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BEFORE THE ARIZONA POWER AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF PINAL CENTRAL ENERGY CENTER, LLC, IN CONFORMANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES 40-360, ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE PINAL CENTRAL ENERGY CENTER 230KV GENERATION INTERTIE LINE PROJECT, WHICH INCLUDES THE CONSTRUCTION OF A GENERATION TIE-LINE ORIGINATING LESS THAN HALF A MILE TO THE SOUTHEAST OF THE PINAL CENTRAL SUBSTATION ON PRIVATE LAND UNDER THE JURISDICTION OF PINAL COUNTY AND THE CITY OF COOLIDGE, ARIZONA, AND TERMINATING IN THE PINAL CENTRAL SUBSTATION IN PINAL COUNTY, ARIZONA.

Arizona Corporation Commission

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APPLICANT PINAL CENTRAL ENERGY CENTER'S LEGAL MEMORANDUM ON THE SITING COMMITTEE'S JURISDICTION TO CONSIDER IMPACTS OR CIRCUMSTANCES PERTAINING TO APPLICANT'S PLANNED 20 MEGAWATT SOLAR PHOTOVOLTAIC AND BATTERY STORAGE FACILITY

AND

MOTION IN LIMINE

Pursuant to the Procedural Order dated March 23, 2017, Pinal Central Energy Center, LLC ("Applicant") provides its memorandum on the legal issues discussed at the March 6, 2017 pre-filing conference. While there was general discussion at the March 6, 2017 pre-filing conference regarding whether the Power Plant and Line Siting Committee's ("Siting Committee") jurisdiction allows consideration of testimony and

1 evidence on the impacts on surrounding lands of Applicant’s planned 20 megawatt
2 (“MW”) alternating current solar photovoltaic (“PV”) plant and connected 10
3 MW/40MW-Hour advanced energy storage (*i.e.*, battery) system (collectively, the “Solar
4 Facility”), no specific legal issues were articulated in the March 23, 2017 Procedural
5 Order. Thus, Applicant frames the legal issue addressed in this legal memorandum in this
6 way: Given that the Siting Committee lacks jurisdiction over the siting of the Solar
7 Facility, as discussed herein, can the Siting Committee consider any facts, circumstances
8 and/or impacts of the Solar Facility in determining whether or not to issue a Certificate of
9 Environmental Compatibility (“CEC”) for the 0.40-mile 230 kilovolt (“kV”) alternating
10 current generation transmission tie-in line (“Gen-Tie”) and associated substation facilities
11 (“Project Substation”) (collectively, the “Gen-Tie Project”) that are the sole subject of the
12 application (“Application”) in this case?

13 SUMMARY ANSWER

14 The Siting Committee has no jurisdiction over Applicant’s planned Solar Facility
15 and may not consider facts, circumstances, and/or impacts pertaining solely to the Solar
16 Facility which are not otherwise related to the Gen-Tie Project.

17 LEGAL ANALYSIS

18 A. Introduction.

19 The Siting Committee’s jurisdiction to issue a CEC for the siting of a “plant” and/or
20 “transmission line” derives from A.R.S. §§ 40-360 *et seq.* (the “Siting Statutes”) and the
21 rules promulgated pursuant thereto by the Arizona Corporation Commission
22 (“Commission”) as set forth in Arizona Administrative Code (“A.A.C.”) R14-3-201 *et seq.*
23 (the “Siting Rules”). A.R.S. § 40-360.03 states:

24 Every utility planning to construct a plant, transmission line or both in this
25 state shall first file with the commission an application for a certificate of
26 environmental compatibility. The application shall be in a form prescribed
27 by the commission and shall be accompanied by information with respect to
28 the proposed type of facilities and description of the site, including the areas
of jurisdiction affected and the estimated cost of the proposed facilities and
site. Also the application shall be accompanied by a receipt evidencing

1 payment of the appropriate fee required by section 40-360.09. The
2 application and accompanying information shall be promptly referred by the
3 commission to the chairman of the committee for the committee's review and
4 decision. (emphasis added)

5 The term "utility" as defined in A.R.S. § 40-360(11) "means any person engaged
6 in the generation or transmission of electric energy." The term "person" as defined in
7 A.R.S. § 40-360(8) "means any state or agency or political subdivision thereof, or any
8 individual, partnership, joint venture, corporation, city or county, whether located within
9 or without this state, or any combination of such entities." The Applicant in this case is a
10 foreign limited liability company and, as such, meets the definition of a "person."
11 Additionally, Applicant intends to engage in the generation and transmission of electric
12 energy and therefore meets the definition of a "utility."

13 The term "transmission line" as defined in A.R.S. § 40-360(10) "means a series of
14 new structures erected above ground and supporting one or more conductors designed for
15 the transmission of electric energy at nominal voltages of one hundred fifteen thousand
16 volts or more and all new switchyards to be used therewith and related thereto for which
17 expenditures or financial commitments for land acquisition, materials, construction or
18 engineering in excess of fifty thousand dollars have not been made prior to August 13,
19 1971." As described in the Application filed March 15, 2017, Applicant's Gen-Tie will
20 have a nominal voltage of 230kV, an estimated four monopole structures, and three power
21 conductors. The related Project Substation will convert power from 34.5 kV to 230 kV.
22 The estimated cost of the Gen-Tie Project is \$4,000,000. Thus, the Gen-Tie is a
23 "transmission line" as defined in A.R.S. § 40-360(10) subject to the Siting Committee's
24 jurisdiction pursuant to A.R.S. §§ 40-360 *et seq.*

25 However, the Applicant's planned Solar Facility is not a "plant" within the meaning
26 of the Siting Statutes and is not subject to the jurisdiction of the Siting Committee or the
27 Commission under A.R.S. Title 40, Article 6.2. The term "plant" as defined in A.R.S. §
28 40-360(9) "means each separate thermal electric, nuclear or hydroelectric generating unit
with a nameplate rating of one hundred megawatts or more for which expenditures or

1 financial commitments for land acquisition, materials, construction or engineering in
2 excess of fifty thousand dollars have not been made prior to August 13, 1971.” (emphasis
3 added). Applicant’s planned Solar Facility fails to meet this definition for two reasons.
4 First, Applicant’s planned Solar Facility will have a nameplate rating of 20 MW, which is
5 well below the threshold of 100 MW that would trigger the requirement for a CEC for the
6 Solar Facility. Second, the Solar Facility will use photovoltaic cells to convert sunlight
7 into energy. PV technology is not “thermal electric” technology.¹ Thermal electric energy
8 is generated using heat to produce steam which powers turbines. Because Applicant’s
9 Solar Facility (1) is not a thermal electric plant and (2) has a nameplate rating well below
10 100 MW, the Solar Facility does not require a CEC. There is no debate on this point.

11 Despite what would be an unprecedented extension of the Siting Committee’s
12 jurisdiction in a manner inconsistent with the Siting Statutes, at the pre-filing conference
13 held on March 6, 2017, legal counsel for potential intervenor Lynda Williams alluded to a
14 number of issues related solely to the purported impacts of the planned Solar Facility or
15 other extraneous issues, and not the Gen-Tie Project which is the proper subject of the
16 Application. Ms. Williams’s issues, as communicated by her attorney, include the
17 following:

- 18 ● “We have asked for and received no ... [c]omputational fluid dynamics
19 study [“CFD”], which gives us an idea of how the airflow and other
20 environmental conditions are going to affect the heat that’s generated by
21 these panels against Ms. Williams.”²
- 22 ● “[L]ooking at the scope of the project, we need to know what the critical
23 analysis would show with respect to the radiant heat, which ties into the
24
25

26 ¹ The Commission’s rules clearly recognize the difference between PV generation and thermal electric
27 generation. A.A.C. R14-2-1802(A)(10) states that “‘Solar Electricity Resources’ use sunlight to produce
28 electricity be either photovoltaic devices or solar thermal electric resources.”

² Reporter’s Transcript of Proceedings, Pre-filing Conference held March 6, 2017, at pp. 15-16 (emphasis
added).

1 CFD and how the airflow and other environmental aspects of the program
2 are going to affect the heat that will be generated. We don't know."³

3 • "And we have asked for reports on what the increased noise will be from
4 the project itself. I understand the inverters produces noise and,
5 depending on the distance from the inverters, it can be as high as 43db at
6 48 meters from the project, as low as 31 dbs at 60 meters from the
7 project."⁴

8 • "So where is this project really going to go and how big is it going to be
9 and how is [it] going to impact the environment, which will impact Ms.
10 Williams?"⁵

11 • "We have had no disclosure at all on the reflection off the panels, i.e. the
12 glare off the panels. We don't know what kind of panels they are going
13 to put up or how they will station them, lean them. ... We believe it is
14 the smaller panels, the black panels, but we don't know."⁶

15 • "We have no disclosure at all as to lithium batteries."⁷

16 • "[I]f in fact this project is approved, if the CEC is granted and then they
17 go back to the zoning changes, go to I-3, they are going to island Ms.
18 Williams in an I-3 island. She is going to be the only [General
19 Residential] in the I-3 island."⁸

20 • "[T]here was a perimeter easement on the north side of Ms. Williams'[s]
21 property that Mr. Wuertz reserved. When he sold the property to the
22 Williamses, he reserved a 10-foot property easement on the north end so
23 he could irrigate. We believe under any one ... of three theories that
24 easement no longer exists."⁹

25 ³ *Id.* at p. 18, lines 4-9.

26 ⁴ *Id.* at pp. 18, lines 10-15 (emphasis added).

27 ⁵ *Id.* at pp. 18, lines 16-18.

28 ⁶ *Id.* at pp. 18-19 (emphasis added).

⁷ *Id.* at p. 19, lines 16-17 (emphasis added).

⁸ *Id.* at p. 20, lines 19-23.

⁹ *Id.* at pp. 21-22.

- 1 ● “The other easement that exists is on the far northwest corner of the
2 property that Ms. Williams owned that abuts to Mr. Wuertz’s property
3 that’s part of the option to purchase. That’s a ... 50 foot by 50 foot farm
4 appliance egress/ingress easement only. And I believe that’s where NEE
5 proposes to run their utility lines, across that easement to Mr. Wuertz’s
6 land, or soon to be their land. That’s a farming-only easement that cannot
7 be used for any utilities.”¹⁰

8 In addition to the issues asserted by counsel for Ms. Williams, potential intervenor
9 Thomas Bagnall also raised the issue of heat associated with the installation of PV panels
10 at the Solar Facility and its effect on his pecan trees, as well as the issue of dust once the
11 ground is no longer being farmed.¹¹

12 Each of these issues raised by Ms. Williams and Mr. Bagnall relate directly to the
13 Solar Facility planned by Applicant and not the Gen-Tie Project. For all of the reasons set
14 forth herein, the intervenors’ questions regarding heat, inverter noise, reflectivity, zoning,
15 and legal access associated with the installation of PV panels at the Solar Facility are
16 outside the jurisdiction of the Siting Committee to consider. Thus, any testimony or
17 exhibits proffered by any party regarding impacts of the Solar Facility is not material to
18 the Gen-Tie Project and should not be considered by the Siting Committee in making its
19 decision on the Application.

20 **B. The Authority of the Commission and Siting Committee Is**
21 **Strictly Limited Based Upon the Parameters Set by the Arizona**
22 **Legislature.**

23 “The Arizona Corporation Commission, unlike such bodies in most states, is not a
24 creature of the legislature, but is a constitutional body which owes its existence to
25 provisions in the organic law of this state.” *Ethington v. Wright*, 66 Ariz. 382, 389, 189
26 P.2d 209, 214 (1948). Article 15 of the Arizona Constitution establishes the Commission
27 and grants the agency plenary authority to prescribe classifications, rates and charges for

28 ¹⁰ *Id.* at p. 22, lines 16-24.

¹¹ *Id.* at p. 26, lines 10-11.

1 utility service provided by public service corporations. *See* Ariz. Const. Art. XV, Section
2 2 (definition of “public service corporation”) and Section 3 (granting authority to set rates
3 and charges for utility service). Notwithstanding its constitutional underpinnings, the
4 Commission’s authority has defined boundaries. In *Commercial Life Insurance Co. v.*
5 *Wright*, 64 Ariz. 129, 139, 166 P.2d 943, 949 (1946), the Arizona Supreme Court held that
6 the Commission has “no implied powers and its powers do not exceed those to be derived
7 from a strict construction of the Constitution and implementing statutes.” *See, e.g.,*
8 *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 449, 610 P.2d 449, 45
9 1 (1980); *Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 17, 409 P.2d 720,
10 723 (1966); *Southern Pacific Co. v. Arizona Corp. Comm’n*, 98 Ariz. 339, 345, 404 P.2d
11 692, 696 (1965). Again, the Commission’s constitutional authority is to prescribe
12 classifications, rates and charges for utility service provided by public service
13 corporations.

14 Pursuant to Article 15, Section 6 of the Arizona Constitution, the Arizona
15 Legislature “may enlarge the powers and extend the duties of the corporation
16 commission....” Thus, any regulatory authority over public service corporations not
17 specifically granted to the Commission by the Constitution resides with the Arizona
18 Legislature and may be delegated to the Commission subject to such restrictions as the
19 Legislature deems appropriate. *Town of Paradise Valley*, 125 Ariz. at 449, 610 P.2d at
20 451; *Corporation Comm’n v. Pacific Greyhound Lines*, 54 Ariz. 159, 176-80, 94 P.2d 443,
21 450-52 (1939).

22 One example of regulatory authority delegated to the Commission by the Arizona
23 Legislature is the authority to issue a Certificate of Public Convenience and Necessity
24 (“CC&N”) to a public service corporation to construct and operate a utility system. *See*
25 A.R.S. §§ 40-281 through 40-283. Like the Siting Statutes, which prohibit construction
26 of a power plant (100 MW or above) or a transmission line (115kV or above) without a
27 CEC, a public service corporation may not construct a utility line, plant, service or system
28

1 without first obtaining a CC&N.¹² However, because the authority to issue CC&Ns has
2 been delegated by the Arizona Legislature, if the Commission fails to comply with the
3 requirements imposed by the Legislature, its decision exceeds its powers and is void for
4 lack of jurisdiction. *See, e.g., Tonto Creek Estates Homeowners Ass 'n v. Arizona Corp.*
5 *Comm'n*, 177 Ariz. 49, 55-57, 864 P.2d 1081, 1087-89 (App. 1993) (setting aside the
6 Commission's decision transferring a CC&N for failure to follow statutory requirements).

7 Like CC&Ns, the Arizona Constitution does not authorize the Commission to issue
8 a CEC, but pursuant to Article 15, Section 6 of the Constitution, the Arizona Legislature
9 granted such authority to the Commission as set forth in A.R.S. §§ 40-360 through 40-
10 360.13. These statutes establish the procedural requirements and substantive standards
11 that must be followed by the Siting Committee and the Commission in issuing a CEC for
12 a proposed power plant or transmission line meeting the jurisdictional thresholds. The
13 Commission has no power to grant, deny or condition a CEC on a basis not authorized by
14 statute. *See Burlington N. and Santa Fe Ry. Co. v. Arizona Corp. Comm'n*, 198 Ariz. 604,
15 606, 12 P.3d 1208, 1210 (App. 2000); *cf American Cable Television, Inc. v. Arizona Pub.*
16 *Serv. Co.*, 143 Ariz. 273, 277-278, 693 P.2d 928, 932-933 (App. 1984) (the Commission
17 lacks jurisdiction to regulate utility pole licenses); *General Cable Corp. v. Citizens*
18 *Utilities Co.*, 27 Ariz. App. 381, 385-386, 555 P.2d 350, 354-355 (1976) (the Commission
19 lacks jurisdiction to interpret terms in an electrical supply contract).

20 The jurisdiction and authority of the Siting Committee itself is based upon the Siting
21 Statutes, which establish the committee, specify its membership, and prescribe the scope
22 of its authority and the procedures it must follow. Among other things, the authority to
23 require a CEC is expressly limited to thermal plants with a nameplate rating of 100 MW
24 or more and transmission lines with a nominal voltage of 115kV or more. *See* A.R.S. §
25 40-360. Power plants and transmission lines which do not meet these jurisdictional
26 Accordingly, thresholds are not subject to the Siting Statutes and are not required to obtain

27 ¹² A.R.S. § 40-281(A) states that “[a] public service corporation, other than a railroad, shall not begin
28 construction of a street railroad, a line, plant, service or system, or any extension thereof, without first
having obtained from the commission a certificate of public convenience and necessity.”

1 a CEC. If the Siting Committee exceeds the scope of its authority or fails to follow proper
2 procedures, its decision is void for lack of jurisdiction.

3 The former chairman of the Siting Committee aptly described the limits on the
4 committee's jurisdiction in his ruling on a motion in limine filed by Tucson Electric Power
5 in Docket L-00000C-11-0400-00164 regarding an application by Tucson Electric Power
6 ("TEP") to construct a 138kV transmission line to serve a proposed new mine known as
7 Rosemont. Opponents of the Rosemont mine intended to offer evidence of the impacts of
8 the mine at the hearing on TEP's planned transmission line. However, Chairman Foreman
9 ruled as follows:

10 The Arizona Power Plant and Transmission Line Siting Committee is a
11 creature of the Arizona legislature. It is solely authorized to act by the
12 statutes, the line siting statutes. The Arizona Corporation Commission is
13 authorized by the legislature to review certain decisions of the Committee
14 and to promulgate procedural rules for it that are not inconsistent with the
15 statutes. The Commission has authority granted to it by the constitution to
16 do other things, like, for example, ratemaking, but its line siting authority
17 comes from the very same statutory source as the Committee, A.R.S. Section
18 40-360 and following statutes.

19 ***

20 The various potential parties and counsel for the Save the Scenic Santa Ritas
21 or for the Scenic Santa Ritas have argued that the Committee, as a part of the
22 balancing it has to do using the statutory factors and the statutes passed by
23 the legislature, can consider the environmental impact of the mine, which is
24 in essence the use to which electricity is being turned, when it considers the
25 environmental impact of the line, which is the conveyance that conveys the
26 electricity to the load or source of use.

27 And there is a -- Mr. Robertson has made a very creative argument about
28 bringing in federal authority that would certainly support that. I view this
29 decision, however, as strictly an Arizona statutory authority issue. And I find
30 that there is no statutory authority for the Committee to consider the
31 environmental impact of the mine.

32 The line siting statute is very broad about the types of environmental factors
33 of a project that may be considered. But it is very precise about the project.
34 And 40-360.06.A says that it has to be with respect to the suitability of the

1 transmission line siting plans. It does not in any way suggest that you would
2 go beyond to with whatever use is being made of the electricity.

3 ***

4 So the decision that I have made is that the various motions to allow evidence
5 of the environmental impact of the Rosemont mine are not material to the
6 application filed. And the line siting statute is pretty clear that the Committee
7 is to, quote, receive material, non-repetitive evidence. And that's out of
8 A.R.S. Section 40-360.04.C.

9 So evidence relating solely to the mine is not going to be admissible. And I
10 am also going to advise the other members of the Committee at the hearing
11 that Arizona law does not authorize the Committee to consider the
12 environmental impact of the proposed mine in evaluating the environmental
13 impact of the proposed transmission line.¹³

14 Chairman Foreman's ruling was approved by the Siting Committee on the first day
15 of the line siting hearing on a 10-1 vote.¹⁴

16 The TEP/Rosemont line siting case is instructive in this case, which is analogous.
17 The impacts of Applicant's planned Solar Facility are not material to the Application for
18 a CEC for the Gen-Tie Project. Thus, evidence relating solely to the Solar Facility should
19 be excluded.

20 **C. The Siting Statutes Do Not Authorize the Siting Committee to**
21 **Base Its Decision on the Impacts of Applicant's Planned Solar**
22 **Facility.**

23 **1. Applicant's Planned Solar Facility Does Not Require a CEC.**

24 There is no debate that Applicant's planned Solar Facility does not require a CEC.
25 As discussed above, Applicant's Solar Facility (1) is not a thermal electric plant; and
26 (2) has a nameplate rating well below 100 MW, both of which exclude the Solar Facility
27 from the requirements of A.R.S. § 40-360.03. Accordingly, Applicant is not required to
28 submit the information or exhibits required by the Siting Rules for a non-jurisdictional
generation plant as part of its application for a CEC for the Gen-Tie Project. The assertions

¹³ Reporter's Transcript of Proceedings (Docket L-00000C-11-0400-00164), Pre-Hearing Conference held December 8, 2011, at pp. 12-15 (emphasis added).

¹⁴ The Siting Committee also recently address the limits of its jurisdiction in Docket L-00000AAA-16-0370-00173 wherein it declined to exercise jurisdiction over the upgrade of a transmission line owned by the Western Area Power Administration.

1 by Ms. Williams and Mr. Bagnall that Applicant must address questions and/or provide
2 information regarding such topics as heat, inverter noise, reflectivity, zoning, and legal
3 access associated with the installation of PV panels at the Solar Facility should be rejected.
4 Such questions are irrelevant and immaterial to the issuance of a CEC for the Gen-Tie
5 Project.

6 **2. The Siting Statutes Do Not Allow For Consideration of**
7 **Impacts Other Than Those Caused by the Gen-Tie Project.**

8 The essential purposes of the power plant and transmission line siting process in
9 Arizona is to: (1) determine the impacts of a thermal power plant (100 MW or above) or
10 transmission line (115kV or above); (2) establish appropriate conditions to minimize the
11 impact on the environment or ecology while meeting the purpose and need; and (3) for the
12 Commission to ultimately balance the project impacts against the need for reliable,
13 economical and adequate power. As stated repeatedly herein, the Siting Statutes do not
14 apply to all generation facilities or transmission lines but are limited to power plants of a
15 certain size (100 MW and above) and transmission lines over a certain voltage (115 kV
16 and above). To Applicant's knowledge, there is no case in Arizona where the Siting
17 Committee or Commission has examined, as part of its CEC determination, the impact of
18 a generation facility over which the Committee has no jurisdiction.

19 Further, A.R.S. § 40-360.06(A) delineates the factors the Siting Committee may
20 consider in issuing a CEC, but such factors are only considered as they relate to the impacts
21 of the power generation or transmission line that is subject to its jurisdiction, in this case,
22 the Gen-Tie Project:

23 The committee may approve or deny an application and may impose
24 reasonable conditions upon the issuance of a certificate of environmental
25 compatibility and in doing so shall consider the following factors as a basis
26 for its action with respect to the suitability of either plant or transmission line
27 siting plans:

- 28
1. Existing plans of this state, local government and private entities for other developments at or in the vicinity of the proposed site.

- 1 2. Fish, wildlife and plant life and associated forms of life on which they are
2 dependent.
- 3 3. Noise emission levels and interference with communication signals.
- 4 4. The proposed availability of the site to the public for recreational
5 purposes, consistent with safety considerations and regulations.
- 6 5. Existing scenic areas, historic sites and structures or archaeological sites
7 at or in the vicinity of the proposed site.
- 8 6. The total environment of the area.
- 9 7. The technical practicability of achieving a proposed objective and the
10 previous experience with equipment and methods available for achieving
11 a proposed objective.
- 12 8. The estimated cost of the facilities and site as proposed by the applicant
13 and the estimated cost of the facilities and site as recommended by the
14 committee, recognizing that any significant increase in costs represents a
15 potential increase in the cost of electric energy to the customers or the
16 applicant.
- 17 9. Any additional factors that require consideration under applicable federal
18 and state laws pertaining to any such site.

17 In interpreting Arizona statutes, the courts seek to determine the intent of the
18 Arizona Legislature. *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996)
19 (quoting *State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (1993)). When the
20 Arizona Supreme Court interprets statutes, it applies “fundamental principles of statutory
21 construction, the cornerstone of which is the rule that the best and most reliable index of a
22 statute’s meaning is its language and, when the language is clear and unequivocal, it is
23 determinative of the statute’s construction.” *Backus v. State*, 220 Ariz. 101, 203 P.3d 499,
24 502 (2009) (internal quotation marks and citation omitted); *see also Firetrace USA LLC*
25 *v. Jesclard*, 800 F. Supp. 2d 1042, 1048 (D.C. Ariz. 2010). The explicit language in the
26 Siting Statutes is that the Arizona legislature intended for the Siting Committee to consider
27 the impacts of power generation and transmission only; it did not intend for the Siting
28

1 Committee to resolve disputes regarding the impacts of the underlying purpose and need
2 for that generation or transmission, in this case the Solar Facility.

3 The Siting Statutes must be interpreted “in such a way as to achieve the general
4 legislative goals that can be adduced from the body of legislation in question.” *Dietz v.*
5 *General Electric Co.*, 169 Ariz. 505, 510, 821 P.2d 166, 171 (1991). The clear goal of the
6 Siting Statutes is to balance the impact of power plants and transmission lines meeting the
7 jurisdictional thresholds. Thus, considering the impacts of the Solar Facility itself is
8 outside the scope of the Siting Committee’s authority.

9 A CEC is defined as “the certificate required by this article which evidences the
10 approval by the state of the sites for a plant or transmission line or both.” A.R.S. § 40-
11 360(2) (emphasis supplied). Thus, a CEC authorizes the construction and location of a
12 jurisdictional power plant or transmission line. It does not authorize all of the impacts that
13 flow from the construction of the jurisdictional transmission line. Asking the Siting
14 Committee to consider the alleged impacts of the Solar Facility is no different—and no
15 less inappropriate—than asking the Siting Committee to consider the impacts of a mine, a
16 master-planned community, a solid water disposal facility, a mobile home park, a
17 manufacturing plant or any other entity which might be served by a transmission line. The
18 alleged impacts of the Solar Facility are simply outside the scope of a review of
19 Applicant’s application for a CEC for the Gen-Tie Project.

20 MOTION IN LIMINE

21 **A. Evidence Regarding the Alleged Impacts of the Planned Solar**
22 **Facility is Irrelevant, Immaterial, Prejudicial and Likely to**
23 **Confuse the Record, and Should be Excluded.**

24 Applicant requests that the Siting Committee consider this legal memorandum as
25 its Motion in Limine to prevent the introduction of evidence by intervenors regarding the
26 impacts of Applicant’s planned Solar Facility. The purpose of a motion in limine is to
27 preserve the objections for appeal without the need to object during the hearing. *See*
28 *Gibson v. Gunsch*, 148 Ariz. 416, 417, 714 P.3d 1311, 1312 (App. 1985); *State v. Briggs*,

1 112 biz. 379, 382, 542 P.2d 804, 807 (1975). Evidence addressing the impacts of the Solar
2 Facility has no bearing on the impacts caused by the Gen-Tie Project and, therefore, is not
3 material or relevant to the proceeding. Additionally, as set forth above, evidence relating
4 to the impacts of the Solar Facility is beyond the scope of the siting process, and
5 introduction of such evidence will result in a confused record. Therefore, Applicant
6 objects to the introduction of evidence that is unrelated to either the Gen-Tie Project.

7 The Siting Committee's Rules of Practice and Procedure allow for the consideration
8 of the Arizona Rules of Civil Procedure for the conduct of the evidentiary hearings. *See*
9 A.A.C. R14-3-216. The Arizona Rules of Evidence may also be considered, because they
10 do not conflict with the Siting Committee's rules and they may be generally followed,
11 even if relaxed, such as they are in other Commission proceedings. *See* A.A.C. R14-3-
12 109.K. Further, the Chairman of the Siting Committee, as the Presiding Officer, has the
13 authority to receive relevant evidence. A.A.C. R14-3-201.E.2. It follows then, that the
14 Chairman also has the authority to limit the scope of the proceedings and exclude irrelevant
15 and immaterial evidence.

16 **B. Evidence Regarding the Impacts of the Planned Solar Facility is**
17 **Not Relevant or Material to this Proceeding.**

18 Rule 401, Arizona Rules of Evidence, defines "relevant evidence" as evidence
19 having any tendency to make any fact that is of consequence to the determination of the
20 action more probable or less probable than it would be without the evidence. This has
21 been described as the articulation of a single and concise standard for determining
22 relevance consistent with established principles. *Brown v. General Foods Corp.*, 117 Ariz.
23 530, 533, 573 P.2d 930, 933 FN 2 (App. 1978). Here, the Siting Committee's authority is
24 limited to balancing environmental factors relating to the siting of the Gen-Tie Project.
25 Evidence regarding the impacts of the planned Solar Facility does not make the impacts
26 caused by the Gen-Tie Project more or less probable. The impacts of the Gen-Tie Project
27 are independent of those caused by the Solar Facility, which is not subject to the
28 jurisdiction of the Siting Committee or the Commission.

1 Here, evidence of impacts caused by the Gen-Tie Project is of consequence to the
2 siting process. In contrast, evidence regarding the impacts of the planned Solar Facility is
3 not of consequence to the environmental compatibility of the Gen-Tie Project. Thus, such
4 evidence is not material. Further, evidence of the impacts of the planned Solar Facility do
5 not make the determination of the Gen-Tie Project impacts more or less probable, so that
6 evidence is also not probative to the siting process. Only evidence material and probative
7 regarding the Gen-Tie Project impacts should be admitted; evidence simply to demonstrate
8 or debate the Solar Facility's impact is neither. Therefore, the Siting Committee should
9 not admit it during these proceedings.

10 C. **The Danger of Unfair Prejudice, Confusion and Consideration of**
11 **Undue Delay or Waste of Time Outweigh Any Probative Value of**
12 **Evidence Relating to the Planned Solar Facility's Impacts.**

13 Rule 403, Arizona Rules of Evidence, allows for the exclusion of evidence if the
14 probative value of such evidence is outweighed by (among others) unfair prejudice,
15 confusion of the issues, or the needless presentation of cumulative evidence. Thus, even
16 if marginally relevant, evidence solely regarding impacts of the Solar Facility should be
17 excluded under Rule 403 because it confuses the issue of balancing and mitigating impacts
18 of the Gen-Tie Project. It also is prejudicial, as it suggests that the proposed Gen-Tie
19 Project will somehow cause the impacts alleged to be caused by the Solar Facility.

20 Admitting evidence relating to the impact of the planned Solar Facility will also
21 confuse the record and cause undue delay in the proceeding. The Application relates solely
22 to the impacts of the Gen-Tie Project, with no substantive information regarding the
23 planned Solar Facility. The purpose of the Application is not to establish findings and
24 conclusions regarding the planned Solar Facility, and it is difficult if not impossible to see
25 how the Siting Committee could make meaningful findings and conclusions regarding the
26 Solar Facility, even if the jurisdictional impediment were removed.

27 Siting proceedings are complex proceedings with many issues. Without some
28 limitation on the presentation of evidence and the scope of the proceeding, administrative

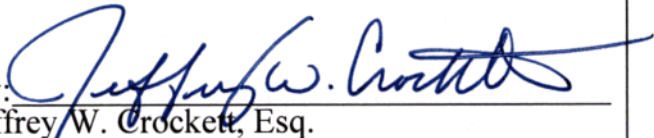
1 efficiency and a clear record are sacrificed. Consequently, the Siting Committee should
2 limit the evidence it receives to only that related to the Gen-Tie Project, which are the
3 subject of the Application. Evidence regarding the impacts of the planned Solar Facility
4 will only clutter the record with information unrelated to the Gen-Tie Project and will
5 serve no beneficial purpose. In other words, such evidence will not clarify what
6 environmental impacts the Gen-Tie Project cause, what conditions are appropriate to
7 mitigate those impacts, or whether the Gen-Tie Project are necessary to provide reliable,
8 economical and adequate power despite those impacts. Further, admitting such evidence
9 will unduly delay the proceedings by attempting to litigate matters that the Siting
10 Committee cannot decide. In short, any probative value of evidence regarding the impacts
11 caused by the planned Solar Facility is outweighed by such concerns of a clear record and
12 administrative efficiency. Therefore, the evidence should not be allowed.

13 **CONCLUSION**

14 The Chairman and the Siting Committee should determine that it is not appropriate
15 to present evidence regarding the impacts of the Solar Facility as is being attempted by
16 Ms. Williams and Mr. Bagnall. The Siting Committee cannot make findings or impose
17 conditions regarding the planned Solar Facility as such is beyond the scope of the Siting
18 Committee's authority. Further, evidence of the impacts of the Solar Facility is of no
19 consequence to the impacts caused by the Gen-Tie Project, and should not be admissible
20 in these proceedings as it is irrelevant and immaterial and likely to confuse the record.

21 RESPECTFULLY submitted this 3rd day of April, 2017.

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2 ORIGINAL and 25 copies filed this 3rd day of April, 2017, with:

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