18 that we have to really think about this hard. There was
19 impropriety in the law is what you're saying.

20 The Judge, and it seems like Chairman Mayes was
21 trying to say to you, and I'm going to have a couple of
22 questions for you. Are you just trying to preserve an
23 appellate issue, or is this a demand that unless this goes
24 back to the beginning, then, you know, you'll take up an
25 appeal, an immediate appeal or something like that, under

1 the open meeting law? I'm trying to figure out what your
2 strategy is here.

3 MR. NADEAU: There's no question that we will
4 appeal if this goes forward.

5 COM. NEWMAN: That was a good third bite at the
6 apple. So it's really -- when the probes about where is
7 the remedy, I would think that any court reviewing our
8 actions, the Commission's actions, the Judge's actions,
9 would want us to think about this, which is what we'll be
10 doing right now, and we'll probably end up taking it under
11 submission in some way.

12 But it seems to me that the appellate court would
13 also want to know, you know, that you didn't waste public
14 resources, that we didn't waste public resources. That
15 there could be an intermediate remedy that we may end up
16 discussing in an executive session or some other means
17 regarding this issue.

18 But you have no suggestions for an alternate
19 remedy for this Commission, all six of us? All five of
20 us, rather. Well, all six of us with the Judge.

21 ACALJ NODES: I'm just overseeing.

22 MR. NADEAU: Two responses. Judicially, on
23 appeal, a judge doesn't necessarily decide how it can be
24 done right other than in compliance with the law. The
25 Judge says it wasn't done right.

1 COM. NEWMAN: Correct.

2 MR. NADEAU: And therefore, it's invalid
3 activity. Secondly, I don't think we wasted judicial
4 resources. I personally was the one who asked if we could
5 go in another bus or be on the tour. That was me. So the
6 issue came up in the beginning. It didn't go forward.

7 Thirdly, although we've spent a good time on the
8 open meeting law issue, I don't think you should approve
9 this application for the two additional reasons we started
10 out with, which are substantively, because we don't think
11 there's need that's been shown to you, nor do we think
12 it's environmentally less impactful than other routes. So
13 there are two separate substantive reasons that this case
14 likewise should be declined.

15 COM. NEWMAN: Okay. Well, I'm considering your
16 arguments, but I thank you for your candor about your
17 intentions.

18 MR. NADEAU: Thank you. We appreciate the
19 opportunity to be here.

20 ACALJ NODES: Chairman Mayes.

21 CHMN. MAYES: Counsel, let's go back to the need
22 question, because you made some arguments on that point.

23 You are rejecting the idea posited by the
24 Applicant that the line is needed to address an extreme
25 event, but it's my understanding that the Applicant has

1 also made arguments that the line would be needed to
2 transport renewable energy throughout the Phoenix metro
3 load pocket. Do you reject that as contributing to the
4 need for the line? Do you reject that as a component of
5 need?

6 MR. NADEAU: Yeah, we do. Exactly.

7 CHMN. MAYES: Why?

8 MR. NADEAU: Because it's entirely speculative.
9 It's made up. There was no proof on it. There was only
10 argument of counsel about potential renewables. It was
11 like a catch-phrase for last year that was thrown out. If
12 you take a look through this record, I challenge anybody
13 on this committee to find substantial evidence from an
14 expert offered up by APS about renewable energy resources,
15 mirrors in the desert, anything having to do with wind
16 power, anything for which this line is necessary.

17 To the contrary -- I'm sorry. I'm wound up on
18 this point. But to the contrary, okay, to the contrary,
19 the purpose of this line as set forth in the application
20 is redundancy. It's not for new power. It's not to
21 supply something at all.

22 And I would tell you that if you take a look at
23 some of the advocacy in this case and creative maps,
24 you'll start to wonder yourself, well, if it's a
25 legitimate need and it's a legitimate purpose at hand, why

1 do we have to have APS and others playing cute with the
2 maps.

3 Can I see the first exhibit, which was the EHV
4 metro area?

5 This is most interesting, and it's advocacy.
6 Look how the two lines are drawn here. First of all, we
7 have two 500-kilovolt lines that exist right now from Palo
8 Verde to Westwing, but the drawing doesn't have them
9 coming up and over to Westwing as they actually exist.
10 The drawing has them like this because it's useful to
11 argue: Then we've got to go from TS-5 to TS-9.

12 You might ask yourself what else is missing here.
13 Why is this map a little off? First of all, there's
14 already a WAPA line that comes down here and goes to
15 Westwing, and it too is a 500-kilovolt line, and APS has
16 ownership rights in it when it arrives at Westwing.

17 So let's take a look, then, if we can, at the
18 exhibit -- what is it -- your black-line exhibit -- right,
19 this one.

20 This is -- I'm sorry -- Figure 1.2, which is an
21 exhibit. Take a look at what actually happens. Here are
22 the two lines coming in in green, and look at the color.
23 The color is designed so that you're not really looking.
24 But here is two that come up, join in, go over to Westwing
25 and then up to TS-9.

1 What else don't you see very well? This green
2 line, which is the WAPA 500-kilovolt line. It's not on
3 that first map that we were just talking about. You don't
4 even see it. Its absence in the drawing from Palo Verde
5 to Westwing that you see on your first map, in our view,
6 misdescribes what is going on.

7 What else? Take a look down here in this corner.
8 There's another 500-kilovolt line right there.

9 So if you use all of this information before you,
10 we objected in part because, although Mr. Campbell and APS
11 will tell you this is one of the largest areas they've
12 ever had, they don't tell you that there's a TransWest
13 Express line they've been working on for more than eight
14 years that's supposed to come into TS-9. That would be
15 running right across their 500-kilovolt line that's
16 supposed to go down to Pinnacle Peak.

17 They also don't take into account anything having
18 to do with Wickenburg and its power needs. And you see
19 that essentially this is drawn so that you end up looking
20 as if the 500-kilovolt lines are not that significant.

21 And then when we turn over to Figure 2, if I
22 could have that. All right. Now look how they started to
23 draw the black lines, because it focuses you. It takes it
24 away from the 500-kilovolt lines that exist. And there's
25 the TS-5 to TS-9 corridor we're talking about that we need

1 redundancy on.

2 Now, if I might, a couple of things about that.
3 Number one, the Chairman started this hearing with the
4 view that there should be a five-year rule. He announced
5 it. He proclaimed it. He said, what I don't want to do
6 is give you a license to condemn people's land that is any
7 longer than about five years out. I want to know what
8 you're doing. Because either there's a need and you've
9 got to do something in the next five or not. Okay. So we
10 need a five-year window.

11 That's why originally it was 2012. That's why it
12 moved to 2014. It never fully changed. There was
13 testimony it was 2016 during these hearings, but we could
14 not get them to commit that it was 2016, and yet you heard
15 today that in the new 10-year plan it's now 2016.

16 So by virtue of the Line Siting Committee's own,
17 call it, practical rule that if you're going to do this
18 you should do it and do it in a context where we don't
19 leave people hanging out for anything longer than five
20 years, we violate that. But let me talk about the extreme
21 contingency plan.

22 CHMN. MAYES: Could I -- I would like to talk --
23 go back to alleged -- go to that issue, but going back to
24 renewables. And first of all, that may be some sort of
25 practical rule that the Line Siting Committee is operating

1 under. It's not my rule. I don't agree with it. I don't
2 think that we can plan transmission lines on a five-year
3 basis, and certainly not for renewable energy, and frankly
4 not for anything else.

5 But anyway, back to renewables. What you're
6 saying is the company made sort of a vague argument about
7 the fact that this would help transport renewable energy
8 through the load pocket but didn't present any evidence.

9 Did they talk about their requirements under the
10 renewable energy standard, which, sir, is not a
11 hypothetical thing. It is quite concrete and they must
12 meet it. Did they present any evidence on that issue?

13 MR. NADEAU: No.

14 CHMN. MAYES: And no evidence about where
15 projects would be sited? I asked the question about the
16 Palo Verde hub versus the desert. Nothing on that?

17 MR. NADEAU: None.

18 CHMN. MAYES: Okay. And I'll -- go ahead.

19 ACALJ NODES: To that point, let me just -- while
20 we're on it, didn't the Staff witness say that there had
21 been -- Mr. Williamson, didn't he say something to the
22 effect that there had been a number of renewable
23 generation requests that were essentially imminent that
24 were going to be required that would require additional
25 transmission facilities to be put into place, and that's

1 one of the reasons why this line was going to be needed?

2 MR. NADEAU: Your Honor, the best evidence that
3 you have before you today is Mr. Campbell who said there
4 was, quote, some notion that eventually there should be
5 something like that. That's not this case. In other
6 words, there may be a need ultimately with respect to the
7 renewables, but you don't have evidence of it here.

8 You have what I would call pulp offered up about
9 it because it was convenient, because they were suffering
10 under the question of whether or not there was any real
11 need. They're talking about building a line to an N-2-1
12 contingency, but in this Commission's own biennial report
13 you said, we don't do that. We don't spend ratepayers'
14 money on that. And that's quoted to you in our exhibit at
15 page -- it's 10-W3 at Page 32 where the biennial report
16 says, no, we don't build to that standard.

17 Why are they talking about that here? Because
18 they need three separate 500-kilovolt lines to fail in
19 order for this one to matter at all.

20 ACALJ NODES: Well, how do you respond to the
21 argument that Mr. Campbell made that there's a lack of
22 lines to the Phoenix load pocket, as well as other points
23 east of the Palo Verde hub? And in addition, APS does not
24 have ownership rights over much of the capacity that moves
25 in an eastward direction. That's what the evidence in the

1 record shows, as I understand it. That's the claim made
2 by Mr. Campbell. Is he just making that up?

3 MR. NADEAU: Well, you have to look at the
4 evidence that was presented. First of all, this question
5 of ownership of lines and what they could get access to
6 and things of that sort wasn't presented.

7 With respect to the WAPA line, they do have
8 rights to it at Westwing. And I cross-examined Mr. DeWitt
9 from APS on that point, and he admitted that they have
10 rights to that power at Westwing coming in off of that
11 500-kilovolt line.

12 So I would assert, Judge, that the only evidence
13 that you actually have is to the contrary, which is that
14 APS has participatory rights in lots of this stuff and
15 sells it. This may be a market grab, you know, a business
16 issue for them. They may want to keep others out. But in
17 terms of this Commission and the need to supply power
18 redundancy in this circumstance cannot withstand scrutiny.
19 And in fact, the extreme contingency report was prepared
20 after the application was filed because they found
21 themselves in jeopardy. They presented no load studies,
22 nothing to support the need issue.

23 ACALJ NODES: Okay. So Mr. Campbell is just
24 simply not telling the truth or not fairly representing
25 what is in the record when he makes the claims that APS

1 does not have sufficient transmission rights to the east
2 of the Palo Verde hub? Is that what you're claiming, that
3 he's not telling the truth?

4 MR. NADEAU: You ask too much of me. Tom
5 Campbell is a fine guy, a very good lawyer, an excellent
6 advocate. What I'm suggesting to you is that in the
7 evidence of this case, if you read it and you look at it,
8 you will not find that Mr. Lucas, who was the power
9 expert, actually justified this line because of something
10 having to do with renewables. No.

11 To the contrary, he was the one who first
12 surprised I think even Mr. Campbell by saying he thought
13 it wasn't necessary until 2016 based on load studies he
14 had looked at, load studies that we never saw, we never
15 had. There were never any load studies produced in this
16 case.

17 So Mr. Campbell is an advocate. I am, too.
18 That's the way this process works. But I suggest to you
19 that the record before you will reflect that there is no
20 evidence sufficient for you to find either need because of
21 a power source failure, you know, we have an actual need
22 and load studies that say it's got to come in and we need
23 this power.

24 Secondly, I want you to focus on the extreme
25 contingency plan. It was filed after the fact, well after

1 any public hearings. There was an argument that it was a
2 security issue; therefore, we couldn't see it. And we
3 demanded that we ultimately get redacted copies of it, you
4 know, the black-lined things so we could see it. It's a
5 very short report. Doesn't have anything to do with
6 earthquakes, terrorists, anything else. It says lots of
7 lines have to fail, and that's about it. And it goes to a
8 building standard that this Commission has never adopted.

9 ACALJ NODES: I want to go briefly back to the
10 renewable energy standards again. Are you familiar with
11 the Commission's renewable energy standard rules that have
12 been put into place and that put mandatory requirements on
13 APS? I mean, are you familiar? Do you have a basic
14 familiarity with those?

15 MR. NADEAU: I read a lot of stuff to get ready
16 for these hearings, and I tried hard. But to suggest that
17 I'm as familiar as you or other members of this Commission
18 would be folly. I am not.

19 I can tell you, though, that without sort of
20 supposition at work here about the needs, the testimony
21 from our expert and the testimony from their expert is
22 that the power lines that exist, these that I have just
23 shown to you in green, the 500-kilovolt lines, are
24 sufficient to handle all of the power that can be
25 generated. Right now, they do not carry enough power

1 because the power isn't there.

2 So if APS builds mirrors or wind power or
3 renewables in the desert and imports them into Palo Verde,
4 presently there's capacity on the existent lines, and that
5 was the testimony, to move it eastward.

6 Likewise, if you take that TransWest Express
7 line, which is a matter of public record, and it's coming
8 in from Wyoming into Las Vegas and then across this very
9 section of land we're talking about in conjunction with
10 WAPA, now you have got tons of carrying capacity.

11 You also know that we don't yet have all of the
12 builds or the specs on where the renewable energy
13 resources might go. Would they be near Yuma? Perhaps.
14 But could they also be down in Casa Grande? How would you
15 deliver them in then?

16 So all I'm saying to you, sir, is that
17 supposition doesn't rise to the level of need. And need
18 to condemn land and take it from private stakeholders,
19 people who have spent money developing it, requires that
20 this Commission say we can see a demonstrable need, not
21 demonstrable expectation or demonstrable notions of what
22 might happen eventually. That's not this case.

23 ACALJ NODES: Okay. Well, as you suggested
24 before, I think, in essence, reasonable minds can differ
25 and there is advocacy, but there is testimony from at

1 least a Staff witness regarding his expert opinion. And
2 he is a very credible witness that the Commission has
3 heard from many times before about what his opinion is or
4 was about the need and the renewable energy standard
5 situation and as it applied to the need for transmission
6 lines. I mean, I read some of his testimony in the
7 record, and I know that he has expressed that opinion.

8 So your expert may have a different opinion, but
9 there are opposing views, as I understand it, that are in
10 the record and on which the Commission in its wisdom could
11 rely upon. Would you agree with that?

12 MR. NADEAU: No, because I think what he said was
13 there is renewable energy stuff, but he didn't say it's
14 being built, I know where it is, and it will exceed the
15 capacity of this line, and we need to do something to
16 bring it in.

17 This line, back to the beginning, is about
18 redundancy. This line is about -- it's not about delivery
19 of power. It's about redundancy. It's not new need. By
20 definition in the application, it is: We're here for
21 redundancy and to protect against an outage. And the
22 outage that they wish to protect against exceeds the
23 standards this Commission announced in its biennial
24 report.

25 ACALJ NODES: Okay. Chairman Mayes.

1 CHMN. MAYES: Thank you, Your Honor.

2 Well, counsel, are you suggesting because -- as
3 you pointed out, the Commission has to weigh under the
4 statute, weigh the need for the line against the impact to
5 the environment, and that's sort of a shorthand version of
6 the statute --

7 MR. NADEAU: Sure. Right.

8 CHMN. MAYES: -- the line siting statutes.

9 Are you suggesting there is -- you are suggesting
10 there is environmental impact, and are you suggesting
11 there is no need to counterbalance the environmental
12 impact or to weigh against the environmental impact, or
13 are you saying that the need is so slight that it can't
14 countermand the environmental impact? Are you saying
15 there's no need at all?

16 MR. NADEAU: Correct. This is for redundancy.
17 It's a major expense, and it's in excess in the building
18 capacity as this Commission has adopted it and identified
19 it.

20 And based on the testimony in this record, the
21 loop that is talked about, the only place in the City of
22 Phoenix in which the loop is already complete, has two
23 lines, is in this very location on the Westwing corridor.
24 It's not complete to the south and down by the Gila River.

25 So if you just parse through what is going on

1 here, there may be argument raised, there may be
2 expectations raised about what could be the needs in the
3 sometime future, but there's no evidence before you that
4 really gives you that solid ground on which you could
5 decide there's a constitutionally present need in the
6 public safety, health, and welfare for Phoenix or for
7 Arizona that this line needs to be put in.

8 CHMN. MAYES: Are you suggesting that the
9 standard is there has to be a present need?

10 MR. NADEAU: Sure. But the statutes also give --
11 no, the statutes give you -- present need is defined, you
12 can appreciate judicially, as being longer periods of
13 time.

14 CHMN. MAYES: Okay.

15 MR. NADEAU: The five-year rule I mentioned
16 earlier, you appreciate the hearing was supervised by a
17 judge. It was his view of not when power should start to
18 be supplied or supported, but it should be when at least
19 construction occurs or condemnation is happening,
20 something active.

21 The cases in Arizona -- and I have handled
22 these -- deal with a present need that is definable,
23 supportable and occurs within a reasonable period of time.
24 Right now, you have the 5000-kilovolt line is talked about
25 in terms of 2016 for possible building as a redundant

1 item. No capital budget available at the moment, as you
2 mentioned.

3 The second line is the 230-kilovolt line. That
4 one is even more remote. That was added after the
5 hearings were -- after the applications were going on,
6 after they had sent out their newsletters. And the
7 230 line, even their own witness Mr. Lucas tells you he
8 has no idea when that will be necessary. It's not in
9 their 10-year plan, at least it wasn't.

10 So when you take a look at the need issue, it
11 would be our view that this Commission cannot get there.
12 And then when you look at the environmental question,
13 because you asked me about that separately, the point is
14 that we've just shown you where that corridor goes with
15 the other 500-kilovolt lines.

16 You had one member of the Line Siting Committee,
17 Ms. Noland, who thought that that was a prospect that
18 would be less impactful to the environment because it
19 falls within an existing utility corridor. And so it runs
20 literally right by TS-5 and on up to Westwing and up to
21 TS-9. So you could drop the line in there, and you don't
22 have to do this line siting on 74, and you don't have to
23 impact state trust land, you don't have to do anything.
24 You drop it in there. Number two --

25 CHMN. MAYES: Are you referring to TransWest

1 Express?

2 MR. NADEAU: No, no, no. No. I'm talking
3 about --

4 CHMN. MAYES: Because that's a very speculative
5 line. In fact, I don't believe APS is even planning on
6 doing that line anymore. It has significantly pulled back
7 from it. So what are you referring to now?

8 MR. NADEAU: You and I would disagree about
9 TransWest Express, because I have read the documents and I
10 have seen the sales documents, and they hold back a lot in
11 terms of their rights with respect to it. They can even
12 buy it back.

13 But regardless, if we go to -- again, to our
14 black-line map. I think it's B-1, Figure 1-2. What I was
15 trying to get at, Commissioner Mayes, is simply that you
16 see here are two 500-kilovolt lines coming in. They
17 junction right there, and there's another 500 that comes
18 in. That 500 that comes in from WAPA and drops out at
19 Westwing, it's not there. So now you have got two lines
20 running up to TS-9.

21 In terms of environmental impact, the question is
22 whether or not you could just simply drop this in that
23 existing utility corridor, which is pretty massive, and
24 have a less impactful occurrence. The only reason offered
25 by APS during the hearings about that issue was, first,

1 that they wanted a 230 line to go up here, but that 230
2 was the one they wouldn't -- wasn't even in their 10-year
3 plan and they didn't know when that might occur. The
4 other thing was they were concerned about how far apart
5 the towers needed to be spaced as it ran up there. But
6 I'll suggest to you that our expert was of the view that
7 it could be done and that would be environmentally less
8 impactful.

9 The other thing that was offered up at the
10 hearing both by my client, 10,000 West, and by Committee
11 Member Noland, was why not come out here, because you're
12 already crossing the Hassayampa here coming in from that
13 power station. I'm sorry, which one was that? Coming in
14 from the Harquahala station. That's not built yet.

15 So why not come out from here and go up this
16 western bank of the Hassayampa River, which is flowing
17 through here, because then you service the Douglas Ranch,
18 Whispering Ranch, and you also line yourself up for power
19 supply into Wickenburg, if and when it needs it.

20 All of this was rejected, in part, because the
21 line didn't go over far enough, or it might require
22 renoticing to the public a potential line this way. But I
23 want you to be aware that at least one committee member
24 made a pitch that that's the way it should go.

25 So that addresses, in part, the environmental

1 impact issues is that we're talking at this point about a
2 zigzag corridor that goes up and gets on State Route 74 to
3 come over to TS-9, when, in fact, the alleged purpose of
4 this line is simply to get from TS-5 to TS-9 for
5 redundancy.

6 ACALJ NODES: Okay. You have exceeded by a half
7 an hour or so, and I understand most of it was taken up
8 with questions. So we're going to take a short break for
9 about 10 minutes and come back at five until 4:00
10 according to the clock on the wall over here.

11 MR. NADEAU: Thank you very much for your
12 questions and for the time.

13 (A recess was taken from 3:39 p.m. to 3:54 p.m.)

14 ACALJ NODES: Let's get started again, if we
15 could. Next I would like to hear from the Arizona State
16 Land Department, Mr. Hays.

17 MR. HAYS: Good afternoon, Judge Nodes, Chairman
18 Mayes, Commissioner. If I can just take a brief second,
19 this is the first time I've made an appearance since
20 January 1 of this year, and I would like to congratulate
21 Commissioner Stump, Commissioner Newman, and Commissioner
22 Kennedy, as well as congratulate Chairman Mayes. It makes
23 me quite proud to be able to say that.

24 I'm hoping that my presentation will be a little
25 shorter and a little less contentious than the last one,

1 but I represent the Arizona State Land Department. And I
2 think it's important to talk about what the mission of the
3 State Land Department is and how it came about.

4 The Land Department was formed by the enabling
5 statute -- the enabling act of the constitution and
6 legislation of the first legislature in Arizona. And the
7 mission is to hold lands in trust for various
8 beneficiaries in the trust, the largest being K through 12
9 education.

10 And as we're all familiar, it is called state
11 land. It's a little different from public land. And
12 there's been a lot of discussion throughout this committee
13 hearing, as well as today, about public lands versus
14 private land. And it is the Land Department's position
15 that theirs isn't public land. Their land is held in
16 trust, trust for the education system in the state of
17 Arizona.

18 Last year, the Land Department gave \$181 million
19 to the K through 12 education. The corpus of the trust
20 that they are fiduciaries of is about \$2 billion now. And
21 State Land Commissioner Mark Winkelman and the State Land
22 Department take that fiduciary duty very, very seriously.
23 And it is their job, based on the constitution, the
24 enabling act and statute, to get the highest and best use
25 for the land and only act in the best interests of the

1 trust. That's why they intervened in this case.

2 In all of the 130 -- I guess we're up to 141 now
3 line siting cases, State Land has taken more than their
4 fair share of the lines, yet have never intervened. And I
5 think that's important to note.

6 And if I could, please, get Mr. Campbell to put
7 up the -- let me see -- the service map, Figure 1-2.

8 As Mr. Campbell alluded to earlier, everything
9 you see in blue is state land. There's a lot of it. I think
10 in Mr. Campbell's brief, I think he said 100,000 acres. I
11 think that's fairly close.

12 What I'm going to stand here today is not tell
13 you, not on our land, because we understand it's going on
14 our land. What we would like to say is not in a way that
15 the State Land Commissioner and the State Land Department
16 feels is not in the best interests of the trust, because
17 that is their duty. Their duty is to the trust.

18 And if you go to the -- actually, we're going to
19 stay on this one for a second.

20 When this first came about, it was supposed to be
21 for a 500kV line and 500kV line only, and so you'll see
22 that there's a large study area. During the course of the
23 process -- I think Mr. Campbell alluded to this -- it was
24 decided to add a 230kV line. Everybody was kind of
25 blowing and going, they're doing development all over the

1 place, and APS said, oh, we need to add a new line.

2 When they added that new line, they basically
3 eliminated all of the routes south, and there's testimony
4 to that in the record, and they only focused up to the
5 northern area of the study area.

6 Now, if I could get you to go to, I guess, the
7 placemat, Figure 2-3.

8 APS met with my client before I got involved a
9 few times and basically handed them a map with lines on a
10 page and said, which one do you like? And I think my
11 client came back and said, well, we really don't like any
12 of them, but if you have to go with one, we would like the
13 one -- and it's hard to pick out here -- but it's the one
14 that became Alternative 2. And that was introduced as
15 Alternative 2, although it was, quite honestly, the lesser
16 of two evils, but what was presented to us, there was
17 nothing really good.

18 And then, Mr. Campbell, if we could go to the
19 actual route approved by the CEC, or by the siting
20 committee.

21 Now, you'll notice that -- and it's hard to show
22 you on the blue one, but you'll notice that almost, in my
23 opinion -- I think Mr. Campbell says 60. I say 80 --
24 80 percent of the land is on the State Land Department's
25 land.

1 And Mr. Campbell told you, rightfully, that when
2 APS came forward with their application, they had
3 corridors that went on public and private land. Well,
4 what Mr. Campbell didn't tell you is on rebuttal they took
5 out the corridors that were on private land. As a matter
6 of fact, on Page 2967 -- yeah, it was that long of a
7 hearing -- in Line 20, Mr. DeWitt in his rebuttal
8 testimony said: We have removed as much of the corridor
9 from the private lands as possible.

10 So on rebuttal, APS offered corridors that placed
11 almost the entire burden, or as much of the corridor as
12 possible, on BLM or state land.

13 The problem that State Land has basically comes
14 down to what we refer to as Segment 3. And it's easy to
15 depict if you look at the screen where it goes up 74, then
16 cuts across almost to the 60 and then goes south. That is
17 our main concern.

18 And in my brief, I asked for one of two things,
19 and I actually have a third, but that will be at the
20 discretion of the Commissioners. I said either deny the
21 CEC, send it back to the committee for a new line. And I
22 guess feasibly there's always a salmon-colored piece of
23 paper that could show up outside this door at open
24 meeting, and that could fix the issue as well. But the
25 State Land Department feels that if that does not happen,

1 that we will have land, in the land commissioner's
2 opinion, that is not in the best interests of the trust,
3 that is going to be rendered in large part unusable and
4 unable to sell.

5 And I say unusable, and I see Commissioner
6 Newman's quizzical look. Where it goes from 74 west, 74
7 is designated a scenic corridor, so we can't have
8 commercial. So we would have a strip of land that would
9 start out at nothing and then, of course, get wider, that
10 would have to be residential that would be surrounded
11 by -- one side would have 74, and the other would have the
12 power line. In the Commissioner's mind, that would be not
13 in the best interests in the trust and not the highest and
14 best use of that land.

15 I think Commissioner Mayes asked some questions
16 about 2016 and 500kV. And remember, the reason we are up
17 here is because of the 230kV line, which Mr. Lucas said is
18 now officially TBD, to be determined. The reason we're up
19 in this area was for this 230kV line, which now isn't even
20 on the books as when it's going to be built. It's still
21 to be determined. So we are having this issue for a line
22 that doesn't even matter at this point.

23 ACALJ NODES: Chairman Mayes.

24 CHMN. MAYES: Well, counsel, you were presumably
25 present for most of the hearings in the case. What do you

1 make of the issue of -- of the need issue with regard to
2 renewables and what kind of evidence was presented by the
3 parties on that issue?

4 MR. HAYS: Judge Nodes, Chairman Mayes, you know,
5 I anticipated this very moment, having been quite familiar
6 with your love for renewables, for lack of a better term.

7 And I asked some questions of Mr. Lucas and
8 Mr. DeWitt, I believe, either Mr. DeWitt or Mr. Lucas.
9 It's been months since I actually asked the questions,
10 quite honestly. And the answers I got back were de
11 minimus at best. And maybe I just didn't ask the right
12 questions, but I assumed we would be standing here at one
13 point.

14 CHMN. MAYES: Well, what kind of questions did
15 you ask? Did anybody ask about the interconnection queue?
16 Did anybody ask about, you know, how many megawatts are in
17 the queue? Did anybody ask about the eastbound capacity
18 of Devers-1? Were those types of questions asked?

19 MR. HAYS: Nothing was introduced like that in
20 testimony by either the Applicant or any of the
21 intervenors. I asked questions along the lines of -- and
22 again, this is from memory so you can check me on the
23 transcript -- of what kind of projects, where are they,
24 and I also said, well, what -- I think I asked something
25 along the lines of what was the probability of these

1 projects being built, because there's been lots of
2 renewable projects that have come and gone over the years,
3 and not a lot of them come out of the ground. And I
4 believe, if I'm not mistaken, Mr. Campbell objected at
5 that point to my questioning.

6 CHMN. MAYES: But, I mean, certainly the
7 probability of them it would seem, you know, my own
8 knowledge, from my own knowledge of renewable energy, is
9 that the probability of them being built has gone way up
10 in recent -- even recent months with California moving
11 forward with its 33 percent standard and the progress
12 being made on -- potential progress being made on
13 Devers-2.

14 I mean, I'm just trying on get a sense of what
15 kind of evidence was actually presented in the record on
16 those issues, and maybe it wasn't. Maybe it wasn't
17 available at the time.

18 MR. HAYS: Judge Nodes, Chairman Mayes, I would
19 say little to none, candidly. Again, this is just my
20 opinion, which I'm sure Mr. Campbell will yell at me about
21 later, but it seemed almost as an afterthought that
22 renewables was thrown in, maybe anticipating this moment.

23 CHMN. MAYES: At what point in the hearings was
24 it raised? Was it in the application? And I could go
25 back, obviously, and read the application, but --

1 MR. HAYS: You know, Judge Nodes, Chairman Mayes,
2 I'm not sure. I remember it during DeWitt's testimony.
3 I'm not -- I don't remember whether or not it was in the
4 application. Mr. Campbell could hopefully answer that one
5 better than I could.

6 CHMN. MAYES: Okay.

7 ACALJ NODES: Mr. Hays, are you disputing the
8 need for the line at this point, or you're just -- or is
9 it more of the immediacy of the line?

10 MR. HAYS: I don't think I'm disputing either,
11 Judge Nodes. I think that my point was we are here where
12 we are in terms of where it goes on State Land's land
13 because of the 230kV line pushed everything up, which took
14 out a whole lot of options which feasibly would work
15 better for everybody, but we never saw them, weren't
16 presented, because of this addition of the 230kV line in
17 the middle of the process.

18 So my point is not whether or not there's a need.
19 I think APS would even say there's probably not a need for
20 a 230kV if they've now put it as TBD. Maybe there's a
21 need sometime, but nobody knows when. But my point is if
22 they changed the process, changed what we're looking at in
23 the middle of the process for something, then that
24 something doesn't materialize, why are we still only
25 focusing where they decided to focus it then, in a place

1 that we feel is completely detrimental to State Land's
2 control there.

3 ACALJ NODES: Well, I read, you know, the claim,
4 the assertion that when you look at the map, you know, one
5 of the first maps, I think it's the third page in,
6 Figure 1.2 or 1-2, there seems to be very -- there seemed
7 to be very few options that would not cross a substantial
8 amount of state land. And I think that you have conceded
9 that you can't totally avoid state land as a result just
10 by the nature of the acreage that the state trust land
11 covers.

12 So the question I guess I have is, did you
13 present any alternatives during the course of the hearing
14 that were considered by the committee that would have been
15 more, I guess, in line with what the state trust land
16 division wanted?

17 MR. HAYS: Judge Nodes, I think Mr. Campbell and
18 I had several meetings. I had several meetings with other
19 intervenors. We did not offer anything because of the
20 notice requirement. Because it wasn't noticed in the
21 official application, State Land would be required to do
22 all of the notice and everything else, which, candidly,
23 there's not a lot of money for in the State Land
24 Department's budget to do a lot of that. So we did not
25 offer any new routes.

1 We did meet several times. I specifically met
2 with Mr. Campbell several times trying to come up with
3 something, as I did with almost all of the intervenors,
4 but we did not offer anything else.

5 ACALJ NODES: Well, let me ask you this. I think
6 one of your arguments, or one of your options is that the
7 Commission send this matter back for further hearings or
8 to start over.

9 If that were to happen, is the State Land
10 Department going to be in any better position to present a
11 case for alternatives to what was previously presented?
12 Because otherwise, aren't we just sending it back for no
13 real purpose?

14 MR. HAYS: Judge Nodes, if I may, I believe that
15 the easiest way to do it is to send it back as it relates
16 to that one section, which is our biggest concern. And I
17 believe that if we send it back for that one section, then
18 we could work cooperatively with APS to come to something
19 that we all can live with.

20 ACALJ NODES: Well, you may be able to live with
21 it, but all of the other -- the 13 other parties may have
22 a different view.

23 MR. HAYS: If we could go back to the surface
24 management map, there's only one other party that cares
25 about it in that area, and we can probably work around

1 something that wouldn't affect them. As you can see, it's
2 all us all over where -- the section that we're
3 discussing, it's all State Land land.

4 And if you go a little further south, that's
5 where Surprise Grand Vista is, but I'm sure we can come up
6 with something that doesn't totally impact Surprise Grand
7 Vista and allows State Land to feel like they have done
8 what they need to do in order to protect the interests of
9 the trust.

10 ACALJ NODES: And if I understand your prior
11 statements, you did have some meetings with various
12 entities, but you weren't able to come up with anything
13 that was mutually agreeable to everyone.

14 MR. HAYS: Well, I think, Judge Nodes, when we
15 were on those meetings, we were focusing more on the
16 southern, the Alternative 2. And candidly, there's a lot
17 more moving parts down there than there is in the northern
18 portion. But we never actually sat down to try and figure
19 out something just as it relates to Segment 3 of the
20 proposed route.

21 ACALJ NODES: Okay. And one other question on
22 this. I guess your argument is that there's a
23 disproportionate burden on state trust land compared to
24 other entities whose land may be crossed under an
25 alternative route. Is that a fair assessment?

1 MR. HAYS: I think it's a fair assessment, but
2 let me qualify it. Judge Nodes, I understand, as does the
3 State Land Department and the State Land Commissioner that
4 we have to take a lot of land, and it's not so much the
5 disproportionate impact. Because candidly, if you look
6 back on the records of the last 139 times, more often than
7 not it was put on state lands. But it has to be put on
8 state land in a way in which we think and the State Land
9 Commissioner thinks it's in the best interests of the
10 trust.

11 So that's why I said it's not a NIMBY argument.
12 There was testimony throughout the entire hearing, or
13 actually throughout the committee hearings, that nobody
14 wanted it on their land. They didn't even want it 1,000
15 feet from their land. And I'm not saying that today. I'm
16 saying we're going to have it on your land, clearly. Look
17 at the map. There's no way we can get from A to B without
18 being on our land. But if we're going to bear the lion's
19 share, which we are, can we bear it in a way that we feel
20 that's beneficial to us. I think that is the crux of my
21 argument.

22 ACALJ NODES: Okay. You would agree that the
23 Line Siting Committee, as well as ultimately the
24 Commission, has to consider a whole host of factors and
25 balance those factors in rendering the decision as to

1 whether to approve the CEC, right?

2 MR. HAYS: That is correct, Judge Nodes, and I
3 think I even alluded to that in my brief. There's a
4 letter from the Game and Fish Department, which you'll
5 hear later from Mr. Birnbaum that it's just a letter and
6 not testimony. Although BLM's letter had a lot of weight
7 today, so maybe we should give as much weight to the Game
8 and Fish letter that talks about the geological -- or not
9 geological, but the various creatures and habitats and all
10 of that good stuff, the bugs and bunnies, that would be
11 affected on Highway 74. And I don't know if there was any
12 consideration, because no one discussed it during
13 deliberations.

14 ACALJ NODES: Okay. Commissioner Newman.

15 COM. NEWMAN: Yes. Thank you, Judge Nodes.

16 I just want a brief couple of questions with you.
17 As somebody said outside, this is almost like a Supreme
18 Court briefing but -- or a cross-examination, but I really
19 am just trying to get information.

20 If we go to the map that shows the corridor that
21 goes through the sections of state land, which is 30, 31,
22 32, and portions of 33.

23 Yeah, I think it's that one. Thank you.

24 Now, I'm just -- the reason why you saw my
25 quizzical look is I come from Cochise County. There's a

1 lot of state land, and sometimes we have right-of-way
2 issues with state land. And I have eight years of
3 experience with these issues and understand the very
4 nature of the State Land Department and how you really are
5 sort of a real estate company that's developing these
6 lands in the children's future interests, and I trust your
7 constitutional duty and I understand that totally.

8 But when you saw my eyebrows go up a little bit,
9 you know, there are places in Scottsdale, very, very
10 prominent places in Scottsdale, where there's, you know,
11 CAP water going through, huge utility lines going through.
12 They tried to place them at the same places, or at least
13 the future planners -- the past planners have tried to do
14 that, and I think that is sort of the duty of this
15 Commission is trying to figure out, you know, the best way
16 to go through.

17 But to say that -- my quizzical look to you is to
18 say, how is the value of five-sixths of Section 32, and
19 half of 31, and half of Section 32, and again five-sixths
20 of 30, and it looks like three-quarters of 33, why can't
21 you build on other sides of those lines? How does that --
22 it diminuzes the value of land a bit, but it's not as if
23 you can't build there. This is going to be one of the
24 fastest growing areas in Phoenix. That's my quizzical
25 look to you.

1 MR. HAYS: And Judge Nodes, Commissioner Newman,
2 I wasn't actually speaking about this portion. We
3 usually -- actually, throughout the entire thing, we went
4 basically neutral on anything other than Segment 3,
5 because Segment 3 is the one we talked about earlier.

6 At the end, I did say that State Land Department
7 has always had a policy that they like them on the edge of
8 their land or on section lines. So in regards to this,
9 remember that that meandering line is the State Route 74.

10 COM. NEWMAN: Yes.

11 MR. HAYS: So they've asked for 500 feet south of
12 State Route 74 to start the corridor. So there's going to
13 be 500 feet, 700 feet, then a power line. So we have just
14 said -- and I think we have been consistent with this --
15 is when there are lines sited, in general, on the edge of
16 the land, on section lines, or on major roads.

17 So in that regard to what we have on the screen
18 right now, it's only that 500 feet back that we were
19 opposed to. That was not the portion where I was talking
20 about where there's serious concerns about rendering it
21 unusable, because that's further over.

22 COM. NEWMAN: So that's okay with you?

23 MR. HAYS: We still have concerns because it's
24 not on a road, a section line, or the edge of our
25 property.

1 COM. NEWMAN: But it goes along the road.

2 MR. HAYS: That actually does not. That's
3 500 feet.

4 COM. NEWMAN: Okay. You can show it. I'm just
5 trying to do some fact gathering myself.

6 MR. HAYS: One of my problems is the thing here.
7 There you go.

8 See, this little buffer is 500 feet. So the
9 corridor won't start until 500 feet south of the road on
10 both sides of where that jog is right there. And State
11 Land Department has always had a long-standing policy that
12 if you're going to site power lines and we're okay with
13 them, put it on the section line, put it on the road, or
14 put it on the edge of our land.

15 But by putting it the way it is here, there's a
16 500-foot buffer because, candidly, there was testimony
17 that private property owners didn't even want it to where
18 they could see it. They wanted to make sure it was so far
19 away from their land that it wasn't even seen. So that's
20 why the 500 foot.

21 COM. NEWMAN: Okay. So that's the area that
22 you're talking about off of Joy Ranch Road over there,
23 north of Joy Ranch Road?

24 MR. HAYS: Right. This is where it's the
25 500-foot buffer. But the portion I was talking about, if

1 we could go to the certificated corridor, if you see right
2 here, this is all designated scenic corridor.

3 COM. NEWMAN: Yes.

4 MR. HAYS: So you can't have commercial. So you
5 have got half sections and less that go up here that you
6 can't do any commercial. You can only sell residential.
7 You can't sell this as residential when you've got
8 starting at zero feet on up between a power line and a
9 road. It makes it very, very, if not impossible, at least
10 that's the opinion of the State Land Commissioner, as to
11 what it does to their property right there.

12 COM. NEWMAN: So if we pushed that up to the
13 road, which would be opposed by many of the parties here,
14 I'm sure, or some of the parties here, would that be
15 better for you?

16 MR. HAYS: Judge Nodes, Commissioner Newman, I
17 would have to talk with my client and the State Land
18 Commissioner. It's clearly something we would be willing
19 to entertain. I know that early in the process we weren't
20 willing to entertain that, but I think as things change
21 and evolve, we're more willing to entertain ideas as they
22 come along.

23 COM. NEWMAN: Thank you. That's all of the
24 questions that I have.

25 ACALJ NODES: Mr. Hays, you have run past the

1 time, but I'll give you another minute to wrap it up,
2 unless there are further questions from the Commissioners.

3 MR. HAYS: You know, I think I just wanted to
4 briefly talk about Mr. Campbell's economic issue compared
5 to BLM.

6 Is it an economic issue in the sense of
7 determining the right-of-way? No. Is it an economic
8 issue in the sense of doing something that is in the best
9 interests of the trust and making sure that the State Land
10 Department and the State Land Commissioner have fulfilled
11 their duties as fiduciary to that trust? Yes.

12 So it's not as easy to say as we've just got to
13 figure out a price and let's do this and get a
14 right-of-way. I don't think it's that easy. I think it
15 is the Commissioner has to do what in his mind is
16 befitting of his fiduciary duty to the trust.

17 And that's all I have, unless there's other
18 questions.

19 ACALJ NODES: Thank you, Mr. Hays.

20 Next I would like to hear from Mr. Wakefield on
21 behalf of DLGC, et al.

22 MR. WAKEFIELD: Thank you, Judge Nodes,
23 Commissioners. Again, I'm Scott Wakefield of Ridenour,
24 Hienton, Kelhoffer & Lewis on behalf of DLGC and Lake
25 Pleasant Group.

1 I have asked APS's technical guy to put up one of
2 the slides that Mr. Campbell had been using so that I can
3 show you where our property is located and discuss some of
4 the issues that affect our property.

5 This is the map that shows the 193rd Avenue to
6 99th Avenue alignments. This is along State Route 74, and
7 DLGC and LPG own two parcels that they're developing, and
8 they are very small relative to the other developers who
9 are parties to this proceeding.

10 Those parcels are right here. This funny-shaped
11 thing just on the north side of State Route 74 adjacent to
12 Lake Pleasant Regional Park, and that parcel right there,
13 also adjacent to Lake Pleasant Regional Park just on the
14 east side of 115th Avenue.

15 As originally proposed by APS -- well, let me
16 point out a few other geographic things in the area.
17 First of all, both of our parcels are adjacent to Lake
18 Pleasant Regional Park, and there are environmental
19 aspects of the park that we want to take advantage of in
20 our development.

21 Because they are adjacent to the park, there
22 obviously will not be construction of other homes and
23 whatnot in these areas. In addition, there is a wash that
24 runs about down through here, and there's some riparian
25 areas around that wash. There is potential nesting

1 grounds for the bald eagle in that portion of Lake
2 Pleasant Regional Park. There are some eagles that nest
3 way up here in Lake Pleasant Regional Park off of this
4 map, but there's some potential feeding and nesting
5 grounds down there in the bottom, too.

6 When APS originally proposed the line, the
7 alternative that would run across State Route 74, it
8 proposed a corridor that would be on both the south and
9 the north side of State Route 74 in this area, including
10 essentially bisecting the DLGC property, because the
11 corridor would have run, I believe it was 2,000 feet north
12 of State Route 74.

13 Through the course of the proceeding, actually in
14 its rebuttal testimony, APS amended its corridor requests,
15 including eliminating the north side of State Route 74
16 from 115th Avenue to the east. So the corridor would not
17 include property that is actually DLGC property. It did
18 retain the south side of State Route 74, essentially just
19 across the highway from the DLGC parcel.

20 As I said, DLGC is a small developer relative to
21 the others in the proceeding. Between the two parcels,
22 there's about 220 acres. So much, much smaller than the
23 other developers, and, therefore, the impacts on the small
24 developer are going to be relatively larger than they
25 would be if you were to have visual impacts that are on

1 some of the other developers. And further, the plat for
2 DLGC's parcel was approved in 2007, so there is platted
3 development right here along State Route 74.

4 Ultimately, the Commission -- the committee
5 approved a route that you see on this, the crosshatched
6 area. And it included a 500-foot buffer between the
7 centerline of State Route 74 and where the corridor
8 begins. There was some testimony about the future
9 expansion of State Route 74 that could take some or all of
10 that 500-foot buffer.

11 In addition, DLGC provided some testimony,
12 including some visual simulations of what the terrain was
13 like in that area, and you'll see there's a few pages that
14 were attached to our brief that showed that simulation.
15 And if you put the -- we simulated what the line would
16 look like at various places within that corridor on the
17 south side of State Route 74.

18 And what we showed is that if you put it just
19 outside of what was the APS proposed corridor at that
20 point, if you went just outside of that, maybe as much as
21 another 500 feet, you could put it behind a ridge and you
22 would really be able to screen a lot of the impacts of
23 that line.

24 And so we asked for the committee to consider
25 approving a corridor that went 500 feet south of the

1 corridor that APS had proposed and had noticed. And the
2 committee, the Chairman of the committee ruled that that
3 was not a substantial change to the application, and,
4 therefore, indicated to the committee that they could
5 consider such a route. And they did, and, in fact, that's
6 why you see right here at the 115th Avenue alignment the
7 proposed -- or the CEC goes an additional 500 feet south
8 right there at 115th Avenue, all the way over to the 99th
9 Avenue alignment. And we appreciated that the committee
10 was able to include in the CEC that corridor.

11 We did file a request for review of the CEC
12 asking for a single, minor change to one of the
13 conditions, and that had to do with our request that when
14 APS goes to the State Land Department to seek actual
15 placement of a line, that they initially try to site that
16 line along that southernmost 500 feet to take advantage of
17 the screening opportunity. And the committee had rejected
18 or did not include that condition, and we are asking the
19 Commission to insert that condition. And you'll find the
20 necessary language for an amendment attached to our brief.

21 In the brief that we had filed last week, DLGC
22 had expressed support for APS's proposal of contingent
23 approval of wider or different route. DLGC would like to
24 withdraw that position at this point, and we do not have a
25 position on whether there should be a contingent approval

1 of another route. However, as we indicated in our brief,
2 if the Commission does want to approve a wider route, I
3 would like to remind you that this land here that impacts
4 us, the first 500 feet south of State Route 74, which APS
5 is asking to be included in this wider route that they are
6 seeking, this contingent route, that that is not BLM land,
7 and so the concerns that they have about BLM denying
8 approval are not raised by this parcel right here on the
9 east of the 115th Avenue alignment. And so to the extent
10 that you do find APS's proposal to be one that you would
11 like to see, there's no need to make those changes east of
12 115th Avenue.

13 ACALJ NODES: Mr. Wakefield, what you're
14 requesting in your request for review, does it affect any
15 of the other parties in this proceeding?

16 MR. WAKEFIELD: No, it doesn't. The entirety of
17 the request is to attempt to place the line in the most
18 southern portion between 115th Avenue and the 99th Avenue
19 alignment. That is entirely on State Land Department.
20 I'm sorry. So State Land Department is impacted by that
21 proposal, but none of the other parties other than State
22 Land are directly impacted by that proposal.

23 ACALJ NODES: Just the State Land Department, so
24 they don't really count.

25 MR. WAKEFIELD: No, I'm sorry. There was so much

1 discussion at the hearing about whether parties who
2 weren't in the room, potential people who weren't in the
3 room were impacted, I guess I just assumed that was what
4 the question was initially. No. State Land -- the
5 corridor that the CEC currently approves does include that
6 southernmost 500 feet. All we're asking is that APS
7 attempt first to site the line in that southernmost
8 500 feet when they go to the State Land Department.

9 If there's no further questions, that's all I
10 have.

11 ACALJ NODES: Thank you, Mr. Wakefield.

12 MR. WAKEFIELD: Thank you very much.

13 ACALJ NODES: Next up I would like to hear from
14 Staff. You're the last party that has filed for a request
15 for a review of the CEC, so Mr. Hains.

16 MR. HAINS: Yes, thank you, Your Honor. Just
17 bear with me here. I'm a little under the weather. With
18 your permission, I'll just stay at the table here.

19 ACALJ NODES: Oh, absolutely.

20 MR. HAINS: Before going into the prepared
21 statement that I had with regard to our position on the
22 matter, I noted that various factual assertions have been
23 made with regard to the application. Staff is prepared
24 with a position on these factual issues; however, I would
25 note that Staff is not the party here with the burden of

1 persuasion in this matter.

2 I had a question with respect to the process you
3 foresaw for this. Were you anticipating that APS would
4 have an opportunity to rebut factual assertions that have
5 been made by other commenters?

6 ACALJ NODES: Well, as long as it's -- my view is
7 always that the more -- within reason, the more said the
8 better as far as being able to counter people. But I'm
9 kind of the conduit here for the Commissioners, and so I
10 would anticipate APS would have a brief responsive
11 opportunity given that they are the Applicant.

12 MR. HAINS: Okay. Thank you for that
13 clarification. Otherwise, Staff was prepared to defer
14 what excess time was available to it over to APS to
15 respond to those comments.

16 ACALJ NODES: Okay.

17 MR. HAINS: Thank you.

18 Your Honor, Commissioners, Staff wanted to focus
19 just on three very narrow issues. We did believe that our
20 brief was very thorough -- fairly thorough on our
21 perspective on the merits of the application and the
22 issues that we raised within the hearing.

23 The first issue, that I would like to bring to
24 your attention, though, is not one that we did address in
25 the briefs. It's one that only came to light through the

1 filing of various briefs and in some of the comments that
2 have been made by at least two of the parties that have
3 been before you, and that's with respect to the potential
4 ability of remanding, for lack of a better word, the
5 matter back to the Line Siting Committee. And I assume
6 that that's been posited as an option because it probably
7 seems a more palatable option than simply denying the
8 matter outright.

9 Staff would note that it's our belief that the
10 statutory framework that governs the matter once it
11 proceeds from the committee does confine the path that the
12 matter can proceed from at that point. If you look at
13 A.R.S. 40-360.07, I believe it's Paragraph B, it is fairly
14 specific that it states that the Commission at that point
15 can either confirm, deny, or amend. It does not leave any
16 room for a remand or a return back to the committee, at
17 least as far as Staff can see. So we just wanted to make
18 you aware of that if you were considering that as an
19 option.

20 ACALJ NODES: But at the same time, denial would
21 effectively send it back, put the ball back in APS's court
22 as to how to proceed, whether to file an amended
23 application or start the whole process over. But your
24 point is that the Commission can't just simply say: We
25 want more factual information from the committee before we

1 make our decision.

2 MR. HAINS: You're absolutely correct. That's
3 our position.

4 Second, I hadn't planned on speaking about this
5 topic. This is something that we did mention inside the
6 brief. It was actually the final point we made in our
7 brief. But it seems that since one party does not seem to
8 agree with this position, it needs to be said again.

9 A procedural conference was held inside the
10 Coolidge line siting matter. This procedural conference
11 had in attendance all of the parties to the matter. This
12 was in a matter that was totally unrelated to this
13 proceeding. It involved the Chairman of the Line Siting
14 Committee, chief counsel for Staff, and the Applicant's
15 attorney in that proceeding, and it was held on
16 October 17. A procedural conference where a -- there
17 was -- let me back up. There actually was also in
18 attendance a court reporter, and a transcript was taken of
19 this procedural conference.

20 Staff continues to believe that it is wholly
21 unreasonable to believe that under those circumstances
22 that any notion of an ex parte communication can occur
23 when you have a formal procedural meeting with a court
24 reporter present, with all of the aspects and
25 accoutrements of a proceeding. It's not behind-closed-

1 doors discussion by one party. It's totally in compliance
2 with relevant ex parte rules that govern line siting
3 proceedings.

4 ACALJ NODES: It was the equivalent of a non-line
5 siting case where an Administrative Law Judge schedules a
6 procedural conference to discuss procedural matters with
7 all of the parties and it's transcribed. Is that what
8 you're saying?

9 MR. HAINS: Indeed.

10 ACALJ NODES: Okay. Thanks.

11 MR. HAINS: Thank you. And then, finally, the
12 last point that I wanted to make was that I anticipate
13 that the Commission and Your Honor may have a question
14 with regard to between Staff's support for the application
15 on the merits, and, on the other hand, our concerns that
16 we noted about the procedural irregularities that we
17 raised, as well as other parties having mentioned. What
18 is our final recommendation for this application as
19 between these two weighty considerations that seem to
20 gravitate in opposite directions.

21 With respect to the merits, Staff does support
22 the application. We believe that the record thoroughly
23 supports an approval of the project. However, not
24 speaking from Utilities Division's perspective, but rather
25 as the attorney who is representing Staff in these

1 proceedings, it's more difficult to provide a
2 recommendation to the Commission with respect to the
3 procedural issues, and that's because your decision, the
4 Commission's decision in this matter is going to be
5 ultimately based upon the degree of confidence that the
6 Commission has in this record and your perspective on
7 whether the public's interest and its public confidence in
8 the record has been preserved.

9 What the Commission's comfort level is with
10 respect to these issues is for the Commission to
11 determine. Staff can't tell you what your mind is on
12 these matters. We have evaluated the issue, and we do
13 believe that there's nothing that strictly speaking
14 precludes the Commission from reaching an approval of this
15 matter, in spite of the procedural issues that we brought
16 to light.

17 However, with respect to if you are seeking a
18 recommendation from us balancing these two perspectives,
19 we would say that if the Commission does not have
20 confidence in the record and does not believe that the
21 public confidence has been preserved in this record, then
22 it is within the Commission's authority to simply deny the
23 matter.

24 If the Commission does believe that you have your
25 confidence in the record, if you believe that the public

1 confidence in this record is intact, then Staff supports
2 approval of the project. Thank you.

3 ACALJ NODES: Commissioner Newman.

4 COM. NEWMAN: Thank you, Judge. I'm going to
5 tread lightly here, because I want to go to the issue
6 of -- that the judge was going to as to that procedural
7 matter and the unringing of the bell. We heard a lot of
8 discussion of that from one of the parties.

9 And as you know, I'm an attorney as well, and I'm
10 trying to figure this out. We can't remand it back. I
11 accept your recommendation about that, but -- and you
12 can't unring the bell from that trip. And that might
13 become an appellate issue, it might not, later on. And
14 it's hard for me to get into the minds and the shoes of
15 whoever would be appealing this.

16 But it seems to me just as sort of a common sense
17 matter that, you know, there may have been discussions in
18 that trip. You know, I don't know what happened, you
19 don't know what happened, but there is an alleged open
20 meeting violation problem.

21 And with regard to a cure, I guess we can -- you
22 know, the Judge in this matter can give us some advice.
23 You're sort of of two minds about it yourself. But may I
24 just say for the record, what if, just what if, a
25 hypothetical, what if all of the parties, again, the

1 Chairman of the line siting commission, all of the
2 parties, all of the intervenors, actually go on a ride of
3 what this line is now? Would that unring the bell?

4 MR. HAINS: Your Honor, Commissioner Newman, I'm
5 trying to wrap my brain around it, the question that you
6 have posited.

7 COM. NEWMAN: I'm trying to figure out what is in
8 the best interests of the people of Arizona.

9 MR. HAINS: First of all, I'm glad you noted
10 that, one, you can't remand -- or we believe that you
11 can't remand it under the statutory framework of the
12 application. I don't know if you're contemplating a
13 wholly new application if you have all of these parties
14 together on the same tour. Is that --

15 COM. NEWMAN: No. I'm just trying to wiggle
16 through this and trying to create fairness and justice,
17 and I'm getting a shaking of a "no" from lead counsel.

18 MR. HAINS: Well, I don't have any additional
19 perspective that would suggest that otherwise. It is our
20 belief that, you know, as I said, the statutory framework
21 does preclude the remand. It does suggest that if you do
22 have some dissatisfaction with the conduct of the tour or
23 any of these other issues, that the way to resolve that is
24 simply to deny this application and basically a do-over.

25 ACALJ NODES: And Commissioner Newman, if I could

1 just make an observation, I'm not trying to express any
2 legal advice, but it seems to me that based on what I have
3 read and heard, the only party that continues to object
4 and request that based on these procedural irregularities
5 alleged that -- it's only the one party that's continuing
6 to pursue that issue. And I don't think the suggestion
7 that you have made is going to in any way satisfy what
8 they claim needs to be done, which is why I tried to pin
9 them down on what is it exactly that you want to see
10 happen. And I thought he was pretty clear that he just --
11 he wants a do-over.

12 COM. NEWMAN: Yeah.

13 ACALJ NODES: And I think that encompasses just a
14 denial. I don't think any subsequent bus ride is going to
15 satisfy what he has expressed as his concern.

16 COM. PIERCE: That's a whole new genie in the
17 bottle.

18 COM. NEWMAN: No, I thank you for that, but I --
19 and I myself, you know, find it hard to believe that the
20 Line Siting Committee, you know, going and doing this,
21 looking at the property, it should have been properly
22 noticed. But that's, you know, that's another issue for
23 another day.

24 But I guess I just have to cogitate about whether
25 that rises to a level of a remand, but I just wanted to

1 lay it out on the table. And I did want to hear counsel's
2 opinion about it, and I appreciate you, Judge, giving your
3 opinion about it.

4 ACALJ NODES: And, you know, as Chairman Mayes
5 brought it up before, there was a prior case. Her and
6 Commissioner Pierce and some other Commissioners expressed
7 very real concerns over the allegations that were raised
8 in a similar fashion. And Chairman Mayes may want to even
9 weigh in on that again, but I think your concerns are
10 probably duly noted by all.

11 COM. NEWMAN: Thank you.

12 ACALJ NODES: Chairman Mayes.

13 CHMN. MAYES: Thank you, Your Honor.

14 Counsel, what distinguishes Staff's concerns
15 about the tour and the e-mail communications in this case
16 as opposed to the prior two cases where we had the same --
17 Staff had the same concerns.

18 MR. HAINS: Your Honor, Chairman Mayes, with
19 respect to the tour, in the one -- the prior case that you
20 allude to, the Coolidge application, there's a factual
21 distinction to the extent that there were actually
22 statements made on the record with respect to how the tour
23 was conducted, the protocols that were observed; actual
24 statements to the effect of comments made by the party to
25 the committee members and questions that were posed by the

1 committee members to the party, the Applicant, during the
2 tour, that were expressed on the record.

3 CHMN. MAYES: Do we know whether any statements
4 were made, or do we know one way or the other whether any
5 statements were made on this tour?

6 MR. HAINS: In this application, there's nothing.
7 It's speculation. We did afford the committee and the
8 Chairman an opportunity to make some statement as either
9 an avowal that nothing did occur or whatnot, and instead
10 the solution that the Chairman opted for was to simply
11 preclude consideration of the tour.

12 CHMN. MAYES: So nothing was said one way or the
13 other about that issue?

14 MR. HAINS: Correct.

15 CHMN. MAYES: Okay. Staff's concern with regard
16 to -- but Staff is satisfied that the Chairman's solution
17 is a solution. I mean, did that solution differ in any
18 material respect from the way we handled the other two
19 cases?

20 MR. HAINS: One, before I answer, I'll point out
21 that this is another question that you might want to pose
22 to APS as well for them to want to try and take a crack at
23 answering.

24 With respect to whether or not there was a
25 sufficient or adequate resolution to how the tour issue

1 was resolved and these open meeting concerns that were
2 raised with relation to the tour, it is the same
3 resolution that was adopted in these other instances. In
4 none of these cases, however, has Staff been asserting
5 that this is necessarily a fix. This is one way that it
6 could be resolved in terms of what is the Commission's
7 comfort level with respect to whether or not that's an
8 adequate resolution of the matter given the circumstances
9 posed by the particular application and level of interest
10 that's been raised by the parties with respect to the
11 issue.

12 CHMN. MAYES: Yeah, and I want to drill down on
13 that a little bit, because -- and I feel you trying to
14 wiggle out of this question, but that's okay. That's your
15 right, I guess.

16 But it seems to me there is a huge difference
17 between -- there's one huge difference between this case
18 and the other case, and that is that you have, what, 13
19 intervenors and it's a greatly contested case affecting a
20 great many, you know, real people. And, you know, when we
21 were discussing Solana, there really were not -- there
22 were no objections whatsoever to that case, and certainly
23 no -- and it didn't seem like there were any objections in
24 the Coolidge matter either.

25 So you would agree with me that is an enormous

1 difference between this case and those others.

2 MR. HAINS: Absolutely. And that's actually the
3 note that co-counsel here is tapping and trying to remind
4 me to make was that that was the distinction I was going
5 to get at, is that in those instances it was the same
6 resolution, but again, no party raised an objection to
7 that being an appropriate resolution of the matter. In
8 this application you do have a party expressing concerns
9 that this still is not a satisfactory resolution.

10 CHMN. MAYES: So I'm trying to understand why
11 you're punting on me. Because you're hitting the ball
12 back over the net when I'm trying to get you to tell this
13 Commission what Staff's view of that issue is. I mean,
14 was it resolved by virtue of the declaration that the tour
15 should be ignored?

16 Anyone who wants to answer.

17 MR. HAINS: I'll have to defer.

18 MS. WAGNER: Janet Wagner with the Legal
19 Division. Madam Chairman, Your Honor, members of the
20 Commission, I apologize for grabbing the mic.

21 You know, with all due respect, we're not trying
22 to punt at all. We've actually given this question a lot
23 of thought, because we knew, of course, that you would ask
24 us, what is your recommendation?

25 And quite honestly, this is it, and it doesn't

1 get any better than this, and I'm not trying to punt at
2 all. But here we have a situation where Staff absolutely
3 supports the application on the merits. We think this is
4 a good project. We think that it's in the public
5 interest. We think there are lots of reasons that support
6 building it.

7 Having said that, any case before the Commission
8 comes down to your confidence in the record before you,
9 because the five Commissioners have to vote and have to
10 make the decision on the record before you. Staff, of
11 course, gives you recommendations, but when it ultimately
12 comes down to this case, the determination of your
13 confidence in the record before you is a determination
14 that we cannot make.

15 As these issues unfolded in this case and in
16 others, we did our very best -- I'll say that again -- we
17 did our very best to raise them in a manner that was
18 courteous that would draw parties' attention to these
19 irregularities and put them in a position to evaluate them
20 and then determine how best to handle them. And that
21 really goes for all of the parties to the proceeding,
22 including the Applicant, whose burden it is to push this
23 application forward, and to the presiding officer and the
24 members of the committee.

25 I will tell you that it's my perception that when

1 these issues were raised, other parties remained
2 absolutely silent, and the committee members and the
3 presiding officer -- again, my perception -- were
4 unresponsive. It is at the committee level where remedies
5 or other attempted cures can be affected in this manner.
6 And again, I will say we did our very best to raise these
7 in an appropriate and courteous manner to afford the
8 parties and the committee an opportunity to take advantage
9 of that.

10 Now, having said that, again, I think what you
11 have to weigh is your confidence in this record. If you
12 conclude that the record is fundamentally fair, that
13 appropriate process was accorded to the parties and to the
14 public, then I think that bolsters the substantial,
15 frankly, evidence on this record about the merits of this
16 project, and I think that, then, would be an aid to you.
17 And really, if you feel that you have confidence in that
18 record, there would be no reason not to approve the
19 application.

20 If, on the other hand, when you evaluate this
21 record and the comments of the various parties, including
22 the party who is complaining about the procedural
23 irregularities, and you conclude that you lack confidence
24 in this record, again, as to its fundamental fairness, or
25 if you conclude that the public may lack confidence in

1 this record -- because, after all, you're talking about a
2 transmission line that is not going to be unsubstantial --
3 I think in that circumstance the balance tips separately.

4 It's, unfortunately, not a recommendation that we
5 are particularly well-suited to make to you as we were
6 litigants in the case before you. Raising these issues,
7 attempting to fix them as best we could, again, my
8 perception, often at times without a great deal of
9 assistance from other parties or the committee itself.

10 So for us to make a recommendation that what we
11 did is absolutely satisfactory, you know, I suppose I can
12 say that. I can tell you we did the best we could. I can
13 tell you we reviewed the case law and the rules and
14 evaluated those and come to the conclusion that there were
15 no procedural irregularities here so egregious as to
16 preclude your approving it. That's essentially the
17 conclusion we came to in the briefs.

18 I can say that. That doesn't, unfortunately,
19 substitute for the determination that only you can make,
20 and that is: What is the degree of your confidence in
21 this record as to whether or not you think it supports
22 approval, or whether or not you think that it is such
23 as -- well, as would lead you to deny it.

24 I'm not trying to dodge the question at all. I
25 hope that was helpful.

1 CHMN. MAYES: No, and I apologize for even
2 suggesting such a thing. You know, I was just trying to
3 clarify, you know, what Staff's view is, and I think that
4 you presented that very well, Ms. Wagner.

5 And so basically what you're telling the
6 Commission is that there were procedural irregularities.
7 Staff did everything that it could to address those issues
8 during the pendency of the case, but Staff believes that
9 the vote to disregard the tour was one method of
10 addressing the issue, and that overall the merits of the
11 case are such that Staff believes that the Commission
12 should move forward.

13 MS. WAGNER: Madam Chair, members of the
14 Commission, yes. I would agree that disregarding the
15 tour, we thought that was one acceptable way to deal with
16 that matter. We would also note that, to the best of my
17 knowledge, no party objected to that or asked for a
18 different treatment or suggested a different treatment.
19 And that happened -- this was a 16-day hearing. That
20 happened on day five. There was plenty of time after that
21 day of the hearing for parties to, you know, to raise that
22 again if they were uncomfortable with it.

23 CHMN. MAYES: Okay. And then on the e-mail
24 communications -- and again, I do want to thank Staff for
25 being the one that raised this issue and insisted that

1 these e-mails be docketed and made public. And as with
2 the last two cases, I am astonished that this kind of
3 substantive e-mailing was going on behind the scenes. It
4 just was not acceptable.

5 And in reading your brief, you state that Staff
6 believes that because those e-mails were filed before the
7 case was concluded, that the parties had sufficient notice
8 of their content for that not to be a fatal flaw; is that
9 right?

10 MS. WAGNER: Madam Chair, members of the
11 Commission, yes, we think that's an appropriate way to
12 view that. And again, I would note that if any party or
13 committee member objected to that as a way to address
14 those issues during the proceedings before the committee,
15 I'm unaware of it.

16 CHMN. MAYES: Okay. Thank you, Your Honor.

17 ACALJ NODES: Thank you.

18 Mr. Hains, are you finished with whatever
19 statement that you wanted to make?

20 MR. HAINS: Yes, Your Honor, it does appear so.

21 ACALJ NODES: And Ms. Wagner.

22 Chairman Mayes.

23 CHMN. MAYES: Well, I did have a question for
24 Staff on the issue of renewables and need.

25 Mr. Hains, Mr. Williamson did put on some

1 testimony, as I understand it, with regard to renewables
2 in Arizona and the company's need to acquire more
3 renewables in the future. What was the depth of that
4 testimony?

5 MR. HAINS: Your Honor, Chairman Mayes, when
6 Mr. Williamson -- what he prepared in his filed testimony,
7 his presentation, he did allude to that there were
8 substantial renewable projects that were in various stages
9 of planning that are in the southwest region and
10 anticipated to plug in through the Palo Verde hub.

11 I don't recall him actually mentioning them
12 specifically by name. There were many of them, and I
13 think that has been expressed in the conduct of the
14 hearing and on the record that there were many projects.
15 The only specific renewable project that I remember being
16 pointed out by name was the Solana project.

17 CHMN. MAYES: Okay. Now, is there record
18 evidence that this link of this line, or this line, is
19 needed in order to get the renewable energy into the
20 Phoenix load, or is there evidence that without the --
21 that if we don't have the line, we won't have adequate,
22 you know, import capacity and transmission capacity to get
23 renewables? I'm trying to get a sense for exactly how the
24 line would be needed to inject renewables into the Phoenix
25 load pocket.

1 MR. HAINS: Yes. One of the -- APS may correct
2 me if I say something that they may disagree with here,
3 but from our perspective there was one approach to it that
4 was taken was a reference to the biennial transmission
5 assessment with regard to anticipated generation or
6 interconnecting through the Palo Verde hub, and how much
7 transmission is available vis-à-vis the amount of
8 generation that's there.

9 And one thing that we noted in our brief was that
10 the BTA -- and this was also noted in the testimony -- the
11 BTA did not contemplate any of those renewable projects in
12 its estimations of what generation was going to be coming
13 in through the Palo Verde hub. And so that does give rise
14 to various positions that have been taken with respect to
15 an excess of transmission -- or import, transfer, export
16 capability, as it were, from the Palo Verde hub.

17 One of the requirements, as you may be aware of,
18 under the REST rules is the ability to actually show that
19 it's at least possible to physically move renewable
20 generation from the point of generation to the end
21 customer.

22 CHMN. MAYES: The deliverability requirement.

23 MR. HAINS: Correct. And that is something that
24 Mr. Williamson did testify to and pointed out as one of
25 the bases for the need evaluation that Staff concluded was

1 there.

2 CHMN. MAYES: Was there testimony -- and I would
3 like APS to respond to these questions as well.

4 Was there testimony about there being need for
5 the line as a result of additional solar generation
6 planned at the Palo Verde hub or around the Palo Verde
7 hub?

8 MR. HAINS: My recollection of the testimony was
9 that it was not specific to a particular vicinity. I
10 think it was expressed as being southwest of Phoenix, and
11 that was about the level that it was approached.

12 CHMN. MAYES: Okay. Thank you.

13 ACALJ NODES: So, Mr. Hains, you believe that the
14 record supports the need aspect of the project as it's
15 currently sited? Well, let's just say the need as has
16 been proposed by APS.

17 MR. HAINS: Your Honor, yes. Staff does believe
18 that there has been a need shown for both the 500 and the
19 230 components of this project. There were many different
20 need bases for the 500kV component.

21 One, it closes the loop, and that has been
22 discussed. It improves by 600 megawatts the transfer
23 capability out of the Palo Verde hub. It improves APS's
24 ability to access renewables generated. I mean, and it
25 also proves reliability interests. There's a number of

1 means upon -- legs upon which to stand a need statement
2 for this case.

3 ACALJ NODES: Any further questions for Staff
4 counsel?

5 (No response.)

6 ACALJ NODES: Okay. Thank you, Mr. Hains,
7 Ms. Wagner.

8 All right. I think we're going to break for
9 today, and let me just kind of give you the rundown of
10 parties for tomorrow.

11 Yes, sir. We're finished for today, so thank
12 you.

13 MR. NADEAU: I appreciate it. I'm requesting
14 just a moment to say something.

15 ACALJ NODES: I understand you're requesting it,
16 but we're finished for the day. Thank you.

17 MR. NADEAU: Okay.

18 ACALJ NODES: All right. Tomorrow we will start
19 out with the Peoria entities, Mr. Robertson's group, and
20 individually each will have 10 minutes. And then followed
21 by the City of Surprise, then the Quintero entities, and
22 then we have Elliott Homes and the Warrick 160, LP 5000
23 group. And that's the order we'll go in tomorrow for the
24 remainder of the oral argument.

25 And Mr. Campbell, do you have something?

1 MR. CAMPBELL: Your Honor, then I take it, based
2 on your response to Staff, after that APS should be
3 prepared to do a brief rebuttal?

4 ACALJ NODES: Yes, I think so. And everybody's
5 positions will be subject to any questions that the
6 Commissioners may have. It may be that Commissioners say,
7 well, now that I have heard X party, I want to hear again
8 from somebody who said something else. So we'll keep it
9 somewhat fluid in that regard. The object, obviously, is
10 to get the Commissioners' questions answered to the best
11 of your ability no matter where they come from.

12 MR. BIRNBAUM: Your Honor, Gary Birnbaum. Your
13 Honor, you did not mention Surprise Grand Vista, and we
14 would like to be heard tomorrow as well.

15 ACALJ NODES: Oh, yes, you're right. And I
16 apologize. You will follow Quintero.

17 MR. BIRNBAUM: Very good. Thank you.

18 ACALJ NODES: I'm sorry for that oversight.

19 MS. ALWARD: Judge Nodes, before you recess,
20 would you say on the record, so people listening will
21 know, what time we're starting tomorrow?

22 ACALJ NODES: I apologize, but I think it's at
23 10:00 that it's noticed for. 9:30? Oh, 9:00? Who did
24 that?

25 MR. CAMPBELL: Let me check.

1 ACALJ NODES: Let me look at the procedural
2 order. No. It says 10:00. The calendar may say 9:00,
3 but the procedural order said 10:00.

4 MS. ALWARD: I'm glad I asked the question, so we
5 all know what time to be here.

6 ACALJ NODES: Regardless, we're going to resume
7 at 10:00 tomorrow morning, and we will continue with the
8 oral arguments. Thank you very much.

9 (The Special Open Meeting/Oral Arguments recessed
10 at 5:00 p.m.)

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.

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4 I, MICHELE E. BALMER, Certified Reporter
5 No. 50489 for the State of Arizona, do hereby certify that
6 the foregoing printed pages constitute a full, true and
7 accurate transcript of the proceedings had in the
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11 WITNESS my hand this 24th day of February, 2009.

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