

1 BEFORE THE ARIZONA POWER PLANT LS-394

2 AND TRANSMISSION LINE SITING COMMITTEE

3 IN THE MATTER OF THE APPLICATION) DOCKET NO.
 4 OF PINAL COUNTY ENERGY CENTER,)
 5 LLC, IN CONFORMANCE WITH THE) L-21314A-24-0144-
 6 REQUIREMENTS OF ARIZONA REVISED) 00233
 7 STATUTES 40-360 ET. SEQ., FOR A)
 8 CERTIFICATE OF ENVIRONMENTAL) LS CASE NO. 233
 9 COMPATIBILITY AUTHORIZING THE)
 CONSTRUCTION OF A 480 MW NATURAL)
 GAS-FIRED, SIMPLE CYCLE, PEAKING)
 POWER GENERATING FACILITY)
 LOCATED NEAR CASA GRANDE,)
 ARIZONA, IN PINAL COUNTY.) SPECIAL OPEN
) MEETING

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12 At: Phoenix, Arizona (VIA ZOOM ONLY)

13 Date: November 7, 2024

14 Filed: November 12, 2024

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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By: MICHELE E. BALMER, RPR
 Arizona CR No. 50489

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Power Plant and Transmission Line Siting
4 Committee, via Zoom videoconference, commencing at
5 1:32 p.m. on November 7, 2024.

6

7 BEFORE: ADAM STAFFORD, Chairman

8 GABRIELA S. MERCER, Arizona Corporation Commission
9 LEONARD DRAGO, Department of Environmental Quality
10 DAVID FRENCH, Arizona Department of Water Resources
11 NICOLE HILL, Governor's Office of Energy Policy
12 R. DAVID KRYDER, Agricultural Interests
ROMAN FONTES, Counties
13 MARGARET "TOBY" LITTLE, PE, General Public
14 DAVE RICHINS, General Public
15 JOHN GOLD, General Public

13

14 APPEARANCES:

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1 CHAIRMAN STAFFORD: Let's go on the record.

2 Now is the time set for the Special Meeting of
3 the Arizona Power Plant and Transmission Line Siting
4 Committee to consider -- we have one thing on the
5 agenda, and that's the Pinal County Energy Center.

6 Let's start by taking the roll.

7 Member Mercer.

8 MEMBER MERCER: Present.

9 CHAIRMAN STAFFORD: Member Gold.

10 MEMBER GOLD: Present.

11 CHAIRMAN STAFFORD: Member Hill.

12 MEMBER HILL: Present.

13 CHAIRMAN STAFFORD: Member French.

14 MEMBER FRENCH: Present.

15 CHAIRMAN STAFFORD: Member Little.

16 MEMBER LITTLE: Present.

17 CHAIRMAN STAFFORD: Member Fontes.

18 MEMBER FONTES: Present.

19 CHAIRMAN STAFFORD: Member Kryder.

20 MEMBER KRYDER: Here.

21 CHAIRMAN STAFFORD: Member Drago.

22 I can see him, but he's still on mute.

23 Okay. Member Drago is present.

24 All right. Well, the only agenda item for this
25 meeting is for the Committee to consider whether they

1 should request the Commission reconsider its Decision
2 Number 79587.

3 The Committee, we passed that -- we issued that
4 CEC 11 to 0. But at least from my perspective, the
5 Conditions 24 and 28 that the Commission removed when it
6 approved the CEC, I felt they were fundamental towards
7 my ability to support the project as proposed.

8 I'm interested to hear from my fellow Committee
9 members if they feel the same way and if they would be
10 willing to ask the Commission to reconsider.

11 Under the statute A.R.S. 40-360.07.C, parties
12 to the proceeding and the Committee itself have the
13 right to request the Commission to reconsider its
14 decision. That has to be filed within 30 days of the
15 entry of the decision.

16 So since the decision was entered on
17 21-October-24, we have until November 20 to file the
18 request for reconsideration.

19 Oh, there's Member Richins.

20 MEMBER RICHINS: I'm sorry. I thought I was on
21 mute.

22 Yeah, I'll weigh in here. I agree with you
23 that those two provisions were key to making that
24 project work. My feelings, though, is I don't feel
25 comfortable asking the Commission to overturn, knowing

1 that we're going to continue to send decisions.

2 I mean, I would prefer to just keep doing the
3 right thing and putting those kinds of provisions in
4 each case that we find them to be appropriate and let
5 the Commission make that decision up or down. And,
6 eventually, they'll either need to decide if there's
7 wisdom in those or not.

8 But I just -- I can't support reconsideration
9 for this just because I don't want to go to war with the
10 Corporation Commission. It's unnecessary. I think we
11 just continue to do the right thing as we have.

12 But understand the viewpoints of my colleagues.
13 If you guys choose to do that, you know, I'm not going
14 to fight it at all, but I just feel that asking -- kind
15 of going to war with the Corp Comm on this issue is just
16 unnecessary at this time.

17 Let's just keep putting these provisions when
18 they're appropriate, and make them continue to strip
19 them back out and dare them to finally leave them in.

20 So that's my opinion.

21 CHAIRMAN STAFFORD: Thank you, Member Richins.
22 Yeah, the way I see it, it's not really getting into a
23 fight with them --

24 MEMBER RICHINS: Adam, you're on mute. I can't
25 hear you.

1 MEMBER HILL: No, he's not.

2 CHAIRMAN STAFFORD: No, I'm not on mute. Can
3 you hear me now?

4 MEMBER GOLD: Yes, I hear you.

5 CHAIRMAN STAFFORD: All right. It's not really
6 picking a fight because it's not, like, if they deny it,
7 we can go to court and try to fight it.

8 It's just a request to them, "Hey, we thought
9 these conditions were appropriate." We ask them to, you
10 know, reconsider putting them in. There's no further
11 recourse for the Committee beyond that.

12 It's not going to -- it's different than a
13 request for rehearing where, if it's denied, then that
14 party has rights to go to challenge the results in
15 court. This process of requesting reconsideration
16 doesn't result in that.

17 My thought is that when the Commission
18 explained why they didn't do it, they didn't couch it in
19 terms of saying, "Oh, we don't think this is good
20 policy. We don't think this is necessary to mitigate
21 the impacts."

22 They said that they didn't have the authority
23 to do it, so I would like to point out to them that they
24 do and that the Committee and the Commission have the
25 authority to impose reasonable conditions. Whether the

1 Commission disagrees whether the Committee's conditions
2 that it imposes are reasonable or not, that's the
3 judgment call for them to make.

4 I'm just -- I'm uncomfortable with it being
5 said that the Commission and the Committee don't have
6 the authority. I think we do. Whether that's wise to
7 implement or not is the policy question that the
8 Commission needs to decide.

9 Member Hill, you had your hand raised. And
10 next would be Member Little.

11 MEMBER HILL: First of all, just to start this
12 conversation, can you characterize the two things -- the
13 two pieces that were -- that we worked on language with
14 the Applicant on? And I think we accepted their
15 language. Can you characterize those two pieces?

16 And because I wasn't able to hear the
17 Corporation Commission hearing, I hear you
18 characterizing their justification, but I just want
19 to -- can we start with, like, the whole picture of the
20 situation?

21 CHAIRMAN STAFFORD: Yes.

22 It was Condition Number 24, which was the
23 community working group, that they have a community
24 working group. And then Condition 28, which was a hard
25 cap on the amount of groundwater they could pump on a

1 three-year rolling average.

2 MEMBER GOLD: On a what?

3 CHAIRMAN STAFFORD: Condition 24 was the
4 community working group where they can decide how best
5 to implement mitigation measures based on the input of
6 the people that live within a mile and representatives
7 from the county, as well as the Applicant.

8 And then Condition 28 was the hard cap on the
9 amount of groundwater they could pump based on a
10 three-year average.

11 MEMBER HILL: And then the Commission said that
12 they didn't have authority to do that, but I think we
13 modeled it on previous CECs, did we not?

14 CHAIRMAN STAFFORD: Yes.

15 MEMBER FONTES: And the Applicant agreed to it,
16 as I recall.

17 CHAIRMAN STAFFORD: Correct, correct.

18 So I think -- I think that they -- that the
19 authority exists and that those were wise conditions to
20 mitigate the impacts.

21 I would just -- the point is I'm asking the
22 Committee to consider whether they should -- we should
23 file a request for reconsideration to ask the Commission
24 to rethink it and give them some -- a few legal points
25 to help guide them.

1 Okay. Member Little, you have your hand up.

2 And then Member Mercer, you're next.

3 MEMBER LITTLE: Yes.

4 Mr. Chairman, would it be appropriate for me to
5 move that we ask the Commission to reconsider, at this
6 point, and then we can discuss it or --

7 CHAIRMAN STAFFORD: Sure.

8 MEMBER LITTLE: -- are we just discussing?

9 CHAIRMAN STAFFORD: You can make the motion.

10 MEMBER LITTLE: I move that we ask the
11 Commission to reconsider this decision.

12 And then I would also like to put my two cents
13 in after somebody seconds it.

14 MEMBER HILL: For the purposes of discussion,
15 I'll second it.

16 CHAIRMAN STAFFORD: Okay. All right. Please
17 proceed, Member Little.

18 MEMBER LITTLE: I feel I'm in total agreement
19 with you, Mr. Chairman, here. I think that there are
20 several reasons why we should ask for reconsideration,
21 and one of them is that I feel that those two conditions
22 were important in my decision to vote aye for the CEC.

23 I also think that we, as a Committee, have
24 worked really hard, particularly over the last few but
25 certainly over the years to bring the public together

1 with the applicant so that -- to help mitigate some of
2 the considerations or concerns that everybody has.

3 And I think that's really an important and
4 healthy aspect of our role, and I think -- I believe
5 that we should let the Commission know that we feel that
6 way, and particularly when the applicant is in
7 agreement.

8 And I did hear the Commission Open Meeting, and
9 I heard the Applicant say several times, you know, "We
10 agree to this. We agree to this. We don't have a
11 problem with this."

12 And I think for the Commission to undermine our
13 work in that area is something that we should at least
14 let them know we're not happy about, and we have the
15 right to do that.

16 CHAIRMAN STAFFORD: Thank you.

17 Member Mercer.

18 MEMBER MERCER: Yes, Mr. Chairman. I have a
19 couple of questions.

20 So the two conditions that the Corporation
21 Commission removed, I mean, they did not deny the CEC,
22 but they removed two conditions; right?

23 CHAIRMAN STAFFORD: Correct.

24 MEMBER MERCER: So one of them was about the
25 water.

1 CHAIRMAN STAFFORD: Right. Condition Number 28
2 imposed a hard cap. I think it's -- was it
3 420 acre-feet? Let me see. On the three-year rolling
4 average.

5 Yeah. 420 acre-feet per year over a
6 consecutive three-year period. That was the condition
7 we imposed. That was a condition to whatever
8 limitations DWR placed on them.

9 Because when they -- my understanding is that
10 when they transfer from the agricultural groundwater
11 rights to an industrial use, it reduces the total amount
12 of the water they can pump. I'll leave it to Member
13 French to answer that since he's the representative from
14 DWR.

15 But would you like to get that answer right
16 now, or do you want to wait and come back to that,
17 Member Mercer?

18 MEMBER MERCER: Yeah, I would like everybody,
19 you know, to have the answer so we know exactly what
20 we're looking at, and also the other condition that was
21 removed.

22 CHAIRMAN STAFFORD: Yeah. The other condition
23 was Condition 24, the requirement that they have the
24 community working group. The Applicant agreed to set
25 aside an amount of funds that would be -- that the

1 community working group would have the authority to
2 direct how they get spent on varying mitigation measures
3 for the effects of the plant.

4 MEMBER MERCER: Okay. If I remember correctly,
5 when -- I mean, we were all very happy for the public
6 that was going to benefit from this Condition 24, but it
7 was pretty loose in terms of there was no details about
8 legally who was going to oversee this.

9 And the Commission or the Committee, neither
10 the Arizona Corporation Commission has any jurisdiction
11 over this.

12 Because if there's no legal agreement between
13 the applicant and the public, who is going to oversee
14 this money? This, whatever, five million, six million
15 dollars over the period of the project, who is going to
16 oversee that? And we don't have jurisdiction over that.

17 That's my only concern. I mean, yes, it's --
18 it's, like, hey, the applicant volunteer. But, you
19 know, are we playing into some stuff that we have no
20 jurisdiction over? That's my concern.

21 CHAIRMAN STAFFORD: Right. Well, the way that
22 I see it is that, typically, when they establish --
23 because there's been multiple cases where the Commission
24 has established community working groups multiple times.
25 So it's not a question of whether they have jurisdiction

1 or not. It's been done. It hasn't been challenged in
2 court. There has been multiple cases.

3 In the Coolidge expansion case, there was a
4 community working group, and that was ordered by the
5 Committee. And that went to the Superior Court twice on
6 two different appeals.

7 And it's -- the Committee and the Commission
8 have the authority to impose reasonable conditions. And
9 in cases where you have a significant expansion of a
10 fossil plant in -- close to residences or a new fossil
11 plant site that has proximity to residences, I think
12 it's appropriate to have community working groups to
13 determine how to mitigate the effects of the plant.

14 And it's been done in multiple cases. I have a
15 list of stuff that I can rattle through later about
16 cases where they've done community working groups or had
17 additional restrictions on water.

18 So, I mean, these are things that the Committee
19 and Commission have done, and it's -- and they're done
20 purposefully vague because the Commission is not in the
21 business of enforcing these community working groups.

22 They have -- they're set up to where they have
23 an independent -- what was the term? -- independent
24 facilitator that's paid by the applicant. And if the
25 people can't work together, then they can employ dispute

1 resolution mechanisms like arbitration or mediation to
2 resolve it. It doesn't come to the Commission to get
3 resolved.

4 MEMBER MERCER: Okay. So I guess I don't see
5 who that independent facilitator in this case is going
6 to be.

7 CHAIRMAN STAFFORD: We don't know. It will be
8 under the terms of the condition. Let's see.

9 "The Applicant shall retain the independent
10 facilitator acceptable to the community working group."

11 So they have to agree.

12 MEMBER MERCER: Okay.

13 CHAIRMAN STAFFORD: They have to work together.
14 If they can't, they can employ dispute resolution
15 mechanisms.

16 And I think it's worth noting that in the prior
17 cases where community working groups have been involved,
18 the Commission hasn't come back and have to get involved
19 after the fact. They haven't. They've managed to make
20 them work and accomplish what they were trying to
21 accomplish.

22 MEMBER MERCER: Okay. And who oversees that
23 this conditions are carried on?

24 CHAIRMAN STAFFORD: Ultimately, the
25 Commission or the courts will enforce the provisions of

1 the CEC. Because the Commission has the authority to
2 enforce its own orders.

3 But in the prior history of these community
4 working groups, I haven't found a complaint where
5 someone said, "Oh, they're not abiding by this
6 condition. Now the Commission needs to take action to
7 settle it." That just hasn't happened.

8 MEMBER MERCER: Okay. I guess that answers my
9 questions.

10 CHAIRMAN STAFFORD: Okay.

11 MEMBER MERCER: So far.

12 CHAIRMAN STAFFORD: Member Gold, you had your
13 hand raised.

14 MEMBER GOLD: Mr. Chairman.

15 CHAIRMAN STAFFORD: Yes.

16 MEMBER GOLD: I served for 30 years in the
17 military as an advisor.

18 MEMBER KRYDER: Move a little closer to your
19 mic, John.

20 MEMBER GOLD: Okay. Is that better?

21 MEMBER KRYDER: Yes.

22 MEMBER GOLD: For 30 years, I served as an
23 advisor to generals, commanders-in-chief. My mission
24 was to advise them to the best of my ability.

25 And after advising them, they made the

1 decision. I had no right to challenge it. And,
2 hopefully, I gave good advice, always options, which is
3 what we've pretty much done as members of this
4 Committee.

5 On the other hand, Adam, you bring up a very
6 good point that there seems to be some misunderstanding,
7 because our advice was good advice.

8 So my question is why did the Corporation
9 Commission take Item 24 and 28 out? What was their
10 reason? Did we do something wrong, or are they
11 misunderstanding what we did? What did they say? Why
12 did they say, "We'll take it out"?

13 CHAIRMAN STAFFORD: Well, let's see. The main
14 drag was they said they didn't have authority over the
15 water and that you can't require a working group. So
16 they seem to think -- well, their argument was that they
17 don't have the authority to do either of those things.

18 MEMBER GOLD: Is that true?

19 CHAIRMAN STAFFORD: Not from my perspective. I
20 think that is wrong. It's been -- things like this have
21 been done in the past and have not been challenged.

22 Like I said, in the Coolidge expansion project,
23 that went to the Superior Court twice, and they didn't
24 strike -- it wasn't even an issue. They didn't -- the
25 Applicant didn't try to say, "Oh, you can't have this

1 community working group."

2 MEMBER GOLD: So if I understand you correctly,
3 the Commission is under the assumption that they have no
4 authority over these two items.

5 CHAIRMAN STAFFORD: Right. That was the
6 position they staked out in the meeting. I disagree
7 with that. I think that they do have the authority, but
8 they do have -- but on the flip side, they have the
9 discretion not to do it.

10 So at the end of the day, you know, we're just
11 asking them to, hey, think about this again. You do
12 have the authority to do this. We think it's good
13 policy. You should do it.

14 That policy call is up to them. If they
15 decide, well, it's not necessary to mitigate the impacts
16 to have this community working group or a hard cap on
17 the groundwater pumping, if they don't think these are
18 necessary, then they can make that decision. That's
19 their decision to make.

20 But my problem is that it was prefaced on the
21 assumption or the belief that they don't have the
22 authority, but they clearly do have the authority.
23 They're just choosing not to exercise it, and that is
24 their prerogative. And that's why I would like to make
25 that point to them from the Committee that, yes, you

1 have the authority. We think you can do this. You
2 should do it.

3 But, again, at the end of the day, that's their
4 policy call to make whether they think those conditions
5 are necessary to mitigate the environmental impact or
6 not.

7 MEMBER GOLD: So the real question,
8 Mr. Chairman, is an assumption that we are making, or
9 that they've made, which could be wrong. If their
10 assumption is wrong -- and you're the lawyer, I'm not.

11 If it's a legal question about whether or not
12 they have the authority to do that, you are the best
13 judge or a far better judge than I am of that.

14 If they understand that they do have the
15 authority and then decide not to do it, that is their
16 discretion, their right, and none of our purview to do
17 that.

18 So on the one hand, I say even though we have
19 no -- it's not our job. It's not something we're tasked
20 to do to question their discretion. However, if they
21 have a faulty assumption, then we should give them
22 evidence or information to tell them that they do have
23 the authority.

24 If there are statutes that you can state that
25 we can send them that says, "Based on this statute or

1 based on common law, or based on past actions that we've
2 taken that have never been challenged in court, you do
3 have the authority. Would you please reconsider," then
4 I have no problem going along with informing them.

5 On the other hand, if they've told you, "Yeah,
6 we heard everything you said and we decided against it,"
7 well, then, that's prerogative.

8 This would be something that I would rely on
9 your judgment. You have heard what they said. I have
10 not.

11 CHAIRMAN STAFFORD: Well, you can go back
12 and -- the Open Meeting is archived. You can go back
13 and you can watch the Open Meeting when they approved
14 this item and struck those two conditions.

15 MEMBER GOLD: Rather than me going back and
16 looking at it, did they state why at the Open Meeting?
17 If any member of our Committee who attended the meeting
18 or yourself would tell me, why did they strike it?

19 CHAIRMAN STAFFORD: Because they said they
20 don't have the authority to impose those conditions.

21 MEMBER GOLD: So they think they don't have the
22 authority. On the other hand, you believe they do have
23 the authority.

24 Let's quote them the authority and ask them
25 to -- you know, "Based on this information, would you

1 keep your decision or would you change it?" and put it
2 back in their court. But at least give them enough
3 information so they can make an educated decision.

4 Because I think what we did when we were
5 leading this Committee, we went over all of this. This
6 was how we got the CEC approved. It was amenable to
7 everybody, and it seemed fair to me and to the other
8 members of the Committee, yourself included.

9 Therefore, if they are under the assumption
10 that they don't have authority, let's tell them where
11 they do have authority and then put it back to them,
12 Mr. Chairman. And that's my thoughts.

13 CHAIRMAN STAFFORD: That's exactly what I'm
14 proposing we do. Thank you.

15 All right. Member French and then Member
16 Mercer.

17 MEMBER FRENCH: Yeah. I just wanted to get my
18 two cents in, as it were, on the removal of the
19 condition regarding the groundwater cap.

20 I don't have strong feelings in either
21 direction. The Commission's attorneys in the Open
22 Meeting brought up their concerns and legal questions
23 regarding authority of establishing water rights and
24 some other issues.

25 And the reason why I don't have strong feelings

1 in either direction is if this condition remains removed
2 and they don't add it back in, the Applicant will still
3 be required to limit their groundwater withdrawal to
4 whatever is legally permissible for their facility on
5 that location.

6 And like the Chairman had mentioned, that
7 currently it's an irrigation grandfathered right for a
8 certain amount. And then when that right is retired,
9 the reduction in that groundwater authority will happen
10 and get converted into a Type 1 right.

11 And then, if I remember correctly, the
12 Applicant also testified about using other water sources
13 like delivered surface water from the irrigation
14 district that serves that area.

15 So like I said, I don't have strong feelings
16 either direction in either keeping the water condition
17 in or out. I just wanted to make sure that everybody
18 here was kind of clear on what the authorities are that
19 are associated with the groundwater rights.

20 CHAIRMAN STAFFORD: All right. But DWR is not
21 opposed to a hard cap imposed by the Commission or the
22 Committee.

23 MEMBER FRENCH: Not necessarily. The only
24 question that has come up that was posed by the
25 Commission's attorneys is if there's going to cause

1 legal issues with -- essentially, if we keep this
2 condition in, the question was posed, "Is this going to
3 establish a water right associated with this facility?"

4 I don't have a legal opinion either direction.
5 I'm not an attorney. But just for the Committee's
6 knowledge that there will be protections if this
7 condition is removed. That they will still be required
8 to follow the law and also take a reduction in what's
9 authorized for that location right now.

10 CHAIRMAN STAFFORD: And the Project Bella is
11 located in Pinal County, so it's part of the Pinal
12 County Active Management Area?

13 MEMBER FRENCH: That's correct.

14 CHAIRMAN STAFFORD: And what is the -- my
15 understanding is that the active management plan calls
16 to maintain the current rate of depletion of the water
17 table.

18 MEMBER FRENCH: I think that's correct.

19 CHAIRMAN STAFFORD: Okay. So it's not to
20 replenish or halt depletion. It's to maintain the
21 current rate of depletion.

22 MEMBER FRENCH: I believe that's right, yes.

23 CHAIRMAN STAFFORD: Okay.

24 MEMBER MERCER: Mr. Chair.

25 CHAIRMAN STAFFORD: One second.

1 My response to that was when they said that
2 they -- that somehow that the condition imposed in the
3 CEC would create a property right to use 420 acre-feet,
4 regardless of what DWR says, that is not possible.

5 If you look at the language in the face of its
6 CEC, the document, the plain language requires them to
7 comply with all DWR regulations and limitations. This
8 was an additional limitation imposed on top of that. If
9 DWR said you can't pump more than 350 acre-feet of water
10 a year, then they would be bound by that because that
11 would be below the floor set by the CEC condition.

12 The CEC condition -- you know, the prior --
13 it's the earlier condition that requires them to comply
14 with DWR. This is an additional condition imposed on
15 top of that and does not contradict or supersede that.

16 Because the Committee and Commission's
17 jurisdiction in this matter is statutory as opposed
18 to -- as, like, DWR's is, but it's not -- it doesn't --
19 it doesn't allow them to -- for example, the CEC
20 couldn't waive requirements with DWR requirements. They
21 can impose additional requirements that are reasonable,
22 but they can't waive existing requirements from other
23 agencies.

24 And so just that -- the very nature of that
25 negates the argument that the CEC condition would

1 somehow create a property right and conflict with DWR's
2 authority, which is completely not the case.

3 All right. Member Mercer had her hand raised.
4 And then, Member Hill, you're next.

5 MEMBER HILL: I just wanted to try and stick
6 with water, if we could. I don't want to interrupt
7 Member Mercer, but if she had, like, a question that was
8 going to shift us gears, I wanted to try to get water
9 in.

10 MEMBER MERCER: Go ahead with the water. I
11 have something else.

12 MEMBER HILL: Okay. So, Member French, thank
13 you for the legal context in what I consider kind of the
14 backstop to this whole thing.

15 I think my -- I just keep coming back to our
16 role as the Committee and that we've been entrusted to
17 do a lot of the community engagement, hearing from the
18 community, hearing the concerns from the community.

19 And when we left that meeting -- and I think
20 water was definitely a concern for other producers in
21 the area and adjacent landowners.

22 And I felt like, when we left that meeting, we
23 had arrived at a water restriction that the Applicant
24 offered as the restriction because it was going to work
25 for them.

1 But also really kind of critical to our job is
2 it gave the community confidence that they had been
3 heard and their considerations had been included in the
4 CEC, and that the Applicant was okay with that.

5 I feel like -- I feel like maybe the Commission
6 doesn't understand that -- you know, the nature of that
7 engagement, the energy and time that people came
8 together in a very hot room on long days to figure out.

9 And so I just don't understand why they don't
10 think that they have this authority, especially since I
11 feel like we modeled it on existing CECs.

12 So while I definitely appreciate the regulatory
13 backstop, I think our job is to hear from community
14 leaders and members that might be affected by these
15 sites and incorporate reasonable thinking into the CECs
16 that reflects the community needs and the Applicant's
17 needs, and I felt like we got there.

18 And so I guess that's my disappointment, and
19 that's what I wanted to say about the water stuff is
20 there's a regulatory backstop, but, at the end of the
21 day, our job is to hear from the public and incorporate
22 all concerns into the CEC.

23 CHAIRMAN STAFFORD: Thank you.

24 Member Mercer.

25 MEMBER MERCER: So you mentioned that there was

1 some previous cases, so there's, obviously, precedents
2 to this case.

3 But you mentioned something about the Supreme
4 Court getting involved. And I guess my concern is --
5 Member Richins, you know, right off the bat said, "I
6 don't want to go sue the Corporation Commission."

7 All of this is new to me. I didn't know that
8 we could sue or anybody could sue. Well, I guess
9 anybody can sue anybody these days, but what is that --
10 what does that look like?

11 So let's say that we all agree to ask the
12 corporation committee to reconsider. What if they say,
13 "No, we already made our decision"?

14 So what happens next? We just say, "Oh, well,"
15 or is that what Member Richins was talking about, "I
16 don't want to sue the Corporation Commission"?

17 CHAIRMAN STAFFORD: The Committee does not have
18 the authority to sue the Corporation Commission. The
19 Committee serves as the finder of fact, a trial court,
20 if you will, for, you know, finding of facts and
21 conclusions of law to make a recommendation to the
22 Commission. The Committee cannot sue the Commission.

23 Under the statute, the Committee has the right
24 to request the Commission reconsider its decision, and
25 that's what I'm proposing. We exercise that right and

1 file a request to have them reconsider.

2 I can -- and we'll talk about -- I guess if we
3 decide today, we'll talk about what it's going to look
4 like, but there's no point in having the discussion of
5 what it's going to look like if we're not going to file
6 it.

7 But, again, under the statute, the Committee
8 has the right to say, "Hey, we think you -- Commission,
9 this is what we think you did wrong. We ask you to
10 reconsider it and do it this way."

11 But if the Commission denies that or ignores
12 it, that's the end of it. There's no -- we're not going
13 to get into some kind of litigation or court fight with
14 the Commission. That's just not possible under the
15 statute from this -- it's not -- to get to court, you
16 have to file a petition for rehearing. The Committee
17 can't file a request for rehearing. It can only file a
18 request for reconsideration.

19 So to get to court, you have to file a request
20 for rehearing and that has to be denied. Once it's
21 denied, then that party could get to court. But there's
22 zero chance of this being litigated because -- unless,
23 of course, one of the parties requests a rehearing,
24 which would be the Applicant, because that was the only
25 party to this case.

1 But I'm not suggesting it. I'm just saying we
2 let the Commission know that we think they got it wrong
3 by removing those conditions and that we ask them nicely
4 to put them back in, to reconsider it. That's the
5 extent of our involvement in it. There's not going to
6 be -- there's no next step for the Committee after that.

7 MEMBER GOLD: Mr. Chairman.

8 CHAIRMAN STAFFORD: Yes, Member Gold.

9 MEMBER GOLD: You have, obviously, done your
10 homework and researched this.

11 Can you give us the information that we're
12 going to be sending the corporation council so that we
13 can, you know, all agree that this is what we want to
14 send them? What are the grounds for them having
15 authority to approve those two points? Let's go one
16 point at a time.

17 CHAIRMAN STAFFORD: Let's take a little stroll
18 down memory lane here with prior CECs that I have
19 harvested just for this occasion.

20 MEMBER GOLD: Okay. So one is going to be
21 historically.

22 MEMBER MERCER: Like Coolidge.

23 CHAIRMAN STAFFORD: That's one of them. I'm
24 starting -- more than that.

25 So if you go back to CEC Number 90, the

1 Commission Decision 61295.

2 MEMBER HILL: Mr. Chair, I am grateful for
3 Member Gold's request. How many cases are there, before
4 we start naming them all.

5 CHAIRMAN STAFFORD: Let's see. There's one,
6 two, three, four, five, six, seven, eight, nine, and
7 then the Coolidge case, which is more about community
8 working groups as opposed to just water.

9 So there's, like, ten different cases where we
10 can talk about how the Commission's imposed different
11 water restrictions other than just comply with what DWR
12 says and having community working groups.

13 MEMBER GOLD: So there are ten cases for
14 Condition Number 28.

15 CHAIRMAN STAFFORD: No. There's ten cases --
16 prior cases overall to talk about both.

17 MEMBER GOLD: For both, for 24 and 28.

18 Okay. Could you just list the cases by CEC
19 just so we have it?

20 CHAIRMAN STAFFORD: So ones I've looked at
21 here, going back, there's Case number 90.

22 MEMBER GOLD: Mr. Chairman?

23 CHAIRMAN STAFFORD: One second.

24 Case Number 90. Case Number 96. Case
25 Number 98. Case Number 101, 104, 105, 116, 117, 118,

1 and then the Coolidge expansion is 197.

2 MEMBER GOLD: Would you mind reading just one
3 case where the Commission granted either the working
4 group was okay with the money and one where they would
5 allow the groundwater? Just so we have a rough idea of
6 what's in all ten of them.

7 CHAIRMAN STAFFORD: I was just about to do that
8 and someone asked us to get the callout of the numbers,
9 so --

10 MEMBER GOLD: I think one would --

11 MEMBER HILL: I just wanted to know how long
12 the list was before we spent 20 minutes describing each.
13 Sorry.

14 MEMBER KRYDER: Mr. Chairman.

15 MEMBER GOLD: All --

16 CHAIRMAN STAFFORD: One at a time.

17 Member Kryder.

18 MEMBER KRYDER: This is all pretty interesting
19 to me, and it would have been really helpful before
20 coming into this meeting to have had some of this
21 information.

22 If we've got ten cases here to look at, there's
23 that whole question of -- I don't feel prepared at this
24 point. And just listening to one line or one condition
25 and so on, without reading the whole context of it,

1 seems to me we're really asking a question that I am
2 finding difficult to comprehend.

3 There was -- so I would have liked to have had
4 this list maybe a couple of weeks ago, but I know there
5 was trouble getting a time and a place for this meeting
6 and all of that stuff.

7 But I don't feel very well prepared to really
8 look at the issues because I haven't done my background
9 reading. That's the comment.

10 CHAIRMAN STAFFORD: No other questions?

11 All right. Member French, you have your hand
12 up and so does Member Mercer.

13 Member French.

14 Or did you just not put it down from last time?

15 MEMBER FRENCH: Honestly, I'm having trouble
16 with what my question was. It's been a second.

17 Oh, got it. Sorry.

18 Just for future applications and hearings,
19 would it be possible to instead pose issues like this as
20 conditions? Would it be better to put them in as
21 stipulations from the applicant?

22 Because I know in this case the Applicant
23 agreed to these conditions, but they are impositions
24 from the Committee.

25 Would it be better to take form as a

1 stipulation from the applicant saying, from them, as a
2 matter of fact, this is how they're going to operate, as
3 opposed to an imposition from us? If that makes sense.

4 CHAIRMAN STAFFORD: Yeah, but it's not really
5 feasible to do it that way. Because the statute gives
6 the Committee the right to impose conditions, and that's
7 what becomes enforceable and binding on the applicant.
8 If they agree to do something on the record without it
9 being a condition, then they're not bound by it.

10 And that's another issue -- that was one of the
11 issues that came up at the meeting where they said, "Oh,
12 the Applicant has agreed to do it. We don't need to
13 require them to do it. They're going to do it anyway."

14 Well, you know, promises just made aren't
15 binding. You don't get -- a contract isn't formed by
16 one party making a promise. There has to be an exchange
17 of consideration for that to become an enforceable
18 contract.

19 But this is -- the Committee and the
20 Commission, they don't adjudicate contracts or
21 agreements between parties. They impose conditions,
22 reasonable conditions, on certificates. That's what
23 they do.

24 And so one of the things about conditions is
25 that they're binding on the applicant and all subsequent

1 entities that take ownership. So, for example, if the
2 project has a CEC requirement that they have a community
3 working group, then if they sell the project to somebody
4 else and that person takes over the CEC, they are bound
5 by those conditions. If it's not a condition and they
6 sell it to someone else, their statement that they're
7 going to do this is not binding on the successor entity.

8 MEMBER FRENCH: Gotcha. I understand.

9 CHAIRMAN STAFFORD: Okay. Member Mercer, your
10 question.

11 MEMBER MERCER: Yes, Mr. Chairman.

12 So what Member French just talked about, I kind
13 of agree with, you know, his take on this issue.
14 Because, we as a committee, we don't have the authority
15 to impose certain conditions.

16 And, you know, unfortunately -- well,
17 fortunately, on this case, Condition Number 24, for
18 instance, the Applicant agreed. The Applicant was so --
19 you know, say, "Hey, I'm willing to do this because I
20 want to be a good neighbor."

21 But because there was no details and there was
22 no legal agreement, I'm having a -- you know, I'm having
23 problems with looking at this with the -- with a
24 transparency and not making it look like there was some
25 bribery or some improprieties. And that's what I'm

1 having problems with with Condition Number 24, even
2 though the Applicant said, "I want to do this."

3 And that's my concern. You know, should we not
4 put this kinds of conditions as -- you know, I don't
5 want to hear anybody saying, "Oh, they twisted the
6 Applicant's arm," even though they said, "We want to do
7 this."

8 I mean, I just don't want to be painted with
9 that brush that there was some improprieties.

10 CHAIRMAN STAFFORD: No. I mean, this is what
11 community working groups do.

12 If you look at the -- we've talked about the
13 Coolidge case a bunch of times. I suggest that you all
14 read the orders on that. That's 197. Everyone has
15 known about that case for some time. It's been
16 discussed on multiple occasions.

17 The statutes give the Committee and the
18 Commission the authority to impose reasonable
19 conditions. In the past, having them form a community
20 working group has been a reasonable condition. They
21 have the authority to do that whether the applicant
22 volunteers to do it or not.

23 Now, an applicant -- if the Committee and the
24 Commission order an applicant to form a community
25 working group and they don't want to do it, the remedy

1 is to request a hearing and go to court and try to have
2 the court say that's an unreasonable condition.

3 These things are typically -- they don't put a
4 ton of detail into these. They just kind of spell out
5 how it's supposed to work, but then it's on the
6 applicant and the neighborhoods and the people involved
7 in the community to make it go and make sure things
8 go -- it's not set up -- the whole thing of having
9 guidelines and expenditures and spending auditing,
10 that's all stuff that the Commission and the Committee
11 don't do. That's something that the applicant and the
12 people in the neighborhood and the city or town or
13 county, whoever else is involved in that, that's for
14 them to sort through.

15 It's not -- it's set to be giving general
16 direction and not micromanage how they run it. It's
17 not -- we're not approving a contract entered in between
18 parties or anything like that. It's a condition that
19 says you got to do this, and then it's up to them to
20 make it go.

21 And if some -- if the applicant were to refuse
22 to even engage and try to do a community working group,
23 then someone could make a complaint to the Commission,
24 the Commission could investigate and decide whether or
25 not -- it's not -- they're not going to decide how to

1 make it work. They're going to say, "Did you comply
2 with the condition? Yes or no."

3 What is the remedy? Fine? Cancellation of the
4 CEC? It's going to depend on the circumstances and
5 facts of the case.

6 All right. Another question, Member Mercer.

7 MEMBER MERCER: So I guess my -- where I'm a
8 little confused here is because there was no details. I
9 understand the -- I made my notes here. Hold on.

10 So the community working group, the condition,
11 you know, it was, okay, the Applicant is going to do
12 this, this, and that. But there was no details about
13 how they're going to do it or there was no legal
14 agreement.

15 And that kind of gives the -- opens the door to
16 somebody questioning how is this happening or why is
17 this happening. Was somebody bribed? Was somebody
18 coerced? Somebody twisted somebody's arm to do this?

19 And I understand what you're saying that the
20 applicant has the -- however they want to do it, they
21 just have to follow that condition. I understand that.

22 But, again, if it's no -- if there's no details
23 or legal agreement, who is going to be held accountable
24 for them doing it or not doing it? That's my concern
25 again.

1 CHAIRMAN STAFFORD: Right. It's the -- there's
2 not a -- it's not a contract. The condition is a legal
3 requirement on the applicant. They are required to do
4 that. That's a legal requirement on the applicant.

5 These things are typically -- they're
6 specifically not done with a bunch of detail because it
7 allows them flexibility to work out what they need to
8 do. It's not -- like I said, the Committee and the
9 Commission aren't policing how these working groups
10 operate.

11 Every year, every applicant, until the project
12 is complete, have to file a self-certification on
13 compliance with the conditions. They'll update the
14 Commission on that.

15 You know, if they just said, "Oh, we're not
16 going to follow this condition," then the Commission
17 would take -- could take action to enforce its order.

18 But it's not -- they don't come to the -- the
19 applicant and the people in the community working group,
20 they don't come to the Committee or the Commission to
21 resolve disputes among them. That's what the
22 independent administrator is for, and that's what --
23 that's why they're authorized to use alternative dispute
24 resolution means to resolve disagreements.

25 These things are purposefully kept vague so

1 it's not -- so it's not -- to keep the Commission out of
2 the business of managing community working groups.

3 Yeah. The irony is that if you added all that
4 detail in, that would be things that people could allege
5 violations of. That's why it's kept vague so that they
6 have to do this. It's a process they have to go
7 through. And if they follow that process, then that's
8 what they do. That's what they're required to do by the
9 condition in the CEC.

10 Disputes between the members of the community
11 working group, those are resolved by the administrator,
12 not by the Commission.

13 And in the past history of having these
14 community working groups, I haven't found any case of a
15 complaint being filed alleging that they're mishandling
16 the funds, or they're not holding the meetings
17 frequently enough, or that they're mean during the
18 meetings. You don't see that. That seems like a
19 manufactured problem to me. It doesn't -- I haven't
20 seen that happen in real life.

21 Member Drago.

22 MEMBER DRAGO: Thanks.

23 Between you and Member French, you helped me.
24 I came in here with two thoughts. First thought was
25 about thinking that this was a voluntary condition that

1 the Applicant made, and why would we throw something out
2 that the Applicant volunteered to do? Now I understand
3 it's an enforceable condition. I didn't know that.

4 So that leads me to my second point. My second
5 point is, is we are held to listen to the public. And I
6 believe the genesis of this condition was born out of
7 the requirement for a government entity to consider
8 public comment.

9 And there is -- I just did some Googling -- and
10 I know, you know, my doctor says, "Don't Google that
11 stuff. It's not true."

12 But since you're an attorney, Chairman, what is
13 the administrative procedure? Because when I read this,
14 it seems to only apply to regulation. But we're
15 required to consider public comment, and that's how we
16 came to this point.

17 CHAIRMAN STAFFORD: Yes. I mean, the public
18 comment isn't evidence, but we still consider it. And
19 so we're not going to -- you know, and it's more
20 indicative of what the public's concerns are.

21 And so I think it's the function of this
22 Committee to impose reasonable conditions on an
23 applicant, on a site, to mitigate the environmental
24 impacts of that.

25 Like, for this one here, there's discussion

1 about some people wanted a wall. Some people said the
2 wall isn't going to make that big of a difference
3 because we'll still see the stacks because you're a mile
4 away from it. You just won't be able to see the low
5 stuff. You'll still see the stacks. You're not going
6 to obscure those.

7 In the Coolidge case, I think they wanted a
8 wall, but then they ended up saying, "No. We've got to
9 spend the money on something else," and they took that
10 out the second time it came back to the Commission.
11 Because in that case, the Committee imposed a community
12 working group. I think, by that point, SRP agreed to
13 it.

14 In other cases like Kyrene and San Tan, they
15 already had -- they were already working with the public
16 because you had -- you know, the contrast is between
17 rural and urban areas. Like, with Kyrene and San Tan,
18 those were in Gilbert and Tempe. There were cities
19 involved. There were homeowners associations involved.

20 When you get out into the rural areas, you
21 don't have either of those things a lot of the time,
22 which was the case with Project Bella. So we had people
23 show up. They took time out of their day and watch the
24 proceedings and weigh in and say they were concerned
25 about the visual impacts of this. We're concerned about

1 the water implications of it, the depletion of our
2 wells.

3 And the Committee and the Applicant worked
4 together to compose reasonable conditions to try to
5 mitigate those concerns and those impacts. And that's,
6 the way I see it, the core function of this committee is
7 to do that.

8 I see Mr. Moyes has his hand raised. I hadn't
9 planned on speaking to the public, but since he does
10 represent the Applicant, I'm inclined to let him give us
11 his two cents.

12 Mr. Moyes.

13 MR. MOYES: Thank you, Mr. Chairman.
14 Appreciate everybody's comments today and opportunity to
15 speak and share the Applicant's viewpoint on this.

16 I hope you can hear me. I'm calling in from
17 the road and just spent the last hour changing a
18 shredded tire on the side of the freeway out in the
19 desert in California.

20 You are all familiar with the phrase that "No
21 good deed goes unpunished."

22 And I would say we can agree on a lot of things
23 about what took place at the Open Meeting. I sat on the
24 same side of the table as the Chairman did, and we
25 argued for the same things. We countered the points

1 that were made by the Chairman, the Commissioners, and
2 the legal staff.

3 What I don't agree with is that the appropriate
4 forum to take this fight on is through our existing
5 permit and holding our permit hostage.

6 You may say to yourself, "I wouldn't have voted
7 11 to nothing if those conditions weren't in there,
8 because we're trying to mitigate impacts to the
9 community and we listened to the community."

10 I agree with all of that. We tried to listen
11 to the community. That's why we offered up the
12 conditions and probably we bent over backwards offering
13 mitigation to the community and doing what the Committee
14 had asked and went probably above and beyond that.

15 What I would say to you from the Applicant's
16 perspective is nothing is going to change by dragging
17 our permit through this process even further and
18 jeopardizing our permit through continued proceedings.

19 As we stated on the record at the Open Meeting,
20 we are going to continue to do exactly what we said we
21 would do. We are going to hold a community working
22 group. There are details in that plan. We have a very
23 extensive charter already drafted. It's still in draft
24 form, but it's probably over 10 pages long with
25 extensive details about how that process should be

1 played out that we plan to present to the community and
2 to the county, who has a seat at that table.

3 The Chairman asked us, after they voted to
4 remove the conditions, "Are you still going to do that?"

5 "Yes."

6 We said on the record we will still do that.

7 We went before the Board of Supervisors last
8 week to get our comprehensive plan amendment, which was
9 approved. They, knowing that these conditions were
10 removed from our CEC, asked all kinds of questions about
11 the community working group. "Are you still going to do
12 these things? We like that. We like the sound of
13 that."

14 We again stated on the record, on a public
15 record, "We are going to still hold the community
16 working group."

17 We even volunteered and offered and said we
18 would stipulate that when we have to come back before
19 Pinal County at start of next year to get zoning changes
20 for the project that we would stipulate that the zonings
21 be conditioned on us complying with these conditions
22 that were removed from the CEC.

23 So all of the things that we told you, the
24 Committee, we were going to do, and all the things we
25 told the public we were going to do, we are still going

1 to do that. We're bound by that.

2 We've told that multiple times on public record
3 that we're going to do it, and we're willing to
4 stipulate on a county requirement that it be done.

5 We don't think that this is the forum, through
6 our particular permit, for this tug of war between what
7 the Committee has authority to impose and what the
8 Commission thinks they have the jurisdiction to enforce.
9 We don't think this is the place and time to do it.

10 You could open a separate docket. You could
11 open a separate rulemaking docket to hash these issues
12 out, similar to what was done with the line siting
13 procedural rules.

14 But at the end of the day, the community -- or
15 the county, rather, is probably the more appropriate
16 party to make sure that a community working group
17 happens, to enforce it, to make sure that water
18 restrictions are happening, because they're part of the
19 working group. They're the ones who have that interest
20 and stakeholders and constituents to account for in
21 Pinal County.

22 So the process is that we're happy to share
23 that draft document if the Committee members want to
24 take a look at that and see that we are serious about
25 it. It's not something that we're looking, saying to

1 ourselves, "Oh, we lucked out there. They pulled those
2 from our permit. Great. Now we don't have to do that."
3 That is absolutely not the case here.

4 So, again, I'm asking you, don't punish our
5 good deed by further dragging out the certainty of our
6 CEC permit that we got an 11 to nothing vote on, that
7 was affirmed by the Commission, although they changed it
8 a little bit, when nothing is going to change on the
9 ground in terms of the actual impacts that you wanted to
10 take place because of those conditions.

11 CHAIRMAN STAFFORD: Thank you.

12 MR. MOYES: And with that, Mr. Chairman, I
13 thank you for the time.

14 CHAIRMAN STAFFORD: Member Gold.

15 You're on mute, Member Gold. We can't hear
16 you.

17 MEMBER GOLD: Mr. Chairman, can you hear me
18 now?

19 CHAIRMAN STAFFORD: Yes.

20 MEMBER GOLD: It seems we're still dealing with
21 a very honorable Applicant. The issue is he's going to
22 do what he said -- you know, he, the Applicant, is going
23 to do what he said he was going to do despite the
24 Corporation Commission pulling it out of the agreement
25 that he agreed to do.

1 So I go back to my original statement. The
2 Corporation Commission is not really relevant at this
3 point. The Applicant has the CEC. The Applicant is
4 going to do what is necessary.

5 But I feel obliged to educate the Corporation
6 Commission. That's why I asked would you please read
7 one paragraph that gives historical precedent for
8 either -- for Number 24 from any of the 90, 96, 98. You
9 choose one or please read one so I know what it sounds
10 like.

11 CHAIRMAN STAFFORD: All right. Let me look
12 at -- I'm going to talk about Case 118. This is for the
13 Bowie Power Station in Cochise County.

14 Now, in this one, after the Committee approved
15 the CEC that said that they require the applicant to
16 comply with all applicable water use and conservation
17 requirements of Arizona Department of Water Resources,
18 it added a condition that required them to enter into a
19 groundwater monitoring program with DWR.

20 Now, this is -- Cochise County is not an active
21 management area; correct, Member French? So they don't
22 have an active management area, so DWR isn't doing
23 anything on that; correct? They're not required to
24 monitor or anything for water levels if it's outside of
25 an active management area; correct?

1 MEMBER FRENCH: The individual property owners
2 are not required to report their groundwater withdrawals
3 to the department, correct. The department still
4 monitors the area just for information.

5 CHAIRMAN STAFFORD: Okay. All right. So in
6 that case, the Commission modified the CEC to add the
7 condition that they enter into a groundwater monitoring
8 program, at their sole expense, with DWR.

9 And that they would -- and then they went
10 beyond that and required the applicant to contribute
11 \$100,000 to a groundwater impact mitigation fund to be
12 established and maintained by the applicant, at a
13 national or state chartered bank, up until they got to
14 \$500,000 in there.

15 And then it allowed for persons claiming
16 property or economic damage as a result of groundwater
17 decline, allegedly directly attributable to project
18 operation, may submit a claim for mitigation payment to
19 applicant. And if there's a dispute, they had to submit
20 to binding arbitration to resolve it.

21 MEMBER GOLD: Mr. Chairman, that sounds like a
22 precedent. Would you mind reading one more that's more
23 specific to Number 24, the Committee working groups?

24 CHAIRMAN STAFFORD: Well, if you look at the
25 CEC that was issued for 197, that was the Coolidge

1 expansion.

2 MEMBER GOLD: 197. Okay.

3 CHAIRMAN STAFFORD: Right. If you look at
4 Chairman-1 that was attached to it, it didn't have the
5 condition for a community working group. That was added
6 at the meeting as Condition Number 8.

7 MEMBER HILL: By the Commission?

8 CHAIRMAN STAFFORD: The Committee added this
9 condition at the hearing. It wasn't in the proposed
10 CEC. That was Chairman-1.

11 MEMBER GOLD: And what does that say?

12 CHAIRMAN STAFFORD: Well, it says "The
13 Applicant agrees to establish a community working group
14 made up of the following members." It lists the
15 members.

16 And it says "The Applicant shall act as advisor
17 to the community working group. The meetings will be
18 noticed to and open to the general public. The initial
19 meeting will take place on evening or weekend in or near
20 the community of Randolph."

21 Then it goes on to require the applicant to
22 retain an independent facilitator acceptable to the
23 group to conduct the meetings.

24 "It's the role of the facilitator to assist in
25 conducting an orderly and productive process. The

1 facilitator, if necessary, may, if necessary, employ
2 dispute resolution mechanisms."

3 And it talks about the scope of the working
4 group to include implementing a landscape plan, visually
5 screen, provide landscaping in public areas, reduce
6 impacts of plant lighting, provide a grant writer to
7 help the GrantAppli seek federal/state support to
8 address community needs, implement job training and
9 skills development for the residents of Randolph.

10 And then another condition they added was,
11 subject to approval, Pinal County and City of Cochise,
12 if applicable, the applicant will pave several roads,
13 like, four roads.

14 So I think a lot of it was proposed and agreed
15 to by the applicant, but, again, that was a condition
16 that was imposed by the Committee in the CEC, and then
17 it went to the Commission. The Commission, at the Open
18 Meeting, voted to deny the CEC. SRP then appealed it to
19 the Superior Court, and the Superior Court upheld the
20 denial.

21 Later on, when -- before they went to the Court
22 of Appeals on that decision, Randolph and SRP got
23 together and agreed for -- so the SRP agreed to more
24 conditions. And then the city of -- town of -- the
25 community of Randolph withdrew its opposition to it, and

1 then the Commission approved it.

2 That decision was subsequently appealed and
3 went to Superior Court, and the Superior Court upheld
4 the grant of the CEC by the Commission with the
5 community working group, all those things in there.

6 The Commission talked about how it was a
7 settlement, and they don't have jurisdiction over
8 settlements. That's a red herring. I mean, the fact
9 that the parties agreed to it was bonus.

10 The thing is, they imposed those conditions,
11 and that's what makes them binding on the applicant and
12 successors in interest because it's a condition of the
13 CEC. You have to do this to get the CEC.

14 MEMBER GOLD: Mr. Chairman, it appears that the
15 Corporation Commission is not aware of this information.
16 Is there a way that we could simply say -- make a motion
17 later on to simply state each of the paragraphs in each
18 of those CEC cases to inform the Corporation Commission
19 that they did have the authority based on past
20 precedent?

21 And we would -- again, our job is to recommend
22 things to them. We recommend they reconsider in light
23 of the fact that it's already historical precedent?

24 CHAIRMAN STAFFORD: And that's my goal is for
25 the Committee to send the request for reconsideration to

1 the Commission and say, "Look, you do have the
2 authority. Here is what you've done in the past."
3 Spell it out for them.

4 The one thing the statute says that the
5 Commission can't do is impose stricter air quality or
6 pollution requirements than the agency having primary
7 jurisdiction. It is completely silent on whether or not
8 you can limit the pumping of groundwater.

9 And, in fact, Section 40-360.13 requires the
10 Committee to consider the availability of groundwater
11 and the impact of proposed use of groundwater on any
12 kind of applicable active management plan.

13 MEMBER GOLD: Mr. Chairman, it seems like
14 everything now is a moot point. The Applicant is going
15 to do what we suggest that they do. The water issue is
16 not an issue.

17 Maybe we can make a statement that's not
18 hostile to our employer, the Corporation Commission,
19 that we're not asking you to change anything. We're
20 giving you information that you may not have had so
21 that, in the future, you can utilize that information,
22 and it will be more beneficial to everybody concerned
23 because we're basing it on legal precedent.

24 CHAIRMAN STAFFORD: Right. And that's the
25 purpose of the request for reconsideration, to ask the

1 Commission -- to say, Hey, look, you stripped these two
2 conditions out of the CEC based on -- here is the
3 statements that were made at the Open Meeting. Here's a
4 point by point refutation of that position. I mean,
5 you've done this multiple times in the past. You've
6 imposed these types of conditions before. They haven't
7 been overturned by a court. I think most of them
8 haven't even been challenged.

9 Now, I'm not saying that these conditions are
10 appropriate in all CECs. They're not. I think things
11 like this are only going to be relevant for significant
12 expansions of fossil plant that are going to use more
13 groundwater, and especially with a new site, a new site
14 for a power plant that's going to be using groundwater.

15 So I think, you know, it's not like, Oh, we're
16 going to start including these kind of provisions in
17 every case. I mean, for a transmission line, it
18 wouldn't make sense to have a community working group
19 most of the time. You've got to figure out where to go,
20 listen to the people and decide where to put it and then
21 it gets put there, but there's not a lot -- there's a
22 lot more mitigation you can do for power plants as
23 opposed to a transmission line.

24 MEMBER GOLD: Thank you, Mr. Chairman.

25 CHAIRMAN STAFFORD: Other than burying them,

1 and we know that's prohibitively expensive. So I don't
2 think anybody is about to suggest that we should, you
3 know, bury everything. It's cost prohibitive.

4 But I think it's like -- it's a big -- it's new
5 plants, on a new site, near where people live. I think
6 that's when it's appropriate to, you know, impose more
7 conditions than the standard conditions that you would
8 for any kind of transmission line or even expansion of
9 existing plant site, in most cases.

10 MEMBER GOLD: Mr. Chairman, thank you. I would
11 say, I don't see any impropriety here. I see we're
12 simply doing what advisors are supposed to do, advise
13 the Corporation Commission of what precedents they may
14 not have been aware of before, and that's our job.

15 So I'm in favor of what you're saying. Just
16 let's do it diplomatically so it doesn't -- you know,
17 let them know they absolutely have the right to do what
18 they've done. We're not questioning that. All we're
19 saying is "Here is additional information which you may
20 not have had access to before, but it's our job to
21 advise you, and that's what we're doing."

22 CHAIRMAN STAFFORD: Right. And that's the key
23 difference between a request for reconsideration and a
24 request for rehearing, which the Committee can't ask
25 for.

1 So the reconsideration is, like, Look, we did
2 this. You did that. We would ask you to not do that
3 and do this instead for X-Y-Z reasons.

4 And if they do, then they would have to do a
5 40-252 to revisit the decision. If they ignore it,
6 nothing happens. And if the court -- and once the time
7 frame to file a petition for rehearing passes, you can't
8 get to court. It will be a final, unappealable order of
9 the Commission.

10 MEMBER GOLD: Mr. Chairman, will we have access
11 to the document that you're going to present to the
12 Corporation Commission, before you present it, so we
13 could just see the paragraphs you're adding in?

14 CHAIRMAN STAFFORD: Well, no. I mean, it will
15 be -- list out the cases and show what they did, the ten
16 cases I named, and talk about the Commission has imposed
17 these.

18 The San Tan -- or the Coolidge expansion case
19 went to court twice. No one even challenged the
20 community working group saying the Commission didn't
21 have the authority to do that.

22 MEMBER GOLD: No. What I'm referring to is
23 Member Kryder's statement that we didn't have advance
24 knowledge of these cases.

25 But if you're giving us the advance knowledge

1 of the cases, you know, just as part of what we're
2 supposed to be doing, you know, we're all sending this
3 to the Corporation Commission. We should be able to see
4 what we're sending.

5 CHAIRMAN STAFFORD: If you wrote down the list
6 of all the cases I gave you, you can look at them
7 anytime at your leisure because they're all available on
8 the Commission's website in the e-Docket.

9 MEMBER GOLD: Have you prepared a document
10 already, Mr. Chairman?

11 CHAIRMAN STAFFORD: No, I haven't prepared an
12 application for rehearing [sic] yet, no. But I printed
13 off a bunch of these decisions and looked at the
14 provisions, and these are the ones that I would point
15 out to say, "Look, the Commission has done far more
16 expansive things in terms of conditions than this."

17 So it's -- the Commission has the authority.
18 It's whether it chooses to exercise that authority,
19 not -- is their prerogative.

20 So that's why this is different than a request
21 for rehearing. It's not "You messed up. You need to
22 redo this to get it right; and, if you don't, we're
23 going to court." This is not that.

24 This is a request for reconsideration saying,
25 "Look, you took these two things out based on what you

1 said at the meeting. Here is some contradictory stuff
2 that says, 'Hey, you can do it,' but you don't have to
3 do it."

4 And so whether they choose to do it or not is
5 totally up to them.

6 MEMBER GOLD: So we're assuming that the
7 Corporation Commission made their choice without having
8 all the information they needed.

9 And they are not questioning any way our
10 integrity or anything else. They are simply lacking
11 information that we can provide them, which is why we're
12 doing this.

13 CHAIRMAN STAFFORD: Right.

14 MEMBER GOLD: Thank you, Mr. Chairman.

15 CHAIRMAN STAFFORD: Member Hill.

16 MEMBER HILL: Thanks, Mr. Chair.

17 I'm inclined to agree with you. I can see a
18 situation where the Commission -- or the Committee --
19 we're a committee. They're a commission.

20 The Commission doesn't fully understand all of
21 the public engagement that we did, particularly on this
22 one, and how hard everybody worked to really come to
23 these terms.

24 And I hear Mr. Moyes saying that they're going
25 to do these things anyway, but I do feel like sometimes

1 these things get lost if a company gets sold or a permit
2 gets sold or, you know, ownership changes and things are
3 dropped.

4 And I do think that these things being in the
5 CECs is a good thing, and I think maybe the Commission
6 just didn't realize.

7 I mean, I was hoping that whatever you send
8 them would also outline, you know, we took two -- we had
9 two public comment periods; right? Because we wanted
10 to -- after the tour, we wanted to be able to have --
11 hear more from the public.

12 You know, the amount of participation that we
13 had and the work that everyone did, so whatever we
14 send I would like also to characterize, because the
15 Commission doesn't -- couldn't possibly read all of the
16 transcripts -- should have some kind of outline of how
17 much effort and how many people participated and what
18 that engagement looked like.

19 So I agree with Member Gold. And if we need
20 to, we can go through each case if Mr. -- if David would
21 feel better.

22 But I also feel like the Commission doesn't
23 always know how much effort has gone into things. And
24 so I think it would be good to kind of characterize that
25 as part of our communications with them in our request

1 for reconsideration. So thank you.

2 CHAIRMAN STAFFORD: Member Little.

3 MEMBER LITTLE: Mr. Chairman, I agree with a
4 lot of what's been said here. I sympathize with
5 Mr. Moyes and the Applicant's position here. Nobody
6 wants to be the CEC that, you know, new things get added
7 to or that changes have to happen to.

8 But I'm afraid if -- you know, if we don't at
9 least say we really think you should reconsider this
10 one, and these are the reasons why we did what we did
11 and these are the reasons that we think it should be
12 reconsidered, I'm afraid that it will go down as a
13 precedent.

14 And we keep talking about precedents, and I
15 think precedents are particularly important in the case
16 of the Commission because the Commission changes.

17 And so we educate this Commission, I guess the
18 new upcoming Commission. I don't know. We educate
19 somebody on how -- you know, what the -- the things that
20 we think perhaps they didn't consider when they were
21 considering this CEC. But the next Commission, they're
22 going to be different people.

23 And I think that -- I also think that if we
24 don't at least say, "We wish that -- you know, we wish
25 that you would reconsider this and these are the reasons

1 why," including some of what Member Hill mentioned as
2 far as, you know, the time and energy that goes into
3 this, to working with the -- with the applicant and with
4 the public, it sort of undermines our -- what we're
5 there to do. You know, the public can come in and say,
6 "Well, why do we even bother with this because it,
7 obviously, doesn't make any difference."

8 I just feel really strongly that this is
9 something that needs to be done. And I agree with
10 what's been said about, you know, we're not going to war
11 here. We're just asking them to reconsider this based
12 on the further information that we would like to provide
13 them. Thank you.

14 CHAIRMAN STAFFORD: Thank you.

15 Yeah. Because the Committee doesn't have the
16 ability to open a docket or do workshops about, you
17 know, what conditions should be put on there. We deal
18 with individual cases and the facts specific to each
19 one.

20 This is a case where we found these conditions
21 were warranted, and we imposed them. The Commission
22 removed them. I think we should explain why they should
23 be left in, and it's up to the Commission to heed us or
24 not. But I think it's important for the Committee to
25 further explain itself on these types of conditions than

1 we have so far, I think.

2 And it's just -- and it's a request for
3 reconsideration. It's not -- there's no way to get to
4 court from this. The Committee doesn't have the
5 authority to sue the Commission. This is just, hey, you
6 know, point out to them "We think that you made a
7 mistake by removing these conditions. We ask that you
8 reconsider it."

9 And what they do, it's entirely on them how
10 they respond.

11 Member Mercer.

12 MEMBER MERCER: So let me see if I'm
13 understanding everybody's points.

14 Member Hill just said something about, you
15 know, it's out of our control if the company is sold and
16 things are -- the conditions are not being followed,
17 then there's room for litigation, but that's up to
18 whoever is in charge at that time.

19 So that's why I brought up that point that when
20 there's no details or legal agreements as to how
21 Condition Number 24, for instance, is going to be
22 carried out. That was my biggest concern.

23 So if we ask the Corporation Commission to
24 reconsider, you said something about a rehearing. So I
25 want to understand. You're just asking them to

1 reconsider putting Condition Number 24 and 28 back.

2 CHAIRMAN STAFFORD: Yes.

3 MEMBER MERCER: But why is it a rehearing?

4 CHAIRMAN STAFFORD: There is no rehearing. We
5 don't have a -- the Committee does not have a right to
6 request a rehearing. All the Committee can do is
7 request the Commission reconsider its decision. That's
8 it.

9 MEMBER MERCER: Okay.

10 CHAIRMAN STAFFORD: Now, the parties to the
11 case, they can both request reconsideration and a
12 rehearing. However, if you don't file a request for
13 rehearing, then you're not going to be able to get to
14 court.

15 MEMBER MERCER: Okay.

16 CHAIRMAN STAFFORD: The statute is clear on
17 that and there's case law that spells it out. A request
18 for reconsideration does not convey the right to get to
19 court. And you have a longer time frame. You have
20 30 days to request reconsideration but only 20 days to
21 request a rehearing.

22 MEMBER MERCER: Okay.

23 CHAIRMAN STAFFORD: If you don't request a
24 rehearing, you can't get to court, period.

25 MEMBER MERCER: Okay. My next question or my

1 next comment is -- so Mr. Moyes came in, and he has
2 concerns that if we -- their case is going to be
3 hijacked in this process. And he said the Applicant
4 will do these conditions even though they were strike or
5 removed from the CEC.

6 So why, you know, it's like -- it's redundant.
7 Why are we -- if they're going to do that, why are we
8 going to ask the Commission to reconsider? It's a moot
9 point, to me.

10 CHAIRMAN STAFFORD: Well, I think it's
11 primarily because the grounds that they said they
12 rejected it. They were saying that they didn't have the
13 authority. They do have the authority. They just chose
14 not to. And it's within their purview to choose not to.

15 But if you have an applicant that's agreed to
16 it and it's a condition, you're better off having it as
17 a condition because then it's binding on, you know,
18 subsequent owners of that.

19 The promises of an applicant made today, if
20 they sell the project to somebody else, the Commission
21 doesn't have -- they're not going to tell them how to
22 word that contract. If they're going to transfer it,
23 you know, I think there's a period to notice thing to
24 transfer it. And then if it's not a condition, it's not
25 binding on the new owner.

1 MEMBER MERCER: I see.

2 And one more thing. Member Little said
3 something about who knows what the new Commissioners are
4 going to do, you know, in the future.

5 And in my opinion, it's the same thing with the
6 Committee. Our terms expire every two years. So, you
7 know, it may be a new committee by -- you know, comes
8 the next -- I think it's March or something when they
9 change the Committee members or the new applicants that
10 maybe reconsider.

11 So it's a -- I don't know. I'm just having
12 trouble understanding why are we going to do this if the
13 Applicant say, "We'll do it anyway"?

14 So that's my only question or trying to
15 reconcile, okay, is it going to be a moot point? Is it
16 going to affect the Applicant if we ask the Corporation
17 Commission to reconsider?

18 I just want to understand all of that before I
19 make a decision.

20 CHAIRMAN STAFFORD: Well, filing the
21 application doesn't affect anything. I mean, the
22 time -- the key time frame is request for rehearing.
23 That's what triggers rights. The Committee doesn't have
24 those rights.

25 So if we were a party and we filed an

1 application for a rehearing, then if -- the Commission
2 can either grant it or deny it. If it ignores it, after
3 20 days it's deemed denied by operation of law. At that
4 point, the party requesting the rehearing has 30 days to
5 file a complaint in Superior Court to challenge the
6 Commission's decision. That's a whole separate process.

7 This one is a request for reconsideration. We
8 have to file it within 30 days. If the Commission acts
9 on it, fine. If it doesn't, fine.

10 Either way, it's just -- the point is, I think
11 it is a way to provide a better view of our perspective
12 to the Commission. Because at the Open Meeting, it was
13 just me there. The Committee wasn't there talking about
14 what happened. So I think, you know, I argued for
15 leaving them in. I just would like to reiterate that
16 point and have the Committee reinforce that point and
17 file a request to reconsider. It's not going to create
18 any appeal rights or anything.

19 MEMBER MERCER: Okay. Thank you.

20 CHAIRMAN STAFFORD: I mean, the only thing that
21 would -- if they granted it, then they would have --
22 once they granted the CEC, then you would have a time
23 frame to request a rehearing. But, again, the only
24 party to the case was the Applicant, and they're not
25 going to request a rehearing on a CEC that they got.

1 That's not -- it doesn't make sense.

2 MEMBER MERCER: Agree.

3 CHAIRMAN STAFFORD: Member Hill.

4 MEMBER HILL: So for Member Mercer's -- just to
5 back her up a little, a couple times you said
6 "rehearing" and I think you meant "reconsideration."
7 So, like, Member Mercer was right. A couple times she
8 might have heard that.

9 So I just wanted to make sure that the record
10 reflects that Member Little's motion --

11 (Background conversation.)

12 CHAIRMAN STAFFORD: Whoever that is, mute your
13 phone, please.

14 MEMBER HILL: Member Little's motion and what I
15 seconded is about reconsideration, not about a
16 rehearing.

17 But I did want to follow up. Gabby inspired
18 this question, and Mr. Moyes' comments inspired this
19 question.

20 If we ask for reconsideration, how much are we
21 really extending this process?

22 CHAIRMAN STAFFORD: If the Commission ignores
23 it, none.

24 MEMBER HILL: Okay. So we're not -- I mean,
25 this may -- this very well could be the end of it.

1 But if they reconsider it, they have a certain
2 timeline, too; right?

3 CHAIRMAN STAFFORD: It's pretty vague. The
4 statute doesn't establish a timeline.

5 MEMBER HILL: Okay.

6 CHAIRMAN STAFFORD: The rules -- I have to look
7 at the rules again, but I think if they ignore it, it's
8 not like we can compel them to do anything. All it is
9 is it's a request. "Hey, we ask you kind of look --
10 give us another look."

11 If they do or not, you know --

12 MEMBER HILL: But we're not talking about
13 months and months, likely. We're talking about this
14 being in a final stage and moving forward.

15 CHAIRMAN STAFFORD: Well, without the
16 application for rehearing, no party can get to court.

17 MEMBER HILL: Yeah. Okay. I just wanted to be
18 clear that we're not extending the timeline by months
19 and months. It's just there's a little bit of process
20 here that remains.

21 And I'm not too concerned about the project,
22 because I think they still have quite a bit to do with
23 the County, as Mr. Moyes indicated. So that's helpful.

24 I just wanted to make sure this action isn't
25 creating a much more burdensome time frame is what I was

1 thinking. So thank you.

2 CHAIRMAN STAFFORD: In all reality, we'll file
3 it, and then nothing will happen, and that will be the
4 end of it.

5 But I would just like to make the point to the
6 Commission saying, "Hey, you know, you might want to
7 rethink this a little bit. Here is why."

8 And the Committee has the right to request
9 reconsideration.

10 MEMBER HILL: One other thing that I thought I
11 would just mention, because Member Mercer mentioned it,
12 is I do think it's interesting that between Case 90 and
13 Case 197, there were dozens of different people that
14 were on the Committee over that time and on the
15 Commission over that time.

16 And the idea that some of these things have
17 been consistently applied to similar or like projects
18 gives me confidence that even if we're not here in
19 March -- and I hope that some people remain on the
20 Committee in March because I think I might be still
21 here.

22 But just knowing that some of these things come
23 back around because they're good things to put in a CEC,
24 we can all share this learning going forward.

25 And so to Member Mercer's point, like, yeah,

1 there's new folks, but some of these things have been
2 consistent across a couple of decades.

3 So thank you.

4 CHAIRMAN STAFFORD: Yes. And they've been --
5 in fact, all kinds of conditions come and go since then.

6 Back in the late '90s, early 2000s, they were
7 building these merchant plants looking to -- you know,
8 for retail competition, but that didn't materialize
9 after certain events in California in 2000.

10 After that point, the Commission in Arizona was
11 not moving forward with electric competition, but a lot
12 of these plants ended up still getting built, and
13 they've changed hands a couple times since then.

14 And, you know, that's kind of the case in point
15 here. It's like, well, if they change hands, especially
16 a merchant plant like we have here, if it changes hands,
17 the new guy is not bound by what the old guy said unless
18 it's a condition in the CEC, in which case every
19 subsequent owner is going to be on the hook for whatever
20 they're required to do.

21 MEMBER HILL: Thank you. I agree with that.

22 CHAIRMAN STAFFORD: And that's kind of like,
23 you know, one of the points I would like to make if the
24 Committee decides to request reconsideration.

25 Member Gold.

1 MEMBER GOLD: Mr. Chairman, I would like to ask
2 you to include the historical precedent over multiple
3 corporation councils. You're mentioning CEC 90 all the
4 way to CEC 197. I would say that is information we
5 should also give to the corporation council.

6 I'm hoping that -- what is the next step? How
7 do we say we either want you to do this or we don't?

8 CHAIRMAN STAFFORD: Let's see. Member Little,
9 I believe, moved to request reconsideration for
10 Decision 79587 that granted the CEC to Project Bella,
11 CEC 233, but removed Conditions 24 and 28. And we would
12 ask the Commission to reconsider the decision and
13 consider putting those conditions back into the CEC.

14 MEMBER GOLD: And it was seconded,
15 Mr. Chairman?

16 CHAIRMAN STAFFORD: Yes. I believe Member Hill
17 seconded it.

18 MEMBER GOLD: So part of the discussion we said
19 was let's include all of those CEC cases as historical
20 just to inform the corporation council of information
21 they may not know. And also to add in that this is not
22 only historical precedent but historical precedent over
23 an extended period of time and multiple corporation
24 councils, and give them that information as well when we
25 request that they do whatever you're asking them to do,

1 which is -- it's not a hearing. It's a request for
2 what?

3 CHAIRMAN STAFFORD: Reconsideration.

4 MEMBER GOLD: Request for reconsideration. So
5 I would now move to do something about that.

6 CHAIRMAN STAFFORD: Well, it's been moved and
7 seconded, and we're still discussing.

8 So I guess what I'm hearing is that if we were
9 to call the question on whether to -- whether the
10 committee wants to request reconsideration or not, I
11 think that what I'm hearing in the discussion is that
12 the request should include -- it should talk about the
13 amount of public comment in this case that was -- and
14 the comments received about this case, as well as
15 talking about the ten cases that I mentioned about prior
16 Commission decisions with similar or more restrictive
17 conditions, whether it has to do with water restrictions
18 or a community working group, point those out, how those
19 have been included in prior decisions.

20 And then talk about -- one of the other issues
21 is that these voluntary conditions aren't necessarily
22 binding on subsequent owners or purchasers of the
23 project. But if they're a condition of the CEC, it
24 explicitly says that they're binding on all future ones.

25 And I think the prior owners still can't get

1 off the hook if the new guy goofs it up too. So if they
2 get it and go, you know, belly up and can't fulfill
3 their obligations, it's going to revert back to the
4 prior one to take care of it.

5 MEMBER GOLD: Also, Mr. Chairman, the fact that
6 multiple corporation councils have done this over an
7 extended period of time. So you're giving an example of
8 ten, but that ten looks like it covers years of
9 corporation councils.

10 CHAIRMAN STAFFORD: Yes. The Commission has
11 imposed a lot of different conditions bearing on the
12 circumstances, the time frame.

13 I compiled a list of those ten cases where they
14 had either included community working groups or, you
15 know, additional water restrictions.

16 Like the one I read from -- what was it? -- 118
17 where they had established a mitigation fund, that's way
18 beyond what we did.

19 MEMBER GOLD: Mr. Chairman, as long as we're --
20 our mission, our guidance is we're exposed to advise the
21 corporation council, not just advise them beforehand but
22 also advise them afterward, or they wouldn't have
23 request for reconsideration as part of the rules.

24 So how do we move to the next step to say,
25 "Yeah, go ahead and draft this"? You seem to have all

1 of the information.

2 So long as we put those points in about public
3 comments, include the ten pages of CEC paragraphs, the
4 historical precedent over time, and the voluntary
5 commitments that the Applicant is going to bind himself
6 by. And, this way, we make the Applicant say "Not only
7 am I binding myself, but I'm asking you to bind anybody
8 if I sell it to them."

9 So what is the next step, Mr. Chairman?

10 CHAIRMAN STAFFORD: All right. Well, we have
11 the motion and a second. I think we discussed what the
12 application for rehearing should include.

13 I see Member Mercer has a question.

14 MEMBER MERCER: I just want to make a
15 correction to Member Gold. He keeps calling the
16 Corporation Commission "council." It's a committee --
17 it's not a committee. It's the Corporation Commission,
18 and the members are the Commissioners.

19 So when I hear the word "counsel/council," it
20 reminds me of an attorney; right?

21 MEMBER GOLD: Thank you, Member Mercer. I'm
22 referring to the Corporation Commission, and we members
23 of the Committee. No counsels involves.

24 MEMBER MERCER: We're not counsels.

25 MEMBER GOLD: The only counselor here is the

1 Chairman.

2 MEMBER MERCER: And Mr. Moyes.

3 CHAIRMAN STAFFORD: There's got to be at least
4 one other lawyer on here. There's a few other lawyers
5 on the call, but I'm the only member of the Committee
6 that's an attorney.

7 MEMBER MERCER: I saw Ms. Benally.

8 CHAIRMAN STAFFORD: Yes, I see her on here.

9 Yes, Mr. Kryder.

10 MEMBER KRYDER: We've gone on quite a long time
11 here. I think everybody would agree with that.

12 I was wondering a couple of things that were --
13 would have been helpful for me to know in the background
14 before this meeting, but I wanted to hear everybody's
15 position before I raised the question.

16 And the first question I had was, was the
17 Corporation Commission counsel present at the
18 consideration of this CEC?

19 CHAIRMAN STAFFORD: Yes.

20 MEMBER KRYDER: And were you there?

21 CHAIRMAN STAFFORD: Yes.

22 MEMBER KRYDER: You and Mr. Moyes, apparently,
23 were sitting there together or whatever? Yeah. Okay.

24 CHAIRMAN STAFFORD: We were at one table, and
25 then Mr. Van Flein and Mr. Dailey from the Commission

1 Staff Legal Department were sitting at a different
2 table.

3 MEMBER KRYDER: Okay. What was the driving
4 force? I mean, we've gone through quite a number of
5 CECs over the past year, and this is the first one
6 that's come up for reconsideration.

7 What did the -- did the Corporation Commission
8 approach you? Did the counsel approach you? Who came
9 to you and said, "Gosh, this has got to be
10 reconsidered"?

11 CHAIRMAN STAFFORD: Me. I saw the decision. I
12 don't agree with the Commission's rationale that it
13 doesn't have jurisdiction to enter these conditions. I
14 think they have the authority, and they have the
15 discretion whether to do them or not.

16 And so under the statute, the Committee may
17 request the Commission to reconsider a decision. And so
18 as the Chair, I called this meeting to ask the Committee
19 to vote whether or not to request reconsideration.

20 MEMBER KRYDER: Okay. Thank you.

21 CHAIRMAN STAFFORD: Because the reasons that
22 they gave for taking them out I don't think are solid.
23 And I would like to point out, you know, the things that
24 we've been talking about in a request to reconsideration
25 to the Commission to get it on the record to say, "Look,

1 we disagree. Here's why. Won't you think it over?"
2 and that's the extent of it.

3 MEMBER KRYDER: And the Corporation Commission
4 attorney signed off on this, if he was present, I
5 assume; is that correct?

6 CHAIRMAN STAFFORD: Yes. They advised the
7 Commission that they didn't have the authority to do
8 this.

9 MEMBER KRYDER: And is it normal that a
10 creation, an advisory group, which is what we, as a
11 committee, are -- correct me if I'm wrong -- we don't
12 have much authority.

13 We advise. We listen to the public, we do this
14 that and the third, and come up with a CEC that we say,
15 "Well, this reflects what our individual knowledge and
16 skill and what we've heard from the community," and so
17 on and so on, and we pass it on.

18 Is it typical that -- I mean, you've got a lot
19 more experience than I do. I'm the newbie here or one
20 of them.

21 Is it typical that the Committee goes back and
22 says, "Hey, guys, you made a mistake. You didn't --
23 you're saying you don't have the authority, and I'm sure
24 you do"? Is that typical?

25 CHAIRMAN STAFFORD: No, it's not. In my

1 recollection, no committee has ever requested the
2 Commission reconsider its decision. However, the
3 statute plainly provides for it.

4 A.R.S. 40-360.07 states -- 07.C states "The
5 Committee or any party to a decision by the Commission
6 pursuant to Subsection B of this section -- that's
7 talking about the party -- may request the Commission to
8 reconsider its decision within 30 days after the
9 decision is issued.

10 "A request for reconsideration made pursuant to
11 the subsection shall set forth the grounds upon which it
12 is based and state the manner in which the party
13 believes the Commission unreasonably or unlawfully
14 applied or failed to apply the criteria set forth in
15 40-360.06.

16 "The decision of the Commission is final with
17 respect to all issues subject only to judicial review as
18 provided by law in the event of an appeal from a person
19 having the legal right or interest that will be
20 injuriously affected by the decision."

21 The reconsideration doesn't create appeal
22 rights, as I've explained.

23 MEMBER KRYDER: Thank you very much. That was
24 interesting to read or to hear.

25 Again, back to my first question, but I'm not

1 going to restate that.

2 I would really have liked to have had this as
3 preparation for this meeting today, that I had hoped was
4 going to be less than an hour long and we're now running
5 on close to two.

6 What sort of you -- you spoke about it has
7 never been done before.

8 CHAIRMAN STAFFORD: Well, not to my knowledge.
9 I haven't seen any request from the Committee to the
10 Commission to reconsider.

11 Now, parties have, and they typically will
12 say -- they'll ask -- they'll file a motion for
13 rehearing along with the request for reconsideration.
14 Those are two different statutes, and they will put them
15 both in there.

16 The Committee doesn't have the ability to
17 request a rehearing. All we can do is request
18 reconsideration.

19 MEMBER KRYDER: Per what you read just a moment
20 ago. Thanks, Adam. That's helpful.

21 So I understand that a party to the CEC could
22 request certain things, but I understand -- and I want
23 to be corrected on this if I've got it wrong -- this is
24 the first time in at least your understanding of it that
25 a committee has gone and said to the Commission "Please

1 reconsider this because we really felt the pulse of the
2 community," or whatever the reason.

3 But this is the very first time, and so, in a
4 sense, we are precedent setting that the Committee now
5 is, in a sense, flexing its muscles. We're going to send
6 CECs over to the Commission, and the Commission is going
7 to consider them with the Applicant and go through the
8 process that you and Mr. Moyes and many others went
9 through, and then you're going to say, "Well, doggone
10 it, we think you have got it 95 percent right, but this
11 5 percent is where we're going to focus on."

12 That troubles me. It troubles me because -- so
13 we spent four days, as I recall, with the Bella project
14 consideration. And was it three or four? Anyway, we
15 spent quite a bit of time as a Committee, as all of my
16 colleagues here have established, and we sent our
17 recommendation forward.

18 And then the Corporation Commission said,
19 "Okay, we'll take everything but," whatever it was,
20 14 and 18 and whatever, "and we'll pass this forward."

21 And so Mr. Moyes and the company that he -- or
22 the Applicant that he represents had their CEC approved.
23 They've stood up and they've said, "Well, we're the guys
24 with the white hats. We ride the white horse. We're
25 going to do this anyway."

1 And so now the Committee is flexing its
2 muscles, it seems to me, and saying, "Well, that's not
3 good enough for us. Your word -- you're good guys. We
4 understand that, but I want to get it back before the
5 Commission."

6 And so in that process, as you stated, the
7 Commission has the right to move those two conditions
8 back into the CEC, or they can ignore it entirely.

9 But why are we doing this? Are we trying to
10 set a precedent here? Is that what's going on?

11 So, Mr. Chairman, I feel very uncomfortable
12 with requesting this sort of a reconsideration.

13 I guess that's all I have to say for the
14 moment. Go ahead.

15 CHAIRMAN STAFFORD: Thank you.

16 Member Gold.

17 MEMBER GOLD: Mr. Chairman, I understand where
18 Member Kryder is coming from. This is -- we're
19 challenging our leader, our commander, our general, and
20 we're advisers to the general.

21 On the other hand, we're not challenging their
22 authority. We're giving them information they may not
23 have had.

24 As I look at the situation, both you and the
25 corporation council's attorney were both present. The

1 corporation council's attorney, obviously, didn't have
2 this information, or he wasn't a good attorney, which is
3 possible.

4 You are a good attorney in my opinion. You may
5 not have had this information at the time, and that's
6 the reason you didn't say anything in the corporation
7 council meeting.

8 CHAIRMAN STAFFORD: Well, I did talk about 197,
9 which is the more recent one, with the Coolidge
10 expansion.

11 MEMBER GOLD: What I'm saying is I don't -- I
12 don't see us challenging the corporation council's
13 decision. I see us as giving the corporation council
14 additional information to be used in the future.

15 Right now, no one is going to challenge the
16 CEC. It's been approved. So the Applicant's not going
17 to challenge it. The Applicant is going to, you know,
18 go forward with everything it's promised the citizens,
19 so they're not going to challenge it.

20 All we're doing is educating the corporation
21 council and giving, perhaps, guidance for the future.

22 Are we setting a precedent? Yeah, but that's
23 going to be on you.

24 CHAIRMAN STAFFORD: Well, it's not setting a
25 precedent. It's just that I don't think a committee has

1 acted under this statute previously. Just like, you
2 know, the statutes have allowed for appointment of a
3 hearing officer, but it hasn't been used until last
4 year, and I think it had largely to do with volume of
5 cases that were being heard.

6 MEMBER GOLD: So I go back to my original
7 question that I asked a substantial time ago. What do
8 we do next? What is the --

9 CHAIRMAN STAFFORD: We vote on whether to
10 request reconsideration from the Commission of that
11 decision.

12 MEMBER GOLD: Based on what we see we're going
13 to send them, or just based on reconsideration, not
14 knowing what we're going to send them?

15 CHAIRMAN STAFFORD: Well, I'll have to write it
16 up, but we talked about what it's going to include. You
17 know, amount of public comment multiple times in this
18 case. Talk about, you know, the prior ten decisions we
19 talked about with similar or more restrictive conditions
20 regarding community working groups or water. The fact
21 that it was 11 to nothing with these conditions.

22 I mean, was there -- I guess my next question
23 would be which members would have second thoughts of
24 voting for a CEC without those two conditions. I
25 certainly would have.

1 MEMBER GOLD: Mr. Chairman, I agree with you.

2 And I'm also reminded of the fact that we made
3 a recommendation for the Commission regarding several
4 gas-powered generators where they said they're only
5 going to count ten of them as one. And we said the
6 Corporation Commission shouldn't give them a CEC, but
7 they did what they wanted to do anyway, and we didn't
8 request reconsideration on that one because they had all
9 the information.

10 Here, we're requesting it because we think they
11 don't have all the information, and I think it's our
12 duty to give them the information. So I think we go to
13 a vote on this.

14 CHAIRMAN STAFFORD: All right. Well --

15 MEMBER KRYDER: Mr. Chairman.

16 CHAIRMAN STAFFORD: Yes, Member Kryder.

17 MEMBER KRYDER: I'm not sure how to put the
18 magic hand up here on the screen here, but that's fine.
19 So you saw that I raised my hand. Thank you very much.

20 Did you bring up these ten cases during the
21 consideration before the Corporation Commission?

22 CHAIRMAN STAFFORD: No, because I hadn't had
23 time to conduct the research on it. I showed up, and I
24 was familiar with the Case 197, so I talked about that.

25 I think there were several -- during that

1 meeting, I took notes. Well, I took notes after I
2 watched the second time.

3 I think there was a couple of comments made
4 about that case that were incorrect. I think someone
5 said that the court reversed the Commission, and that's
6 not the case. The court upheld both decisions by the
7 Commission in that case.

8 I think someone said something about the
9 settlement being done outside of the formal Commission
10 process, and that's not the case either. The
11 requirement for the community working group was added by
12 the Committee at the hearing.

13 MEMBER KRYDER: Thank you.

14 I think Member Gold made a very favorable point
15 a moment ago where there was this consideration of
16 having several of the single-cycle units considered --
17 five, as I recall, considered as one or are they
18 separate, and we didn't -- you didn't -- no one on the
19 Committee, apparently, approached you or did anything
20 else.

21 I'm just really antsy about the whole thing of
22 us putting this back.

23 Yeah, the counsel for the Corporation
24 Commission can go and do the same homework that you have
25 done, or you can pass that to him and he could go to his

1 superiors, that is, the Commission and say, "Folks, I
2 should have brought this up at the meeting, but I didn't
3 because I didn't know about it until someone brought it
4 to my attention. However, I think that we do have the
5 authority to do this. And for us saying we didn't have
6 the authority, I have given you -- I'll be honest, I
7 gave you bad advice."

8 And right now, instead of that happening, one
9 of the creations of the Corporation Commission, that is,
10 our Line Siting Committee, through your good background
11 work, is saying, "Oh, boy, you guys missed the boat on
12 this and your counsel missed the boat on it. And if it
13 hadn't have been for my hard work and background, you
14 would let this go."

15 I'm really very concerned that what we're going
16 to do, as we're doing today, is having three or four
17 days of meetings, sending forward a CEC, it's considered
18 by the Commission and if something gets whacked out of
19 that, suddenly we're going to be on Zoom again for two
20 hours without any preparation material in front of us.

21 I didn't even know officially that this was
22 going to be about the Bella project. I didn't have any
23 background. Did I miss that?

24 CHAIRMAN STAFFORD: Yes. It's in the notice.
25 The notice says, you know, Pinal County Energy Center,

1 and gives the Docket Number, the Decision Number.

2 MEMBER KRYDER: Sure.

3 CHAIRMAN STAFFORD: The purpose of the meeting
4 is to discuss a potential vote to request the Commission
5 reconsider its decision pursuant to the Statute A.R.S.
6 40-360.07.C.

7 MEMBER KRYDER: And when was that sent?

8 CHAIRMAN STAFFORD: It was sent out -- let's
9 see.

10 MEMBER MERCER: Last week.

11 CHAIRMAN STAFFORD: Yeah. At least ten days
12 prior to today by certified mail.

13 MEMBER KRYDER: And what were we doing last
14 week? We were all in meetings last week.

15 And I tell you, it sets a bad precedent, Adam.

16 CHAIRMAN STAFFORD: I disagree. The statute
17 lays out this mechanism for the Committee to request
18 reconsideration. The fact that it hasn't been done
19 doesn't make it illegitimate in any way.

20 The other case, the UniSource case you're
21 talking about with multiple -- the dispute was whether
22 to count the individual generators together or separate.
23 That matter is in the courts now. The Attorney General
24 and then two parties to the case have filed requests for
25 rehearing, which were denied, and now they've filed

1 complaints with the Superior Court. There's three court
2 cases on that case right now, one of which is being
3 brought by the Attorney General.

4 The Committee doesn't have the authority to
5 request rehearings or go to court. We're a creature of
6 statute. We have a role. But within that role, we have
7 the ability to request the Commission reconsider its
8 decision, and that's what I'm asking for us to do.

9 I didn't have time to write a whole application
10 before this meeting because that would seem kind of
11 really fruitless, especially if it was voted down. It
12 would have been a huge waste of my time. However, I
13 think the research I did is valuable whether or not we
14 decide to request reconsideration, so --

15 MEMBER KRYDER: I appreciate that.

16 And following up on what Member Gold spoke a
17 moment ago, you have in mind or have on paper -- I'm not
18 certain -- this resolution that you feel would be
19 appropriate to, basically, put the flesh around the
20 skeleton of Toby's proposal, which is on the table?

21 CHAIRMAN STAFFORD: Yes.

22 MEMBER KRYDER: I haven't seen that. It would
23 be nice to see what I'm voting on.

24 In a normal situation, is it not true that I
25 can say, "Okay, let's get this written down?"

1 So I am really reluctant to send this forward
2 just based on all of the important subtleties that are
3 involved here.

4 And the fact that, in a sense, because of the
5 timelines, which are statutory -- I understand that --
6 but also because of the fact that we were in a set of
7 hearings last week and didn't have all of this
8 information. So here we show up and, for what should be
9 a 15-minute discussion, we're now on an hour and 55.

10 So I'll stop at that point and ask you -- thank
11 you very much for letting me speak.

12 CHAIRMAN STAFFORD: All right. Well, let's
13 call the question. We've had a motion and we've had a
14 second. I think there's enough specificity in there to
15 give me direction to draft the application for
16 reconsideration.

17 We'll do a roll call vote.

18 Member Mercer.

19 MEMBER MERCER: I vote nay.

20 CHAIRMAN STAFFORD: Member Gold.

21 MEMBER GOLD: I vote yes.

22 CHAIRMAN STAFFORD: Member Hill.

23 MEMBER HILL: I vote yes.

24 CHAIRMAN STAFFORD: Member French.

25 MEMBER FRENCH: Aye.

1 CHAIRMAN STAFFORD: Member Little.

2 MEMBER LITTLE: Aye.

3 CHAIRMAN STAFFORD: Member Fontes.

4 MEMBER FONTES: Aye.

5 CHAIRMAN STAFFORD: Member Drago.

6 MEMBER DRAGO: Aye.

7 CHAIRMAN STAFFORD: Member Kryder.

8 MEMBER KRYDER: No.

9 CHAIRMAN STAFFORD: Member Richins.

10 MEMBER MERCER: Mr. Chairman, Mr. Richins, he
11 sent a message. It says "I have to hop off the call for
12 a meeting. I vote nay."

13 CHAIRMAN STAFFORD: Well, he can't vote if he's
14 not here, so that's what his vote would have been. I'll
15 put it in parentheses.

16 And I vote aye.

17 So a vote of one, two, three, four, five,
18 six -- seven ayes and two noes, and one possible no, a
19 phantom no. The motion carries.

20 All right. So the deadline to file this is
21 November 20 of this month.

22 This isn't going to be -- basically, we talked
23 about what is going to be in there, kind of spelling out
24 what other conditions have been used by the Commission.
25 Explain to them that they have the authority. Whether

1 they want to do it or not is up to them, but we ask them
2 to reconsider and put these conditions back in there
3 because that's why we got a unanimous decision, and
4 that's how we got, yeah, a unanimous decision. That's
5 how we think it should be done.

6 I mean, it's their prerogative to grant it or
7 not, but I just thought it was important for the
8 Committee to exercise the options that are available to
9 it in the circumstances.

10 Member Gold.

11 MEMBER GOLD: Mr. Chairman.

12 CHAIRMAN STAFFORD: Yes.

13 MEMBER GOLD: I would ask that in the future,
14 if we have things like this that come up again -- I
15 understand this is very rare and the chances are not --
16 could you give us more information up front so Member
17 Kryder's objection would not really be an objection?
18 That we would have -- I didn't know what this was about
19 either. I had no idea why we were meeting today.

20 And, again, I get a lot of information. I can
21 absorb it quickly but my background says that.

22 And I would appreciate, in the future, if the
23 opportunity arises, that you give us that information.

24 I used to tell my troops, "Hey, look. I will
25 always tell you why I'm giving an order, assuming we

1 have time. If we don't have time and I give you an
2 order, please follow my order. And if we live and
3 survive, I promise you I will tell you why."

4 I believe that's the situation that we are in
5 now. In the future, if you have time -- and I
6 understand your time is costly. If you have time,
7 please just give us a heads-up, more information, so we
8 can be prepared for this and some of us would not be
9 taken by surprise. Thank you.

10 CHAIRMAN STAFFORD: We've got the numbers, so I
11 would suggest, if you want, you can go back and you can
12 watch the Open Meeting and see the discussion for
13 yourselves, and you can look at the conditions in the
14 CECs that I've mentioned.

15 What I'll do is I'll put them in there and
16 they'll have -- I'll cite to, you know, the case and put
17 the blurb of the language in there for them to see other
18 conditions that they've been in there.

19 So, of course, you know, they're going to --
20 the Commission, they'll go back and look at the original
21 cases and, you know, make their own conclusions, but the
22 point of this is to, you know, get them to take another
23 look at it.

24 MEMBER GOLD: Mr. Chairman, our job is to make
25 recommendations to the Commission, and I believe that's

1 what we're doing. That's what the statute provides for,
2 and that's what our mission is.

3 And I don't see us challenging the Commission.
4 I see us educating the Commission, and then it's up to
5 them to do what they want to do, no questions from us.

6 But we're obliged to give them information
7 based on all the knowledge available, and we now have
8 more knowledge that we didn't have earlier.

9 Again, the only rub that I have is saying what
10 was going on beforehand, and I understand that you were
11 under the gun. But in the future, if we have time and
12 you're not under the gun, give us a heads-up, even if
13 it's an informal up heads-up.

14 CHAIRMAN STAFFORD: As much as I can without
15 violating Open Meeting law, yeah, I will endeavor to do
16 so.

17 MEMBER GOLD: Thanks for being a lawyer.

18 CHAIRMAN STAFFORD: Okay. Anything further
19 from members?

20 MEMBER HILL: It's my birthday, so you can all
21 say happy birthday to me before you sign off.

22 (A chorus of happy birthdays.)

23 MEMBER LITTLE: Shall we sing?

24 MEMBER HILL: No. No singing.

25 Thanks, Adam, for pulling us together. And I

1 found this highly educational, so I appreciate it.

2 CHAIRMAN STAFFORD: Thank you.

3 With that, we are adjourned.

4 (The Special Open Meeting concluded at
5 3:32 p.m.)

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

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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
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10 I CERTIFY that I am in no way related to any of
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12 outcome hereof.

13 I CERTIFY that I have complied with the ethical
14 obligations set forth in ACJA 7-206(F)(3) and
15 ACJA 7-206(J)(1)(g)(1) and (2).

16 DATED this 11th of November, 2024 at Yuma,
17 Arizona.

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MICHELE E. BALMER
Arizona Certified Reporter
No. 50489

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