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SE NO. 174

PREHEARING CONFERENCE

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BEFORE THE ARIZONA POWER PLANT
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.)

DOCKET NO.
L-00000BBB-17-
0073-00174
Case No. 174

Arizona Corporation Commission

DOCKETED

APR 13 2017

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PREHEARING
CONFERENCE

At: Phoenix, Arizona
Date: April 10, 2017
Filed: April 13, 2017

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard before the Arizona
3 Power Plant and Transmission Line Siting Committee, at
4 the Attorney General's Office, 15 South 15th Avenue,
5 Room 401, Phoenix, Arizona, commencing at 10:01 a.m. on
6 the 10th of April, 2017.

7

8

BEFORE: THOMAS CHENAL, Chairman

9

10 APPEARANCES:

11

For the Applicant:

12

CROCKETT LAW GROUP, P.L.L.C.
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and

16

Ms. Maria Moncada, via teleconference
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19 For Potential Intervenor Ms. Lynda Williams:

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GILBERTO FIGUEROA, ESQ.
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1 APPEARANCES:

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For Potential Intervenor SunZia Transmission, LLC:

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Green Valley, Arizona 85622

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and

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LAW OFFICES OF DOUGLAS V. FANT
By Mr. Douglas V. Fant
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12

13 ALSO PRESENT:

14

Mr. Jess Melin, NextEra Energy Resources, LLC,
Director Business Development, via
teleconference

15

16

Mr. Eric Koster, NextEra Energy Resources, LLC,
Environmental Project Manager, via
teleconference

17

18

Mr. Devin Petry, Environmental Planning Group,
Environmental Planner

19

20

Mr. Tom Wray, SunZia

21

Ms. Lilia Monarrez, Coash & Coash, Court Reporter
observing proceeding

22

23

Ms. Lisa Romeo, Assistant to Chairman Chenal

24

25

25

1 CHMN. CHENAL: All right. This is the time set
2 for the prehearing conference for the Southline project.

3 Can we have appearances for the parties.

4 MR. CROCKETT: This is the Pinal Central Energy.

5 CHMN. CHENAL: I am sorry. What did I say?

6 MR. CROCKETT: Southline.

7 CHMN. CHENAL: Why would I say Southline?

8 MR. ROBERTSON: No idea, sir.

9 MR. CROCKETT: It is his fault.

10 CHMN. CHENAL: Why would I say Southline? I
11 know I was looking at one of the orders in that case.

12 Pinal Central Energy. Let's have appearances,
13 please.

14 MR. CROCKETT: Good morning, Chairman Chenal.
15 Jeff Crockett appearing on behalf of the applicant,
16 Pinal Central Energy, LLC.

17 And I will let you know that on the phone is
18 Maria Moncada, who was here at the prefiling meeting.
19 She is counsel to NextEra in Florida. Jess Melin is on
20 the line. Jess, I think you also met, is the project
21 lead for NextEra. And then Eric Koster is on the phone
22 with NextEra as well, K-O-S-T-E-R. And then in the room
23 with me -- well, we will probably go around the room --

24 CHMN. CHENAL: That's okay.

25 MR. CROCKETT: -- but Devin Petry with EPG is

1 also here on behalf of the applicant here today.

2 CHMN. CHENAL: All right. Thank you very much.

3 And welcome aboard. Probably --

4 MR. CROCKETT: Thank you.

5 CHMN. CHENAL: -- a little sprinting to catch
6 up.

7 MR. CROCKETT: A little bit of sprinting, a
8 little bit of drinking from the fire hose, but it is
9 good to be here.

10 CHMN. CHENAL: Good. Good to have you.

11 MR. ROBERTSON: The microphone has been passed
12 to me.

13 Good morning, Mr. Chairman, Lawrence
14 V. Robertson, Jr., of counsel to the law firm of Munger
15 Chadwick, PLC, and Doug Fant of SunZia Transmission,
16 LLC, appearing as counsel for SunZia Transmission, LLC.
17 Also with us today is Mr. Tom Wray, the project manager
18 for the SunZia project.

19 CHMN. CHENAL: Very good.

20 Nice to see you again, Mr. Wray.

21 MR. WRAY: Nice to be here, sir.

22 MR. FIGUEROA: Gilbert Figueroa, co-counsel for
23 Lynda Williams with Rod Jarvis.

24 CHMN. CHENAL: Gilberto and I went to law school
25 together. And he reminded me last time, after the

1 hearing he said, well, I haven't seen you in 40 years,
2 however many, 40 or so. He said I remember you as
3 having long blond hair down to your shoulders, which I
4 did. So the ravages of time.

5 Good to see you, too.

6 MR. FIGUEROA: Likewise.

7 MR. ROBERTSON: Mr. Chairman, if I might make
8 one brief comment before we start.

9 CHMN. CHENAL: Yes, sir.

10 MR. ROBERTSON: I don't know how long the
11 prehearing conference will run today, but I have an
12 appointment commitment over at the Capitol at 12:00
13 noon. So if you see me leaving a little bit before,
14 that's why.

15 CHMN. CHENAL: And that's fine. We will make
16 sure we address the issue of the status of where you are
17 with your, with the issues you have raised in your
18 briefs. We will get to that right off the bat. So any
19 of the substantive issues I think will be resolved well
20 before noon --

21 MR. ROBERTSON: Very good.

22 CHMN. CHENAL: -- if we go that long. I don't
23 anticipate it will.

24 Okay. So far I have seen two notices of
25 intervention, not interventions of right but

1 interventions by request. And, as you know, those will
2 be handled at the hearing by the Committee. If there
3 were interventions by right, I would rule on those now.
4 But we will rule on those. My general preference is to
5 allow intervention. But I think that's an issue that is
6 best left to the Committee. That's how it has
7 traditionally been done. And I would continue with that
8 tradition. So that issue will be resolved when we begin
9 our hearing.

10 Mr. Crockett, could you -- I have a little
11 checklist here, just so you know. It is a checklist I
12 have used in every case, which is basically the
13 checklist that John Foreman, the predecessor Chairman,
14 followed.

15 I have reviewed obviously the application, Pinal
16 Central Energy generation-tie line project. We will get
17 it right. Let's talk a minute about the notice of
18 hearing and the posting of, publishing of the notice,
19 Mr. Crockett. Can you talk just about that, please.

20 MR. CROCKETT: Yes. Thank you, Mr. Chairman.
21 Let me just go through beginning with the publication of
22 notice.

23 The applicant caused notice of the hearing to be
24 published in the Casa Grande Dispatch. The notice first
25 ran on March 19th, 2017 and then ran again during that

1 week and the week of March 26, 2017, except for the
2 Monday of that week. The notice also ran in the
3 Tri-Valley Dispatch on March 22nd and March 29, 2017.
4 We have included affidavits of publication from both
5 newspapers in our prefiled testimony and exhibits that
6 came in on Friday. I think I will go ahead and file a
7 notice of filing affidavits in the docket so that they
8 are in there separately.

9 CHMN. CHENAL: Good. I would think that's a
10 good idea.

11 MR. CROCKETT: So I will go ahead and get that
12 done early this week.

13 CHMN. CHENAL: Okay, fine. Very good.

14 MR. CROCKETT: As far as posting of notice, we
15 posted notice on three signs that are in the vicinity of
16 the gen-tie project on March 26, 2017. One site, one
17 notice sign was posted at the proposed project
18 substation location on private land that is under the
19 control of the applicant. Two additional notice signs
20 were posted along Eleven Mile Corner Road in the City of
21 Coolidge right-of-way. A map showing the sign locations
22 is attached as Exhibit PCE-2C, which we filed on Friday.
23 And it is the same map that was marked at the prefiling
24 conference as Prefiling No. 5. So those locations
25 stayed the same.

1 We included in our filing Friday photographs of
2 the sign locations. Those are attached as Exhibit
3 PCE-2D. And all three of those signs are in close
4 proximity to the gen-tie route.

5 With respect to notice to affected
6 jurisdictions, pursuant to the March 23rd, 2017
7 procedural order, copies of the notice of hearing were
8 mailed. They actually were, I guess the notice of
9 hearing was mailed on March 17th, 2017 via certified
10 mail to Pinal County and the City of Coolidge.
11 Additionally, I would note that the procedural order
12 dated March 23rd, 2017 directed that the applicant send
13 a copy of the notice to the City of Casa Grande --

14 CHMN. CHENAL: Casa Grande.

15 MR. CROCKETT: -- which we went ahead and did --

16 CHMN. CHENAL: Good.

17 MR. CROCKETT: -- on, I believe, March the 24th.

18 We have copies of the return receipt cards that are
19 evidencing receipt of those notices of hearing that we
20 have included in our prefiled exhibits as
21 Exhibit PCE-2G.

22 I would note that the affected jurisdictions,
23 being Pinal County and the City of Coolidge, were
24 invited to the prefiling conference on March the 6th;
25 however, neither one attended.

1 I can get into dates that the parties received
2 the notice, if you would like.

3 CHMN. CHENAL: Not necessary.

4 MR. CROCKETT: Okay. Then moving ahead, we
5 filed a notice of service to affected jurisdictions in
6 the docket on March 24th, 2017. A copy of that notice
7 is provided as Exhibit PCE-2H. As a courtesy, we mailed
8 copies of the notice of hearing, the agenda, the first
9 amended agenda, and the March 23rd, 2017 procedural
10 order via certified mail on March 24, 2017 to
11 Mr. Robertson, Mr. Fant, Mr. Figueroa, who is counsel to
12 Ms. Williams, and Mr. Bagnall, and Caywood Farms. And
13 we have return receipt cards back from each of those --

14 CHMN. CHENAL: Okay.

15 MR. CROCKETT: -- except possibly Mr. Robertson,
16 who called me to say what did I get in my mailbox that I
17 need to go pick up. And I told him what it was, and he
18 may not have gone down to actually pick it up.

19 MR. ROBERTSON: Mr. Crockett is correct. Our
20 office, everybody in the office was out of the office at
21 the time that the postal service showed up. They are
22 located about a half a mile away. And I concluded
23 calling Mr. Crockett would be easier than going to the
24 post office.

25 MR. CROCKETT: So I will avow that we had a nice

1 conversation about the notice of hearing.

2 CHMN. CHENAL: No doubt about that. But I
3 wonder, if Mr. Robertson had gone that half mile, if
4 that would have showed up as a travel expense billed to
5 Mr. Wray.

6 MR. ROBERTSON: No, sir.

7 MR. WRAY: He uses a bicycle, no fuel costs.

8 CHMN. CHENAL: Very good.

9 MR. CROCKETT: With regard to the public notice,
10 in addition to the newspaper publication, the sign
11 postings, and the copies of notices that were sent out
12 to potential intervenors and affected jurisdictions in
13 this case, the sign notices and other notices have
14 referred interested parties to the Arizona Corporation
15 Commission website for a copy of the application. We
16 have also provided a copy of the application to the --
17 well, I guess the application, I will ask Devin on this,
18 the application is in -- is that the Vista Grande
19 Library?

20 MR. PETRY: Correct, Casa Grande.

21 MR. CROCKETT: Okay. In Casa Grande, okay.

22 And then we also provided of the prehearing or
23 the prefiling transcript --

24 CHMN. CHENAL: Transcript.

25 MR. CROCKETT: -- to the, yeah, transcript, to

1 the library.

2 So I think that covers the notice.

3 CHMN. CHENAL: All right. All right. Good.

4 And there will be testimony of that at the hearing?

5 MR. CROCKETT: Yes. Mr. Melin will testify to
6 that. And that's all reflected currently in the
7 testimony that we prefiled on Friday.

8 CHMN. CHENAL: Okay. I did not have a chance to
9 review all of that information. I will have an
10 opportunity to do that between now and when the hearing
11 starts.

12 MR. FIGUEROA: Just so you know, a minor
13 objection to the comments offered by Mr. Crockett. And
14 that is he talks about the signs being posted on
15 property controlled by the applicant. We have no way of
16 finding that out because the option is a sealed option.
17 We have never been told whether or not they actually
18 have control or whether Mr. Wuertz maintains control.

19 CHMN. CHENAL: Okay.

20 MR. FIGUEROA: So that will be just for the
21 record, objection to that notice.

22 CHMN. CHENAL: But the sign is posted?

23 MR. FIGUEROA: As far as we can tell, yes, sir.

24 MR. CROCKETT: Yes.

25 CHMN. CHENAL: All right. Let's talk about the

1 hearing for a minute.

2 I don't think -- it is premature about how long
3 the hearing will be until we rule on some of the legal
4 motions and have a little further discussion about that.

5 We do have lodging for out-of-town Committee
6 members? I just want to make sure that aspect has been
7 nailed down.

8 MR. CROCKETT: That has been nailed down,
9 Mr. Chairman. Mr. Petry has been working with your
10 assistant, Lisa Romeo, on those arrangements. We have
11 hotel rooms at the Casa Grande Holiday Inn for the
12 duration of the noticed hearing, which I believe is
13 April 18th through the 25th. And we have a conference
14 room reserved there. We have, we have, or at least are
15 very close to having, signed a contract with an
16 audiovisual company that will provide microphones, the,
17 you know, access to the internet, and things that we
18 need in that conference room.

19 CHMN. CHENAL: Very good. A robust wi-fi is
20 important.

21 MR. CROCKETT: You know, we have talked about
22 that. That has been communicated to the contractor. We
23 understand that the last hearing that was held there,
24 that the wi-fi was relatively good. But that has been
25 communicated to the contractor that that's important,

1 and to the hotel.

2 CHMN. CHENAL: Okay. We are in a transition
3 period with the Committee with two new members. So I
4 assume that their names will be updated for the hotels.

5 MR. PETRY: Yes, Mr. Chairman.

6 CHMN. CHENAL: Hotel.

7 MR. PETRY: Ms. Romeo and I discussed that this
8 morning. And we will be coordinating with the Casa
9 Grande Holiday Inn to make sure they are available.

10 CHMN. CHENAL: Perfect. Good.

11 Okay. Mr. Crockett, let's talk about the tour
12 for just a moment.

13 MR. CROCKETT: Okay.

14 CHMN. CHENAL: Given the level of interest in
15 this almost half mile line, it seems like a tour would
16 be appropriate. I would like to see one. My general
17 feeling on tours is, if anyone wants, of the Committee
18 members, wants to see a tour, we will make that
19 available to them. And I guess I am telegraphing to you
20 I know of one Committee member who wants to have a tour,
21 me. So --

22 MR. CROCKETT: Okay.

23 CHMN. CHENAL: -- I would like to see that and
24 see where the, where the disputed areas are.

25 MR. CROCKETT: Sure. Mr. Chairman, we have

1 filed on Friday a proposed schedule and protocol along a
2 map showing the tour route options. I have copies of
3 those if folks today would like to look at that.

4 CHMN. CHENAL: Let's do that. And we will mark
5 that as Exhibit 1.

6 MR. CROCKETT: Why don't I have this marked as
7 Prehearing Conference, Prehearing Conference No. 1.

8 (Exhibit 1 was marked for identification.)

9 MR. CROCKETT: Colette, was this marked as --

10 THE REPORTER: Prehearing No. 1.

11 MR. CROCKETT: Prehearing No. 1. Thank you.

12 Mr. Chairman, Prehearing No. 1 was filed with
13 our submission on Friday. And as you will notice, we
14 have two tour route options. And if you will turn to
15 the second page of the document, which is a map, it
16 shows there is a northern tour option and a southern
17 tour option, but they both wind up at the same place,
18 which is that red star that you see.

19 We are -- we have been working to address the
20 right of entry to get back, to get from Eleven Mile Road
21 back to this property. And we had two options we were
22 working on. We may still be working on those two.

23 Devin, do you have any kind of an update at this
24 point?

25 MR. PETRY: No, I don't.

1 MR. CROCKETT: Okay. So we will get that locked
2 down this week. But for our purposes, I think the
3 important point is we have identified one stop. And if
4 you see where the stop is, you can see the substation
5 and you can also -- it is roughly underneath the
6 proposed gen-tie line right there at the --

7 CHMN. CHENAL: The red star?

8 MR. CROCKETT: Southeast, yeah, the southeast
9 corner of the SRP Pinal Central substation.

10 CHMN. CHENAL: So the red star.

11 MR. CROCKETT: Yes, correct. So we would come
12 in off Eleven Mile Road and make that stop there at the
13 red star.

14 We are estimating a couple of hours to take the
15 tour. You see under either route option they are
16 approximately the same. I mean they are exactly the
17 same in terms of the timing. I mean this project is
18 relatively compact, as you know. And so there is not a
19 lot of ground to cover on the tour. But I, you know, I
20 know that we were discussing before we met that a
21 picture is worth a thousand words and seeing it is
22 helpful. So if you are interested in a tour, we will
23 certainly do that.

24 We have arranged to have SUVs available to
25 transport the members of the Committee. The folks from

1 NextEra that would be attending would include the list
2 of attendees here, Jess Melin, Bill Brannen, Devin
3 Petry. I would be along on the tour, Ms. Moncada as
4 well, possibly a couple other folks from NextEra.

5 CHMN. CHENAL: Okay. Very good.

6 Do any of the potential parties and interested
7 parties have any objection to the tour as proposed?

8 MR. FIGUEROA: I may offer a third alternative,
9 Mr. Chairman. Although we were not contacted, I
10 anticipated from the conversation I had with prior
11 counsel that he would call us, and I was asked to speak
12 to Ms. Williams to see if she would authorize them going
13 through her property down Sunshine Boulevard south to
14 the Laughlin Road alignment, then west on the Laughlin
15 Road alignment to the property. She is willing to do
16 that but wanted to know a little bit more about how many
17 vehicles, how many people, that kind of thing.

18 MR. CROCKETT: And, Mr. Chairman, the way I
19 would, I guess, respond to that is, coming in off of
20 Eleven Mile Road, we think, is probably a better option
21 to get to where we need to go. There is no need to come
22 in from the east across the property. And given the
23 concerns that Ms. Williams has raised about having
24 people and equipment on her property, we are sensitive
25 to that. And so we feel like this gets us where we need

1 to be and --

2 CHMN. CHENAL: Okay. Well, you will let us know
3 which of those two is the one you will select?

4 MR. CROCKETT: Yeah. We will get that wrapped
5 up prior to the start of the hearing.

6 CHMN. CHENAL: All right.

7 Yes, Mr. Robertson.

8 MR. ROBERTSON: You inquired whether any party
9 had an objection to the proposed tour. SunZia does not.
10 In fact, we would encourage it. Because the red star,
11 which is the centerpiece, if you will, of the ultimate
12 point of the tour, we believe, will enable the Committee
13 members to see on the ground what our concerns are with
14 respect to the currently proposed alignment of the
15 gen-tie route.

16 CHMN. CHENAL: I think it would be helpful. It
17 would be helpful to me. I mean I have read the
18 materials, you know. I have seen the maps. I
19 understand, I think, the issues. But it would be
20 helpful, for me anyway, to see on the ground that area.

21 Now, I do remember from a previous case, you
22 know, visiting the substation, but I do remember it is
23 large. It is very large. And I am not exactly sure I
24 can remember where we were in that case in relation to
25 where the red star is on Exhibit 1 here.

1 So, okay. Well, good, very good. So there is
2 no objections by any other parties.

3 And, of course, we all know the parties, parties
4 will be permitted to follow along. There will be very
5 limited testimony at the stop. It will be basically
6 where we are, why it is important. Any extended
7 testimony we can take back at the hearing to go into the
8 details. But it will be very brief. It is very
9 difficult for the court reporter staff to take extended
10 testimony in the field like that.

11 MR. FIGUEROA: Mr. Chairman, if I may. My
12 memory was you were considering, if a tour were
13 arranged, for it to be Wednesday morning. Am I still
14 correct?

15 CHMN. CHENAL: Yes, yes. Thank you. Yeah, it
16 would be Wednesday morning. So the hearing would
17 start --

18 MS. MONCADA: This is Maria Moncada on the
19 phone. And I am sorry to interrupt. But for my own
20 scheduling purposes, it would be helpful to know, if we
21 start at 9:00, whether that means we would leave the
22 Casa Grande Holiday Inn hotel at 9:00 or whether we
23 should be somewhere else by 9:00 --

24 MR. CROCKETT: Maria, this is Jeff.

25 MS. MONCADA: -- assuming the start time was

1 9:00.

2 MR. CROCKETT: Sure. On Wednesday, April the
3 19th, that's the date that we propose the tour. The
4 start time, we would meet actually at the Holiday Inn
5 and then leave from there at 9:00 a.m.

6 MS. MONCADA: Thank you.

7 CHMN. CHENAL: All right, very good. Any
8 questions by any of the potential parties on the tour?

9 (No response.)

10 CHMN. CHENAL: Let's look at the agenda, which
11 is a matter of record. It has been filed in the docket.
12 I just wanted to ask if any of the, if the applicant or
13 any of the potential parties had any questions or
14 concerns or corrections regarding the agenda as filed
15 with Docket Control.

16 MR. ROBERTSON: No.

17 CHMN. CHENAL: Okay. Mr. Robertson says no.
18 Mr. Crockett.

19 MR. CROCKETT: No, Mr. Chairman.

20 CHMN. CHENAL: Okay. Mr. Figueroa.

21 MR. FIGUEROA: No, Your Honor.

22 CHMN. CHENAL: Okay, all right.

23 I also want to verify if any party disagreed
24 that the time limit within which the Committee has to
25 act in accordance with the statutes is September 11th of

1 2017.

2 MR. CROCKETT: Mr. Chairman, I did the number,
3 did the math this last week, and that's what I came up
4 with as well, so no objection from the applicant.

5 MR. ROBERTSON: Mr. Chairman, from SunZia's
6 perspective, knowing your thoroughness from previous
7 hearings before you, we assume your calculation is
8 correct.

9 CHMN. CHENAL: Thank you. I rely on Lisa for
10 the most part. But I think I did this one. But when I
11 saw September 11th, honestly, I did it a second time.

12 MR. CROCKETT: Yeah. That's a momentous day.

13 CHMN. CHENAL: Absolutely.

14 Okay. All right. The hearing, we have the
15 date. We have the location. It is in the notice of
16 hearing April 18th through the 25th during the weekdays,
17 if necessary.

18 I will remind the applicant we like to have
19 sign-in forms for the hearing and public comment
20 sessions. And we would like to include in that,
21 Mr. Crockett, name, address, and phone or e-mail, some
22 kind of contact information.

23 All right. I always ask this. I don't see it
24 in this case, but any need for security? I don't see it
25 in this case.

1 MR. CROCKETT: I don't see it either,
2 Mr. Chairman, no.

3 CHMN. CHENAL: Public comment session, we will
4 have it on April 18th at 6:00 p.m. Again, I am pretty
5 liberal with public comment to accommodate people. If
6 they are going to come out and show up and want to say
7 something, we are going to accommodate them. But we
8 have it formally set for the 18th at 6:00 p.m. to
9 accommodate people who may, you know, be working and be
10 a little easier for them to attend.

11 We talked about the tour logistics. Do you also
12 have, Mr. Crockett, a Google Earth flyover or any -- or,
13 you know, flyover, maybe that's not necessary in this
14 case -- an aerial?

15 MR. CROCKETT: We have, we have aerial maps that
16 are part of our filing that we have made.

17 CHMN. CHENAL: Sure.

18 MR. CROCKETT: We, candidly, had not planned to
19 do a flyover because it is such a compact area, so...

20 CHMN. CHENAL: I agree. We don't need a
21 flyover. For most tours, most cases --

22 MR. CROCKETT: Or a Google --

23 CHMN. CHENAL: Google Earth?

24 MR. CROCKETT: -- image, Google Earth, you know,
25 we had not planned to do that.

1 CHMN. CHENAL: I don't think it is necessary,
2 but you have blow-up maps so --

3 MR. CROCKETT: Yes.

4 CHMN. CHENAL: -- the Committee can see and the
5 situational awareness for the issues that will be
6 raised.

7 MR. FIGUEROA: Mr. Chairman, if I may.

8 CHMN. CHENAL: Sure, Mr. Figueroa.

9 MR. FIGUEROA: Mr. Fant just brought up a good
10 point. I don't know if San Carlos received notice of
11 any of the ongoings. I know that the project has been
12 using the canal to cross over into Mr. Wuertz's land.
13 But I don't know if San Carlos ever received notice
14 other than from Lynda Williams.

15 CHMN. CHENAL: If they haven't formally been
16 provided notice, I am sure Mr. Crockett will be happy to
17 send a notice.

18 MR. CROCKETT: Let me see, Mr. Chair, if I can
19 answer that question quickly.

20 MR. PETRY: If I may, I do know that we
21 contacted the San Carlos Irrigation & Drainage District,
22 as well as the San Carlos Irrigation Project, which is
23 affiliated with the Bureau of Indian Affairs. I will
24 note not only in contact with them, but in coordination
25 with them throughout the process.

1 MR. FIGUEROA: That was just a question that we
2 have here and didn't have an answer.

3 MR. CROCKETT: That's right. I am looking at an
4 exhibit from, or Schedule H from an Exhibit H to our
5 application that identified those folks that have
6 received a notice of the filing. And it includes the
7 Bureau of Indian Affairs, San Carlos Irrigation Project.

8 CHMN. CHENAL: Okay. Okay. Since we have daily
9 transcripts, we will break every 90 minutes. And if
10 there is a reason why a break is needed, we can always
11 take a break. But we will plan on those approximately
12 every 90 minutes.

13 We talked about the robust wi-fi. Any other
14 issues regarding the hearing itself or the venue that we
15 need to talk about?

16 MR. CROCKETT: None that I am aware of,
17 Mr. Chairman. We have tried to think through
18 everything, and I think we are on top of all the
19 arrangements.

20 CHMN. CHENAL: Okay.

21 MR. FIGUEROA: When this comes on, may I ask you
22 speak up just a little bit? My hearing aids pick up
23 that as much as they do you.

24 MR. CROCKETT: Sure. I will speak loudly,
25 Mr. Figueroa.

1 MR. FIGUEROA: Thank you.

2 CHMN. CHENAL: I don't have as much hair, but I
3 don't have a hearing aid.

4 MR. FIGUEROA: I was going to say I have more
5 hair but I have loss of hearing, so we are even.

6 CHMN. CHENAL: All right. Let's talk about the
7 witnesses' testimony and filing of, exchange of
8 exhibits.

9 Has that been accomplished, Mr. Crockett? I
10 know from your perspective it has been.

11 MR. CROCKETT: From the applicant, yeah, the
12 applicant's perspective, it has.

13 While I have the floor, I will let you know that
14 we have three witnesses we have identified. Jess Melin
15 and Devin Petry have prefiled their testimony on Friday,
16 testimony and exhibits. We have filed a witness summary
17 for William Brannen.

18 CHMN. CHENAL: Okay.

19 MR. CROCKETT: And we anticipate that those
20 three gentlemen would appear as a panel at the hearing.
21 That just seemed to make the most sense for us. Again,
22 it is a discrete project. And they had a little bit
23 different responsibilities and pieces, and we thought
24 for purposes of efficiency that it made sense to have
25 them appear together.

1 But I will, I have -- you know, the purpose of
2 prefiling the testimony of two of our main witnesses was
3 that we would save the time of having to elicit that on
4 direct at the hearing. So we don't anticipate, unless
5 you have a preference, that that testimony would be read
6 into the record at the hearing. It would be introduced
7 as an exhibit and then those witnesses would be, after
8 making a PowerPoint presentation, they would be
9 available for cross-examination.

10 CHMN. CHENAL: Well, okay, let's talk about
11 that. I don't know that I would like read like they are
12 standing up and reading it. But I think it would be
13 better for the Committee, Mr. Crockett -- if it were
14 just me, I would read it and what you propose would be
15 perfectly acceptable. But for the benefit of the
16 Committee members, who I will not assume all will have
17 read that testimony, I think it would be more beneficial
18 for them if you would, if you would go through that
19 testimony.

20 And you know what? Maybe my procedural order
21 isn't clear. Maybe I need to make a correction there to
22 clarify that point. But I think it is important that
23 the Committee hear the testimony of your witnesses, and
24 then we will open it up for cross-examination.

25 MR. CROCKETT: Now, we do have a PowerPoint

1 presentation which is designed to walk the members, the
2 Committee members, through the prefiled testimony. But
3 it obviously won't have the full detail of the
4 testimony. So if it is your preference, we are
5 certainly happy to take the time to go through that
6 testimony in fairly good detail at the hearing, if
7 that's what you think would be helpful.

8 CHMN. CHENAL: That's how we have done it in the
9 past. We have had, we have had detailed testimony.

10 I would sure like to get the thoughts of some of
11 the other folks here, but I am just afraid that you
12 won't be giving your case justice, and when we get into
13 the weeds in some of these other issues, it may be
14 helpful for the Committee to have heard that testimony.
15 I think it just makes the issues that may come up more
16 understandable.

17 And, now, I don't want to be a slave to that and
18 just have them, you know, go over mundane,
19 uninteresting, you know, laborious, heavy factual detail
20 that is of no interest and of no real moment to the
21 issues that they have to decide in this case. So, you
22 know, there may -- it is not a hard and fast rule in my
23 mind, Mr. Crockett. But I think I don't want a
24 situation where cross-examination occurs in areas where
25 the Committee has not heard the actual testimony and

1 they are just with a blank stare or what are you talking
2 about. That's what I am trying to avoid.

3 MR. CROCKETT: Okay. Well, we have heard your
4 concern. And we have got the burden of proof here. So
5 we will make sure that, we will go back and talk about
6 this, we will make sure that we present something that
7 gives the Committee members all of the underlying
8 information they will need to make the decision, on the
9 assumption that not everyone will have read everything
10 that we have submitted.

11 CHMN. CHENAL: I think that's a fair assumption.
12 Mr. Robertson.

13 MR. ROBERTSON: Thank you, Mr. Chairman.

14 If I might offer a comment, because I think your
15 observations in this instance are very well taken, and I
16 will presume to speak only on behalf of SunZia, as you
17 are aware from various filings that we have made going
18 all the way back to our original application for leave
19 to intervene, and also comments I made at the March 6,
20 2017 pre-filing conference, SunZia has had some concerns
21 about the proposed routing for the 230kV gen-tie line,
22 as we perceive it might adversely impact SunZia's rights
23 and options under the certificate of environmental
24 compatibility that was granted to SunZia in Case
25 No. 171.

1 If we are granted intervention, what I would
2 propose is we would be calling Mr. Wray to explain those
3 concerns for the benefit of you and the other members of
4 the Committee.

5 I think, in fairness to Mr. Crockett, the more
6 fully his direct case, if there is still an area of
7 disagreement by the time of the hearing between NextEra
8 and SunZia, I think in fairness to him, but more
9 important in fairness to you and the Committee members,
10 it is good to have a more complete presentation orally
11 instead of a brief summary so that you and the other
12 Committee members can make an informed decision if you
13 are called upon to rule on certain issues that may then
14 exist between SunZia and NextEra. So I support your
15 initial thinking.

16 CHMN. CHENAL: And I see the confusion now that
17 hasn't come up before, frankly, in the procedural order.
18 Some of these provisions I have changed from the
19 provisions that had been there forever because I didn't
20 think they made any sense. That one I left alone, and
21 now I can see that there is still ambiguity there: why
22 have two direct testimony or witness summary. It leads
23 me to -- the identical conclusion you draw now is clear
24 to me. So I am going to change the procedural order
25 going forward.

1 But I think, I think, yeah, I think your case
2 would be better served, Mr. Crockett, by having more
3 rather than less.

4 MR. FIGUEROA: May I add two more cents to
5 Mr. Robertson?

6 CHMN. CHENAL: Of course.

7 MR. FIGUEROA: I fully agree with his comments,
8 but I want to add from the perspective of Ms. Williams
9 that I think one of the issues here is going to be
10 credibility. And it is very, very important for, I
11 think, the Committee to listen to the witnesses and
12 determine where the truth does lie with respect to some
13 of the issues that we have raised. And that's assuming
14 that we are allowed to intervene, and/or the second
15 issue with respect to access has not yet been clarified.

16 So we would respectfully request that oral
17 testimony be presented because I don't think any plan to
18 cross-examine that I have, whether it is Mr. Petry or
19 Mr. Melin, is going to mean anything to the Committee
20 unless they have fully read all the transcripts, are
21 familiar with not only the technical aspect of their
22 testimony but those aspects of the testimony that have
23 to rely on credibility. I think they have to hear those
24 witnesses so that the cross-examination makes more sense
25 to them.

1 CHMN. CHENAL: Okay. I thank you. And I kind
2 of think that's the direction we are going. So we will
3 assume that there will be testimony on the case in
4 chief.

5 Mr. Robertson, I read your, the motion you filed
6 basically indicating that, until the issue is either
7 resolved or not resolved on the location of, you know,
8 the, on the dispute on the matter that SunZia raised, it
9 is hard for you to file testimony and know what exhibits
10 that you will be using. Are you any further along in
11 that endeavor?

12 MR. ROBERTSON: Let me give you a bifurcated
13 response.

14 In terms of the discussions between SunZia and
15 NextEra and their respective consulting engineers -- and
16 the last meeting that they had, some in person and some
17 by means of webinar was a week ago tomorrow -- there
18 still had not been a definitive resolution. And my
19 understanding from talking with Mr. Wray, and he can
20 expand on this if he would like, is that the proverbial
21 ball, if you will, was back in NextEra's court to take a
22 look at possibly some options that might address
23 SunZia's concerns.

24 Mr. Wray and I have talked since I filed my
25 filing last Thursday, or April 6, which I styled a

1 Response to Sections 13 and 14 of the Procedural Order.
2 And I think that's what you are referring to.

3 CHMN. CHENAL: Yes, yes.

4 MR. ROBERTSON: We think, if the concern that we
5 have has not been resolved between NextEra and SunZia
6 within the next few days, it would be appropriate for us
7 to file by this Friday a brief summary of the kind of
8 testimony SunZia anticipates putting on. And our plan
9 has been, if we are granted intervention, to have
10 Mr. Wray testify at the hearing. And I would defer to
11 him whether he felt Mark Etherton would also be
12 appropriate to testify as well. At most we would have
13 two witnesses. But that would be an update on our
14 current thinking.

15 We do think you and the members of the Committee
16 should have some idea of the nature of our testimony.
17 NextEra obviously is very aware of our concerns because
18 we have been engaged in ongoing discussions for several
19 weeks now.

20 CHMN. CHENAL: Let me ask Mr. Crockett. We will
21 talk a little more about what you just said,
22 Mr. Robertson.

23 But is that acceptable to you, Mr. Crockett?
24 That's Friday. It is a few days before the hearing.

25 MR. CROCKETT: Yeah, I mean, Mr. Chairman, I am

1 troubled by it. You know, we have a procedural schedule
2 in the case. And, you know, the parties, both SunZia
3 and Ms. Williams, were represented at the prefiling on
4 March the 6th. And Friday was the deadline for filing
5 testimony and testimony summaries.

6 I recognize there are -- I agree with
7 Mr. Robertson. There have been ongoing discussions
8 between SunZia and NextEra to try to accommodate the
9 concerns that arise out of the, out of the CEC that
10 SunZia already holds. But there is -- but that doesn't
11 give us a lot of time when they file on Friday.

12 And, you know, rereading the March 23rd
13 procedure order, some of the language in there struck me
14 that, you know, the purpose for the parties to get
15 together and exchange exhibits and testimony is to avoid
16 surprise at the hearing, to avoid undue delay. And, you
17 know, I do have concerns about getting this on a Friday
18 over the Easter weekend, where the hearing starts on
19 Tuesday afternoon, so...

20 But, on the other hand, the report that I get
21 back from my client is that there have been fruitful
22 discussions in terms of addressing issues. I don't want
23 to get into these discussions because I think probably
24 they fall under Rule 408 as settlement discussions and I
25 don't want to talk about who is, you know, who has

1 proposed what or not.

2 But the other, the other concern that I have --
3 well, and there may be a scope concern that I have
4 there, too, in terms of what SunZia is proposing. And,
5 you know, our perspective as we have laid this out in
6 our memo on jurisdiction is we think the focus here is
7 limited to the gen-tie line, you know, which
8 incorporates a substation that is shown on the maps that
9 we have submitted. And concerns that go to the
10 photovoltaic facility that is planned, we think, are
11 beyond the scope of this.

12 CHMN. CHENAL: We will talk about that in a few
13 minutes.

14 MR. CROCKETT: But that's tied into, I think it
15 is tied into some of the discussion with SunZia.

16 CHMN. CHENAL: Mr. Robertson.

17 MR. ROBERTSON: May I respond very briefly. I
18 would like to address three phrases in your procedural
19 order. And I think they each appear in section 13 and
20 14, if not elsewhere. And they are very short,
21 Mr. Chairman.

22 The first one is meet and confer. Now that's a
23 phrase that appears in numerous places throughout your
24 procedural order and in all the predecessor procedural
25 orders of recent years. That's precisely what SunZia

1 has been doing with NextEra for weeks. And we have
2 spent money on consulting engineers as well as in-house
3 time in an effort to move forward in good faith and
4 meet, confer, and see if we can resolve our differences.
5 And I agree with Mr. Crockett; from what I have heard,
6 the discussions on both sides have been in good faith
7 thus far. So I think we have satisfied the meet and
8 confer criteria.

9 Secondly, in section 13 and 14 there is a good
10 cause shown exception to the deadline that was
11 established for the prefiling of brief summaries or
12 prepared testimony. I think we have satisfied that good
13 cause shown criterion in this particular circumstance.

14 And the third point within those same two
15 sections that Mr. Crockett just addressed is to avoid
16 surprise. I would find it very hard for NextEra to be
17 surprised here, after all of the time that has been
18 spent in the meet and confer activities between NextEra
19 and SunZia, as to what SunZia is going to be proposing
20 in its testimony.

21 So I conclude with those brief remarks.

22 CHMN. CHENAL: Okay. This doesn't seem to me to
23 be a case where there is an absence of a good faith
24 effort to try and find a solution. And the problem is,
25 as I see it, is, yes, if you don't resolve the issue,

1 your testimony will be X; if you do resolve it, the
2 testimony will be Y. In either case SunZia would like
3 to intervene, but I see that there is a wide difference
4 between the testimony. It is just hard to know at this
5 point.

6 On the other hand, I can, I can sympathize with
7 Mr. Crockett, with Easter weekend coming up and getting
8 this information on Friday afternoon with the hearing on
9 Tuesday. Even though it is probably foreseeable what
10 the testimony would be, I do see we would want to avoid
11 a possibility where Mr. Crockett is surprised by an area
12 of testimony that he had not anticipated based on the
13 good faith efforts of the parties.

14 So perhaps we could find a compromise of,
15 instead of direct testimony, a summary of the areas of
16 testimony, but something prior to Friday, maybe
17 Thursday, to give Mr. Crockett an extra day to
18 reasonably anticipate what the testimony will cover in
19 the event this matter is not resolved. Because if it is
20 resolved, it seems like that that's an easy -- that's
21 easy. You both would be presenting that together.

22 MR. ROBERTSON: Mr. Chairman, I have a hearing
23 before the Arizona Corporation Commission in Tucson on
24 Thursday. That could run all day. I want to be
25 responsive to your suggestion. If I might have a moment

1 to confer with Mr. Wray and Mr. Fant, or perhaps they
2 know right now if we could work to meet that timeline,
3 recognizing, because of prehearing preparation, my
4 availability to them will be somewhat limited during the
5 next two days.

6 CHMN. CHENAL: Okay. Could you confer? You
7 could --

8 MR. ROBERTSON: Sure. We can do that out in the
9 hall.

10 CHMN. CHENAL: Okay. Let me ask, Mr. Crockett,
11 I mean, would you be amenable to that compromise?

12 MR. CROCKETT: You know, the additional day
13 would be very helpful to us. I don't know that our
14 objection is to SunZia putting on some testimony; it
15 just is the scope of that. And without knowing, you
16 know, it is hard to agree to something without knowing
17 what is going to be submitted.

18 If what comes in is fairly limited scope and it
19 goes to specific issues that are germane to the gen-tie
20 line, then I think we are probably fine with that. If
21 it goes beyond that and there is broader issues, I
22 mentioned the PV facility, if it goes into issues
23 pertaining to the PV facility, I would probably, I would
24 reserve the right to object to that as beyond the scope
25 of the hearing.

1 MR. ROBERTSON: Let me respond to two points.
2 First of all, I have had the opportunity to confer with
3 Mr. Wray. If we are talking about summaries of what the
4 nature of our testimony would be, we could meet a
5 submittal deadline of this coming Thursday.

6 With regard to the scope, and I don't presume to
7 fully occupy Mr. Crockett's mind and line of thinking,
8 but it sounds like he is merging jurisdiction issues
9 with technological issues. And I don't anticipate our
10 testimony going after the jurisdictional issue. If it
11 turns out, if there is in fact a legitimate concern that
12 SunZia has and the proposed gen-tie routing is
13 irresolvable of that concern without making some change
14 in that proposed routing, I don't view that as a
15 jurisdiction issue. That's a technological issue. Now,
16 the question then becomes whether that required
17 rerouting remains within the proposed corridor that the
18 applicant has submitted. And then you get to whether or
19 not there is a substantial change, substantial
20 deviation, notice, those sorts of things. That's not
21 what we are proposing.

22 We are proposing to address the concern we have,
23 if it hasn't been resolved. And what we suggest from a
24 technical standpoint could be done to address the
25 concern. Then it is up to the Siting Committee to

1 decide the argument and which side, if we still are in
2 disagreement, should prevail. That's how we look at it.

3 MR. CROCKETT: And, Mr. Chairman, with that
4 being said, if the focus of the SunZia testimony is on
5 the gen-tie route and the substation that has been
6 proposed, and we are talking about integrating what we
7 want to construct with their future plans under their
8 CEC, I think we are going to be fine. It is just,
9 again, without getting into discussions, settlement
10 discussions, I do have some concerns that there is other
11 issues that have been raised that, in my opinion, go
12 beyond focusing purely on the gen-tie route.

13 CHMN. CHENAL: Well, precisely the reason to
14 have that summary delivered on Thursday, so there are no
15 surprises. And you will know the scope then,
16 Mr. Crockett. And if there are problems that arise
17 because of that that you want resolved prior to the
18 hearing on Tuesday, I will make myself available and we
19 can have a telephonic conference to try and work those
20 out.

21 What I am trying to do is set up a plan where,
22 to take into account the fact that there are good faith
23 negotiations that could resolve this, but also balancing
24 unfair surprise at the hearing. And I think what I have
25 outlined is a reasonable solution to that to avoid

1 surprise but still allow time to continue to resolve the
2 matter.

3 MR. ROBERTSON: Very good.

4 CHMN. CHENAL: Okay?

5 MR. CROCKETT: Thank you.

6 MR. ROBERTSON: Thank you, sir.

7 CHMN. CHENAL: Mr. Figueroa, have you had the
8 opportunity to exchange exhibits and testimony or --

9 MR. FIGUEROA: Mr. Chairman, we don't anticipate
10 calling any witnesses. Our anticipation was just to
11 cross-examine witnesses called by -- and, I am sorry, I
12 refer to them NEE because that's the easiest acronym for
13 me to remember, but Pinal Central Energy. So we don't
14 anticipate any witnesses.

15 As far as exhibits, the only exhibits we would
16 anticipate using are the ones that were already
17 identified, and that was the deeds and the map of the
18 50/50 easement. So outside of that, I didn't --

19 I suppose it should be said on the record I am
20 trying to save Ms. Williams as much money as I can
21 because it is a big expense for her.

22 CHMN. CHENAL: Sure.

23 MR. FIGUEROA: And so I am trying to piggyback
24 as much as I can with Mr. Fant and Mr. Robertson or
25 anything submitted by Pinal Central. I don't anticipate

1 any witnesses. And outside of the two exhibits, they
2 were already identified as exhibits they intend to use
3 anyway, I didn't have any exhibits that I would be
4 introducing.

5 CHMN. CHENAL: Okay.

6 MR. CROCKETT: And, Mr. Chairman, if I could
7 inquire from Mr. Figueroa, he had submitted a Memorandum
8 of Law No. 1 on the heat island effect. And attached to
9 that were three articles.

10 Our concern on the articles -- I think what I
11 heard him say is he doesn't intend to introduce those as
12 exhibits.

13 MR. FIGUEROA: Mr. Chairman, and perhaps my
14 naivete is showing here, I had anticipated, because they
15 were attached to the memo that was submitted as a memo
16 of law to the Committee, that that would be a part of
17 the exhibits already introduced.

18 CHMN. CHENAL: No.

19 MR. FIGUEROA: No? All right then. I guess I
20 will have to.

21 MR. CROCKETT: And if I could just respond to
22 that, my concern would be that he won't have a witness
23 to authenticate and to testify on any of those three
24 documents. We have looked at them. We think there is
25 real issues. But, you know, how does he get them into

1 evidence without a witness to sponsor them?

2 CHMN. CHENAL: Let's reserve that discussion
3 until after we talk about these, the memos, because we
4 will get into these very shortly, and depending on how
5 that turns, we will probably decide that issue on which
6 exhibits.

7 SunZia, your exhibits will be SUN. Is that
8 acceptable?

9 MR. ROBERTSON: That's acceptable, yes, sir.

10 CHMN. CHENAL: Okay. We will see, Mr. Figueroa.
11 What is good for you? L, I have an L. What is -- do
12 you know your client's middle initial?

13 MR. FIGUEROA: S.

14 CHMN. CHENAL: S. LSW --

15 MR. FIGUEROA: Yes.

16 CHMN. CHENAL: -- for Ms. Williams,
17 Mrs. Williams. Okay.

18 MR. CROCKETT: And, I am sorry, Mr. Chairman, if
19 I could, Mr. Figueroa identified two exhibits that he
20 intended to use.

21 Mr. Figueroa, which two were those?

22 MR. FIGUEROA: Those were the deeds that you
23 submitted. Specifically the one referenced the 50/50
24 easement, and I believe you included a map of the 50/50
25 easement. Like I said, I scanned them last night late

1 at night. So I wasn't sure --

2 CHMN. CHENAL: Let's do this. Let's have you,
3 Mr. Figueroa, just shoot an e-mail or something to
4 counsel just to let them know specifically the documents
5 that you intend to use --

6 MR. FIGUEROA: Okay.

7 CHMN. CHENAL: -- as exhibits so there is no
8 guessing. My understanding is that there are exhibits
9 that other parties intend to use. Is that --

10 MR. FIGUEROA: That was my anticipation.

11 CHMN. CHENAL: Okay.

12 MR. FIGUEROA: And I believe both of those
13 exhibits were listed in Mr. Crockett's list of exhibits.
14 Again, I got the packet yesterday or late Saturday
15 evening, didn't look at it until last night. And it was
16 kind of one of those "I don't need it until next week"
17 and just scanned it.

18 CHMN. CHENAL: Mr. Crockett.

19 MR. CROCKETT: If I could follow up on SunZia,
20 they are going to file witness summaries on Thursday. I
21 don't know if Mr. Robertson would also be in a position
22 to identify exhibits that you intend to use at the
23 hearing.

24 MR. ROBERTSON: Not at this moment, no.

25 MR. CROCKETT: No? Okay.

1 MR. ROBERTSON: I listed a number of figures and
2 exhibits actually from the applicant's original
3 March 15, 2017 filing that I believe we may use as a
4 part of Mr. Wray and possibly Mr. Etherton's testimony.
5 What I don't know at this time is whether there will be
6 any in addition to that. And those are actually
7 identified, I believe, in my March 30th application for
8 leave to intervene and also perhaps, to an extent, in my
9 April 6, 2017 response to sections 13 and 14 of the
10 procedural order. And I also identified certain pages
11 where I excerpted text from the applicant's March 15,
12 2017 application.

13 So I think that should give a pretty good
14 insight initially as to where we are going. If we have
15 any additional ones, obviously we would include that in
16 our summary this coming Thursday. I just haven't had a
17 chance to confer with Mr. Wray. So I don't have
18 anything beyond what I have indicated, Mr. Crockett.

19 CHMN. CHENAL: But you believe, Mr. Robertson,
20 that in the meetings that you filed thus far you have
21 identified certainly a universe of documents that you
22 may use in the case?

23 MR. ROBERTSON: Yes. I would anticipate any
24 additional ones might be a refinement within the
25 universe on specific facilities or a specific location

1 of the gen-tie line in relation to the SunZia lines.

2 CHMN. CHENAL: Okay. Again, the idea here is to
3 avoid surprise. And I think that's a good
4 clarification. But if you, in your further discussions
5 with your client, believe that there are any, a
6 possibility of using exhibits outside of that universe,
7 I would ask you to provide those to Mr. Crockett, even
8 if you haven't determined that they will definitely be
9 used but just a possibility, so that he is not unfairly
10 surprised on Thursday when you give your updated
11 summary.

12 MR. ROBERTSON: I think that's a very fair
13 suggestion, Mr. Chairman. And it is conceivable that we
14 might have occasion to refer to language in a previous
15 decision of the Siting Committee and the Commission.
16 And certainly we would provide Mr. Crockett with notice
17 of that as well, as well as Mr. Figueroa.

18 CHMN. CHENAL: Sure. Okay. So by Thursday we
19 can expect from SunZia then a summary of testimony and a
20 further delineation of exhibits?

21 MR. ROBERTSON: That's correct, with the
22 understanding by 5:00 p.m. on Thursday?

23 And I say that only because I am in a hearing
24 all day Thursday. Mr. Fant and Mr. Wray will be working
25 on it. I will try and work with them --

1 CHMN. CHENAL: Sure.

2 MR. ROBERTSON: -- as much as I can the two
3 preceding days. But most of your deadlines are 5:00
4 p.m., so I just wanted to see if that would apply as
5 well.

6 CHMN. CHENAL: 5:00 p.m. is fine. That's kind
7 of what I was thinking. But, you know, we will do it by
8 e-mail with Mr. Crockett, right, so that he will have it
9 at 5:00 --

10 MR. ROBERTSON: Absolutely.

11 CHMN. CHENAL: -- and not two days later in the
12 mail.

13 MR. ROBERTSON: And we appreciate that
14 clarification or confirmation, as the case may be.

15 CHMN. CHENAL: Okay. Before we get into the
16 legal issues, are there any other matters needing
17 discussion, merit discussion at this point?

18 MR. CROCKETT: Mr. Chairman --

19 MS. MONCADA: This is Maria -- oh, no, go ahead.

20 MR. CROCKETT: Go ahead. Maria, I am going to
21 take a look at my notes and see if there is anything
22 else we needed to cover.

23 MS. MONCADA: Thanks, Mr. Crockett.

24 Mr. Chairman, you indicated to Mr. Figueroa that
25 he send a note to Mr. Crockett indicating which exhibits

1 he intends to work with during the hearing. Do we have
2 a deadline for that notification as well?

3 CHMN. CHENAL: Well, Mr. Figueroa, when can you
4 do that? I mean it seems like you could do that by
5 tomorrow.

6 MR. FIGUEROA: I should be able to e-mail
7 something either tonight or tomorrow morning.

8 CHMN. CHENAL: Okay.

9 MS. MONCADA: Thank you.

10 MR. FIGUEROA: And, Mr. Chairman, just so it is
11 clear, I don't anticipate any more than the two exhibits
12 that I have identified as the deeds that he has already
13 identified, specifically the 2005 deed talks about the
14 50/50 easement, and the map that they have -- that has
15 previously been submitted several times. I think that
16 was submitted at the prehearing conference. And then I
17 think, I think they included it, so I think they have
18 the 50/50 map there.

19 As far as the exhibits, I will address those --
20 the memos, I will address those when you call for those.

21 CHMN. CHENAL: Okay. Mr. Crockett, anything
22 further?

23 MR. CROCKETT: Mr. Chairman, the only other
24 thing I want to note is that this morning on my way here
25 I filed a proposed form of CEC for consideration. I

1 have hand-delivered copies to the parties that are here,
2 the attorneys that are here, and I have given your
3 assistant a copy of that.

4 CHMN. CHENAL: I have it.

5 MR. CROCKETT: And so we do have that submitted.
6 And that's, I think that's the other, only other thing
7 on my list that we needed to cover.

8 CHMN. CHENAL: Okay. Financial arrangements
9 with the ACC, I understand that the applicant will be
10 covering the hotel, you know, costs directly. Have you
11 had an opportunity to confer with the ACC, Corporation
12 Commission, to confirm that any expenses will be, from
13 these hearings, will be paid by the applicant?

14 MR. CROCKETT: I have not had that discussion.
15 I did talk with Docket Control that mails out notices
16 just to make sure that the \$1,000 deposit that we made
17 was still covering their expenses. And as of late last
18 week, it was.

19 The other expenses in terms of the hearing
20 transcript and the accommodations for the members of the
21 Committee, the audiovisual arrangements, those are all
22 being paid directly by the applicant. So I don't -- I
23 am not aware of any other expenses.

24 The Commission Staff has not intervened, is not
25 coming into this case as a party. I know you sent a

1 letter requesting that they submit any comments they
2 have. I spoke with Mr. Hains. He wasn't sure, when I
3 spoke to him, whether they were or were not going to be
4 doing that.

5 But, in any event, if there is anything else
6 that you are aware that we are not thinking about in
7 terms of financial arrangements, please let us know and
8 we will -- Lisa has been, Lisa has been very good to
9 coordinate that with us, on top of things.

10 CHMN. CHENAL: It's -- paragraph 5 of the
11 procedural order requests the applicant to contact the
12 appropriate member of the Staff of the Commission and
13 advise them of the applicant's position concerning
14 reimbursement of the line siting fund should the
15 expenses of the hearing exceed the application fee and
16 discuss financial arrangements regarding hotel
17 reservations and other expenses of the Line Siting
18 Committee members. The applicant shall advise the
19 Chairman of the results of these discussions so the
20 necessary information can be communicated to the Line
21 Siting Committee members.

22 The hotel is usually the big expense. The
23 \$1,000 application fee doesn't come close to covering
24 all the expense of the hearing. It's an old statute.

25 Meals, what is the position of the applicant

1 regarding the meals? I can tell you, I can tell you in
2 some cases, you know, lunch is provided. In other
3 cases, it is just a matter of reimbursement, and same
4 with dinner. Sometimes I just think the Committee
5 doesn't want to concern itself when they put in their
6 expense reimbursement, you know, to the Corporation
7 Commission. You know, they want to feel comfortable
8 that there will be funds to pay and reimburse them for
9 their meals and such. This is probably not, it is not
10 like some of the other cases we have had where, you
11 know, that could be a lot more of a substantial amount.
12 But a \$1,000 application fee may not cover such
13 expenses. So I think just to confirm with the
14 Corporation Commission that, you know, those expenses
15 will be covered in the event additional monies have to
16 be paid in by the applicant...

17 MR. CROCKETT: Okay. Mr. Chairman, I will make
18 that communication today with the Arizona Corporation
19 Commission so that they understand that those expenses
20 will be covered.

21 CHMN. CHENAL: Good, good. I think that's
22 important, especially when you have an out-of-state,
23 essentially an out-of-state applicant. In the old days
24 where it is just Tucson Electric or, you know, APS, it
25 is not -- we still would have this conversation, but I

1 just think it is important that that's not -- it doesn't
2 become an issue. It has never been an issue to my
3 knowledge.

4 MR. CROCKETT: Okay. Maria Moncada or Jess
5 Melin, do you have anything to add on the discussion
6 about reimbursement for meals of Committee members?

7 MS. MONCADA: No, no. I agree with your
8 statement, Mr. Crockett.

9 We can, through Mr. Crockett, will confirm that
10 the expenses will be covered.

11 CHMN. CHENAL: All right. Thank you.

12 MS. MONCADA: We will communicate to the person
13 that the procedural order directs us to communicate
14 with.

15 CHMN. CHENAL: Perfect. And it is, it is
16 mileage. It is meals. It is incidentals. But the
17 hotel is usually the largest expense. And that's being
18 paid directly, all right, so very good.

19 All right. Let's talk about the legal
20 memorandum now.

21 How are we doing on time? It is a little after
22 11:00.

23 MR. ROBERTSON: We are good.

24 CHMN. CHENAL: We are good.

25 Okay. Let's start with Ms. Williams' first

1 legal memorandum on the -- I will summarize it by saying
2 the impacts of the solar facility.

3 The applicant filed a response. And I know
4 there was a little confusion here on what the issues
5 were. I believe at the prefiling conference I had
6 anticipated counsel would get together and refine what
7 the legal issues were and I would then put those legal
8 issues in the procedural order. I didn't get that
9 letter or, you know, those refined legal issues. So I,
10 of necessity, kept it a little vague in the procedural
11 order.

12 So I understand the little confusion there about
13 two issues versus the one issue. That's why I allowed
14 the parties to respond, so that there was, you know, we
15 would have a complete record on the subject. But the
16 applicant responded to that issue. Ms. Williams
17 responded.

18 Then of course there was SunZia's memorandum on
19 the right to present evidence, which I don't anticipate
20 is an issue, but we will put that to the side.

21 But let's talk about the first legal memoranda.
22 I will tell you, Mr. Figueroa, that my sense is that's a
23 difficult issue for your client to prevail on. I want
24 to hear what you have to say. I want us to have a
25 complete record on it. But this Line Siting Committee

1 previously in cases where I have been the Chair has
2 basically excluded that type of evidence as not being,
3 you know, relevant to the statutory authority of the
4 Committee and what we can do in issuing a CEC.

5 The Rosemont case is one. There has been some
6 other cases, Pinal -- the Price Road corridor case where
7 part of the line went through the Gila River Indian
8 Tribe. The Southline case touched on it, the most
9 recent case, where part of the line was owned by Western
10 Area Power Authority. It was federal and other
11 preemption principles. We didn't really have authority
12 to, we felt, to really discuss that. That's a little
13 more tangential. But the Rosemont case, which happened
14 to have been cited by Mr. Crockett, and the Price Road
15 corridor case, I think, are two very similar to this
16 issue.

17 So I wanted to have the opportunity to make the
18 record, and then we will hear from the other parties.
19 But I did read the materials, and I am all ears.

20 MR. FIGUEROA: And that's fair. You referred to
21 Memo No. 1, I believe. That was the access issue,
22 correct?

23 CHMN. CHENAL: No, no. This is on the solar
24 facility, impacts of the solar facility, your Legal
25 Memorandum No. 1.

1 MR. FIGUEROA: Mr. Chairman, if I may, and I
2 know that I am treading on thin ice here, perhaps to
3 even deep waters, but our position has always been that
4 the application that was originally submitted to Pinal
5 County was a wholesale plant. I mean it included a
6 600 megawatt gas-fired electric facility. It included a
7 50 megawatts photovoltaic field. And it included
8 50 megawatts storage facilities.

9 And our questions prior to the hearing at the
10 board of supervisors were precisely that, how is this
11 going to impact our environment. And at the hearing, we
12 became concerned even more so at the hearing and after
13 the hearing, because at that point NEE pulled the 60
14 megawatt gas-fired facility, remained and argued for the
15 50 megawatt photovoltaic field and the 50 megawatt
16 battery storage. And we continued to question, provide
17 us the information. We said, you know, give us
18 something that shows us whether or not there is a
19 heat -- there is an island created that's going to be
20 affected by the heat.

21 And I read with interest Mr. Melin's response to
22 the newspaper question, newspaper reporter's question
23 about the heat issue. And his response essentially was
24 I put up tens of thousands of megawatts of photovoltaic
25 fields and have never heard about the heat issue.

1 Well, I did a simple Google search, and I found
2 three articles that are there. So either Mr. Melin is
3 not telling the truth or he is not up to date on what
4 the issues are about the photovoltaic fields and the
5 heat issues. There are three at least two articles that
6 I submitted. The third article, I believe, was
7 Mr. Acken's article on the process for setting these up.
8 So that's not relevant. Both of those articles make
9 quite clear that there is a heat island effect created.
10 They differ as to exactly what the temperature change
11 is, but they both agree that there is a heat issue, that
12 the heat issue affects the surrounding area, and that it
13 could affect the area by three to five, in fact, if I
14 can combine them both, three to seven degrees increase
15 in temperature. Depending which article you read, one
16 is three to four, one is three to seven.

17 That is a significant rise in temperature if you
18 consider that the temperature in that area is already in
19 the summer 116 to 120 degrees. As a result of that,
20 Ms. Williams felt compelled not only to not reinitiate
21 her business but to remove her horses because she was
22 afraid of what impact those, that heat exchange would
23 have on her horses.

24 So the argument then becomes, well, if they are
25 only building a 20 megawatt facility, then you can't

1 complain. Well, that may be true, but this is where I
2 think the whole tie-in comes in. Even if it is only a
3 20 megawatt photovoltaic field, it is not going to be
4 that long before they go for what they really want, and
5 that is the 600 megawatt gas-fired facility and the full
6 50 megawatt photovoltaic field. They are buying
7 250 acres. The last map Mr. Melin produced, I believe,
8 stated they were going to use slightly over 100 acres.
9 That leaves them 140 some acres to decide what to do
10 later.

11 So our argument is the transparency here is the
12 issue. That's why I believe the credibility in the
13 testimony of these parties is going to be so essential
14 to the Committee. Because at some point we believe, and
15 we believe the financial information, the financial
16 analysis that has to be conducted here, will reveal that
17 NEE cannot make any money off of a 20 megawatt
18 photovoltaic. They have not provided any CDF nor any
19 CAR reports that would indicate how that heat exchange
20 is going to affect Ms. Williams' 14 acres. That's the
21 issue number one with respect to the heat.

22 It all ties in, Mr. Chairman, whether it is a
23 20 megawatt field or otherwise, whatever electricity
24 they produce, still goes to the 230kV gen-tie. And our
25 question quite simply is why do you need a 230 gen-tie

1 if you are only producing 20 megawatts of power and
2 storing that to elevate it to 40 megawatts transport.
3 We have not been given any answers other than Mr. Melin
4 says you just don't understand the science. And I
5 don't. I will be quite frank with that. But I
6 understand a little bit of the math, and the math
7 doesn't add up.

8 CHMN. CHENAL: I am not going to argue
9 Mr. Crockett's case; I know he will. But I am -- we are
10 ships crossing in the night on this, I am afraid.

11 MR. FIGUEROA: I understand.

12 CHMN. CHENAL: Because I am saying to myself
13 let's assume there is all the impacts that you allege.
14 It still is an impact on an area that's not within the
15 corners of the application that's before the Committee.
16 I understand that one of the statutes, 40 dash, you
17 know, put my glasses on here --

18 MR. FIGUEROA: 06.

19 CHMN. CHENAL: -- 360.06 allows us to consider
20 the environment of the area. But I have not read that
21 and I know previous chairmen have not read that to mean
22 that the area is outside of that area as described and
23 encompassed by the application.

24 So it still, as in the Rosemont case, we can
25 consider the impact of the line, but are we to consider

1 the impact of that to which the line attaches to, the
2 use to which that electricity is put? And traditionally
3 this Committee has said no. And, so, the same logic
4 here, we will hear from Mr. Crockett in a moment, but
5 that, I think, is the issue that has kind of been the
6 deciding factor in the previous cases, Mr. Figueroa, is
7 the impact of where the line caused by the use to which
8 the electricity is put has traditionally not been
9 something that the Committee has dealt with.

10 MR. FIGUEROA: If I may --

11 CHMN. CHENAL: Sure.

12 MR. FIGUEROA: -- I think you narrowed it a
13 little bit too much. The Rosemont mine case referred to
14 a third party and use of third-party facilities. So I
15 think it is slightly different here because Ms. Williams
16 is a directly adverse party. She is adversely affected
17 by this directly. That's number one.

18 And number two, in this case, NEE, assuming that
19 the option is actually in effect and NEE is controlling
20 the property, assuming all these other things we already
21 discussed, NEE owns all the facilities. So they have
22 got to figure out how to get that power from one place
23 to the other. And the only way to get that is by either
24 overhead power lines or underground power lines. But
25 they own the whole facility, we presume. I don't think

1 Mr. Wuertz is going to reserve any part of that
2 facility. So I think that's the more relevant issue, is
3 that they are connected all the way across to what the
4 gen-tie is going to do.

5 I suppose the easiest question to ask is what is
6 a gen-tie going to do them if they can't get the power
7 to it. Why have a 230 gen-tie if you don't have enough
8 power to justify pushing 230 up? I understand there is
9 converters and there are all kinds of things you can do.
10 But why start with a 230? That's why the relevance, I
11 believe, is there with respect to the heat issue.

12 CHMN. CHENAL: Okay. Mr. Crockett.

13 MR. CROCKETT: Thank you, Mr. Chairman.

14 And at the end of Mr. Figueroa's argument, he
15 started to cross over into the access memo. And that's
16 a separate --

17 MR. FIGUEROA: That's why I backed up.

18 MR. CROCKETT: -- issue we will talk about in a
19 minute.

20 CHMN. CHENAL: We will take that up next.

21 MR. CROCKETT: But just focusing on the PV
22 facility, Mr. Chairman, you have identified the cases
23 that are relevant, of the TEP Rosemont case, the SRP
24 Price Road corridor case, and the Southline transmission
25 case in terms of addressing the jurisdiction of this

1 body. Whether the PV facility planned by NextEra is 20
2 megawatts, which is what is before you, or 50 or a
3 thousand, it is not subject to the jurisdiction of the
4 Line Siting Committee, because photovoltaic plants are
5 not thermal energy. So no matter how big it is, you
6 know, it doesn't fall within the jurisdiction of the
7 Line Siting Committee.

8 So in terms of Mr. Figueroa's concerns about
9 whether, you know, the applicant has something larger
10 planned down the road, what is before you today is a
11 gen-tie line, and that's associated with the plant, 20
12 PV facility, PV facility with a 10 megawatt storage
13 component, battery storage component. But even if it
14 had been a larger PV project, it wouldn't change the
15 fact that it is still not relevant to what is before the
16 Line Siting Committee.

17 Mr. Figueroa mentioned a 600 megawatt gas plant.
18 There were plans early on to do that, but those plans
19 have been abandoned. If there were to be that, if that
20 plant were to come back by NextEra or by some other
21 entity, there would be a plant siting requirement. So
22 they would be back in front of this body. There would
23 be zoning and entitlement issues to be dealt with there.

24 So it is not a concern that's germane to this
25 proceeding. What is before you is that quarter or that

1 half mile gen-tie line and related project substation.

2 In terms of the sizing of the line, again, I
3 mean I don't believe that that's -- you know, the line
4 has been engineered to be appropriate for the facility
5 that it will connect to, which is the 20 megawatt and
6 10 megawatt battery storage facility. So I don't think
7 that's a relevant issue.

8 If you look at, if you look at Mr. Figueroa's
9 response that he filed on April 6, his response to
10 applicant's legal memorandum and motion in limine, on
11 page 2 he says that Ms. Williams has in fact set forth
12 numerous arguments and has raised health related
13 concerns about applicant's proposed electrical
14 generating facility.

15 Later he says why does the applicant need a
16 230kV gen-tie transmission line if the applicant only
17 proposes to build a 20 megawatt photovoltaic field and
18 10 megawatt battery storage facility. He says just as
19 important is the next question, how long will it be
20 after the CEC is granted, based on the limited
21 information the applicant seeks to present, before they
22 return to the Committee seeking to construct a greater
23 than 100 megawatt photovoltaic field.

24 I mean everything he talks about in his response
25 is focused on that PV facility, which clearly is outside

1 the scope of the Line Siting Committee.

2 So we would -- we believe that to try to
3 introduce evidence of that, of effects, whether they be
4 heat or glare or dust or anything else related to the PV
5 facility, is immaterial to this proceeding, it is
6 outside the scope, it prejudices the applicant and
7 potentially delays the hearing and causes surprise. For
8 all those reasons the evidence and testimony in that
9 regard should be excluded.

10 CHMN. CHENAL: Thank you.

11 Mr. Robertson.

12 MR. ROBERTSON: Thank you, Mr. Chairman. SunZia
13 has no position on the issues under discussion at the
14 moment.

15 CHMN. CHENAL: Mr. Figueroa.

16 MR. FIGUEROA: Your Honor, and certainly I don't
17 propose to speak for anyone other than Ms. Williams, but
18 I think the scope of the project has to be looked at in
19 its entirety.

20 And one of the other issues I raised there was
21 that, while I do not speak for anybody other than
22 Ms. Williams, there is another facility that's there
23 that's being impacted. And so I raise that solely to --
24 and I think I worded it as the giant in the battle and
25 Ms. Williams being the little gal caught in the middle.

1 We understand, and Mr. Melin has made the
2 comment to me several times, we understand that this
3 area is likely to develop into a power corridor. We
4 grant that. We also understand that Ms. Williams
5 already has an easement across the south end of her
6 property with SRP involved. So if you look at the
7 logistics here, 360.06 talks about other facilities and
8 how they are impacted. Without pretending to speak for
9 SunZia, I remind, Mr. Chairman, that there is already an
10 issue there. We don't have -- and I have spoken to SRP
11 and did not get any indication of what their position
12 is, but we know that they plan to develop that facility
13 in certain areas in certain respects, and they have a
14 plan for that. We don't know how this plan impacts that
15 plan. We know that Tucson-Tortolita power already has a
16 line across there. We don't know how they are impacted.
17 So without pretending to speak for anybody else, all of
18 this is impacting Ms. Williams in a direct way.

19 Mr. Melin made a comment at one of the meetings
20 she already sold off part of the land and is getting,
21 you know, huge amounts of money, whatever. And we, we
22 responded to that saying that's fine, she took care of
23 that and we have dealt with it, now we are dealing with
24 you and how we are going to address the issues here.
25 And I started to speak about the heat and the elements

1 there, and he showed me the drawings where they modified
2 them to, you know, shrink the project to 20 megawatts.

3 Again, I can only bring up what I believe is
4 relevant. I think Rosemont was a third party issue,
5 doesn't really affect us here. I don't recall that the
6 counsel brought up and I did not look at the Price Road
7 corridor because he didn't bring that up, and I,
8 frankly, didn't look into it.

9 I will rest on that, Mr. Chairman. And hope
10 that we can at least ask the questions with respect to
11 the future plans, because I think it is important for
12 the Committee to consider whether or not these plans are
13 going to impact who is there now, which is SRP,
14 potentially SunZia, the Tortolita project, and how those
15 are all going to impact Ms. Williams.

16 What I didn't get into, and it is not relevant
17 for these proceedings but it will be zoning, and I
18 already pointed out to the county, is the fact that this
19 project in and of itself, because of the way it is being
20 designed, will cost Ms. Williams the entire value of her
21 property. So we will address that at zoning.

22 CHMN. CHENAL: Mr. Crockett.

23 MR. CROCKETT: Mr. Chairman, if I could just
24 briefly respond to the argument about the applicability
25 of A.R.S. 40-360.06, and I would read from the

1 prehearing transcript at the TEP Rosemont case. And I
2 brought copies of this. I don't know that we need to
3 mark it as a prehearing exhibit unless you would like to
4 have it marked. I brought an excerpt of it because I
5 didn't purchase the transcript. But here is the
6 language that I think is relevant for purposes of our
7 discussion. And this is Chairman Foreman at the time,
8 your predecessor:

9 The line siting statute is very broad about the
10 types of environmental factors of a project that may be
11 considered, but it is very precise about the project.
12 And 40-360.06.A says that it has to be with respect to
13 the suitability of the transmission line siting plans.

14 So this argument that this, that the
15 consideration of the environment can extend out and
16 encompass the PV facility, I believe that argument has
17 already been lost, as reflected in the TEP Rosemont case
18 and the Southline case and perhaps the Price Road
19 corridor SRP case. So, you know, again, we would
20 urge -- it really is going to wreak havoc with this
21 hearing if issues about the PV facility can be
22 interjected into the process where they really don't
23 belong.

24 CHMN. CHENAL: Okay. Here is the ruling that I
25 will make on this. I have given this a lot of thought.

1 And I have looked at these previous cases. I don't have
2 a written ruling but the verbal ruling will be
3 sufficient.

4 I do not believe that the evidence of the
5 photovoltaic plant impacts on this application are
6 relevant. And I think it would be inappropriate to hear
7 that evidence in this case for the reasons that we have
8 discussed on the record today. And I will refer to
9 previous, you know, Rosemont, the Price Road corridor
10 case, and, to some extent, Southline. I think our
11 jurisdiction is limited. I think the impacts that are
12 appropriate for the Committee to consider are the
13 impacts caused by the subject of the application.

14 To boot, in this case, the photovoltaic facility
15 is a facility over which the Committee doesn't have any
16 jurisdiction. So that's a separate reason why I believe
17 that that evidence of impacts of that project would be
18 inappropriate for this case.

19 So my ruling is that that evidence will not be
20 admissible. Having said that, I will provide
21 Mr. Figueroa --

22 And, Mr. Figueroa, you made a valiant effort
23 here. And I appreciate the effort and the arguments.
24 It is not an easy case. But I will make every
25 opportunity available to you to make an offer of proof,

1 including an oral offer of proof at the hearing,
2 evidence that will be admitted on the record for the
3 record, not as evidence for the Committee to decide.
4 But it will have to be evidence that will be admissible.
5 You already have in the record the attachments. I am
6 thinking that will be good enough to have in the record.
7 But if there is other evidence that you want to submit,
8 we will allow you to do that.

9 MR. FIGUEROA: Thank you. I appreciate that.

10 CHMN. CHENAL: Okay? All right.

11 All right. That takes care of the Memo No. 1.

12 Memo No. 2 relates to the easement issue. And
13 that is Lynda Williams' Legal Memorandum 2 regarding a
14 50 foot easement and the applicant's response to that.

15 Mr. Robertson.

16 MR. ROBERTSON: Mr. Chairman, as I indicated
17 earlier, I am going to have to slip out. So may I
18 indicate for the record SunZia also has no position on
19 this issue.

20 CHMN. CHENAL: Yes. And let's take that one
21 memo you filed, Mr. Robertson, very quickly regarding
22 whether or not you believe the motion in limine filed by
23 Mr. Crockett related to evidence submitted by, presented
24 by SunZia. And I just want to make sure that we don't
25 have an argument that Mr. Crockett's motion covers your

1 concern, and that you will be permitted --

2 MR. ROBERTSON: My understanding, Mr. Chairman,
3 based on our discussion this morning and your direction
4 to SunZia to file a summary of testimony it contemplates
5 providing at the hearing by 5:00 p.m. this coming
6 Thursday basically mooted any potential concern, because
7 Mr. Crockett appears to be supportive of the approach
8 that you describe, with the reservation if he believes
9 that our testimony goes beyond the scope of the
10 jurisdiction of the Committee and gen-tie line. So it
11 seems to me you have arrived at a resolution of it, but
12 I would be interested if Mr. Crockett looks at it
13 differently.

14 CHMN. CHENAL: Let me read the, to me, the
15 critical sentence in your motion: As SunZia interprets
16 the discussion, legal argument, and conclusions set
17 forth in applicant's memorandum and motion, they are not
18 intended by applicant to address or apply to the right
19 of SunZia to present evidence during the forthcoming
20 evidentiary hearing in the instant proceeding as to
21 potential adverse impacts of the currently proposed
22 230kV gen-tie line upon SunZia's rights and options
23 under the certificate of environmental compatibility
24 granted to SunZia in Siting Case 171.

25 And I just want to make sure that my

1 understanding of the extent of the motion in limine,
2 Mr. Crockett, while Mr. Robertson is here, extends to
3 the photovoltaic issues we just addressed as opposed to
4 extending beyond that and the slippery slope into
5 affecting SunZia's right to present evidence on the
6 concerns they articulated in their position, in their
7 papers.

8 MR. CROCKETT: Mr. Chairman, I think we have
9 agreement here. NextEra does not oppose the
10 introduction of evidence and testimony regarding the
11 impacts of the proposed intertie and project substation
12 on the CEC that was issued in Case No. 171 to SunZia.

13 What we -- we have reserved the right -- and I
14 will give you an example. If SunZia were to raise the
15 argument that the planned PV facility negatively impacts
16 their certificate and they want to raise and introduce
17 evidence and testimony of how the planned PV facility
18 will negatively impact the CEC that they possess, that
19 is, I believe, outside the scope of this proceeding for
20 the very seem reasons that we just went through with
21 Mr. Figueroa.

22 MR. ROBERTSON: And as I understand
23 Mr. Crockett, his comment and his objection under that
24 scenario would be if our contemplated evidence was
25 directed to the PV solar facility as opposed to the

1 gen-tie line. So I think the answer to the question you
2 posed to him is yes, the motion in limine was directed
3 towards evidence relating to the solar facility, not the
4 gen-tie line. And that certainly is how we contemplate
5 approaching it.

6 CHMN. CHENAL: Okay. I don't see a
7 disagreement. I, just before you left, I just wanted to
8 make sure of that.

9 MR. ROBERTSON: I appreciate that.

10 May we go off the record very briefly.

11 CHMN. CHENAL: We may.

12 (A recess ensued from 11:28 a.m. to 11:40 a.m.)

13 CHMN. CHENAL: Let's go back on the record then.

14 Let's tackle the second legal memoranda that was
15 filed. That again was by Ms. Williams. It is
16 Memorandum of Law No. 2 regarding deed for 50-by-50 foot
17 easement.

18 Mr. Figueroa, do you want to summarize your
19 arguments again? I have read everything.

20 MR. FIGUEROA: I will, and I will make it as
21 brief as I can. Our position on the 50-foot easement
22 has been discussed and talked about, you know, for
23 several months. And I will make it as simple as I can.

24 The language in the 2005 warranty deed created a
25 50/50 foot easement. There was confusion as to exactly

1 what Mr. Wuertz sold and what Mr. Williams bought in
2 1977. There is a 1978 deed that I have tried, the
3 gentleman who did the survey in 2005 has tried, and we
4 can't figure out where that was, other than it appears
5 that Mr. Williams and Mr. Wuertz had swapped, somehow
6 swapped the actual pieces of property, that one sold,
7 the other bought, and that five-acre parcel played a
8 role somewhere, which is what led Mr. Williams to
9 believe that he owned 19.1 acres as opposed to slightly
10 more than 14 acres.

11 Somehow during the tax season of 2005 Mr. Wuertz
12 compared what he was paying taxes on to what he sold.
13 And he realized that there was an error in the legal
14 descriptions. So they redid the legal descriptions.
15 And to facilitate Mr. Wuertz' continued access to his
16 west fields, they created this 50-foot easement. And it
17 is very clear by its language that it is ingress and
18 egress. You can come in; you can go out. That's all it
19 was intended to be: You can do your farming over my
20 land, I don't have a problem with that, but that's all
21 you are going to do. That's all he is going to do.
22 That created the 50-foot easement.

23 To whatever extent NEE has directly been
24 involved in crossing that easement, Ms. Williams had me
25 write a letter that says stay off my land; Mr. Wuertz,

1 you are the farmer, that's what I agreed to, you can use
2 it, you can cross over it. The transfer across easement
3 continued. I wrote a second letter. I have written a
4 third letter. I think my second letter was with
5 Mr. Castro, to Mr. Castro. The third one may have been
6 to Mr. Orin, and I can't pronounce the last name.
7 Shakerdge I believe it is.

8 In any event, that has been the discussion back
9 and forth. They have maintained that, because it is,
10 the general language is ingress and egress, that they
11 have the ability to cross that easement anytime they
12 want. I have written back and said Mr. Wuertz has the
13 ability and the authority to cross anytime he wants, but
14 you can't, you can't cross it for commercial purposes
15 and you cannot cross it for utility purposes.

16 And I think telling in that regard is the
17 easement that Mr. Crockett has in fact attached to the
18 exhibit, and that is the SRP easement and the detail
19 that that easement contains with respect to what SRP can
20 and cannot do on that 3.23 acres. They can maintain it.
21 They can add to it. They can construct. But even SRP,
22 who has a legal right to be on that easement, will
23 communicate with Ms. Williams generally by phone and say
24 we would like to be on your property on April 10th at
25 10:00 a.m. Then the people that show up on April 10

1 have a letter from SRP that says we are the authorized
2 contractors working on whatever they are going to do.
3 That's the SRP method. That's the way that a utility
4 easement works.

5 This particular easement is a 50-by-50 foot
6 easement. And as I said in my memoranda, you know,
7 parole evidence is admissible if the Chairman decides it
8 is admissible or if the witness is called by either the
9 Chair or opposing party. We are prepared to present
10 parole evidence if that becomes necessary. But we
11 believe and we submit that the memorandums, the case law
12 attached to the memoranda suggests two very strong
13 indicators that we are correct:

14 1. What does the language say? Ingress/egress,
15 period;

16 2. What is the historical use? Farming,
17 period;

18 And perhaps 2A to that is what can be
19 anticipated when the easement was created in 2005 that
20 the use would be. In 2005 the use was farming.
21 Mr. Wuertz was still farming, at least the north acreage
22 at that time; although, we believe the west acreage was
23 basically storage for his farming equipment. And, of
24 course, farmers travel their fields whether they are
25 fallow or not, whether they were planted or not. It is

1 the thing farmers do. They get up at 4:00 in the
2 morning and they ride around their fields. We
3 understand that. We didn't want to deprive Mr. Wuertz
4 of that.

5 If it means anything at all, Mr. Wuertz and
6 Mr. Williams were best friend. So whatever they
7 negotiated was an agreement between best friends,
8 between two men who trusted each other and believed a
9 handshake was enough. But in this case they put it in
10 writing: you can come in; you can go out, period.
11 That's the, that's the basic premise upon which we
12 object to the continuing use by anyone else.

13 Through discussions and at the open house, it
14 became my understanding from both Mr. Rosenblum and
15 Mr. Melin that they believe that they could cross their
16 facilities across the utility lines and that they could
17 use that as an egress/ingress for them for the
18 construction of first the weather station and next the
19 inverter/converter and the gen-tie.

20 We believe otherwise. They do not have access
21 through that facility. And we object to any continuing
22 use, which brings us then to the logical question. You
23 can build your 20 megawatt photovoltaic field. You can
24 build 50 megawatt if you want. But if you can't cross
25 whatever power you generate to either your batteries or

1 your gen-tie because you don't have any access to that
2 west field, then why should you get a CEC?

3 CHMN. CHENAL: Can you show me on what is the
4 tour map, which is Hearing Conference No. 1 --

5 MR. FIGUEROA: Yes, sir.

6 MR. CROCKETT: Mr. Chairman, I brought an
7 exhibit. Maybe we could mark this as Prehearing 2 --

8 CHMN. CHENAL: Okay.

9 MR. CROCKETT: -- and then look at that. That's
10 a little --

11 CHMN. CHENAL: I am confused.

12 MR. FIGUEROA: As to where it is?

13 CHMN. CHENAL: Because there was no map with
14 what you filed.

15 MR. FIGUEROA: I submitted it at the
16 prehearing --

17 CHMN. CHENAL: Okay, okay.

18 MR. FIGUEROA: -- and marked it as Exhibit No. 1
19 at that time.

20 CHMN. CHENAL: Okay, okay.

21 MR. FIGUEROA: I thought I had it with me,
22 Mr. Chairman. I apologize, I do not, for whatever
23 reason.

24 MR. CROCKETT: So if we could mark this as
25 Prehearing 2, Colette.

1 (Exhibit 2 was marked for identification.)

2 CHMN. CHENAL: If you could, Mr. Figueroa, look
3 at this, what has been marked as Prehearing No. 2, and
4 just confirm where your client's house is and where the
5 easement is.

6 MR. FIGUEROA: Well, this is too far west to
7 show her house.

8 CHMN. CHENAL: Okay, okay.

9 MR. FIGUEROA: I believe we have a bigger map
10 that shows her house.

11 But just for purposes of demonstration, the farm
12 road, the green line, the heavy green line to the far
13 right of the map, is the farm road to the Caywoods.
14 Okay? Just east of that is where it intersects with the
15 alignment for Laughlin Road, is the other heavy line on
16 the south.

17 If I may point, that's the Laughlin alignment.
18 This is the Caywood's farm road. The easement is a
19 50-foot, there, 50-foot easement north, 50 north and 50
20 west -- or 50 east. I am sorry.

21 CHMN. CHENAL: Okay.

22 MR. FIGUEROA: That's the corner.

23 CHMN. CHENAL: All right.

24 MR. CROCKETT: So, Mr. Chairman, if I could add
25 just a couple of things to what Mr. Figueroa said, on

1 this map that we are looking at here, this area in the
2 green down here is land currently owned by Mr. Wuertz
3 that is under option to the applicant.

4 The same thing, this green piece up here then
5 going east and going north from there, that's also
6 Wuertz' land that is under option to the applicant.

7 This, this corner here is land that's owned by
8 Ms. Williams. And we refer to this corner as the bow
9 tie, where the two corners of the NextEra property
10 connect.

11 And so there is, well, there is -- well, I was
12 just going to say there are two questions here. Number
13 one, Mr. Figueroa is asking about access to get onto the
14 property here to be able to either construct or operate
15 the gen-tie. That's one issue. The second issue is is
16 there access to go through this corner of Ms. Williams'
17 property to bring a power line from a buried line from
18 PV panels to the north and east through the bow tie down
19 to the gen-tie.

20 CHMN. CHENAL: Okay. Thank you. I understand
21 better now. Thank you.

22 MR. FIGUEROA: I have a little bit better map,
23 if we can get a copy of it.

24 MS. ROMEO: I don't have a color copier.

25 CHMN. CHENAL: I think --

1 MR. FIGUEROA: Your choice.

2 CHMN. CHENAL: I think we understand it.

3 MR. FIGUEROA: This is one we submitted at the
4 prehearing.

5 CHMN. CHENAL: We will have that in the record
6 then if we need it. But I understand it better now. I
7 just had a hard time trying to figure out where the
8 50-foot easement was in relation to the gen-tie line.
9 Now I see. Okay.

10 Okay. So, Mr. Figueroa, are you finished with
11 your argument on that?

12 MR. FIGUEROA: Your Honor, if you have any
13 questions, I certainly would be willing to answer them,
14 but our position is very clear. That easement was
15 granted to Mr. Wuertz solely for his -- to allow for him
16 to cross to check on his farm, to do his farm work. I
17 don't believe the 10-foot perimeter easement that has
18 been discussed before is at issue here because it only
19 runs along the perimeter. It is on the north end of --
20 of the south side of Mr. Wuertz's 80 acres, the north
21 side of Ms. Williams' property.

22 CHMN. CHENAL: So I am clear, though, the
23 easement is not an issue for locating the gen-tie line
24 that's the subject of the application?

25 MR. FIGUEROA: I believe it is, Mr. Chairman.

1 CHMN. CHENAL: Well, but there is no easement
2 necessary for the applicant to put a gen-tie line in as
3 they propose?

4 MR. FIGUEROA: To quote Mr. Robertson, may I
5 bifurcate my response to that? You are correct if all
6 you are talking about is building a facility that can
7 never be used. The second part of that is, if in fact
8 they intend to transport any power generated on the
9 north and east fields to the west field, yes, that 50/50
10 foot easement is an issue.

11 CHMN. CHENAL: Okay. All right. Thank you.
12 Mr. Crockett.

13 MR. CROCKETT: Thank you, Mr. Chair. Let me
14 take these issues. Let me start with the second issue,
15 which is coming -- is connecting the PV facility.

16 For all of the reasons that we raised with
17 regard to -- and this is why we ended up doing one memo
18 on jurisdiction as opposed to break it into two. We
19 think it is really the same issue. How we would get
20 power from a planned PV facility to this gen-tie in the
21 future is something that's going to have to be worked
22 out. And, you know, whether that will come through this
23 corner or not is yet to be determined.

24 There are other options available to NextEra to
25 construct that connection to the gen-tie. You have,

1 this Committee has approved very large CECs for the
2 SunZia and Southline transmission lines. Neither of
3 those applicants had arranged for all of the legal
4 access and rights-of-way for the entire routes of those
5 lines. Those, you know, that's done after the fact.
6 You get the certificate and then you address the access.

7 One option is to come through this bow tie.
8 Mr. Figueroa has raised a concern about the scope of the
9 access or the scope of the easement here and whether it
10 would permit that. I don't believe we need to address
11 that issue in this proceeding. That will get worked
12 out. There are other alternatives to bring that power
13 from here that are available to NextEra.

14 So this gen-tie is not dependent upon having
15 access through this corner. It may be that that's where
16 the access comes but it may be some other, some other
17 option. And, again, because this pertains to
18 interconnecting the PV facility, which is outside the
19 scope of the proceeding here, we would exclude evidence,
20 or we don't think that it is appropriate to consider
21 evidence on access for connecting a future planned PV
22 facility.

23 With regard to the access to get onto the
24 property to actually, you know, build the project
25 substation and the gen-tie or to maintain it, we believe

1 we do have an easement, a legal easement. And the
2 document that Mr. Figueroa referred to is attached to
3 his Memorandum of Law No. 2. And it is, the description
4 of the easement is on page 3 of 10.

5 And it says -- if you go back, Mr. Chair, to the
6 exhibit, and there is kind of a grainy page that's the
7 first one, and then the second one is a warranty deed,
8 that's the deed I am looking at. And if you look at
9 page 3 of that warranty deed, and there is already a
10 mark on there, which I don't know if Mr. Figueroa put
11 that or if we did that, but it says here: Reserving
12 onto the grantor -- and the Wuertzes are the grantors
13 here; this is the deed by which they are granting the
14 Williamses the property -- reserving under the grantors,
15 their successors, heirs, and assigns an easement for
16 ingress and egress over the north 50 feet of the west
17 50 feet thereof.

18 Now, Mr. Figueroa has talked about limits and
19 scope of that easement and what was intended of the
20 parties. There is no evidence in the record of any of
21 that. And Mr. Figueroa has indicated that he doesn't
22 intend to offer a witness that can put that on the
23 record.

24 You know, what we have is the document here
25 itself and what it says. And it is an easement for

1 ingress and egress. It is not limited to farming. It
2 is not limited to occasional use, or it is not an
3 easement that was agreed to -- it doesn't say it was
4 agreed to among friends, I mean any of that limiting
5 kind of language that he has tried to introduce here.
6 So we do have legal access to the property.

7 And they have, NextEra has had legal counsel,
8 not me but other legal counsel, look at this easement,
9 and they are advised that they do have a legal right to
10 use that easement as holding the option as an invitee or
11 guest of the Wuertzes to be able to use that easement to
12 cross and get onto this property.

13 But, again, you know, to the extent there is an
14 issue with access, that is something after the
15 certificate is worked out. I mean if the Wuertzes or
16 the Williamses decide to somehow oppose this legally in
17 court, I mean I guess they are free to do that, but I
18 don't think that the Siting Committee needs to worry
19 about, at this point, whether they have access. We have
20 made the, I think we have made a prima facie case that
21 we do have legal access. And, frankly, I don't know how
22 they get in evidence anything to contradict, you know,
23 what we have put in in terms of using this document as
24 evidence of our right to access the property for
25 purposes of the easement.

1 So we don't believe that the -- in fact,
2 Mr. Williams indicates in his, I think in his
3 memorandum, that there is a lack of easement and it
4 should result in a denial of the CEC in this case.
5 That's page 2 of his Memorandum of Law No. 2. We
6 strongly disagree with that statement that it should
7 result in a denial of the CEC.

8 So, you know, we would argue that language -- to
9 the extent that Mr. Figueroa wants to cross-examine
10 witnesses on the access to make a record, he is, you
11 know, he is welcome to do that. But it should not be
12 the basis for denying a CEC.

13 MR. FIGUEROA: Mr. Chairman, I would like to
14 point out just a couple things, if I may.

15 CHMN. CHENAL: Sure.

16 MR. FIGUEROA: Number one, if you will note, the
17 original date -- well, first, they are offering these
18 exhibits. So they already marked them, identified them,
19 and they will be offered. I don't need to do that. I
20 think I can ride that piggyback.

21 More importantly, the original deed in 1977 was
22 the one that was wrong, confused, created problems,
23 whatever the language you want to use is. They didn't
24 put an easement into that one because everybody thought
25 that the property was still Mr. Wuertz's apparently.

1 But when they clarified it, and, again, whether or not
2 parole evidence is admitted is largely up to you,
3 whether you want to clarify that information is largely
4 up to you, Mr. Wuertz will be available, Ms. Williams
5 will be available. If the Committee wants to hear that,
6 I can submit their names as witnesses if you want.

7 But the issue still remains what is the
8 historical use of that easement, what was anticipated in
9 2005. The historical use of that easement anticipated
10 in 2005 was farming, period. I beg to differ with
11 whatever legal research has been done. Arizona law is
12 very clear. You read the language; the language says
13 ingress/egress. It doesn't say commercial. It doesn't
14 say utility.

15 When you prepare a utility easement, you do what
16 SRP did. And that is you detail how wide it is, how
17 long it is, what the use is, what kind of power can be
18 crossed over that easement, how that easement is to be
19 used in perpetuity and whether or not the easement is in
20 perpetuity. And it allows for ages to access.

21 I will point out the last line he didn't read
22 was that beneficiaries of that easement and the property
23 in the trust is the trust and the beneficiary under the
24 trust, not -- in fact, I would now raise the issue of
25 whether or not they can even buy that easement from

1 Mr. Wuertz. You use that easement from Mr. Wuertz
2 because it is limited to the trust and the use of the
3 trust and benefit of the trust.

4 Now, are they going to take this property out of
5 the trust and sell it? I don't know. We don't have
6 access to their option. We have no idea what they are
7 selling or buying. We understand from Mr. Wuertz's
8 comments how much he is getting paid for it. We know
9 that. So does that set the value of our property? It
10 is arguable.

11 MR. CROCKETT: And, Mr. Chairman, the only other
12 thing I would add is that we did on Friday file a
13 response to the Memorandum of Law No. 2. And I brought
14 extra copies in the event that anyone didn't receive
15 those. But I won't, you know, I won't repeat what is in
16 here.

17 But, in any event, for those reasons we believe
18 that certainly the question of access for
19 interconnecting a future planned PV facility is outside
20 the scope of this proceeding. And, you know, to the
21 extent that the access, you know, is unclear, if you
22 believe the access to get onto the property is unclear,
23 you know, we certainly can present additional evidence
24 on that at the hearing.

25 CHMN. CHENAL: One question I have, looking at

1 Prehearing Exhibit No. 2, the area outlined in green
2 with the hash marks where the proposed substation is to
3 be located --

4 MR. FIGUEROA: Yes.

5 CHMN. CHENAL: -- are there -- is the dark green
6 line heading right to left, which is above the red line,
7 is that a road?

8 MR. FIGUEROA: No, Mr. Chairman. That's an
9 alignment for Laughlin Road. Laughlin Road stops at
10 La Palma, which is about a mile and a half east of this
11 property.

12 CHMN. CHENAL: Okay. So is there physical --
13 what is the physical access, not legal access, the
14 physical access to the property where the proposed
15 substation is to be located?

16 MR. CROCKETT: Mr. Chairman, I will try to do
17 this so the other parties can see. And, Devin, if I
18 have this wrong, tell me to correct me. But the
19 property here is owned by the Caywoods.

20 CHMN. CHENAL: Okay.

21 MR. CROCKETT: And you have heard about the
22 Caywoods a little bit at the prefiling meeting. The
23 access comes south from Highway 287, State Route 287,
24 along this dirt road down to this corner.

25 Now, the Caywoods apparently had argued that the

1 road was on their property. And so Mr. Wuertz has
2 bladed another road that's clearly on this side of the
3 property which he owns. So there is a dirt road that
4 comes south from Highway 287 down to this corner, which
5 I refer to as the bow tie. And then the 50-by-50 square
6 is this notch right here on the corner.

7 CHMN. CHENAL: Got it.

8 MR. CROCKETT: So they come through that bow tie
9 to come onto the property.

10 That's the access, is that right?

11 MR. PETRY: That's consistent with my
12 understanding, yeah.

13 CHMN. CHENAL: All right. So in order to
14 construct the project, the applicant is going to have
15 physical and legal access to build the project, assuming
16 a CEC is approved, is that correct?

17 MR. CROCKETT: I agree with that, Mr. Chairman.

18 CHMN. CHENAL: Okay, all right. Well,
19 Mr. Figueroa, to me this is a little closer, but, and I
20 am not prepared to grant a motion in limine, but the
21 Siting Committee is not a court of quiet title or
22 determining the rights and obligations and what -- like
23 we are a declaratory judgment action to decide the
24 extent of this easement.

25 I think it is interesting and useful background

1 information, just like we have inquired of applicants in
2 previous cases, and I know we did with SunZia and I know
3 we did with Southline, what the status is of acquiring
4 legal access to the property that's necessary for the
5 project in those other cases. I think it is something
6 the Committee is interested in. And it is interested as
7 well, if the applicant doesn't have that legal access,
8 how it intends to acquire it, either by purchase, by
9 working with the neighbors, with -- if there is a way
10 that there is eminent domain powers, you know. So it
11 does come up in cases. I think it is useful for the
12 Committee to have that background information. So I can
13 anticipate at the hearing that there will be some
14 questioning allowed or cross-examination. And I think
15 the Committee will have some questions.

16 They are generally very interested in the
17 practical impact of a project on the folks that live in
18 that area. But this is not going to become an action to
19 determine the extent of an easement. So I can
20 anticipate there might be some leeway into, into
21 cross-examination. There may be questions of the
22 Committee even on this issue. But it is not going to be
23 determinative of whether a CEC is issued. And whether
24 or not your client, Mr. Figueroa, agrees whether the
25 applicant has legal access, I can't see that as being

1 determinative here, because in all the other cases, we
2 have issued CECs where, it is true, the legal access has
3 not yet been determined.

4 So it is the cart and the horse, do you have
5 legal access and then get the CEC or do you get the CEC
6 and then get legal access. And most cases I am familiar
7 with it is the latter, you get the CEC and you try and
8 get legal access. You try to do it the easy way or the
9 hard way. We build some latitude in the extent of the
10 corridor for that very reason, to allow parties, if they
11 can't get legal access one way, they may have to jig or
12 jag, you know, to get to where they need to be.

13 So this one is closer to me. I think it is of
14 interest to the Committee to know some of the background
15 here. But having said that, you don't expect that there
16 is going, this is going to turn into, you know, an
17 action on declaring rights of the parties in the
18 easement.

19 MR. FIGUEROA: And if -- oh, go ahead.

20 MR. FANT: Go ahead, sir.

21 MR. FIGUEROA: He knows my memory is short.

22 If I may really be brave here, I believe that
23 the issues that you have just identified will become and
24 have to be relevant in the planning and zoning and the
25 board of supervisors, because they do have a specific

1 ordinance that talks about exactly the issues you
2 raised, what impact will this project have on an
3 adjoining piece of property. And the economic factor is
4 one of those factors they will consider. So they will
5 consider the heat. They will consider the noise. They
6 will consider the glare.

7 And, again, I am being extremely brave here
8 because I am anticipating, I believe, what the P&Z in
9 Pinal County will do. But in case Mr. Crockett doesn't
10 know, I know Mr. Petry knows, the citizens committee
11 rejected this proposal by a 9/0 vote. The planning and
12 zoning committee rejected it by an 8/1 vote, I believe.
13 So they got zeroed out in the planning and zoning and
14 the citizens committee. The board of supervisors
15 approved it by 4/1, a 4/1 vote, which was very close
16 and the arguments were very long and extended.

17 So with all due respect, I think you now know
18 where I am going here. My hope is that they will reject
19 the CEC because of the no access. But if, you know, if
20 it is clear that they are not going to do that, then we
21 have raised the issue that I think it is ultimately
22 going to be decided by the planning and zoning. And I
23 appreciate that you will allow me to cross-examine
24 because I think that question becomes very important.

25 Now, I will also note that, as I have already

1 repeated, I have given NEE notice at least three times,
2 one telephonically to Mr. Rosenblum back in December and
3 at least two additional ones, one to Mr. Castro and at
4 least one to Mr. Shakerdge -- is that how you pronounce
5 his name -- that we will not allow any easement, we
6 will -- any access -- we will continue to report those
7 crossings by NEE to law enforcement. They are still
8 investigating. There may still be charges. I don't
9 know. I don't control any of that.

10 The point I am making, I agree with you that it
11 is an interesting issue for the Committee. I appreciate
12 the opportunity to at least cross-examine on that issue.
13 But I find it interesting that Mr. Wuertz is not listed
14 as a witness to talk about what access he has or has not
15 had.

16 I didn't list Ms. Williams. And I will be
17 totally honest with you. I am not sure her health would
18 hold up being a witness. She has had several very
19 serious episodes recently. The stress of all this has
20 been very hard for her. I don't list her as a witness
21 because I really don't want to put her on the stand. I
22 assume if push comes to shove at P&Z she will have to
23 testify at that point. But I am trying to make a
24 record. I appreciate the opportunity to vet those
25 issues, and I will go from there.

1 CHMN. CHENAL: All right. Mr. Fant.

2 MR. FANT: Mr. Chair, SunZia would like to make
3 two comments on this issue.

4 The first is SunZia believes that using the
5 SunZia project as an analogy is inept, because the
6 SunZia route has been approved by the United States
7 federal government, specifically by the United States
8 Bureau of Land Management through its Record of
9 Decision. Here the connection between the gen field and
10 the substation are uncertain.

11 And comment number two is SunZia takes no
12 position on this issue.

13 CHMN. CHENAL: All right. As to position number
14 one, though, it is my recollection, I may be recalling
15 incorrectly, but it is my recollection that there was a
16 route that was approved, that is correct, but SunZia
17 still had to go and deal with landowners to acquire
18 legal access through their property.

19 MR. FANT: That is correct. But the distinction
20 here is that we have an approved route, a specific
21 corridor on the map within which we have to work here.
22 NextEra isn't subject to that same issue, so...

23 But you are right, there has to be acquisition
24 of state and federal land rights and state lands, but it
25 requires the acquisition of land rights within a

1 designated corridor.

2 CHMN. CHENAL: So doesn't SunZia have to go out
3 after the CEC was issued and acquire easements through
4 private landowners' property?

5 MR. FANT: Correct, correct, within a designated
6 corridor.

7 CHMN. CHENAL: So how is that different from
8 this case where what I think the applicant will have to
9 do is acquire easement rights --

10 MR. FANT: Correct, correct.

11 CHMN. CHENAL: -- either through clarify the
12 easement rights she has or would have to acquire
13 easement rights through some other private landowner?

14 MR. FANT: But in this case, in this case the
15 applicant is not subject to working within a permitted
16 designated corner. They are free to go where they want
17 to make those connections.

18 CHMN. CHENAL: Okay.

19 MR. FIGUEROA: Or where they can.

20 And if I may just add very quickly, Mr. Wray and
21 I had a conversation back in late December, I believe,
22 about their ROW. At that time, Ms. Williams was, A, not
23 well and, B, scared out of her wits. And she basically
24 instructed me to call back and say, look, right now we
25 don't even want to talk to you, just leave us alone.

1 And I believe it was 10-minute conversation. He
2 is a true gentleman and he gave me details of what they
3 were doing. But he very graciously agreed to leave
4 Ms. Williams alone at that point.

5 So I do appreciate that. And I put that on the
6 record, Mr. Chairman, simply because that's the
7 difference between what we are here dealing with when we
8 are dealing with SunZia and some of the issues we have
9 had with NEE.

10 CHMN. CHENAL: Okay. Well, are there any other
11 legal issues that we need to discuss that we haven't
12 discussed thus far?

13 MR. CROCKETT: I don't think so, Your Honor, or
14 Mr. Chair.

15 MR. FIGUEROA: The only thing is a personal
16 point. I previously advised the Chair that I hopefully
17 would be done on Friday. But if we have to go into
18 Monday and Tuesday, I will be there. But my surgery is
19 scheduled for Friday, the 28th. And so I am hoping we
20 don't return past that day because I will be out of
21 commission for at least two weeks.

22 CHMN. CHENAL: Let's talk about that,
23 Mr. Figueroa. Let's talk about, given these rulings,
24 how long this hearing is likely to take, including a
25 tour that will last a few hours.

1 MR. CROCKETT: You know, Mr. Chairman, I think
2 it is shorter now that we have had a couple of these
3 rulings. Honestly, we had been working on a contingent
4 plan to bring in an expert on heat island if a ruling
5 had gone a different way on us. So I think that's going
6 to shorten the process.

7 It depends to an extent on what we are able to
8 accomplish with SunZia between now and the start of the
9 hearing, but I would hope that we could be wrapped up by
10 Friday of that week, start on the 18th, and be done by
11 Friday, even including the tour.

12 CHMN. CHENAL: Yeah, the tour will be a few
13 hours. I don't think that's going to pose -- I don't
14 view it as a delay. It is a part of the process.

15 Your case in chief, Mr. Crockett, with your
16 panel, any, any notion of how long that would take?

17 MR. CROCKETT: Not as much because we are going
18 to have to go back and talk about how we deal with the
19 prefiled testimony. That's going to -- I had
20 anticipated that would knock an hour, couple hours out
21 of the process right there by not going through the
22 testimony. But we will spend more time going through
23 it. That was good counsel.

24 So I would say that, you know, our case in chief
25 would be done by the middle of the second day. So we

1 start on Tuesday at 2:00 and then have a tour -- well,
2 we have a tour on Wednesday morning. So I would think
3 by midafternoon on Wednesday, toward the end of the day,
4 we would be finished with our case in chief.

5 CHMN. CHENAL: All right. Mr. Figueroa, I think
6 the question I'm really anxious to hear is SunZia, but I
7 think, Mr. Figueroa, with you, we won't have the
8 testimony. We will give you an offer of proof on the
9 solar facility. But there will be some
10 cross-examination, but it won't be much on the easement
11 issue. So what do you think? I am not holding you to
12 it. I am not holding anyone to these time estimates.

13 MR. FIGUEROA: I don't know Mr. Brannen. I
14 don't know what his testimony would be. The only one I
15 anticipate would be Mr. Melin, and perhaps Mr. Petry on
16 a couple of questions because he is -- I think he was
17 nodding when we discussed access. So he may have more
18 information about the access than Mr. Melin. I would
19 not expect any more than half an hour, if that.

20 CHMN. CHENAL: That leaves SunZia. If you are
21 able to work out an arrangement with the applicant, you
22 know, that shouldn't take too long. But if there is
23 still disagreement, any notion of how long you might
24 require to present your case, your concerns? And then
25 there obviously would be some more testimony and

1 evidence from the applicant.

2 MR. FANT: Mr. Chair, two witnesses, three hours
3 or less, so...

4 CHMN. CHENAL: Okay.

5 MR. FANT: If there were not an agreement.

6 CHMN. CHENAL: If there were not agreement,
7 sure.

8 MR. FANT: Right.

9 MR. FIGUEROA: May I ask one very quick?

10 MR. FANT: And I would defer to Mr. Wray for
11 more detail.

12 CHMN. CHENAL: Sure.

13 MR. FIGUEROA: Just to the offer of proof, a
14 page, less than two, just something sweet and quick?

15 CHMN. CHENAL: Sweet and quick is always good.

16 MR. FIGUEROA: Okay. I will try to keep it to
17 one page.

18 CHMN. CHENAL: Two is good.

19 Okay. Mr. Crockett, if they are going to have
20 two witnesses, take about three hours, what would be
21 your -- the time required for cross of their witnesses
22 and re -- you know.

23 MR. CROCKETT: Well, there is the possibility, I
24 guess, of a rebuttal case.

25 CHMN. CHENAL: Rebuttal.

1 MR. CROCKETT: It is hard to know until we see
2 what they come up with.

3 I am optimistic that we will get something
4 worked out. So I hope this is a moot point. But if
5 their direct case is three hours, I would think that our
6 cross-examination would similarly be about three hours
7 with the possibility of a rebuttal witness.

8 CHMN. CHENAL: All right. So if it doesn't get
9 worked out, we are probably into Friday. If it does get
10 worked out, the case may get worked out, it may finish
11 by Wednesday. And we will probably have the Committee
12 deliberate Wednesday, maybe into Thursday, because it
13 will take some time to do the conditions.

14 MR. FIGUEROA: Same time frame, we start 2:00
15 Wednesday, 9:00 a.m. -- I am sorry, 2:00 Tuesday,
16 9:00 a.m. Wednesday, Thursday, and Friday?

17 CHMN. CHENAL: Correct.

18 Okay. So probably Thursday if you have a deal,
19 Friday, certainly Friday if you don't, maybe in the
20 following week. Okay, all right.

21 I don't have anything further that we need to
22 bring up now. Notebooks for the Committee members is
23 always helpful. I think it is covered by the procedural
24 order.

25 MR. CROCKETT: Yeah. And, Mr. Chairman, the

1 notebooks I would, I would envision a notebook that
2 includes the prefiled testimony and exhibits --

3 CHMN. CHENAL: That would be helpful.

4 MR. CROCKETT: -- for each of the members.

5 CHMN. CHENAL: Sure.

6 MR. CROCKETT: Is that 11 copies that we would
7 need?

8 CHMN. CHENAL: Yes, well, 10.

9 MR. CROCKETT: 10?

10 CHMN. CHENAL: We are down one Committee member
11 because the statute calls for a representative of the
12 Governor's Energy Department, which basically doesn't
13 exist anymore. So there is a Committee of 10.

14 MR. FIGUEROA: Mr. Chairman, just a courtesy
15 again, I will reoffer that probably the most direct
16 route is off of Sunshine through Ms. Williams' property
17 if you want to use that. In the event that the
18 Committee wanted to see the 50/50 foot easement, we
19 could accommodate that as well. The vehicles would have
20 no problems getting through.

21 CHMN. CHENAL: Well, that's something to discuss
22 with Mr. Crockett.

23 MR. FIGUEROA: I am sure he has got my phone
24 number if you decided to call me.

25 CHMN. CHENAL: Sure. If you want to do that,

1 Mr. Crockett, or change your tour plans, you can submit
2 a revised tour, you know, document, but otherwise, you
3 know, we will rely on what you have submitted.

4 Is there anything else?

5 MR. CROCKETT: Nothing from us.

6 Maria Moncada, anything else?

7 MS. MONCADA: No, nothing from me.

8 I would like to again thank you, Mr. Chairman,
9 for allowing us to call in from Florida and other places
10 around the country.

11 CHMN. CHENAL: Of course, absolutely. Okay.

12 MR. WRAY: Mr. Chairman, just for the record.

13 We are very interested in working with your
14 client and seeing -- we are almost there, I think. So
15 we will have all week do that, continue to do that so
16 that we can --

17 MR. CROCKETT: We will go have some phone calls,
18 because we thought we were there when we came in here
19 this morning, but Mr. Wray says we are almost there. So
20 we will make sure we get together and figure out where
21 we are still not touching.

22 MR. WRAY: Right.

23 CHMN. CHENAL: Okay. Very good.

24 All right. I want to thank everybody. I am
25 very pleased with the level of cooperation and the

1 quality of the work and the arguments today. So I look
2 forward with interest to the hearing starting next
3 Tuesday at 2:00 in Casa Grande.

4 And, again, if anything comes up in the interim
5 and you need my assistance in any way, we will set it
6 up. Okay? We do that telephonically.

7 MR. CROCKETT: Thank you.

8 (The proceeding concluded at 12:20 p.m.)

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2 COUNTY OF MARICOPA)

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