

1 BEFORE THE ARIZONA POWER PLANT LS-270

2 AND TRANSMISSION LINE SITING COMMITTEE

3

4 IN THE MATTER OF THE APPLICATION) DOCKET NO.
 5 OF YUMA BN, LLC, IN CONFORMANCE) L-00000A-22-0313-00213
 6 WITH THE REQUIREMENTS OF ARIZONA)
 7 REVISED STATUTES, SECTIONS)
 8 40-360, et. seq., FOR) LS CASE NO. 213
 9 CERTIFICATES OF ENVIRONMENTAL)
 10 COMPATIBILITY AUTHORIZING THE)
 11 ORCHARD SOLAR 230 KV)
 12 TRANSMISSION LINE PROJECT AND)
 13 ASSOCIATED INTERCONNECTION) PREFILING CONFERENCE
 14 FACILITIES LOCATED IN YUMA)
 15 COUNTY, ARIZONA.)

10

11 At: Phoenix, Arizona

12 Date: December 12, 2022

13 Filed: December 22, 2022

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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 (Pages 1 through 17)

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NO.	DESCRIPTION	IDENTIFIED
1	Notice of Hearing	12
2	Black and white photocopy of map	12
3	Color photocopy of map	12

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Power Plant and Transmission Line Siting
4 Committee, commencing at 3:00 p.m., on the 12th day of
5 December 2022, with all participants appearing via
6 videoconference.

7
8 BEFORE: PAUL A. KATZ, Chairman

9 APPEARANCES:

10 For the Applicant:

11 ACKEN LAW
12 Mr. Albert Acken
13 111 East Dunlap Avenue, Suite 1-172
14 Phoenix, Arizona 85020

15 For Potential Intervenor Arizona Public Service Company:

16 PINNACLE WEST CAPITAL CORPORATION
17 Ms. Linda Benally
18 400 North 5th Street, MS 8695
19 Phoenix, Arizona 85004

20 Also Present:

21 Mr. Dean Hazle, SWCA
22 Mr. Brandon Pollpeter, BrightNight
23 Mr. Tod Brewer, Assistant to Chairman Katz
24 Ms. Lisa Glennie, Glennie Reporting Services, LLC
25

1 CHMN KATZ: This is the time we have set --
2 we'll go on the record -- this is the time we have set
3 for the prefiling conference in BrightNight Orchard
4 gen-tie project. And I believe this will likely be CEC
5 213. I can't promise you that, but I don't think anybody
6 else is going to sneak in ahead of you. And I'm going to
7 ask counsel for the applicant to please identify himself
8 for the record.

9 MR. ACKEN: Thank you, and good afternoon. Bert
10 Acken of Acken Law, on behalf of the applicant, who will
11 be Yuma BN, LLC. With me today is Brandon Pollpeter, who
12 is the representative of the project manager of
13 BrightNight, as well as Dean Hazle, SWCA, environmental
14 consultant on this project.

15 CHMN KATZ: Okay. Just turning up my volume a
16 little bit.

17 And I do see counsel Linda Benally appearing,
18 and I know she usually represents APS or its parent
19 company. And I don't know whether APS is planning to
20 intervene or is just going to observe.

21 MS. BENALLY: Good afternoon, Chairman. This is
22 Linda Benally here on the call, representing Arizona
23 Public Service Company. APS is evaluating its position
24 in this case, but may be intervening to protect its
25 interests in this matter.

1 CHMN KATZ: Okay. Sounds good.

2 And I did notice that we did, as you indicated,
3 Mr. Acken, we have -- Dean Hazle is one of the
4 representatives. And I see a Brandon, but no last name,
5 and we need to make sure we have a good record.

6 MR. POLLPETER: Apologies for that. Brandon
7 Pollpeter. Happy to spell, as well, that for the record.

8 CHMN KATZ: Please do so. Even if we could
9 guess at it, we need to make sure the court reporter
10 knows your last name.

11 MR. POLLPETER: Absolutely. Yeah, so that's
12 P-o-l-l-p-e-t-e-r.

13 CHMN KATZ: Okay.

14 Anyhow, APS might intervene; I understand that.
15 And has there been much public interest expressed so far,
16 Mr. Acken, by any members of the public or any government
17 agencies that have actively shown an interest in the
18 proceedings?

19 MR. ACKEN: Nothing out of the ordinary. We
20 have held an open house, which a handful of nearby
21 residents attended. There are some dispersed residential
22 areas along this transmission route; it's a 9-mile route.
23 But we haven't heard any concerns expressed by the nearby
24 residents, just curiosity. The other aspect of this
25 project is that a portion of it will be on lands

1 associated with the Marine Corps Base there outside of
2 Yuma. And so there is a, you know, federal permitting
3 process that need -- that we'll be undergoing as well,
4 and so I've had active engagement with the military base
5 there.

6 CHMN KATZ: And who are the affected
7 jurisdictions?

8 MR. ACKEN: So Yuma County, the City of Yuma,
9 State Land Department, are all affected jurisdictions. I
10 wanted to get your thoughts. I don't view the federal
11 agencies as meeting the definition of an affected
12 jurisdiction under the statute. I don't typically
13 include them, but, you know, we certainly can if you'd
14 like us to.

15 CHMN KATZ: Well, my feeling is, is that unless
16 you're going to be interfering with Marine Corps Air
17 Station aviation, I'm not really all that concerned.
18 You're not running your project through federal land; is
19 that correct?

20 MR. ACKEN: No, we are. I just -- the reason I
21 don't -- when I read the definition of affected
22 jurisdictions, it talks about state and local entities,
23 and so I've not included the federal agencies before as
24 an affected jurisdiction, specifically because I don't
25 think they fit within that statutory definition, not

1 because they don't have an interest in the project; they
2 most certainly do.

3 CHMN KATZ: So is there a NEPA evaluation that
4 is required?

5 MR. ACKEN: Yes, there is a process that's
6 underway.

7 CHMN KATZ: And is it with the Navy or Marine
8 Corps?

9 MR. ACKEN: Yeah, the Department of Navy there.
10 And, Brandon and Dean, please correct me if I
11 misspeak.

12 CHMN KATZ: Okay. And the evidentiary hearing,
13 I saw it was Yuma Holiday -- is it a Holiday Inn or just
14 the Yuma Holiday?

15 MR. ACKEN: It would be the Holiday Inn. So if
16 it doesn't say that, then that's a typo on the draft
17 Notice of Hearing, but the Holiday Inn, Yuma.

18 CHMN KATZ: Yeah, because the draft notice of
19 hearing just says "the Yuma Holiday," and not the Holiday
20 Inn.

21 MR. ACKEN: Yuma is a holiday for all of us, but
22 I'll get that corrected.

23 CHMN KATZ: And we're beginning this hearing,
24 again, when is that, January what?

25 MR. ACKEN: The 30th, Monday.

1 CHMN KATZ: Okay. And I'm assuming that there
2 will be lodging available for the Committee members. I
3 think all of whom will be out of town and staying unless
4 they appear virtually. I'm assuming that the lodging
5 arrangements have been made for all of us that will be
6 traveling to Yuma for this hearing?

7 MR. ACKEN: Yeah, that's correct.

8 CHMN KATZ: Okay. And do you -- what are your
9 thoughts regarding whether or not a tour is indicated?

10 MR. ACKEN: So this project we can do a tour.
11 It's fairly accessible from the hearing location. It is
12 a 9-mile route, and there are roads along it, so, you
13 know, sometimes you've heard me say that I don't think a
14 tour is feasible; a tour is doable here, you know, I
15 think where we are is we will have a tour protocol, and
16 we will provide optionality for the Committee if they
17 want to take a tour. And, if not, we'll make sure that
18 our presentation is adequate to address that.

19 CHMN KATZ: Does it run -- does any portion of
20 the line run in close proximity to single-family
21 residents; and I don't mean just a scattered home here or
22 there, but a significant number of residential dwellings,
23 single-family, or other residential dwellings?

24 MR. ACKEN: I characterize this as, in some
25 areas it's rural residential, so, you know, you have

1 dispersed residential development along the route. You
2 don't have designated subdivisions with hundreds of
3 people or anything like that, but you do have a handful
4 of residential properties along the route.

5 CHMN KATZ: Okay. And I didn't look at the
6 calendar again, but I'm assuming that we're starting on a
7 Monday, correct, we're not up against any holidays?

8 MR. ACKEN: Yes, that's correct. So we're
9 starting on Monday afternoon. Whether we do a tour or
10 not, we still think this project will be done by Tuesday.
11 We're not anticipating adverse intervention. We haven't
12 heard any adverse intervention. So with or without a
13 tour, this is a day, day and a half.

14 CHMN KATZ: Tod, do we have a tentative date for
15 a prehearing conference?

16 MR. BREWER: Yes, Mr. Chairman, thank you. It's
17 for January the 23rd at 3:00 p.m.

18 CHMN KATZ: Does that work for you and your
19 client, Mr. Acken?

20 MR. ACKEN: It does, Mr. Chairman. Tod does a
21 great job of making sure those are on our calendar long
22 in advance, so thank you.

23 CHMN KATZ: Okay. And, again, we -- I've always
24 been happy to have our Committee members -- I always need
25 a copy of the application and of the exhibits, because we

1 keep hard copies. Most of our Committee members,
2 probably all of them, don't care if they have hard
3 copies, as long as they will have electronic access to
4 the application and the exhibits at the hearing, but I
5 also know that 25 copies last year, and we had over 600
6 pages, that 25 copies had to be provided to the
7 Corporation Commission, and then they got mailed out to
8 all of the Committee members, at a cost of about four
9 grand, which seemed kind of ridiculous, but I guess we
10 have to follow the rules.

11 MR. ACKEN: Yes, until we get the change in the
12 law, we'll unfortunately be filing 25 copies.

13 CHMN KATZ: Okay. And I have encouraged -- I've
14 talked with you before -- I've talked with most of the
15 lawyers that regularly appear on these matters -- I'm
16 hoping we can get applicants together and their attorneys
17 to look at a change in the law, because we are booked
18 solid well into 2024, in terms of advising people of
19 available dates.

20 And what I don't want to start having happen, or
21 I could suggest negative things, that everybody decides
22 that's too long to wait, so they start filing. And,
23 technically, they have to be heard within 90 days of a
24 filing. But the whole protocol is ridiculous.

25 One of the upcoming hearings, the line is

1 primarily underground, the above-ground portion is 3/10
2 of a mile, and they have to expend exorbitant sums of
3 money and a lot of our time going through that. But I'll
4 silence myself.

5 And I will work with Tod in getting a procedural
6 order together and signed, as well as the Agenda and
7 Notice of Hearing. I don't know if you -- I don't know
8 when you'll provide us with the draft conditions for the
9 CEC, but we should have that no later than the prehearing
10 conference. And that should be in Word format, because
11 if there aren't any changes after the evidence comes in,
12 Tod, with a little assistance from me, and vice versa,
13 will do any necessary amending of that. And if it's in
14 the form that we're going to use, with some minor tweaks,
15 we will or that Tod will send it out in both Word version
16 and in PDF version.

17 Have we had any public comments from
18 governmental officials, and do we expect any of them to
19 possibly appear at this hearing?

20 MR. ACKEN: At this time, I don't think so. We
21 haven't -- well, certainly by the time we get to the
22 prehearing, I'll be in a better position to advise
23 whether we're expecting that.

24 CHMN KATZ: And when we're talking about the
25 Marine Corps Air Station, is the line actually running

1 through it or just adjacent to it and there's some
2 concerns about air traffic?

3 MR. ACKEN: So this morning I sent over the
4 proposed sign location map. I don't know if you have
5 that in front of you --

6 CHMN KATZ: Right.

7 MR. ACKEN: -- or can pull that up, because it
8 provides a good visual depiction. Perhaps I can share my
9 screen. Let me try doing that.

10 CHMN KATZ: And I do have what I've marked as
11 Exhibit Prefiling 1 as a draft Notice of Hearing, and
12 then I marked as Exhibit 2 this black and white map. And
13 then 3, I think, is a color map, Prefiling Exhibit 3,
14 which shows where signs will be posted.

15 MR. ACKEN: Yeah. And I've pulled that up to
16 share on the screen now. I hope you can see that.

17 CHMN KATZ: I can see it.

18 MR. ACKEN: And so all of the area that's in
19 that tan color, if you will, that's the Base, and so the
20 project does run along that western boundary on -- on
21 federal lands. So it's west of State Route 195. It's an
22 area that doesn't have, like, active operations, but it
23 is still federal land. And so that's why we've got to go
24 through the NEPA process. And you see it kind of hugs
25 that as -- with the dispersed residential on the other

1 side there to the left.

2 CHMN KATZ: Right. And I see that residential,
3 but I'm assuming that we're not in the high noise and
4 accident potential zone of the air station?

5 MR. ACKEN: That's correct.

6 CHMN KATZ: Okay. And I'm assuming that you're
7 using one of our usual groups of IT professionals, and
8 that we will have iPads, tablets, Chromebooks, or some
9 other digital media available for the members of the
10 Committee?

11 MR. ACKEN: We will. We'll be fully prepared
12 and have electronic exhibits for the Committee, as well
13 as that blended in-person and virtual component for the
14 hearing itself, and a public comment session.

15 CHMN KATZ: Okay. And we also need to remind
16 the parties that we need to make sure that the
17 court -- that the transcripts of this conference and the
18 prehearing conference get posted on the Applicant's
19 website, so that the public has the ability to see what
20 we've discussed behind closed doors, so to speak.

21 MR. ACKEN: We will do so. And I believe the
22 website is already up and publicly available, or it will
23 be by the time we file.

24 CHMN KATZ: Are there any other concerns that we
25 need to address here today? If not, we will get together

1 for that prehearing conference. And I think I already
2 told you, but my last day in the office is February 28th,
3 and a -- I think both transition teams for the AG -- I
4 think it's pretty clear that a machine recount, which is
5 what will take place, will result in Kris Mayes, more
6 likely than not, becoming our next Attorney General,
7 although Abe Hamadeh, on a recount, could end up
8 prevailing. But my supervisor's supervisor, the head of
9 our entire division, not just our natural resources
10 section, is meeting with the Mayes transition time and
11 maybe Hamadeh's transition team. And at the top of the
12 list, I've given her a full listing of twice per month
13 hearings that already are going well into 2024. And I
14 don't know if this is going to become a full-time job,
15 because I, right now, have responsibilities to the Land
16 Department and the Mine Inspector -- State Mine
17 Inspector, and these hearings are starting to get too
18 numerous, and we're stuck with them.

19 And I don't mean that in a negative way, but
20 we're stuck with them as long as the statutes remain
21 as-is. And many of these could be decided by an
22 administrative law judge or a hearing officer, and not
23 have to be reviewed by a committee of 10. That all being
24 said, I will silence myself.

25 If anything comes up that we need to discuss

1 prior to our prehearing conference, please just let Tod
2 know, and we can always get together for another
3 conference, if that should become necessary.

4 Is there anything else, Mr. Acken, that you
5 would like to put on the record?

6 MR. ACKEN: Yeah, one other thing. And,
7 certainly, interesting times with the elections, for
8 certain, but the one last item I wanted to bring up was
9 our application filing dates. Originally, we were
10 shooting for end of this week; I think it's more likely
11 to be early next week, and I just want to make sure and
12 check on your availability to sign the Notice of Hearing,
13 so that we can make sure we get it turned around in time
14 for publication.

15 CHMN KATZ: Well, I will --

16 Were you going to say something, Tod? Go ahead.

17 MR. BREWER: No, Mr. Chairman. Thank you.

18 CHMN KATZ: I'm available just about any day
19 next week or -- this week or next week, and if I should
20 choose to work from home rather than my temporary office
21 here, I will be available anyhow to sign things.

22 MR. ACKEN: Okay. Great. Thank you.

23 And then the only other last thing I always like
24 to ask is, Brandon or Dean, is there anything that I
25 need -- that needs to be supplemented or corrected?

1 MR. POLLPETER: I don't believe so. Everything
2 you mentioned is accurate, Bert. I can also confirm that
3 the project website is live, and it has been for a period
4 of time now.

5 CHMN KATZ: Okay. I think we're set. Is there
6 anything else, Tod?

7 MR. BREWER: No, I believe that's it,
8 Mr. Chairman. Thank you.

9 CHMN KATZ: Well, thank all of you. And if we
10 don't talk again prior to the holiday season, have a
11 Merry Christmas, a Happy Hanukkah, and a very happy and
12 healthy new year. But we'll see you after the first of
13 the year for one of the last hearings I'll likely be
14 doing, and I look forward to seeing some familiar faces.

15 So we do stand in recess.

16 (The hearing concluded at 3:21 p.m.)

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1 STATE OF ARIZONA)
COUNTY OF MARICOPA)

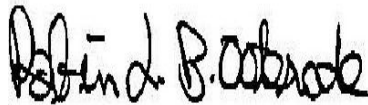
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4 BE IT KNOWN that the foregoing proceedings were
5 taken before me; that the foregoing pages are a full,
6 true, and accurate record of the proceedings all done to
the best of my skill and ability; that the proceedings
were taken down by me in shorthand and thereafter reduced
to print under my direction.

7 I CERTIFY that I am in no way related to any of
8 the parties hereto nor am I in any way interested in the
outcome hereof.

9 I CERTIFY that I have complied with the ethical
10 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206
(J)(1)(g)(1) and (2). Dated at Phoenix, Arizona, this
11 21st day of December, 2022.

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ROBIN L. B. OSTERODE, RPR
CA CSR No. 7750
AZ CR No. 50695

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18 I CERTIFY that Glennie Reporting Services, LLC,
19 has complied with the ethical obligations set forth in
ACJA 7-206(J)(1)(g)(1) through (6).

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GLENNIE REPORTING SERVICES, LLC
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