

WS-01303A-02-0867, etc. Prehea



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1 BEFORE THE ARIZONA CORPORATION COMMISSION

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3 IN THE MATTER OF THE APPLICATION) DOCKET NOS.
 4 OF ARIZONA-AMERICAN WATER COMPANY,) WS-01303A-02-0867
 5 INC., AN ARIZONA CORPORATION, FOR) WS-01303A-02-0868
 6 A DETERMINATION OF THE CURRENT) WS-01303A-02-0869
 7 FAIR VALUE OF ITS UTILITY PLANT) WS-01303A-02-0870
 8 AND PROPERTY AND FOR INCREASES IN) W-01303A-02-0908
 9 ITS RATES AND CHARGES BASED)
 10 THEREON FOR UTILITY SERVICE BY ITS)
 11 SUN CITY WEST WATER AND WASTEWATER)
 12 DISTRICTS.)

8

9 AND RELATED MATTERS.) **PREHEARING**
) **CONFERENCE**

10

11 At: Phoenix, Arizona

12 Date: December 1, 2003

13 Filed: **DEC 19 2003**

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16 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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 20 Court Reporting
 Suite Three
 2627 North Third Street
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22 By: MICHELE E. BALMER, RPR
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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, 1200 West
4 Washington Street, Phoenix, Arizona, commencing at
5 10:00 a.m. on the 1st day of December, 2003.

6
7 BEFORE: TEENA WOLFE, Administrative Law Judge

8 APPEARANCES:

9 For the Arizona Corporation Commission Staff:

10 MR. TIMOTHY J. SABO
11 MR. GARY HORTON
12 MR. JASON GELLMAN
13 Staff Attorneys, Legal Division
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 For Arizona-American Water Company:

17 FENNEMORE CRAIG, P.C.
18 By: Mr. Norman D. James
19 Mr. Jay L. Shapiro
20 Suite 2600
21 3003 North Central Avenue
22 Phoenix, Arizona 85012

23 For Sun Health Corporation:

24 JENNINGS, STROUSS & SALMON, P.L.C.
25 By: Mr. Robert Taylor
Mr. Kenneth Sundlof
201 East Washington Street, 11th Floor
Phoenix, Arizona 85004

1 APPEARANCE (Continued):

2 For the Residential Utility Consumer Office:

3 RESIDENTIAL UTILITY CONSUMER OFFICE
4 By: Mr. Daniel Pozefsky
5 Suite 200
6 1110 West Washington Street
7 Phoenix, Arizona 85007

8 For the Town of Youngtown:

9 MARTINEZ & CURTIS
10 By: Mr. Paul R. Michaud
11 2712 North 7th Street
12 Phoenix, Arizona 85006

13 MICHELE E. BALMER
14 Certified Court Reporter
15 Certificate No. 50489

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1 ALJ WOLFE: Good morning, and welcome to the
2 Arizona Corporation Commission. We're here today for
3 the procedural conference in the consolidated Docket
4 Nos. WS-01303A-02-0867, et al., in the matter of the
5 application of Arizona-American Water Company, Inc., an
6 Arizona corporation, for a determination of the current
7 fair value of its utility plant and property, and for
8 increases in its rates and charges based thereon for
9 utility service by several of its divisions, the Sun
10 City West water and wastewater districts, the Sun City
11 water and wastewater districts, the Mohave water
12 district and Havasu water District, Anthem water
13 district, Agua Fria water district, and Anthem/Agua
14 Fria wastewater district, and also Tubac water
15 district.

16 My name is Teena Wolfe, and I'm the
17 Administrative Law Judge assigned to this matter.

18 We'll begin this morning by taking appearances,
19 beginning with the Applicant.

20 MR. JAMES: Thank you, Your Honor. Norm James
21 and Jay Shapiro for the Applicant Arizona-American
22 Water Company.

23 ALJ WOLFE: Okay. We'll just go around the
24 table here.

25 MR. SUNDLOF: Kenneth Sundlof from Jennings,

1 Strouss & Salmon representing Sun Health Corporation.
2 With me is Robert Taylor, also from Jennings, Strouss &
3 Salmon.

4 MR. MICHAUD: Paul Michaud with the law firm of
5 Martinez & Curtis on behalf of the Town of Youngtown.

6 MR. POZEFSKY: Good morning, Your Honor.
7 Daniel Pozefsky on behalf of RUCO.

8 ALJ WOLFE: Are any of the intervenors here?
9 The customer intervenors present this morning?

10 MR. SHAPIRO: I don't see any, Your Honor.

11 MS. DIAZ CORTEZ: The one customer, he had to
12 be out of town. And he had told me he was going to
13 contact you ahead of time. He hasn't or --

14 ALJ WOLFE: Ms. Diaz Cortez, are you talking
15 about Mr. Grimmelmann?

16 MS. DIAZ CORTEZ: Yes.

17 ALJ WOLFE: I'll address that in a moment.
18 And for Staff?

19 MR. SABO: Your Honor, also, I spoke to
20 Mr. Buric, the attorney for Fiesta RV. And he
21 indicated they were going to send somebody over, but I
22 don't see anybody here. So I'm not sure what their
23 intentions are.

24 ALJ WOLFE: Thank you, Mr. Sabo.

25 And for RUCO, do you want to go ahead and enter

1 your appearance. Did you already?

2 MR. POZEFSKY: Yes.

3 ALJ WOLFE: Oh, you did. Sorry. Okay.

4 And Staff?

5 MR. SABO: Tim Sabo, Gary Horton, and Jason
6 Gellman for Staff.

7 ALJ WOLFE: Okay. As Ms. Diaz Cortez brought
8 up, Frank Grimmelmann did say that he was not going to
9 be able to make it this morning, but he was hoping to
10 get in touch with some of the parties to coordinate his
11 date of giving his testimony. I believe that he'll be
12 here on Thursday and plans to give an opening
13 statement.

14 Just some housekeeping matters. The hearing
15 will commence at 10:00 on Thursday, December 4. And
16 we'll be taking public comment and opening statements
17 of the parties if they desire to make opening
18 statements.

19 Thursday we will be adjourning at 1:00 p.m. due
20 to a Special Open Meeting of the Commission on some
21 Qwest matters that is scheduled to take place at
22 1:30 p.m. And for the remainder of the hearing we will
23 convene at 9:00 a.m. each morning.

24 The hearing will continue daily through
25 December 12, and then we'll reconvene on December 22

1 through the 24, unless we finish prior to that date.
2 If we don't finish, then we'll just see how it goes.
3 Hopefully we'll finish by that time.

4 Let's go through a list of the witnesses that
5 have prefiled testimony just to make sure that I have
6 it all.

7 For Arizona-American I have the testimony --
8 and I'm not going to go through whether it's rejoinder
9 or rebuttal or direct. Dave Stephenson, Frederick
10 Schneider, Ray Jones, Thomas Bourassa, Thomas Zepp, and
11 Ronald Kozoman.

12 Is that correct, Mr. James?

13 MR. JAMES: There are a few that are missing.

14 ALJ WOLFE: Okay. Which ones would that be?

15 MR. JAMES: Let me just go through -- in fact,
16 I actually have a list of exhibits that I'm happy to
17 pass out to the parties if that's helpful.

18 But our witnesses are Mr. Bourassa. Mr. Akine,
19 I think that was one you missed, Your Honor. He only
20 filed direct testimony.

21 ALJ WOLFE: Okay.

22 MR. JAMES: Mr. Stout. He only filed rebuttal
23 testimony. Mr. Turner, again, only filed direct
24 testimony. Mr. Jones you mentioned. Mr. Schneider.

25 And just so it's clear for the record, Your

1 Honor, Mr. Schneider is adopting the direct testimony
2 of Mr. Kuta who left the company's employ a short time
3 after his direct testimony was filed.

4 Dr. Zepp, who testifies on cost of equity,
5 Mr. Kozoman, and Mr. Stephenson.

6 ALJ WOLFE: And Mr. James, is that the order of
7 witnesses that you're proposing?

8 MR. JAMES: Generally, yes, with one or two
9 notes. If you would like me to go through that, I can.
10 Mr. Turner, who is in California, does need to testify
11 Friday. So we may have to move -- we may have to move
12 Mr. Turner ahead of some of the other witnesses.
13 Likewise, we would like to try to have Mr. Jones
14 testify on Friday as well.

15 And we had had some discussions with the
16 parties about not having Mr. Stout testify at all, as
17 well as some of the Staff engineering witnesses,
18 because no one filed anything in response to
19 Mr. Stout's rebuttal testimony.

20 So those are issues I assume we're going to
21 talk about today, but generally that is the order of
22 the witnesses. And Dr. Zepp, who is in Oregon, we
23 would like to have him testify on Monday, Your Honor,
24 because he's got to travel in from Salem, Oregon. And
25 we've got him scheduled to come in on Sunday, and he'll

1 be available to testify Monday morning.

2 ALJ WOLFE: Okay.

3 MR. JAMES: Or whenever on Monday.

4 MR. SABO: Mr. James, can I get that order
5 again if possible?

6 MR. JAMES: Yes. Well, Your Honor, let me --
7 it might be helpful. I brought some things to pass
8 out. I thought it might be helpful.

9 ALJ WOLFE: We would appreciate that. That's
10 great. Thank you.

11 MR. JAMES: Your Honor, just for the record,
12 the list of witnesses in terms of Arizona-American
13 tracks the order that I just gave you. Obviously, I
14 don't know the order of the other parties or the other
15 witnesses or anything. That was just a list that we
16 had put together just to try to get organized.

17 The list of exhibits was just a checklist. I
18 thought it might actually be helpful to pass this out,
19 because there is a lot of prefilled testimony here.
20 And, again, we were trying to just make a list
21 ourselves to keep organized, and I thought it might be
22 helpful for the other parties to have that as well, as
23 well as yourself.

24 ALJ WOLFE: Thank you. Obviously, Mr. James,
25 since we have a shortened day on Thursday, that may

1 affect whether the witnesses could go in this order if
2 you want Mr. Turner and Mr. Jones to testify on Friday.

3 MR. JAMES: Well, we understand that, Your
4 Honor. And, again, we were hoping that we could agree
5 today that Mr. Stout wouldn't need to testify at all.
6 And Mr. Akine only filed direct testimony on a very
7 narrow issue, and he can to some extent float.

8 And if we have to, we can push Mr. Jones into
9 Monday as well. Mr. Turner and Mr. Zepp really are our
10 key witnesses who are out of state and have travel
11 commitments and similar constraints. So the order here
12 is approximate. I will try to stick to the order, but
13 it may change slightly.

14 ALJ WOLFE: Mr. Sundlof, do you have any
15 objection to the proposal by Mr. James?

16 MR. SUNDLOF: Your Honor, no objection.

17 ALJ WOLFE: And are you planning to have just
18 the one witness?

19 MR. SUNDLOF: Yes. We have one witness, Bill
20 Sellner. And I would like at the appropriate time to
21 ask if anybody plans to cross-examine him.

22 ALJ WOLFE: Okay. We will do that.

23 Mr. Michaud, let's just go with the
24 Arizona-American first. Mr. Michaud, do you have any
25 objections to the order of witnesses as being proposed

1 by Mr. James?

2 MR. MICHAUD: Your Honor, no.

3 ALJ WOLFE: And do you have any objection to
4 Mr. Stout not appearing? Do you have cross-examination
5 for Mr. Stout?

6 MR. MICHAUD: Your Honor, we don't object. We
7 don't have any cross-examination for that witness.

8 ALJ WOLFE: Mr. Sundlof, did you have
9 cross-examination for Mr. Stout?

10 MR. SUNDLOF: No. We do not.

11 ALJ WOLFE: Mr. Pozefsky, first, do you have
12 cross-examination for Mr. Stout?

13 MR. POZEFSKY: No, I don't, Your Honor.

14 ALJ WOLFE: Okay. And the order of witnesses,
15 do you have a problem with that?

16 MR. POZEFSKY: I have no objection and no
17 problem with that.

18 ALJ WOLFE: Mr. Sabo?

19 MR. SABO: We have no objection to the order of
20 witnesses, nor do we wish to cross-examine Mr. Stout.

21 ALJ WOLFE: Okay. Mr. James, I don't know if
22 some of the pro se intervenors are going to want to
23 cross-examine Mr. Stout. I suppose if they do we can
24 address that on Thursday and arrange a time for
25 Mr. Stout to be available.

1 Is that acceptable?

2 MR. JAMES: Yeah. That's fine. I don't --
3 again, because of his -- his testimony is so narrow
4 that no one addressed it. If we do have to have him
5 testify, we would like to do it telephonically, if
6 that's possible.

7 ALJ WOLFE: I wouldn't have any problem with
8 that.

9 MR. JAMES: Okay. Thank you.

10 ALJ WOLFE: Since no one has shown up today
11 requesting his presence.

12 All right. Then do you want to have
13 Mr. Bourassa testify on Friday morning then? I don't
14 see much possibility of having any testimony on
15 Thursday. I think we'll be, for all intents and
16 purposes, starting on Friday with testimony.

17 So do you want Mr. Bourassa to start, or do you
18 want to have Mr. Turner start so that you can be
19 assured of getting through there?

20 MR. JAMES: That's a good question. I hadn't
21 focused on that with the change, Your Honor.

22 ALJ WOLFE: We can wait a little bit and
23 address that.

24 MR. JAMES: Just so all the other parties know,
25 we certainly intend to call those two witnesses on

1 Friday. And I'm not sure what order. In fact, I'm not
2 sure -- I also, frankly, need to coordinate with
3 Mr. Turner. But if you'll let me -- if you'll give me
4 a day or two to figure that out, I'll let everybody
5 know.

6 ALJ WOLFE: So Bourassa, Turner, and Jones is
7 what we can count on for sure on Friday.

8 MR. JAMES: Yes, Your Honor.

9 ALJ WOLFE: Okay. And then Mr. Akine, he's in
10 town?

11 MR. JAMES: Yes, he is.

12 ALJ WOLFE: Okay.

13 MR. JAMES: He's actually here today. So with
14 some of the witnesses we have more flexibility. And
15 then I can't speak for other parties, but I doubt if
16 Mr. Akine is going to be a witness that's going to be
17 cross-examined at length either. So I think we can fit
18 him in more easily.

19 ALJ WOLFE: And then Dr. Zepp on Monday, and
20 Mr. Schneider, Kozoman, and Stephenson, in that order,
21 on Monday if we can get them. And if not, Tuesday.

22 MR. JAMES: Yes, Your Honor.

23 ALJ WOLFE: Has everybody got that pretty much
24 for preparation purposes?

25 MR. POZEFSKY: Your Honor, if you can just

1 repeat that one more time.

2 ALJ WOLFE: Sure. On Friday we'll have
3 Arizona-American witnesses Thomas Bourassa, Kent
4 Turner, and Ray Jones. Ray Jones may go over into
5 Monday. It depends on how much cross people have for
6 these witnesses, but this is tentatively.

7 And then Dr. Zepp won't be available until
8 Monday, but we will put him on on Monday. And then the
9 following order for the remaining witnesses who will be
10 testifying, Frederick Schneider, Ronald Kozoman, and
11 David Stephenson, in that order.

12 MR. POZEFSKY: Okay.

13 ALJ WOLFE: Any questions or concerns with that
14 from any of the parties?

15 (No response.)

16 ALJ WOLFE: Okay. And Mr. Young is not
17 present. This would be the order that I would
18 anticipate for the intervenors if they wish to put on
19 testimony and be cross-examined, or if parties have
20 cross-examination for them. I don't believe he filed
21 testimony, Carlton Young.

22 Frank Grimmelmann did file testimony. He would
23 be going next. SCTA, I didn't note that there was any
24 testimony filed.

25 And City of Youngtown -- the Town of Youngtown.

1 Excuse me. Mr. Michaud, I have Michael Burton, Andrew
2 Burnham, and Jesse Mendez.

3 MR. MICHAUD: Yes, Your Honor.

4 ALJ WOLFE: Are they going to be -- they did
5 file testimony; correct?

6 MR. MICHAUD: Yeah. They will be testifying.
7 I think at this point the Town would request that the
8 Town's three witnesses be put up as a panel to be
9 cross-examined as a panel.

10 And because two of our witnesses are from
11 Florida and there is some time -- some travel
12 constraints and some other scheduling conflicts, we
13 would request that they go on a date certain because
14 they need to fly out here. And our preferred dates
15 would be Friday the 12th or the 22nd or 23rd.

16 ALJ WOLFE: And this is all three of them are
17 from out of town? Isn't one local?

18 MR. MICHAUD: Mendez is in town. He could
19 theoretically testify at any date, but the other two
20 witnesses are from Florida.

21 ALJ WOLFE: Okay.

22 MR. MICHAUD: Again, as a matter of efficiency,
23 we think that if they could be cross-examined as a
24 panel, that may save time for everybody.

25 ALJ WOLFE: Do any of the parties object to

1 these witnesses being cross-examined as a panel?

2 MR. JAMES: Well, I think, yes, I think we do,
3 Your Honor. I think panels can be used under limited
4 circumstances where the witnesses' testimony overlaps
5 to a great extent. In this particular case, I don't
6 think the Youngtown witnesses' testimony really does
7 overlap. They cover completely different topics.

8 And using a panel would -- well, it would be
9 akin to us putting up five of our witnesses and just
10 saying you can cross-examine them as a panel, and then
11 anybody gets to, I guess, field the question. Frankly,
12 I've never been in a rate case with a panel.

13 I assume what that means is if I ask a question
14 of the panel, whoever wants to answer the question gets
15 to answer it regardless of whether that particular
16 witness submitted testimony.

17 And, again, if you have a case -- the Staff
18 engineering witnesses are a good example in this case.
19 They looked at different systems, but the position they
20 took on a lot of issues is identical. We don't have
21 that here. We have one witness testifying on sort of
22 income statement issues and somebody else talking about
23 rate base issues. Mr. Mendez, who is the Town Manager,
24 talking about, you know, fire flow issues. So they're
25 completely different issues.

1 So having a panel I don't think makes a lot of
2 sense in that case. Again, I'm not trying to drag the
3 hearing out. I just don't know how that would work
4 where you have witnesses providing testimony on
5 completely different topics now testifying at the same
6 time.

7 MR. POZEFSKY: Your Honor, we also would join
8 in that objection and just to be consistent. Because
9 the parties had talked preliminarily about perhaps
10 methods to streamline the process or make it a little
11 bit more efficient. And I know there's been some
12 discord on a couple of the ideas.

13 Although I don't intend to ask much of the
14 Youngtown's witnesses, I do object to the idea of a
15 panel for the reasons Mr. James has specified.

16 And also I think it can lead to inefficiencies
17 if an individual has submitted some testimony ahead of
18 time, and I wanted to prepare a line of cross for that
19 individual, I think it would be inefficient to throw a
20 question out and have anyone else answer that if I'm
21 specifically, you know, trying to be directing my
22 questioning.

23 So I think the process itself is not really
24 necessarily efficient, and I would object to it.

25 ALJ WOLFE: Mr. Sundlof, does Sun Health have a

1 position?

2 MR. SUNDLOF: We have no position, Your Honor.

3 ALJ WOLFE: Okay. Mr. Sabo.

4 MR. SABO: Thank you, Your Honor. Staff does
5 support the use of panels where parties are willing to
6 use it for their own witnesses, and we intend to offer
7 two panels, which we'll get to in due course.

8 Generally speaking, you know, panels are
9 somewhat rare here, but they have been done. It's
10 certainly -- you know, before the Commission's Line
11 Siting Committee, they've become the standard way of
12 presenting testimony there. So I don't think that
13 there's any due process or other issues with using a
14 panel for an administrative hearing like this.

15 I do believe that there can be some efficiency
16 and saving of time. In particular, it's often the case
17 that one witness -- you will ask a question of one
18 witness and the witness will defer and point to another
19 witness. In the recent Arizona Water case, there was a
20 lot of that on behalf of Staff. There was a number of
21 Staff witnesses that did that. There was company
22 witnesses that did that.

23 So by having them all there at the same time,
24 that can just minimize that problem because the
25 appropriate person that knows the answer can go ahead

1 and give the answer rather than deferring lots of
2 questions or facing the possibility of recalling a
3 witness.

4 ALJ WOLFE: Okay. Mr. Michaud.

5 MR. MICHAUD: Your Honor, if I may respond to
6 company counsel. The Town's witness Burton and Burnham
7 both testified essentially to the same rate base type
8 issues. Burnham simply -- his testimony centered on
9 the supporting schedules, and both Burton and Mendez
10 testified to fire flow. So their testimony does --
11 they do interrelate. They do cover some of the same
12 issues.

13 And I think this Commission set a precedent in
14 the Track B hearing where they did have panel
15 witnesses, and I think it went very well there. And I
16 think as a matter of efficiency, I think you should
17 strongly consider that.

18 MR. POZEFSKY: Your Honor, may I make a
19 suggestion at least as to your ruling?

20 ALJ WOLFE: Mr. Pozefsky.

21 MR. POZEFSKY: Thank you. Perhaps I could
22 suggest that before you do rule on that particular
23 issue, along the lines of this idea of efficiency,
24 there have been some other proposals that I intend to
25 make, at least one other. And I think it may be worth

1 our while -- your while if you at least listen to
2 everything. And if the idea is to make the process
3 more efficient, then maybe make a decision based on all
4 of the different things thrown out as opposed to one at
5 a time.

6 ALJ WOLFE: Well, based on Staff's comments,
7 I'm just going to wait and see if anybody else is going
8 to propose a panel before I make a decision on that.
9 So we will go through that. Thank you.

10 Okay. And actually, RUCO, I have your four
11 witnesses as William Rigsby, Marylee Diaz Cortez,
12 Timothy Coley, and Rodney Moore.

13 MR. POZEFSKY: That's correct, Your Honor.

14 ALJ WOLFE: And what order do you propose to
15 have your witnesses go in?

16 MR. POZEFSKY: I intend to have Ms. Diaz Cortez
17 testified fourth, last. I intend to have Mr. Coley,
18 Mr. Moore, Mr. Rigsby, and Ms. Diaz Cortez, in that
19 order.

20 ALJ WOLFE: Coley, Moore, Rigsby did you say?

21 MR. POZEFSKY: And then Diaz Cortez.

22 ALJ WOLFE: And you're not proposing to have
23 them as a panel?

24 MR. POZEFSKY: No, Your Honor.

25 ALJ WOLFE: All right. You said that you were

1 planning to offer something else to aid in the
2 efficiency of the proceeding. What were those? What
3 is that proposal?

4 MR. POZEFSKY: One of the -- well, one of the
5 things that I think I would suggest, Your Honor, would
6 be to put a time limitation as far as the length of
7 cross-examination. I've seen it done in Superior
8 Court. In fact, often times it's done in Superior
9 Court in trials. I've seen it done more frequently in
10 administrative contexts.

11 I think we have 20 -- somewhere I saw 28 Staff
12 witnesses, although obviously we're not going have that
13 many. But we're going to have more than 10, 15. And I
14 think it's important to keep control on the length of
15 this. The issues that we're going to argue are not
16 that remarkable. They're pretty much straightforward
17 issues. And I think to allow unlimited cross-
18 examination would be inefficient.

19 So I would propose a time limit. And I had
20 suggested three hours as an outside limit for
21 cross-examination.

22 ALJ WOLFE: For each party?

23 MR. POZEFSKY: For each witness.

24 ALJ WOLFE: Okay. Each party could
25 cross-examine each witness for three hours?

1 MR. POZEFSKY: Three hours maximum. And
2 believe me when I say it could get a lot longer than
3 that, as I'm sure you're aware.

4 ALJ WOLFE: I'll get some responses to that
5 from the other parties.

6 Mr. James?

7 MR. JAMES: Well, Your Honor, again, we
8 disagree with the suggestion. We appreciate what
9 Mr. Pozefsky is getting at. And, in fact, I would hope
10 that we could complete our cross-examination in under
11 three hours.

12 Our concern is, as you also know, when you get
13 into a hearing, you don't always know how things are
14 going to go. You may end up thinking that you're going
15 to cross-examine a witness for an hour and it turns
16 into 10 minutes, or it may turn into something
17 substantially longer than that.

18 We also think, as we do with panels, that there
19 are due process issues here, particularly when we have
20 30 minutes to cross-examine a witness and -- or excuse
21 me -- three hours to cross-examine a witness, and every
22 other party here has three hours to cross-examine a
23 witness. We're not talking about three hours per side,
24 which is the sort of limitation I'm used to seeing, for
25 example, in an appellate argument.

1 Parties that are aligned the same way typically
2 get to share time, but we're not talking about doing
3 that here. We're talking about giving everybody up to
4 three hours to cross-examine the company witness. And
5 if you look at the general alignment of the parties,
6 the majority of the parties here are either opposed to
7 the company or are here testifying on a very narrow
8 issue like Sun Health, for example, or the AUIA.

9 So, again, no one wants to drag this hearing
10 out. I mean, I would hope we could complete the
11 hearing by the end of next week or be very close to
12 completing it. But I think putting an artificial
13 deadline on cross, I think creates problems. Again,
14 unless it's going to be per side to give each party up
15 to three hours. I'm just not sure it accomplishes
16 anything frankly.

17 ALJ WOLFE: Mr. Sundlof.

18 MR. SUNDLOF: Thank you, Your Honor. This
19 really would not be an issue for us because we don't
20 have that extensive cross-examination.

21 In general I would be opposed, though, to
22 limits on cross and leave that to your discretion. If
23 you feel cross is not being productive, to cut it off
24 rather than impose a strict time deadline.

25 ALJ WOLFE: Mr. Michaud.

1 MR. MICHAUD: Your Honor, the Town is not
2 opposed to a time limit either set for -- a specific
3 time limit set for a panel or set for a specific
4 witness. We're generally not opposed to that.

5 ALJ WOLFE: Okay. Mr. Sabo.

6 MR. SABO: Staff strongly supports the idea of
7 time limits. And indeed, you know, maybe even three
8 hours might be too long. Perhaps two hours could do
9 it.

10 On Mr. James' point of per side versus per
11 party, you know, he does have some merit in that
12 suggestion, but I think the practical problems of
13 implementing it would -- there are practical problems
14 in implementing it.

15 Certainly Mr. Meek is aligned with the company.
16 Sun Health, it's hard to categorize them. They
17 obviously oppose Staff and support the company on rate
18 design, but on revenue requirement presumably that's
19 flip-flopped. So it would be hard to say what side
20 they're really on.

21 Fiesta RV Park, for example, if they do show
22 up, they seem to be equally opposed to everybody. So
23 it would be difficult to put them on a side.

24 Also, typically in the order of cross, usually
25 the intervenors get to go first, and Staff is a little

1 concerned that, you know, if a number of the pro se
2 intervenors get going, there might not be much time
3 left by the time it gets to RUCO and then Staff for
4 cross.

5 So I see some practical problems with that,
6 which is why we would prefer that per side or per -- or
7 I'm sorry -- the per party approach.

8 ALJ WOLFE: I see some practical problems with
9 putting any sort of limitation on cross-examination,
10 practical and possibly some due process problems. I do
11 sympathize with everyone with the number of witnesses
12 that we have in this proceeding, and I will do my very
13 best to keep everything moving along.

14 I know with some of the pro se intervenors --
15 who unfortunately aren't here to speak up for
16 themselves -- I know sometimes when you have an
17 attorney cross-examining -- a non-attorney cross-
18 examining a witness, it can be difficult. But I hope
19 that we'll be able to deal with that as it comes along
20 and not have that unduly prolonged.

21 Possibly we might be able to deal with that by
22 having the intervenors cross-examine the witnesses
23 after some of the parties who are represented by
24 counsel. So I'll consider that. That may help some of
25 the time issues that we have going here. I'm sensitive

1 to those as well.

2 And as far as the panels of witnesses, when we
3 have had panels of witnesses in the past there has been
4 no objection by any of the other participating parties.

5 So since there has been an objection made, what
6 I will do is endeavor to have Mr. Burton, Mr. Burnham,
7 and Mr. Mendez testify all on the same day so they'll
8 all be available. So that if we have to recall one
9 witness to answer a question, if the question needs to
10 be given to another witness to get an answer, that we
11 can deal with that. So I will try to get those three
12 witnesses scheduled for the 12th.

13 MR. MICHAUD: Thank you, Your Honor.

14 ALJ WOLFE: And barring that, the 22nd.

15 MR. JAMES: Your Honor, if I may, we had talked
16 to Staff. And we're not disagreeing with Youngtown's
17 request on this.

18 We had talked to Staff because we had
19 originally talked about having a day for all of the
20 cost of capital witnesses to testify, in part because
21 Dr. Zepp is out of town. And we couldn't get that
22 worked out.

23 However, the Staff did indicate they would be
24 amenable to having the Staff cost of equity person,
25 Mr. Reiker, testify on the 22nd. Now, I don't know

1 whether that's going to be -- how extensive that's
2 going to be. Obviously, we do have some questions for
3 him. The theory there being that it allows Dr. Zepp,
4 if necessary, to travel back to Phoenix that weekend.

5 So I just mention that. We don't have any
6 objection to having Youngtown, for example, testify on
7 the 12th as Mr. Michaud had requested. We would just
8 like the opportunity to cross-examine Mr. Reiker on the
9 22nd just for logistical reasons as well.

10 ALJ WOLFE: Okay. Mr. Pozefsky, are you
11 planing to have your cost of capital witness testify on
12 the same day as Mr. Reiker, or was there a plan for
13 that?

14 MR. POZEFSKY: There was no plan. Whatever
15 would suit the Court as far as convenience-wise, we
16 would be fine with.

17 ALJ WOLFE: Okay. Mr. Rigsby is available?

18 MR. POZEFSKY: Anytime. Yes.

19 ALJ WOLFE: At any time.

20 Mr. Sabo, let's first address that issue of
21 Mr. Reiker testifying on the 22nd. Is that something
22 that is acceptable?

23 MR. SABO: Your Honor, we're not opposed to
24 having a day certain. And I suppose if people think
25 that the hearing is going to spill over to that week,

1 then the 22nd is as good a day as any. I'm sort of
2 reluctant to give up on the idea that we can keep it to
3 seven days. I think Mr. James thinks I'm naive, I
4 think, on that point, and that may be the case. But to
5 the extent certainly we go that long, the 22nd is okay
6 with us.

7 MR. JAMES: And I don't want to sound overly
8 negative either. I mean, I just -- my thought was if
9 we have Mr. Reiker testify on the 22nd, Your Honor,
10 that may well be the last witness in the hearing.

11 I think it's -- particularly with the Open
12 Meeting that is now scheduled on Thursday, it's going
13 to be real tight to squeeze everything in next week.
14 But if we get it accomplished and everybody done except
15 for Mr. Reiker, great. We'll do Mr. Reiker Monday
16 morning. I just think it's going to be a tight fit.
17 I'm still hopeful we can get this hearing done in
18 seven, eight days. I really am.

19 ALJ WOLFE: If it turns out that everyone is
20 all finished pretty much on the 18th, would Dr. Zepp be
21 able to telephonically attend and put Mr. Reiker on on
22 the 19th? Not the 19th, but the 12th. Excuse me.

23 MR. JAMES: We would try to work -- we would
24 certainly try to work something out, Your Honor.

25 ALJ WOLFE: Well, we'll tentatively schedule

1 Mr. Reiker for the 22nd then. Okay. And your other
2 witnesses, is there a certain order that you plan to --
3 I'll let you address that Mr. Sabo.

4 MR. SABO: Thank you, Your Honor. Just as a
5 housekeeping point, you mentioned the order you're
6 going to call the parties was going to be
7 Arizona-American, then Mr. Young, Mr. Grimmelmann, Sun
8 City, then Youngtown. What about Mr. Meek, Fiesta RV,
9 and Sun Health?

10 ALJ WOLFE: Those I was putting in that order.
11 AUIA, Fiesta, and Sun Health. That's a somewhat
12 arbitrary order, but it's the order that I had, and we
13 can discuss that.

14 MR. SABO: Whatever you want, Your Honor.

15 For the Staff witnesses we have nine witnesses,
16 and we would propose to call them in the following
17 order.

18 We would like to start with Mr. Igwe. Followed
19 by Mr. Reiker, subject of course to that provision that
20 we just talked about. Then going to Mr. Rogers. And
21 then by, I believe, agreement with all of the parties
22 and certainly agreement with the company, we would
23 propose to present a panel of the four engineering
24 witnesses, Mr. Scott, Mr. Chelus, Ms. Hains, and
25 Mr. Hammon, to present those four witnesses as a panel.

1 We would also propose -- the remaining two
2 witnesses are Mr. Bozzo and Mr. Carlson. We would
3 propose to call them as a panel because they're both
4 rate base witnesses. If that's not allowed, we would
5 call Mr. Bozzo and then Mr. Carlson.

6 ALJ WOLFE: Now, Mr. Bozzo and Mr. Carlson,
7 their rate base testimony, does that concern separate
8 systems or is it overall?

9 MR. SABO: It was somewhat overall. The way
10 they split it up was I believe Mr. Bozzo testified to
11 rate base in general, but then Mr. Carlson testified to
12 post test year plant, and that includes in it rate
13 base. And then Mr. Carlson also sponsored all of the
14 schedules.

15 ALJ WOLFE: So Mr. Bozzo is a policy sort of a
16 witness? I mean, I don't want you to categorize it
17 right away, but is that --

18 MR. SABO: Well, Mr. Carlson is the lead
19 witness, so he's sort of the overall policy catchall
20 witness. And Mr. Bozzo was responsible, though, for
21 the calculation of the test year plant. And then
22 Mr. Carlson did the post test year modifications to
23 that plant figure.

24 ALJ WOLFE: I'll get the responses of the
25 parties to that.

1 Mr. Michaud?

2 MR. MICHAUD: Your Honor, I'm seeing some
3 inconsistency here. We certainly don't oppose the
4 Staff witnesses going on panels, but we would request
5 the same -- I think due process kind of works both
6 ways, and all we ask is for some consistency in this
7 hearing in that matter.

8 ALJ WOLFE: I think that Staff supported your
9 request.

10 MR. MICHAUD: And we support Staff, and we
11 would just like the same opportunity.

12 ALJ WOLFE: Mr. James.

13 MR. JAMES: Well, two different sets of issues
14 here. With respect to the engineering witnesses, I do
15 feel that's a unique situation. However, I had also
16 spoken, or at least via e-mail, we're willing to simply
17 stipulate, as the parties have with respect to
18 Mr. Stout, we're willing to stipulate to the admission
19 of the engineering witnesses' testimony and waive
20 cross-examination.

21 There's no real issue there, with one minor
22 exception. There is one of the engineering witnesses
23 who addresses Sun City. We have a small amount of
24 cross-examination limited to one very narrow issue, and
25 that relates to the company's contract with the City of

1 Tolleson. Other than that, we have no questions for
2 the engineering witnesses, so we're willing to waive
3 cross-examination.

4 And, again, in the interest of saving time,
5 that's probably -- I would recommend that that be
6 adopted.

7 We do disagree, however, with presenting
8 Mr. Bozzo, Mr. Carlson as a panel for the reason, I
9 think, Mr. Sabo suggested. They do testify -- their
10 testimony does not overlap in the same manner that the
11 engineering witnesses do. They do cover different
12 topics and different issues. So in that type of
13 situation I think it's inappropriate.

14 ALJ WOLFE: Which engineering witness do you
15 have cross-examination for?

16 MR. JAMES: Ms. Hains, who is the engineering
17 witness assigned to the Sun City systems.

18 And, again, it's a very short amount of
19 cross-examination, Your Honor, and it would be limited
20 to one topic.

21 ALJ WOLFE: Mr. Sundlof, I assume you don't
22 have cross-examination for the other three engineering
23 witnesses?

24 MR. SUNDLOF: That's correct.

25 ALJ WOLFE: Mr. Michaud, which of the

1 engineering witnesses do you have cross-examination
2 for?

3 MR. MICHAUD: Your Honor, at this point we don't
4 have any.

5 ALJ WOLFE: Okay. Mr. Pozefsky?

6 MR. POZEFSKY: Your Honor, at this point we
7 don't have any cross-examination, and certainly won't
8 object to the admission of the testimony.

9 As far as the generic issue of the paneling
10 however, to be consistent, we've said before we just
11 don't believe in panels.

12 ALJ WOLFE: Okay. Mr. Sabo, do you want to
13 arrange with the parties to get the stipulated
14 admission of the testimonies of Mr. Chelus, Mr. Hammon,
15 and Mr. Scott, if possible, and have those witnesses
16 available should the need arise to cross-examine them?

17 MR. SABO: Your Honor, rather than do that, we
18 would prefer to take the paneling approach. And that
19 way there's not any of this problem about somebody, you
20 know, one of the intervenors or somebody wants to
21 cross-examine one of them, and then we have to put them
22 up separately. The Staff would prefer to have a panel,
23 which the company has agreed to, I think.

24 ALJ WOLFE: Okay. I think what I'll do is deal
25 with that the same way that we did with Youngtown.

1 I'll schedule all four of those witnesses for the same
2 day so that they'll know a date certain when they can
3 testify, hopefully. And I don't know whether the
4 intervenors are going to have cross-examination for
5 them or not, but definitely Ms. Hains it sounds like
6 needs to come up and sponsor her testimony.

7 Let's see. I really need to take a minute to
8 look at all of these dates and to get an order of
9 witnesses. But before we do that, I want to just talk
10 about the briefs. We'll go ahead and go to that.

11 MR. JAMES: Your Honor, and I don't mean to
12 interrupt, but it does relate to what we were talking
13 about a moment ago.

14 ALJ WOLFE: Okay.

15 MR. JAMES: One thing that would save time, and
16 one of the reasons I passed out our exhibit checklist,
17 is as you can see there's a tremendous amount of
18 prefiled testimony, in part because we have 10
19 different districts that are involved in the case.

20 And one thing I think that it would save, by my
21 estimate maybe half a day, would be if we can simply
22 stipulate to the admission of the prefiled testimony
23 and not have to go through the normal foundational
24 questions. In other words, the witness would come up,
25 essentially just identify by exhibit number the

1 testimony, and then the witness is available for
2 cross-examination. I think that in and of itself could
3 save us three or four hours.

4 ALJ WOLFE: And that was the plan. That's why
5 there was a deadline of today for objecting to prefiled
6 testimony, and we're going to address that.

7 MR. JAMES: Good.

8 ALJ WOLFE: There was an objection to some of
9 the prefiled testimony and we'll address that. I was
10 going to get to that. That is an excellent way to deal
11 with it, and we have been doing that. So anything
12 that's not objected to today will be admitted.

13 Opening and closing statements are
14 discretionary, but I will be requiring closing briefs
15 with transcript citations. The briefs don't need to be
16 extensive, but they should address all of the issues in
17 the case. That may be a little contradictory there to
18 say that. I will assume that if a party fails to brief
19 an issue that that party has waived that issue.

20 I'll be relying on the briefs to inform me of
21 your final positions in this case, so if you choose not
22 to touch on an issue in your brief, your position on
23 that issue won't be addressed in the proposed order.

24 That being said, I don't want you to think that
25 I'm looking for 10 pages on each issue. What is

1 required is a statement on the issue, the party's
2 position on the issue, and why the party holds that
3 position. But that's what I'm looking for.

4 After checking with the court reporter on when
5 the transcripts will probably be available on a normal
6 schedule, I would anticipate having initial closing
7 briefs due approximately six weeks after the last day
8 of the hearing. This is assuming that we go over into
9 the 22nd. You know, into that -- if we skip a week of
10 the hearing.

11 So that would make the initial briefs due
12 February 4th. This is subject to change if we finish
13 up earlier. And then that would make reply briefs due
14 on February 17th.

15 Is there any discussion on this issue at this
16 time? Like I said, those are my preliminary dates. It
17 depends on how long the hearing goes.

18 Mr. James?

19 MR. JAMES: That's fine.

20 ALJ WOLFE: Okay. Mr. Sundlof?

21 MR. SUNDLOF: That's fine.

22 ALJ WOLFE: Mr. Michaud?

23 MR. MICHAUD: One quick question. In regard to
24 the prefiled testimony, would the witnesses be allowed
25 to provide a brief summary?

1 ALJ WOLFE: I believe that -- I know that the
2 pro se parties, the ones who have called me to talk to
3 me about what do we do in this hearing, I've told them
4 that they would be able to provide a brief summary of
5 their position in the case.

6 I think that each witness should be allowed to
7 provide a brief summary, but I would ask that they be
8 limited to about five minutes, if possible.

9 Do you have any comments on the briefing
10 schedule, Mr. Michaud?

11 MR. MICHAUD: No, Your Honor.

12 ALJ WOLFE: Mr. Pozefsky?

13 MR. POZEFSKY: I have no objection. I do have
14 a comment though. I think it may be a little bit
15 optimistic, given that if it is seven or eight days of
16 hearing, for the transcriber to get it out and give us
17 enough time. But if they can do it, that's great.

18 ALJ WOLFE: This was assuming a normal delivery
19 schedule of the briefs. And you can talk to the court
20 reporter about that after if you want.

21 Mr. Sabo.

22 MR. SABO: Basically no problem, Your Honor.
23 One minor thing. If by some chance we do finish that
24 week of the -- you know, next week, then I would just
25 note that I have a vacation scheduled in early January.

1 So, you know, I think that still comes out to late
2 January, which would be fine. But certainly middle of
3 January would begin to be problematic for me.

4 ALJ WOLFE: Okay.

5 MR. SHAPIRO: We would note for Mr. Sabo that
6 the Packers are not likely to make it to the Super
7 Bowl. So he may want to change his plans.

8 MR. SABO: That was not the vacation
9 destination, and I thank Mr. Shapiro for that insight.

10 ALJ WOLFE: Let's go to the objection that was
11 filed, since today is the deadline for objections.

12 Before I talk about the objections that were
13 prefiled, do any other parties here today have any
14 objections to prefiled testimony?

15 MR. JAMES: We do not, Your Honor.

16 MR. MICHAUD: No, Your Honor.

17 MR. POZEFSKY: No, Your Honor.

18 MR. SABO: Your Honor, we would just make the
19 same objection to the rejoinder that we made to the
20 rebuttal. With that, no other objections.

21 ALJ WOLFE: So your prefiled objections apply
22 also to the rejoinder?

23 MR. SABO: That's correct, Your Honor.

24 ALJ WOLFE: Okay. Since Staff did make the
25 objection, I'll let you go ahead and argue that at this

1 time.

2 MR. SABO: Thank you, Your Honor. Our
3 objection is founded on the principle that it is
4 inappropriate to allow an expert witness to offer
5 testimony as to matters of domestic law. And we do
6 believe that a number of the company witnesses have
7 done so, and so we would object to their testimony on
8 that basis.

9 In addition, none of the company witnesses
10 would be -- even if it was appropriate to offer
11 testimony on the topic of legal issues, none of the
12 company witnesses are appropriately qualified to do so.
13 And, therefore, the objection should be sustained on
14 that basis as well.

15 In their reply to the objections, the company
16 points to Rule of Evidence 702, which goes to matters
17 of -- that expert testimony is allowable if it goes to
18 scientific, technical, or other specialized knowledge
19 that will assist the trier of fact to understand the
20 evidence or to determine a fact in issue.

21 We don't disagree with that standard, but quite
22 simply we don't believe that testimony as to legal
23 issues will, in fact, assist the trier of fact, but
24 rather believe that it would be appropriate to
25 determine these legal matters through the briefing,

1 inclusion of legal arguments in the briefing that has
2 already been scheduled.

3 ALJ WOLFE: Thank you, Mr. Sabo.

4 Mr. James.

5 MR. JAMES: I'll let Mr. Shapiro handle that.

6 MR. SHAPIRO: Thank you, Judge Wolfe. I guess
7 the starting point is that the company certainly -- and
8 we've informed Mr. Sabo of this. We're certainly
9 willing to stipulate that our two witnesses that Staff
10 objects to are not intending to offer legal opinions
11 in the nature of, I think, the kind of legal opinions
12 that Staff objects to.

13 But I think if you look at the reasons for the
14 law that Mr. Sabo cites in their objections, those
15 reasons just simply don't apply here. We don't have a
16 jury who may be confused or persuaded that a particular
17 witness is offering a conclusion of law that needs to
18 be followed. There's no jury here.

19 You are the initial trier of fact making a
20 recommendation to the Commission. We're confident that
21 both you as an initial decision-maker and the
22 Commission can provide appropriate weight to that kind
23 of testimony.

24 And let's look at what that testimony is. What
25 Mr. Bourassa and Dr. Zepp have done is basically

1 explain the basis for their testimony, and they've
2 identified legal authorities that they understand weigh
3 or impact on the kind of testimony and the issues
4 they're addressing.

5 They're not stating that this decision-making
6 body must decide this way based on authority. That's
7 something that we'll argue in the briefs. But they're
8 explaining that if I make a particular adjustment, this
9 particular statute, or this particular constitutional
10 provision, or this particular precedent is part of my
11 determination as to what adjustment I need to make. So
12 they're identifying the law that they considered in
13 making a particular adjustment.

14 And I think in that sense it does assist you in
15 your capacity as initial trier of fact, and the
16 Commission in its ultimate decision-making, to
17 understand why witnesses did what they did. It's
18 explanatory testimony. It's not offered as a legal
19 opinion in the sense that I think certain cases, again,
20 which don't apply in administrative proceedings, as
21 we've identified in our response.

22 With all of that, I reiterate again that the
23 company is certainly willing to stipulate that
24 Mr. Bourassa and Dr. Zepp are not intending to offer
25 legal opinions as to what the law requires. They're

1 intending to offer what they understood or what they
2 did to explain what they did. And with that, we think
3 that you in the first instance and the Commission in
4 the second instance can give that testimony appropriate
5 and due weight.

6 ALJ WOLFE: Mr. Sabo.

7 MR. SABO: Your Honor, I agree that a witness
8 can make an -- you know, try and explain an adjustment
9 or a basis of an opinion by referring to a legal
10 principle as the basis for that. But I don't think
11 that that is what the company witnesses are doing here.
12 Rather, they are, in fact, making statements of law.

13 For example, I'll point to Dr. Zepp, his
14 rebuttal testimony, page 28, starting at line 1: My
15 review indicated the Arizona Constitution and the
16 Arizona Supreme Court decisions require that a fair
17 value rate base, not an original cost rate base, be
18 adopted as the rate base when setting rates.

19 And he makes a very similar statement in his
20 rejoinder at page 7, line 17 through 26. Those are
21 statements as to what the law is, not what the basis of
22 his opinion would be.

23 However, you know, perhaps we can reach an
24 agreement here by -- if the company is willing to
25 stipulate that this should only be considered in

1 explanation of the basis for the witness's position,
2 not as a statement of law, despite the phrasing of it.

3 ALJ WOLFE: Mr. Shapiro.

4 MR. SHAPIRO: Your Honor, as indicated twice,
5 that's acceptable to the company. We are confident
6 you'll give it its appropriate weight.

7 ALJ WOLFE: So it sounds like there's no
8 objection based on the company's stipulation; is that
9 correct?

10 MR. SABO: Yes.

11 ALJ WOLFE: Okay. Good. It will be given its
12 appropriate weight.

13 I'm going to take a break and look over this
14 list of testimony and come back and let you know a
15 little bit more about what days the witnesses will be
16 scheduled to testify. I'll be back in about 10
17 minutes.

18 (A recess was taken from 11:00 a.m. to
19 11:15 a.m.)

20 ALJ WOLFE: Back on the record.

21 I'll first address the order of witnesses.

22 Mr. James, did you decide on Mr. Bourassa if
23 you wanted to have him on Friday or Monday? I wasn't
24 clear.

25 MR. JAMES: I'm sorry. He'll be our first

1 witness, Your Honor.

2 ALJ WOLFE: He will be on Friday. You did make
3 that clear. I just wasn't sure.

4 MR. JAMES: Your Honor, if I can. I don't mean
5 to interrupt. But one other question occurred to us
6 during the break, and I'll just throw this out.

7 Does anybody have any cross-examination for
8 Blaine Akine?

9 MR. POZEFSKY: I have none at this time, Your
10 Honor.

11 MR. SUNDLOF: No, Your Honor.

12 MR. MICHAUD: No, Your Honor.

13 MR. SABO: No.

14 MR. JAMES: What I was hoping is that's another
15 witness that we can avoid having to put on, if that's
16 all right.

17 ALJ WOLFE: Unless -- and I know this is an
18 inconvenience, you know, unless some of the pro se
19 intervenors have questions.

20 MR. JAMES: We understand.

21 ALJ WOLFE: It may not be very likely, but if
22 he could be here on Friday, I would appreciate it.

23 MR. JAMES: Okay.

24 ALJ WOLFE: Thank you.

25 This is just a rough list of the order of

1 witnesses, then, that I came up with. So Mr. Bourassa
2 is the first witness on Friday, and then Mr. Turner.
3 Then Mr. Jones for Friday or Monday.

4 MR. JAMES: Yes.

5 ALJ WOLFE: And then Mr. Akine on Friday just
6 to be available. Dr. Zepp on Monday. Frederick
7 Schneider, I would like for him to be available on
8 Friday in case we have a slot Friday, Monday, or
9 Tuesday. Mr. Kozoman also Friday, Monday, or Tuesday.
10 And Mr. Stephenson Friday, Monday, or Tuesday.

11 Is that doable?

12 MR. JAMES: Yes, it is, Your Honor.

13 ALJ WOLFE: And then Mr. Meek for AUIA, I'll
14 have him scheduled for Monday, Tuesday, or Wednesday.

15 And Mr. Sundlof, would you be able to have your
16 witness available on Tuesday or Wednesday?

17 MR. SUNDLOF: Yes. I believe I would.

18 ALJ WOLFE: Both days just in case?

19 MR. SUNDLOF: I'll make sure. But subject to
20 checking with him, I think so.

21 ALJ WOLFE: Okay. Those are the days
22 tentatively that I would see that he will be scheduled.

23 And then Mr. Young, Mr. Grimmelmann, Fiesta,
24 and SCTA, in case they're listening on the Listen Line,
25 I'll try to get those in Monday, Tuesday, or Wednesday.

1 Those are the days that we'll try to do those
2 witnesses. We'll do some other witnesses those days,
3 too.

4 MR. SHAPIRO: I was just going to ask, Judge
5 Wolfe, of those that you just named, the only one that
6 has filed testimony is Mr. Grimmelmann.

7 ALJ WOLFE: Right.

8 MR. SHAPIRO: Okay.

9 ALJ WOLFE: I am going to explain to them the
10 first day of the hearing, if they're here, that they
11 can give opening statements. If they want to be sworn
12 and put some testimony on the record -- I know that
13 they haven't prefiled testimony -- but I would allow
14 them to get up and say something and be subject to
15 cross-examination if that's what they want to do.

16 Mr. Sabo.

17 MR. SABO: I guess Staff would object to that
18 on the grounds that the procedural order did direct
19 that any testimony that was provided -- that was going
20 to be provided should be prefiled.

21 And I can say I've had some conversations with
22 Fiesta RV that I know they've hired a consultant and
23 they were thinking about presenting a witness. And I
24 indicated to them that Staff would object on the
25 grounds of that. You know, and certainly as a party

1 represented by counsel, they should be expected to
2 follow the procedural order. And so certainly I think
3 at least they should not be allowed to do that.

4 And I don't see any reason why the pro se
5 intervenors could not be held to the same standard.
6 Because, again, as you noted, they're certainly free to
7 make an opening statement and make it clear on the
8 record what their position is.

9 ALJ WOLFE: Okay.

10 MR. SHAPIRO: The company would join Mr. Sabo's
11 objection. And, certainly, just to take it a step
12 further, as Mr. Sabo indicated, we recently had a
13 pretty lengthy hearing for Arizona Water. And in that
14 case intervenor testimony was allowed in as public
15 comment. We wouldn't oppose that as well.

16 But Mr. Sabo is correct. There's a procedural
17 order. And it isn't fair to the company that has the
18 burden of proof on so many issues to allow testimony to
19 come in, and then have to do cross-examination
20 essentially on the fly.

21 So we would join Mr. Sabo in his objection,
22 particularly with respect to Fiesta RV Park, which is
23 represented by counsel and certainly, you know, should
24 be aware of the procedures that are being followed.

25 ALJ WOLFE: My comments were directed to the

1 pro se intervenors. I realize now that Fiesta is
2 represented by counsel. We'll cross that bridge if we
3 come to it. If they want to get up here and testify,
4 then we'll allow objections at that time. I won't make
5 a ruling in advance.

6 But those would be the days as far as
7 scheduling purposes.

8 And then for RUCO's witnesses, I would like to
9 have Mr. Coley available Tuesday, Wednesday, and
10 Thursday. Also Mr. Moore, Tuesday, Wednesday or
11 Thursday. Mr. Rigsby, let's say Wednesday, Thursday,
12 and Monday in case -- if we have to rearrange some of
13 the RUCO witnesses, I would prefer to have Mr. Rigsby
14 go on the same day as the other cost of capital
15 witnesses, if possible.

16 Would that be a problem?

17 MR. POZEFSKY: Well, as I said, I would like to
18 have Ms. Diaz Cortez testify after Mr. Rigsby.

19 ALJ WOLFE: After.

20 MR. POZEFSKY: As being our last witness. And
21 when you say --

22 ALJ WOLFE: Well, I'll endeavor to do that, but
23 if we run out of time and have to schedule it that
24 way --

25 MR. POZEFSKY: Then it won't be a problem. As

1 long as, at the very least, we would like her to go
2 after Mr. Coley and Mr. Moore for sure.

3 ALJ WOLFE: Okay.

4 MR. POZEFSKY: When you say Wednesday, are you
5 talking the 9th?

6 ALJ WOLFE: Yes. And then Ms. Diaz Cortez
7 Tuesday, Wednesday, and Thursday.

8 And the Youngtown witnesses would go on Friday.
9 And that's a date certain for the Youngtown witnesses.
10 Mr. Burton, Mr. Burnham and Mr. Mendez.

11 MR. MICHAUD: Your Honor, I would prefer for
12 Mr. Burton to go after Mr. Burnham.

13 ALJ WOLFE: Okay. So Mr. Burnham first, and
14 then Mr. Burton, and then Mr. Mendez. In that order?
15 Is that okay?

16 MR. MICHAUD: Yes.

17 ALJ WOLFE: That will be the order.

18 And then the Staff witnesses. Mr. Igwe, I
19 would like for him to be available Thursday, Friday,
20 Monday, and Tuesday, possibly Wednesday. And I'm being
21 optimistic leaving Wednesday out. So you can just
22 assume that Wednesday will be the day. And Mr. Rogers,
23 Thursday, Friday, Monday, and Tuesday.

24 MR. SABO: I'm sorry. Could you give that to
25 me again, Your Honor?

1 ALJ WOLFE: Mr. Igwe, Thursday, Friday, Monday,
2 Tuesday. Mr. Rogers, Thursday, Friday, Monday,
3 Tuesday. Mr. Reiker on Monday. And we'll try to make
4 that a date certain for Mr. Reiker and Dr. Zepp.

5 Okay. Ms. Hains and the other engineers, in
6 case there's cross-examination for the other engineers,
7 Monday and Tuesday. That's Monday or Tuesday.
8 Mr. Bozzo on Tuesday, and Mr. Carlson on Tuesday.

9 MR. SABO: By Tuesday you mean the 23rd?

10 ALJ WOLFE: That's correct.

11 ALJ WOLFE: So basically I've given them to you
12 in the chronological order if we fit them in. I just
13 tried to give guidelines of what days we can
14 anticipate. If we have a very short day one day, then
15 things would move up.

16 Are there any questions about that order of
17 witnesses?

18 MR. SABO: Your Honor, which day was Dr. Zepp
19 going to testify?

20 ALJ WOLFE: Monday.

21 MR. SABO: The 8th?

22 ALJ WOLFE: Oh, I'm sorry. I understand what
23 you're saying. Mr. Reiker was going to go on the 8th
24 also?

25 MR. SABO: No. No.

1 ALJ WOLFE: On the 22nd. That's right. I have
2 Dr. Zepp on Monday the 8th.

3 MR. SABO: Okay. Thank you.

4 ALJ WOLFE: And Mr. Reiker on Monday the 22nd.
5 But possibly if we finished sooner, Mr. Reiker would go
6 to the Friday prior, which would be if things are
7 wrapping up and we can do it on the 12th, Friday the
8 12th. That would be fine. And then Dr. Zepp could
9 attend telephonically. I think we've got that
10 straightened out.

11 MR. JAMES: Your Honor, if possible, it just
12 seems unlikely -- again, if we're down to -- if we have
13 no other witnesses left, we would certainly want to
14 accommodate everybody. But if there are still three or
15 four Staff witnesses, I would prefer to just have him
16 testify -- Mr. Reiker testify on the 22nd. It just
17 logistically makes things a lot easier for me.

18 ALJ WOLFE: Yes. Yes. That's my plan.

19 MR. JAMES: Okay. Thank you.

20 MR. SABO: And, Your Honor, we're open to being
21 somewhat flexible. Basically, we would like to start
22 with Mr. Igwe and finish with Mr. Carlson. But other
23 than that, you know, there's some flexibility there.

24 ALJ WOLFE: Okay. I could ask the parties if
25 they see any -- do you want a polling of the attorneys

1 here to find out how much cross-examination they
2 anticipate for each witness? I guess it's under three
3 hours from the earlier comments.

4 Does that seem -- would that be helpful to
5 anyone here?

6 (No response.)

7 ALJ WOLFE: Okay. Unless someone requests it,
8 then I'm not going to poll and find out about that.

9 Are there any other procedural matters that
10 need to be covered today?

11 (No response.)

12 ALJ WOLFE: Okay. Then I will see you on
13 Thursday morning at 10:00 a.m., and we'll start with
14 public comment and -- yes.

15 MR. SABO: Your Honor, Mr. James suggested that
16 the testimony, the prefiled testimony be admitted
17 without having to do a direct examination.

18 Did you issue a ruling on that?

19 ALJ WOLFE: That's the way that -- as long as
20 there hasn't been an objection to the testimony by the
21 date for objections, then it will be admitted whenever
22 the witness comes up. I will have the witness identify
23 the exhibit.

24 So you can go ahead and have your exhibits
25 marked, and they should be admitted if they've been

1 docketed and filed. There shouldn't be a problem with
2 that.

3 Okay. Well, thank you. I'll see you Thursday
4 morning.

5 (The Prehearing Conference concluded at
6 11:30 a.m.)

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I, MICHELE E. BALMER, Certified Court Reporter
 No. 50489 for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full,
 true and accurate transcript of the proceedings had in
 the foregoing matter, all done to the best of my skill
 and ability.

WITNESS my hand this 11th day of December,
 2003.

Michele E. Balmer
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 Certified Court Reporter
 Certificate No. 50489