

1 BEFORE THE ARIZONA POWER PLANT LS-351  
2 AND TRANSMISSION LINE SITING COMMITTEE  
3 IN THE MATTER OF THE APPLICATION ) DOCKET NO. TBA  
4 OF TUCSON ELECTRIC POWER COMPANY, ) L-00000C-24-0118-00232  
5 IN CONFORMANCE WITH THE )  
6 REQUIREMENTS OF A.R.S. § 40-360, ) LS CASE NO. 232  
7 ET SEQ., FOR A CERTIFICATE OF )  
8 ENVIRONMENTAL COMPATIBILITY )  
9 AUTHORIZING THE MIDTOWN )  
10 RELIABILITY PROJECT, WHICH )  
11 INCLUDES THE CONSTRUCTION OF A )  
12 NEW 138 KV TRANSMISSION LINE )  
13 ORIGINATING AT THE EXISTING )  
14 DEMOSS-PETRIE SUBSTATION (SECTION )  
15 35, TOWNSHIP 13 SOUTH, RANGE 13 )  
16 EAST), WITH AN INTERCONNECTION AT )  
17 THE PLANNED VINE SUBSTATION )  
18 (SECTION 06, TOWNSHIP 14 SOUTH, )  
19 RANGE 14 EAST), AND TERMINATING )  
20 AT THE EXISTING KINO SUBSTATION ) PREHEARING CONFERENCE  
21 (SECTION 30, TOWNSHIP 14 SOUTH, )  
22 RANGE 14 EAST), EACH LOCATED )  
23 WITHIN THE CITY OF TUCSON, PIMA )  
24 COUNTY, ARIZONA. )  
25 \_\_\_\_\_ )

15 At: Phoenix, Arizona  
16 Date: July 2, 2024  
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19 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
20 (Pages 1 through 60)

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22 GLENNIE REPORTING SERVICES, LLC  
23 Court Reporting, Video & Videoconferencing  
24 1555 East Orangewood Avenue, Phoenix, AZ 85020  
25 602.266.6535 admin@glennie-reporting.com

By: Jennifer Honn, RPR  
Arizona CR No. 50885

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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, commencing at 3:01 p.m. on July 2, 2024, with  
5 all participants appearing via videoconference.

6

7 BEFORE: Adam Stafford, Chairman

8 MARGARET "TOBY" LITTLE, PE, General Public

9

10 APPEARANCES:

11 For the Applicant:

12 Meghan H. Grabel, Esq.  
13 Elias Ancharski, Esq.  
14 OSBORN MALEDON  
15 2929 North Central Avenue  
16 21st Floor  
17 Phoenix, Arizona 85012

18 and

19 Megan Hill  
20 Tucson Electric Power Company  
21 88 East Broadway, MS HQE910  
22 P.O. Box 711  
23 Tucson, Arizona 85702

24 For Banner University Medical Center and Banner Health:

25 Michelle De Blasi, Esq.  
LAW OFFICE OF MICHELLE DE BLASI, PLLC  
7702 East Doubletree Ranch Road  
Suite 300  
Scottsdale, Arizona 85258

//

1 APPEARANCES: (continued)

2 For City of Tucson:

3 Roi L. Lusk, Esq.  
Principal Assistant City Attorney  
4 Jennifer J. Stash, Esq.  
Senior Assistant City Attorney  
5 P.O. Box 27210  
Tucson, Arizona 85726

6

For Pima County:

7

Bobby Yu, Esq.  
8 Pima County Attorney's Office Civil Division  
32 North Stone Avenue  
9 Suite 2100  
Tucson, Arizona 85701

10

For Underground Arizona:

11

Daniel Dempsey, Director  
12 John E. Schwarz, Director  
737 East 9th Street  
13 Tucson, Arizona 85719

14 ALSO PRESENT:

15 Clark Bryner, Project Manager  
Adriana Marinez, Project Coordinator  
16 Tod Brewer, Assistant to Chairman Stafford  
Lisa Glennie, Glennie Reporting Services

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

2 Now is the time set for the prehearing  
3 conference for Docket No. L-00000C-24-0118-00232, Line  
4 Siting Case 232, the application of Tucson Electric Power  
5 Company for a CEC.

6 Let's start with taking appearances,  
7 beginning with the applicant.

8 MS. GRABEL: Thank you, Mr. Chairman.

9 Meghan Grabel from the law firm Osborn  
10 Maledon on behalf of Tucson Electric Power.

11 With me from my firm is Elias Ancharski.

12 Also with us from Tucson Electric Power  
13 Company is its in-house regulatory counsel Megan Hill,  
14 its manager of siting outreach and engagement, Mr. Clark  
15 Bryner, and another person on that team, Adriana Marinez.

16 CHMN STAFFORD: Okay. Banner Health.

17 MS. DE BLASI: Good afternoon, everyone.  
18 Thank you, Chairman.

19 Michelle De Blasi from the Law Office of  
20 Michelle De Blasi, appearing for Banner Health.

21 CHMN STAFFORD: All right. And the City of  
22 Tucson.

23 MR. LUSK: Afternoon, Mr. Chair.

24 This is Roi Lusk, principal assistant city  
25 attorney with the city of Tucson.

1 We're also represented by Jennifer Stash.

2 CHMN STAFFORD: And Pima County.

3 MR. YU: Mr. Chairman, I'm Bobby Yu. I'm  
4 with the Pima County Attorney's Office representing Pima  
5 County.

6 CHMN STAFFORD: All right. And Underground  
7 Arizona.

8 MR. SCHWARZ: I'm John Schwarz. Thank you.  
9 I'm John Schwarz, and I'm a director of Underground  
10 Arizona.

11 And I believe Dan Dempsey is here as well.

12 MR. DEMPSEY: Sorry. I was muted. I  
13 didn't realize it. Sorry.

14 I'm Dan Dempsey. I'm here with John  
15 Schwarz with Underground Arizona.

16 CHMN STAFFORD: All right. Now, which one  
17 of you is seeking to represent Underground Arizona at the  
18 hearing?

19 MR. DEMPSEY: I'll -- I'll do the -- the  
20 talking. I was just muted. I apologize.

21 CHMN STAFFORD: Okay. Now, are you an  
22 attorney?

23 MR. DEMPSEY: No.

24 CHMN STAFFORD: All right. Well, under the  
25 Supreme Court Rule 31.3, there's an exception to

1 appearing before the Commission and the Committee.

2 There's four conditions that need to be met.

3 I believe you filed a document stating that  
4 you are an officer, partner, member, manager, employee of  
5 the entity. Correct?

6 MR. DEMPSEY: Yes.

7 CHMN STAFFORD: And that the entity has  
8 specifically authorized you to represent it in this  
9 particular proceeding?

10 MR. DEMPSEY: Correct, yes.

11 CHMN STAFFORD: All right. Now, that  
12 representation, is that your primary duty, or is it  
13 secondary or incidental to other duties relating to the  
14 entity?

15 MR. DEMPSEY: It's -- I guess it would be  
16 secondary.

17 CHMN STAFFORD: Okay. And then are you  
18 receiving additional separate or compensation --  
19 additional or separate compensation for representing the  
20 entity?

21 MR. DEMPSEY: No.

22 CHMN STAFFORD: Okay. Well, then you meet  
23 the four criteria for representing the party before the  
24 Committee.

25 All right. Looks like --

1 MR. SCHWARZ: I guess, does this mean that  
2 I cannot speak before the Committee?

3 CHMN STAFFORD: Well, you can be a witness.  
4 But your -- there's only -- only one of you is going to  
5 be cross-examining witnesses and that sort of thing.

6 MR. SCHWARZ: Yeah. But in terms of an  
7 opening statement?

8 CHMN STAFFORD: Well, only -- you only get  
9 to make one opening statement between -- for the party.

10 MR. DEMPSEY: Yeah, we can figure it out.

11 MR. SCHWARZ: Thank you.

12 CHMN STAFFORD: Okay. But I guess those  
13 same four questions, would you have the same answers to  
14 it?

15 MR. SCHWARZ: I think so, yes.

16 CHMN STAFFORD: Okay. Now, in terms of  
17 parties, it looks like everyone would be a party as a  
18 matter of right. The applicants pursuant to (A)(1);  
19 Banner Health pursuant to (A)(3); City of Tucson and Pima  
20 County pursuant to (A)(2); and Underground Arizona  
21 pursuant to (A)(3).

22 Does any party have reason to dispute that?

23 (No response.)

24 CHMN STAFFORD: No? All right.

25 Does everyone -- do all the parties agree



1 that November 20, 2024, is the time limit for the  
2 Committee to act in compliance with A.R.S. 40-360.04(D)?

3 MS. GRABEL: The applicant does,  
4 Mr. Chairman.

5 CHMN STAFFORD: Okay.

6 MS. DE BLASI: Yes.

7 CHMN STAFFORD: Okay. So the applicant,  
8 the lodging arrangements have been made for out-of-town  
9 Committee Members?

10 MS. GRABEL: Yes, sir, they have, at the  
11 DoubleTree by Hilton Tucson which is where the hearing  
12 will also take place.

13 CHMN STAFFORD: All right. And has the  
14 applicant complied with the notice to affected  
15 jurisdictions?

16 MS. GRABEL: Yes, sir, we have.

17 CHMN STAFFORD: And I believe you filed --  
18 it's in the -- one of the filings. Is that one of the  
19 pre -- is that one of the prehearing conference exhibits?  
20 No.

21 MS. GRABEL: It's not one of the prehearing  
22 exhibits, sir, no. But it is included in the list of  
23 exhibits that we filed for the hearing.

24 CHMN STAFFORD: Is it in TEP-14?

25 MS. GRABEL: No, I believe it's in TEP-10.

1 CHMN STAFFORD: All right. And the  
2 affected jurisdictions are Tucson, South Tucson, Pima  
3 County, ASLD, ADOT, and the Yaqui Tribe.

4 MS. GRABEL: Yes. The Yaqui Tribe is not  
5 an affected jurisdiction, but we sent them a notice of  
6 hearing as though they were an affected jurisdiction.  
7 They just aren't -- they don't meet the statutory  
8 definition.

9 CHMN STAFFORD: Right. Now, has the  
10 applicant complied with the posting and publishing  
11 requirements of the Procedural Order and 40-360.04(A)?

12 MS. GRABEL: Yes, Mr. Chairman, we have.  
13 And we have included as prehearing exhibits the map of  
14 the locations where we erected signs showing the notice  
15 of hearing as well as the contents of those signs.

16 CHMN STAFFORD: Why don't you talk us  
17 through the -- I have five prehearing exhibits.

18 MS. GRABEL: Sure.

19 So Exhibit 1 is the map of the proposed  
20 project which will also be the map that you'll see on the  
21 placemat for the Committee members.

22 Exhibit 2 is an example of the notice of  
23 hearing that was contained on the signs. We erected 20  
24 signs throughout the project study area.

25 Exhibit 3 is the map of where we actually

1 posted those signs.

2 Exhibit 4 is a proposed tour itinerary.

3 And I want to talk with you a little bit more with you  
4 about that at the appropriate time.

5 And Exhibit 5 is just a form of proposed  
6 CEC that we have also e-mailed to Tod in a Word form.

7 CHMN STAFFORD: Excellent.

8 All right. Those are all admitted.

9 (Exhibits 1 through 5 were admitted.)

10 CHMN STAFFORD: Has anyone had a chance to  
11 review the agenda?

12 MS. GRABEL: We did review the agenda.

13 CHMN STAFFORD: Are there any objections or  
14 additions by any parties?

15 MS. GRABEL: Not from the applicant, sir.

16 CHMN STAFFORD: Anyone else?

17 (No audible response.)

18 CHMN STAFFORD: All right. The hearing is  
19 scheduled to start Monday the 8th at one p.m. at the  
20 DoubleTree Inn -- DoubleTree by Hilton Tucson Reid Park.

21 You'll have sign-in forms for public  
22 comment with name, address, phone number, e-mail, and a  
23 box to check if they wish to speak?

24 MS. GRABEL: We will.

25 We will also have a customer service

1 representative there, and we would ask you, Mr. Chairman,  
2 to announce that she's present so interested members of  
3 the public can talk to her if they feel the need to do so  
4 not on the record.

5 And we will also have a Spanish interpreter  
6 available at the public comment session.

7 CHMN STAFFORD: Okay.

8 MS. GRABEL: And, hopefully, it won't get  
9 out of line, but I just want you to know we will have two  
10 nonuniformed people there, security officers there,  
11 during the first two days of the hearing and during  
12 public comment session.

13 CHMN STAFFORD: Okay.

14 MR. BRYNER: If I could just jump in and  
15 correct that. This is Clark Bryner. We are planning on  
16 having them be uniformed.

17 MS. GRABEL: Oh, I'm sorry. Uniformed.  
18 Thank you.

19 CHMN STAFFORD: Okay. Now, just remind me  
20 to announce the customer service rep and interpreter at  
21 the hearing.

22 MS. GRABEL: Will do.

23 CHMN STAFFORD: All right. So we'll do the  
24 public comment. Initially it will be on the 8th at 5:30.  
25 Depending on how many people show up, we'll go to till

1 whenever we've finished or 7:30. And then if we have  
2 more, we can address it at other times during the  
3 hearing.

4 The estimated time for the hearing, we have  
5 it booked from 8th through the 19th. Is there any  
6 thoughts whether it will go shorter or longer than that?

7 MS. GRABEL: We believe that our direct  
8 case will probably take the entire first week of the  
9 hearing. But, hopefully, given our meet and confers with  
10 the other parties to this case, we should be able to wrap  
11 it up by that second week.

12 Of course, it depends on how extensive the  
13 Committee's questions are and the cross-examination is.

14 CHMN STAFFORD: That is the wild card.

15 MS. GRABEL: That's right.

16 CHMN STAFFORD: Member questions, yes.

17 All right. The attire for the hearing is  
18 business casual.

19 What is the status of the filing exchange,  
20 the witness summaries and written testimony?

21 MS. GRABEL: I believe, Mr. Chairman, that  
22 that has all -- it's been timely -- we've filed it, and  
23 other parties have timely exchanged it with the other  
24 parties.

25 CHMN STAFFORD: Any other parties, have

1 they exchanged and submitted and received everything from  
2 the other parties --

3 UNIDENTIFIED VOICE: Yeah.

4 CHMN STAFFORD: -- from the applicant? So  
5 the City got the stuff from the County and vice versa?

6 MR. LUSK: That's correct, Mr. Chairman.  
7 We received all, I believe, that the applicant and other  
8 intervenors have filed.

9 We did have an issue with filing ours  
10 initially, but we did exchange it timely. But it's all  
11 been filed now.

12 CHMN STAFFORD: Okay.

13 MR. LUSK: Thank you.

14 CHMN STAFFORD: All right. And then for  
15 exhibits at the hearing, everyone will need to have two  
16 hard copies, one for me and one for the court reporter,  
17 except for the applicant. I've already got the hard copy  
18 delivered, the two binders of your exhibits, so you will  
19 not need to bring me another binder at the hearing. I  
20 have that already.

21 I assume, Ms. Grabel, you-all will have  
22 Peaks Audio with the tablets for the members?

23 MS. GRABEL: Yes, sir, we will.

24 CHMN STAFFORD: Now, will you be able to  
25 put the other parties' exhibits on the -- on the tablets

1 as well?

2 MS. GRABEL: I think we can do that. We  
3 can talk to Peaks Audio about doing that.

4 CHMN STAFFORD: Okay. And the other  
5 parties will need to get their exhibits in -- well, I  
6 guess they already sent them to you electronically, so  
7 you can just upload them; correct?

8 MS. GRABEL: That's correct.

9 CHMN STAFFORD: I guess it would just be if  
10 anybody has any late exhibits, they'll need to bring  
11 copies and either -- you'll have to have an electronic  
12 and a hard copy because you'll need a hard copy for the  
13 chair and for the court reporter, and you'll need the  
14 electronic copies for the members. And if any member's  
15 attending remotely, you'll need to get those e-mailed to  
16 them so they can see them as the hearing goes.

17 Okay. The applicant's filed a proposed  
18 CEC, and that's TEP-15.

19 And the public outreach summary TEP-14.

20 Which brings us to TEP-13, the tour  
21 logistics.

22 MS. GRABEL: So, Mr. Chairman, this is  
23 going to be a long tour because there are several routes,  
24 and we want to make sure that the Committee members have  
25 the opportunity to see them and ask questions.

1                   However, given the nature of the tour, we  
2 think it's helpful if Mr. Bryner -- and we will probably  
3 have another TEP representative on a different bus -- be  
4 able to narrate a portion of what they want to point out  
5 as the bus is driving because it's harder to recreate it  
6 once you're actually off the bus.

7                   So what we've done and what you see in  
8 Exhibit 4, prehearing Exhibit 4, is it's actually a  
9 narration that shows when we will start talking and  
10 when -- what we will read verbatim and when we will stop  
11 talking. This is so the members of the public have this  
12 on the record. No other conversation about the substance  
13 of the project will take -- will happen on the bus. And  
14 then we'll get off as normal, we'll allow the court  
15 reporter to set up, and have additional dialogue at the  
16 stop.

17                   But that's the intent behind the  
18 Exhibit TEP-4.

19                   CHMN STAFFORD: Okay. TEP Prehearing 4?

20                   MS. GRABEL: That's right. TEP  
21 Prehearing 4. And it's a different TEP exhibit; I don't  
22 have it in front of me.

23                   CHMN STAFFORD: Right. Okay. And then the  
24 tour, were we looking to do that on Tuesday the 9th or  
25 Wednesday the 10th?



1 MS. GRABEL: Actually, as we've been going  
2 through our presentation, we think it would be best if we  
3 had it on Thursday the 11th. And the reason is the  
4 presentation takes a while, and we would like the  
5 Committee to have the benefit of hearing about the  
6 various route alternatives, seeing the virtual route  
7 alternatives put on the Google Earth presentation, and  
8 then actually go out and drive the line. And we think  
9 that that's likely to happen on the fourth day of the  
10 hearing, which is the 11th.

11 CHMN STAFFORD: Okay. And what do you  
12 think -- what do you anticipate the duration of the tour  
13 will be?

14 THE WITNESS: About four and a half hours.  
15 And we do have a stop for lunch so that the Committee  
16 members are comfortable.

17 We also will have little fans and heat  
18 protectors, all that kind of good stuff. Water galore.

19 CHMN STAFFORD: Okay. Good.

20 Are there any other issues regarding the  
21 hearing itself, physical aspects of the hearing?

22 MS. GRABEL: One thing I did want to ask  
23 you, Mr. Chairman, is -- and I've asked the other parties  
24 and I've heard from the City of Tucson, but no one else  
25 yet. I wondered if it would be possible to stipulate to

1 the admission of Exhibits 9 -- TEP-9 through 11. Just  
2 because those are the legal compliance things that take  
3 forever.

4 CHMN STAFFORD: We'll get to that.

5 MS. GRABEL: Okay.

6 CHMN STAFFORD: I got the -- we'll talk  
7 about witnesses and exhibits next.

8 MS. GRABEL: Okay.

9 CHMN STAFFORD: I guess that was kind of --  
10 the next question is what is the status of -- and issues  
11 of the hearing. I guess that's stipulating to TEP-1  
12 through --

13 MS. GRABEL: Just 9 through 11.

14 CHMN STAFFORD: 9 through 11, okay.

15 MS. GRABEL: Those are the ten-year plans  
16 and the various notice requirements, the compliance  
17 filings, et cetera.

18 CHMN STAFFORD: That's TEP-9 through  
19 TEP-11, you said?

20 MS. GRABEL: Correct. 9, 10, and 11.

21 CHMN STAFFORD: Okay. That's -- are the  
22 other parties agreeing -- agree to stipulating? I'm  
23 looking for some nods.

24 MR. LUSK: City of Tucson has already  
25 agreed, Mr. Chair.

1 MS. DE BLASI: Banner Health is in  
2 agreement as well.

3 CHMN STAFFORD: And City of Tucson -- oh,  
4 wait, I guess it's County. Pima County?

5 MR. YU: Mr. Chairman, I just want to  
6 preface it with that the County's not intending to  
7 present any witnesses or evidence or actually be, really,  
8 present for this hearing. The County just wants to make  
9 sure that -- to have an seat at this table, and we're  
10 interested how this goes.

11 But it doesn't really matter in the sense  
12 of whether this comes in. We have no objection to that.

13 CHMN STAFFORD: Okay.

14 MR. DEMPSEY: I haven't had a chance to --

15 CHMN STAFFORD: One second.

16 So you'll stipulate to that to their  
17 admission?

18 MR. YU: Yes.

19 CHMN STAFFORD: Okay. And then Underground  
20 Arizona?

21 MR. DEMPSEY: So we haven't had a chance to  
22 review. But, I mean, if the City of Tucson is going  
23 along with it, I can't imagine there's any issue. So  
24 we're okay, just -- we're okay.

25 CHMN STAFFORD: All right. So, then, now

1 for witnesses and exhibits.

2 The applicant, I see you've got five  
3 witnesses and four panels, and you said it would take --  
4 you think you anticipate a week to do your direct;  
5 correct?

6 MS. GRABEL: That's correct, Mr. Chairman.

7 We do propose, however, that once one panel  
8 concludes, the other parties have the opportunity to  
9 cross-examine that panel because it'll be more timely  
10 then so we won't require having our entire case go  
11 through before cross-examination happens.

12 CHMN STAFFORD: All right. You've got 19  
13 exhibits, and you've stipulated to 9 through 11.

14 Before the hearing, what I'd like to see is  
15 a spreadsheet from the applicant showing where the  
16 parties' positions are for each segment, whether they  
17 favor it or oppose it or neutral on it, I guess. Because  
18 we have -- there's A, B, C, and D for the first leg and  
19 then there's 1, 2, 3, 4, 5, 6 for the second leg.

20 The applicant's preferred route is B-4; is  
21 that correct?

22 MS. GRABEL: Yes, that's correct.

23 CHMN STAFFORD: Okay. So will you be able  
24 to prepare that before the hearing, a spreadsheet? Get  
25 with the other parties and find out what their positions

1 are on each segment?

2 MS. GRABEL: We will, yes, Mr. Chairman.

3 I will tell you we have met and conferred  
4 with each of the parties, and my understanding is that  
5 the City of Tucson does not intend to take a position on  
6 any of the routes and that Underground Arizona opposes  
7 all of the routes.

8 And so I suppose it would just be whether  
9 or not -- and, of course, I invite the other parties to  
10 contradict me if I'm mischaracterizing their positions.

11 But Banner Health, I believe they support  
12 the preferred route as well. I don't know their position  
13 on the other segments.

14 CHMN STAFFORD: Okay.

15 MS. DE BLASI: Yeah, we just stay neutral.

16 MR. DEMPSEY: Speaking for Underground  
17 Arizona, I mean, I wouldn't say that we're opposed. I  
18 would just say that none of the routes really comply with  
19 local laws, so it's difficult to say a route's okay. So,  
20 yeah, I guess -- I mean, I could say we're opposed or you  
21 could say we're not taking a position. It doesn't matter  
22 way you frame it, I guess.

23 CHMN STAFFORD: Banner Health, you have one  
24 witness?

25 MS. DE BLASI: That's correct, Chairman.

1 CHMN STAFFORD: And two exhibits; correct?

2 MS. DE BLASI: Correct. He'll be  
3 presenting through a presentation, so we can present that  
4 as one exhibit or however you'd like to do that.

5 I anticipate we won't need more than a  
6 couple hours, probably an hour, to present and then  
7 depending on cross.

8 CHMN STAFFORD: Okay. One to two hours for  
9 direct.

10 All right. And City of Tucson, you have  
11 one witness, Mark Castro, with three exhibits?

12 MR. LUSK: That's correct, Mr. Chair.

13 And Mr. Castro will be a contingent witness  
14 depending on the presentation of direct testimony. But  
15 if we do call him, we don't anticipate it being very  
16 long, an hour or so.

17 CHMN STAFFORD: So zero to one hour, then?

18 MR. LUSK: Zero to one hour, that's  
19 correct.

20 CHMN STAFFORD: All right. It looks like  
21 the exhibits got rejected by docket control. Have you --

22 MR. LUSK: We addressed that this morning,  
23 Mr. Chair. So they should have been hand filed this  
24 morning.

25 CHMN STAFFORD: All right. Well, in any

1 event, all the other parties have received them, so.

2 MR. LUSK: That's correct.

3 CHMN STAFFORD: And Pima County, you will  
4 have zero witnesses and zero exhibits?

5 MR. YU: That's correct, Mr. Chair.

6 CHMN STAFFORD: Okay. And Underground  
7 Arizona, I see you have two witnesses and 33 exhibits?

8 MR. DEMPSEY: Correct. As of now, yes.

9 CHMN STAFFORD: Okay. All right. Well,  
10 before the hearing starts, I'd like the parties to look  
11 at each other's exhibits and see if there's any  
12 additional ones you can stipulate to or some that could  
13 not be offered because they're redundant. We don't need  
14 to have, for example, the City's plan, we don't need five  
15 different exhibits of the same thing. So if you could  
16 kind of narrow -- narrow the field there a little bit to  
17 make it a little less cumbersome.

18 All right. And then looks like we have  
19 several motions that are pending.

20 Underground Arizona filed a motion to  
21 continue. It looks like you had a stamped copy that you  
22 filed in Tucson, but it still hasn't made it up on the  
23 docket yet --

24 MR. DEMPSEY: Yeah.

25 CHMN STAFFORD: -- TEP filed a response

1 that was docketed.

2 MR. DEMPSEY: Yeah, I think they do it in  
3 Phoenix so it's docketed in the same day or whatever. We  
4 can't do that.

5 CHMN STAFFORD: Would you like to talk  
6 about your motion?

7 MR. DEMPSEY: Yes, sir. You're ready?  
8 Okay.

9 So as to the continuance, so the  
10 fundamental problem is that we prepared on the basis that  
11 TEP's application was referring to Sargent & Lundy's  
12 prior reports. We had no idea that TEP's application was  
13 not based on those reports but instead on a new secret  
14 report. This is unfair not just because it robs us of  
15 our time -- of our time between now and hearing but also  
16 because we prepared off of incorrect materials. Entire  
17 veins of argument that we prepared may no longer apply.

18 There's surely a legal basis for the ACC to  
19 say that an application is incomplete when it fails to  
20 include the materials on which it is based and which it  
21 cites. Without Sargent & Lundy's new report, TEP's  
22 application apparently would not make sense.

23 So yesterday TEP said, you know, they made  
24 their filing. So TEP's vague statement in its  
25 application that it's from Sargent & Lundy -- or that



1 it's from a Sargent & Lundy report is not at all  
2 disclosure that a new report is forthcoming. It speaks  
3 of this report in its application in the past tense.

4 It would be one thing if TEP disclosed that  
5 a new report was forthcoming, but it failed to do even  
6 that. Such a disclosure would have at least allowed us  
7 to make these arguments a month ago.

8 So we applied our days until Monday not  
9 expecting any surprises like this. We're supposed to be  
10 reviewing TEP's exhibits to prepare for examining its  
11 witnesses. Instead, we're now expected to go back to the  
12 drawing board and start all over again.

13 So on that basis, we're asking that the  
14 hearing be continued.

15 And a month or two is really not going to  
16 make or break TEP's project.

17 That's it.

18 CHMN STAFFORD: All right.

19 Ms. Grabel, would you like to respond?

20 MS. GRABEL: Certainly. Thank you,  
21 Mr. Chairman.

22 First, I mean, I'm going to object to his  
23 characterization of the report as a secret report. We  
24 had a long discussion of it right upfront in our  
25 application. The Sargent & Lundy report is simply an

1 update of reports it has done in the past in a prior  
2 docket, but it's specific to these new routes and the  
3 changes that have occurred over the next couple of days.

4           And there's nothing in the statutes or the  
5 regulations that requires us to wait until the report is  
6 finalized before we can file our CEC application. As you  
7 know, the application date kind of -- the filing of the  
8 application triggers the rest of the statutory time line.  
9 So if we were to wait for the actual completed final  
10 report, we wouldn't have been able to make this hearing  
11 deadline work.

12           And I also disagree with Mr. Dempsey's  
13 characterization, "a couple more months is not going to  
14 make or break this project." I think that you'll hear,  
15 Mr. Chairman, during the hearing that time is of the  
16 essence with this case. We've waited as long as we can.  
17 We've already spent \$10 million in improvements to an  
18 aging system that, if we continue to wait and push off  
19 this project, we're going to have to just rebuild the  
20 distribution system and forego all the transmission  
21 benefits. And that's something I don't think anyone in  
22 Tucson wants to have happen. And you'll hear a lot more  
23 about that, but the delay really does make a difference.

24           And there's no legal basis to grant  
25 Mr. Dempsey's motion.

1 CHMN STAFFORD: Now, what is the substance  
2 of the Sargent & Lundy report? What does that entail?

3 MS. GRABEL: Certainly. It's an analysis  
4 of the costs and operations of an underground  
5 transmission facility. And so it's not relevant to the  
6 construction of any of the overhead routes. What it does  
7 do, however, is respond to the contentions of  
8 Mr. Dempsey's organization, and others in Tucson, many  
9 public commenters, that TEP should build this project or  
10 portions of it below ground.

11 So it just addresses, as has been done  
12 in prior -- in earlier line siting matters, for example,  
13 with SRP, it just talks to the committee about the cost  
14 implications, how much more expensive it is to build  
15 underground compared to aboveground, and what it takes to  
16 maintain the system.

17 It's also relevant to the extent the  
18 Committee elects to choose a route that's within a City  
19 of Tucson Gateway Corridor Zone that allows -- it's  
20 evidence that the Committee can use to make a legal  
21 finding that would basically preempt that -- that local  
22 ordinance. We're hoping you don't have to make that  
23 finding, as you'll hear during the hearing, but that is  
24 evidence that would allow you to do so.

25 CHMN STAFFORD: All right.

1 Mr. Dempsey, anything further?

2 MR. DEMPSEY: So, yeah, I mean, as I just  
3 said, you know, a few minutes ago, there's no route that  
4 TEP has in it as a primary route or alternative route  
5 that complies with local law. And it's not our position;  
6 it's the City's position. I mean, this isn't -- the City  
7 has given TEP numerous opportunities to follow the law  
8 and told it it's not following the law. So, I mean, the  
9 idea it's us doing something is incorrect. We're just  
10 pointing it out.

11 Like, the entire basis of TEP's request --  
12 or, I'm sorry, the entire basis of TEP's application is  
13 that it has to supercede a local law, and the entire  
14 basis of superseding the local law is this engineering  
15 report. It has no other basis for making that argument.  
16 So giving it to us at the last second is not reasonable.

17 CHMN STAFFORD: Does the City of Tucson  
18 have a position on this?

19 MR. LUSK: Mr. Chair, the City of Tucson  
20 doesn't have a position on the motion to continue.  
21 Obviously, there are other issues involved that we do  
22 have a position on. But we can discuss those at another  
23 time.

24 CHMN STAFFORD: Okay. With that, I'm going  
25 to deny the motion for a continuance.

1 The hearing is set. It's going to run from  
2 the 8th through the 19th. They're going to be putting on  
3 their case for the first week. You'll have ample time to  
4 look at the report during that and ask questions about  
5 it. So I think it will be addressed in the hearing.

6 Up next, we have TEP has the request in the  
7 application that the Committee find undergrounding  
8 ordinances unreasonably restrictive and compliance  
9 therewith is not feasible.

10 Ms. Grabel?

11 MS. GRABEL: Yes, Mr. Chairman. So that  
12 request is only if the Committee elects of the many  
13 routes to choose a route that would be required to be  
14 ungrounded under the City of Tucson's Gateway Corridor  
15 zoning ordinance.

16 Assuming that it applies. Which for the  
17 purposes of this proceeding, we are assuming that it  
18 would apply. That's the subject of litigation in  
19 another -- another docket, not even -- a docket in court  
20 that has not yet been resolved.

21 CHMN STAFFORD: All right. So what  
22 segments does -- to what segments does the ordinance  
23 apply, I guess?

24 MS. GRABEL: It's essentially -- it's the  
25 line that runs down Campbell. Mr. Bryner, what are those

1 segments specifically?

2 MR. BRYNER: It's route segments D and 1.

3 MS. GRABEL: Thank you.

4 CHMN STAFFORD: D and 1?

5 MR. BRYNER: Correct.

6 CHMN STAFFORD: Okay. So then of all the  
7 10 segments, only two of them implicate this ordinance?

8 MR. SCHWARZ: That's incorrect.

9 MS. GRABEL: So I can add a little bit more  
10 to that.

11 Those are the ones that actually run down a  
12 Gateway Corridor Zone. Several of them cross a Gateway  
13 Corridor. However, there are something called special  
14 exceptions to the Gateway Corridor Zone zoning ordinance  
15 that we believe would apply and not requires the segments  
16 in the other routes to be constructed below ground.

17 MR. SCHWARZ: That's --

18 CHMN STAFFORD: Hold on.

19 So D and 1 run parallel, so the ordinance  
20 clearly applies; correct?

21 MS. GRABEL: Yes.

22 CHMN STAFFORD: All right. And you said  
23 other segments would cross it, and so they may need a  
24 smaller section to be --

25 MS. GRABEL: We would have to apply for

1 something called a special exception, but we would not  
2 need, we believe, to build it below ground.

3 CHMN STAFFORD: Okay. Now, what is the  
4 status of the litigation in superior court?

5 MS. GRABEL: Ms. Hill, will you address  
6 that?

7 MS. HILL: Sure.

8 And so one of the -- one of the things I  
9 just want to clarify for you, Mr. Chairman, too, since I  
10 have the opportunity is the special exception process is  
11 specific to that UDC, to the Gateway Corridor ordinance,  
12 in that it's built in and it's -- so that's what we're  
13 discussing on those certain, very small segments that  
14 would cross a Gateway Corridor themselves.

15 And so regarding the litigation, so Judge  
16 Bryson's 60th day to issue his ruling is July 8 which is  
17 the very first day of the hearing. But at that point I  
18 believe the hearing is going to proceed as planned. We  
19 don't see there being any change in our -- in our hearing  
20 strategy at that time.

21 CHMN STAFFORD: Okay. So the 60th day to  
22 issue the ruling is July 8, so that's when it's due?

23 MS. HILL: Yes. That's when Judge Bryson's  
24 decision is due.

25 MR. DEMPSEY: So may I correct something?

1 CHMN STAFFORD: Yes, Mr. Dempsey.

2 MR. DEMPSEY: So TEP applied for a special  
3 exception permit already and it was denied by the City.  
4 And it was denied by the City not because of the Gateway  
5 Corridor Zone. It was denied by the City because of the  
6 University Area Plan. And the University Area Plan,  
7 literally every single route out of TEP's is affected by  
8 the University Plan. So there's not -- the special  
9 exception process has not had any -- has not had anything  
10 to do with the Gateway Corridor Zone.

11 CHMN STAFFORD: Okay. Now --

12 MR. SCHWARZ: The rezoning -- excuse me.  
13 The rezoning for the Vine Substation, it requires a  
14 rezoning which, in turn, requires -- appears to require  
15 that TEP follow the University Area Plan which calls for  
16 undergrounding within the entire area. All of the TEP  
17 routes run in that area.

18 That's -- and that's why we are asking for  
19 the discontinuation of the hearing because the -- because  
20 the routes are against Tucson laws and that would seem to  
21 override all of the routes and put them all in question.

22 CHMN STAFFORD: Well, it seems that this  
23 statute is -- there's some dispute about what it actually  
24 means. I don't think it's ever actually been applied in  
25 real life.



1 Ms. Grabel, do you have any recollection of  
2 this statute being in play for a line siting case  
3 previously, other than this one? I think it was  
4 addressed previously in prehearing and prefiling  
5 conferences back in 2021.

6 MS. GRABEL: Yes, Mr. Chairman, there was a  
7 prior line built in a Gateway Corridor that was approved,  
8 and there was no objection to it at the time. This is  
9 the first time I think the Line Siting Committee is being  
10 asked to make some sort of decision.

11 But I believe Mr. Lusk has indicated his  
12 intent to speak.

13 MR. LUSK: Thank you. Thank you,  
14 Ms. Grabel.

15 Mr. Chair, if I could, I think I might be  
16 able to clarify for what's sort of been said so far.

17 So there are two different issues that --  
18 that TEP has requested this particular finding for. One  
19 is the Gateway Corridor Zone. And, to clarify, the  
20 Gateway Corridor Zone applies to routes 1 and 2 and  
21 routes D -- excuse me, 6 -- 1, 2, 6, and D. So those are  
22 all routes that implicate the Kino-Campbell corridor.  
23 And that's a Gateway Corridor Zone.

24 Additionally, TEP has requested the same  
25 finding for application of if -- if the City were to

1 apply the application of special -- specific plan in the  
2 City of Tucson and other neighbor plans related to the  
3 general plan. And TEP has asked in its application for  
4 the same finding for those specific plans.

5 And this may be a discussion that we can  
6 have offline, but it may be one of the things that we can  
7 discuss in terms of making the hearing go a little bit  
8 smoother. If we can limit that discussion to the Gateway  
9 Corridor Zone, it may make the issues a little bit easier  
10 to deal with.

11 And I have not discussed that with  
12 Ms. Grabel or Ms. Hill, so I don't want to deprive them  
13 in any way. I was just thinking out loud in terms of how  
14 we can make this hearing go a little bit more smoother.

15 MS. GRABEL: Yes, Mr. Lusk, I agree.

16 Mr. Chairman, we will meet and confer with  
17 the parties about how to streamline this for the hearing.

18 CHMN STAFFORD: All right. Well --

19 MS. HILL: I'm sorry, I don't want to --  
20 but so long as one of the parties is saying that we are  
21 not -- that the Vine Substation and the routes that do  
22 not cross a Gateway Corridor Zone are not in compliance  
23 with the law and that that is the City's position, that  
24 those require undergrounding, I think we have to have the  
25 conversation for all of the routes. So I --

1 MR. LUSK: If that's the easiest position,  
2 we're fine with that as well. I just want --

3 MS. HILL: I mean, I don't -- I don't --  
4 it's clear that Underground Arizona is taking a position  
5 that all of the routes require undergrounding. And  
6 unless -- you know, it depends on the deference given to  
7 the City's interpretation of its -- of the plans by the  
8 Committee.

9 But I don't think we can avoid it because  
10 we have to be able to address the concerns that  
11 Mr. Dempsey's and Mr. Schwarz' group is raising.

12 MR. SCHWARZ: I'd have to say, too, it's  
13 not just our position. It's a clear implication of the  
14 zoning examiner's position.

15 CHMN STAFFORD: All right. Well, we'll all  
16 need to get into this at the hearing, but it appears to  
17 me now that an issue exists with respect as to whether  
18 such ordinance, master plan, or regulation is  
19 unreasonably restrictive.

20 So that triggers, for me, the obligation to  
21 send notice of that, not -- not declaring that the  
22 ordinance is unduly restrictive, but that the issue does  
23 exist with it, required to send it to the chief executive  
24 officer of the area of jurisdiction affected, which I  
25 guess would be Tucson.

1 So who is Tucson's CEO?

2 MR. LUSK: Mr. Chair, that would be the  
3 city manager. The city manager for the City of Tucson  
4 currently is Tim Thomure.

5 CHMN STAFFORD: Can you spell that?

6 MR. LUSK: T-i-m. And the last name is  
7 T-h-o-m-u-r-e.

8 CHMN STAFFORD: T-h-o-m-u-r-e?

9 MR. LUSK: That's correct. And if you want  
10 to send it to the city manager, that's fine, too.

11 CHMN STAFFORD: I thought he is the city  
12 manager?

13 MR. LUSK: He is the city manager. We  
14 just -- I only bring that up because there was a  
15 miscommunication as to -- the current -- he is the  
16 current city manager. There was a prior city manager.  
17 There was a miscommunication as to that. We'll guarantee  
18 it gets there.

19 CHMN STAFFORD: All right. Well, I guess  
20 the whole point of that is to give the City the  
21 opportunity to become a party, which you already are.

22 MR. LUSK: Right.

23 CHMN STAFFORD: So it seems that the  
24 certified mail is redundant at this point.

25 Could the City's -- could you stipulate on

1 behalf of the City to waive receipt of the certified mail  
2 and acknowledge that you're already a party and you will  
3 have the opportunity to respond to the issue about the  
4 hearing?

5 MR. LUSK: We're fine with that, Mr. Chair.  
6 We were just waiting for this hearing to ensure we were  
7 made a party. If that's the chair's position, then we're  
8 fine with that.

9 CHMN STAFFORD: Okay. So you'll waive  
10 formal compliance with the 360.06(D) then?

11 MR. LUSK: Correct. As to the notice  
12 portion, yes.

13 CHMN STAFFORD: Because the City has actual  
14 notice.

15 MR. LUSK: Correct.

16 CHMN STAFFORD: Okay. And I believe from  
17 our prefiling conference the permit status is pending  
18 until a resolution of the CEC, Ms. Grabel?

19 MS. GRABEL: Yes, that's correct.

20 CHMN STAFFORD: Okay. So I don't think the  
21 Committee can determine whether the underground ordinance  
22 is unreasonably restrictive until after we hear all the  
23 evidence and hear arguments at the hearing. So we're --  
24 I'm going to wait to decide what it is, but clearly it's  
25 an issue. The City has actual notice and is a party to

1 the proceeding. So statute has been complied with, and  
2 they waived formal notice by certified mail.

3 MR. LUSK: I apologize, Mr. Chair. As to  
4 that particular issue, I didn't -- and this, again, we  
5 haven't had a time to discuss this, and we can do that as  
6 well.

7 But I wasn't sure if it would assist the  
8 Committee in any way to perhaps define the legal issues a  
9 little bit further in order -- obviously, this is a legal  
10 issue. It's not -- obviously the Committee has to make a  
11 factual finding, but the legal issue as to the  
12 interpretation of what that statute means isn't -- is in  
13 somewhat of a disagreement. And I don't think Ms. Grabel  
14 or Ms. Hill would disagree with me on that particular  
15 issue.

16 The parties' positions might be helped in  
17 terms of -- because it's not in the -- in the normal  
18 course of a CEC to do statutory interpretations, so I  
19 might suggest that it be helpful that the parties provide  
20 that and their respective positions if the Committee  
21 would be open to that.

22 CHMN STAFFORD: Well, the Committee's role  
23 is to determine whether the site complies with the  
24 factors of the statute and then either grant or deny a  
25 CEC. Section D allows -- requires the CEC to have a

1 condition that they -- that the applicant comply with  
2 all, you know, county, state, city ordinances. However,  
3 it does provide that if it determines that one is, in  
4 fact, unreasonably restrictive, they can grant the CEC  
5 without that statement they have to comply with it.

6 The effect of that afterwards, it's  
7 unclear. I don't think it's been adjudicated yet.

8 MR. LUSK: Agreed.

9 CHMN STAFFORD: I think the superior court  
10 decision that's due the first day of the hearing may  
11 provide a lot of clarity to these issues for the  
12 Committee. It may be that we want to have the issue  
13 briefed before we decide whether to determine -- because  
14 it's a finding of fact that the Committee makes that it's  
15 unreasonably restrictive. It's not a legal determination  
16 whether it applies or not.

17 MR. LUSK: Understood. We just want to --  
18 and, Ms. Grabel, if it's okay with you, I'd like to  
19 clarify for the chair what the disagreement might be, if  
20 that's agreeable?

21 MS. GRABEL: Certainly. Go ahead.

22 MR. LUSK: I think what our difference of  
23 opinion is is that the requirement under D is  
24 unreasonably restrictive and not feasible given the  
25 technology available. And there's a disagreement between

1 the City and the applicant as to what that section of the  
2 statute means, whether cost which makes it feasible or  
3 technology which makes it feasible. So that's really the  
4 crux of the disagreement.

5 And so understanding that it is a factual  
6 determination that the Committee must make, we want to  
7 be -- just be clear about how they're going to make that  
8 determination based on the statute. If that makes sense.

9 CHMN STAFFORD: Yeah. It's is the issue  
10 whether it can physically be done or is it just too  
11 expensive to physically do.

12 MR. LUSK: Correct. That's what seems to  
13 be the issue.

14 MS. HILL: I don't -- tipping our hand, I  
15 don't think -- we're not going to claim it defies the  
16 laws of physics or that it's impossible to underground a  
17 138kV transmission line. Our position relates solely to  
18 cost.

19 MS. GRABEL: And, Mr. Chairman, to your  
20 point about whether the court decision will have an  
21 impact on the outcome of that discussion, I candidly  
22 don't think necessarily -- I mean, it will be interesting  
23 to know the outcome. However, that could be appealed,  
24 and there's a lot of uncertainty that will accommodate  
25 just relying on that decision. Therefore, it's possible



1 that if the Committee selects a route that does require  
2 that finding to be made, we're going to ask for that  
3 finding to be made irrespective of Judge Bryson's  
4 opinion.

5 CHMN STAFFORD: Fair enough. And the  
6 Committee may require briefs on it, but we'll see.

7 MR. SCHWARZ: Can I raise a question,  
8 please?

9 CHMN STAFFORD: Who's speaking?

10 MR. SCHWARZ: This is John Schwarz  
11 speaking. I'd like to raise a question.

12 Something being unfeasible because of cost  
13 means the cost is the issue. And as I understand it, the  
14 Line Siting Committee does not have jurisdiction over  
15 cost and ratepayer expense.

16 And, secondly, it has to do with an issue  
17 of undergrounding and what the cost of undergrounding is,  
18 and the ACC doesn't have jurisdiction over issues related  
19 to undergrounding.

20 What we have here is a local ordinance that  
21 says that something must be done. TEP objects to the  
22 cost of it even though in its own contract with the City  
23 it agrees to pay the costs -- that the costs can't be  
24 part of feasibility. It says that in the franchise  
25 contract. So I don't understand how there can be a

1 hearing on something that the TEP agrees it should do in  
2 its franchise contract.

3 And, in addition, the Committee hearing it  
4 has neither jurisdiction over costs nor over  
5 undergrounding. I'd like an answer to that.

6 CHMN STAFFORD: Well, that's the next  
7 thing. I believe you guys filed some requests for denial  
8 or disclaimer for jurisdiction or something that's --

9 MR. SCHWARZ: -- I apologize.

10 CHMN STAFFORD: All right. So on this one  
11 here -- well, I would say that the dispute you just  
12 described I believe is the subject of the lawsuit in  
13 superior court as we speak, isn't it?

14 MR. SCHWARZ: Go ahead, Dan.

15 MR. DEMPSEY: Only -- the subject in  
16 superior court is an appeal of the Gateway Corridor Zone.  
17 It doesn't have anything to do with any other specific  
18 plan or ordinance. So it's a very narrow -- the court  
19 case is a very narrow issue.

20 CHMN STAFFORD: So the court case only  
21 focuses on the Gateway Corridor Zone?

22 MR. DEMPSEY: Correct.

23 MS. GRABEL: Correct.

24 CHMN STAFFORD: Okay. All right. Well,  
25 the notice that complies to the .06(D) request from the

1 applicant, we'll wait to see how -- at the hearing to  
2 determine whether or not that's granted.

3 And, okay, now moving on, the last thing I  
4 have on the list here is the filing from Underground  
5 Arizona.

6 MR. DEMPSEY: Yeah. Do you want me to  
7 talk -- to speak about it?

8 CHMN STAFFORD: Yes, please.

9 MR. DEMPSEY: Okay. So, and to be frank,  
10 TEP's application is -- is a little bit confusing.

11 But my understanding is TEP argues that  
12 because the cost of complying with the local law will  
13 increase rates, a project can be determined infeasible  
14 under 40-360.06(D). So we disagree that cost is a part  
15 of technological feasibility, just as the City does, but  
16 it doesn't matter because TEP's argument is  
17 self-defeating.

18 Let me explain. The only way rates  
19 increase is by a determination of the ratemaking process  
20 that an expense was prudent and recoverable. And a  
21 recoverable expense is, by definition, feasible. So the  
22 only possible argument that TEP could be making is that  
23 the Line Siting Committee should predetermine that an  
24 expense is unrecoverable from ratepayers. However, per  
25 statute, and the ACC's own legal counsel, questions of

1 ratepayer recovery are not for the Line Siting Committee.  
2 And that's to say nothing of the fact that the Line  
3 Siting Committee does not have jurisdiction over  
4 undergrounding.

5 There are multiple layers here that  
6 undermine TEP's request in multiple ways.

7 We ask that the Line Siting Committee  
8 decline jurisdiction on determinations to whether a cost  
9 is recoverable from ratepayers. We also ask the Line  
10 Siting Committee to decline jurisdiction on disputes over  
11 undergrounding. Doing so now allows TEP to reconsider  
12 whether it wants to proceed with the hearing.

13 That's it.

14 CHMN STAFFORD: All right. Well, I mean,  
15 it's -- the Committee's jurisdiction's set by statute.  
16 The Commission has exclusive authority over rate setting  
17 for public service corporations. I don't think that's in  
18 dispute at all.

19 MR. DEMPSEY: I'm talking about the Line  
20 Siting Committee, not the rate -- not the ACC.

21 CHMN STAFFORD: Right. The Line Siting  
22 Committee doesn't have jurisdiction over rates, period.

23 MR. DEMPSEY: Right.

24 CHMN STAFFORD: That's a nonissue.

25 MR. DEMPSEY: It's apparently fundamental

1 to TEP's argument about costs.

2 CHMN STAFFORD: Well, I mean, that's the  
3 thing. One of the factors that you have to look at is  
4 the, let's see, estimated cost of the facilities and  
5 sites proposed by the applicant and then the estimated  
6 cost and facilities as recommended by the Committee. And  
7 it says, "Recognizing that any significant increase in  
8 costs represents potential increase in the cost of  
9 electric energy to the customer or the applicant."

10 That's in statute.

11 MR. DEMPSEY: Right.

12 CHMN STAFFORD: So that's to be considered.  
13 That must be considered. It's mandatory in the statute.

14 MR. DEMPSEY: Right. But this is about  
15 subsection D. Subsection D doesn't have that.

16 CHMN STAFFORD: Well, subsection D allows  
17 the Committee to issue a certificate that says -- that  
18 doesn't require compliance -- doesn't have a condition  
19 that requires compliance with all applicable ordinances,  
20 master plans, and regulations. That's what it says.

21 MR. DEMPSEY: So I guess what I'm trying to  
22 understand is -- I guess what would be helpful is if  
23 TEP's interpretation says subsection D's definition of  
24 technological feasibility includes all of the factors in  
25 the rest of the statute.

1 CHMN STAFFORD: Ms. Grabel, would you like  
2 to respond?

3 MS. GRABEL: Yes. So, I mean, I'm having a  
4 little bit of trouble following Mr. Dempsey's argument.

5 I mean, here's -- what we're asking for is  
6 approval of an overhead transmission line. That's  
7 clearly within the Committee's jurisdiction.

8 To the extent we're asking you to look at  
9 the cost and operations of undergrounding, it's strictly  
10 to determine -- which the statute, as you were getting  
11 to, allows you to do -- is to determine whether or not  
12 the local ordinance is unreasonably restrictive and  
13 compliance therewith is not feasible in light of the  
14 technology available.

15 The information we'll provide with respect  
16 to the cost of undergrounding and the potential impact on  
17 ratepayers is not -- is relevant only to that legal issue  
18 which the statute allows the Committee to hear.

19 So I don't hear anything in Mr. Dempsey's  
20 argument that would deprive this Committee of  
21 jurisdiction over the application as proposed.

22 CHMN STAFFORD: I agree.

23 So anything further, Mr. Dempsey?

24 MR. DEMPSEY: Again, I guess I just still  
25 don't -- I still don't understand what TEP's argument is

1 in terms of technological feasibility. So I guess we'll  
2 get at that in the hearing?

3 CHMN STAFFORD: Yeah. So that's -- that's,  
4 I guess, that has to do with statutory interpretations,  
5 though, whether the Committee thinks that --

6 MR. DEMPSEY: Are we allowed --

7 CHMN STAFFORD: -- that the cost of it is  
8 relevant to determine what is feasible. I mean, it's  
9 possible to put a man on the moon, but people don't do it  
10 very often because it's so expensive.

11 MR. DEMPSEY: So the question I guess I  
12 have is the ACC's legal counsel was very concerned about  
13 this issue and wrote that they don't have jurisdiction on  
14 this issue in response to a request by Ms. Grabel to do  
15 this earlier -- or to make a statement on this issue. So  
16 I guess the question is what is it they were concerned  
17 about?

18 And are we allowed to, I guess, question  
19 them? Are they allowed to be witnesses? Or what's  
20 the --

21 CHMN STAFFORD: The Commission?

22 MR. DEMPSEY: What's the procedure for  
23 that?

24 CHMN STAFFORD: The Commission -- once the  
25 Committee makes a decision, it gets forwarded to the

1 Commission to accept, reject, or modify. So I guess it's  
2 theoretically possible that the Commission could say, oh,  
3 if the Committee denied it, the Commission could grant it  
4 and say, yes, we interpret the statute to mean that it  
5 has to do with costs.

6           Because the Commission ultimately is the  
7 one that sets the rates, and they're aware that -- I  
8 think they have a policy, I think it's part of the  
9 opinion we're talking about, that they have a policy that  
10 disfavors undergrounding due to the extra cost that would  
11 get put into rate base. And how they deal with that,  
12 that is entirely up to the Commission because they have  
13 plenty of authority over rates.

14           So the Committee has nothing to do with  
15 that, but we are mindful of the fact -- I mean it says  
16 that, you know, (A)(8) of 306 -- 360.06 tells the  
17 Committee to consider, you know, the cost and what the  
18 applicant's proposing as to what if the Committee issues  
19 a CEC that has different conditions that imposes  
20 additional cost, just to be aware of that.

21           So, I mean -- so I guess it depends if  
22 there's a different route, one route requires  
23 undergrounding and one doesn't, well, then, look at  
24 comparing the two. The one that doesn't require  
25 undergrounding would be -- unless it's much longer, would



1 be, everything else held constant, would be cheaper.

2 Isn't that safe to say, Ms. Grabel?

3 MR. SCHWARZ: Let me -- sorry.

4 MS. GRABEL: I agree with you,  
5 Mr. Chairman, yes.

6 CHMN STAFFORD: Because the -- Mr. Schwarz,  
7 one second. I thought Mr. Dempsey was speaking for  
8 Underground Arizona at this. He's representing --

9 MR. SCHWARZ: Both of us are co-directors.

10 CHMN STAFFORD: Right. But only one of you  
11 get to speak at a time. All right.

12 MR. SCHWARZ: I'd like to speak if he's no  
13 longer speaking.

14 CHMN STAFFORD: Okay. Please share with  
15 us, Mr. Schwarz.

16 MR. SCHWARZ: Thank you. So the ACC  
17 counsel says that the ACC -- advises that the ACC has no  
18 jurisdiction over issues of undergrounding.

19 What it seems like is being said here is  
20 that if undergrounding costs more, then the ACC does have  
21 jurisdiction over undergrounding because it can  
22 effectively say you must do it above ground, you can't do  
23 it below ground.

24 Is -- is that correct? In other words, the  
25 ACC really does have jurisdiction over issues relating to

1 undergrounding?

2 CHMN STAFFORD: Well, the Commission has  
3 extensive jurisdiction under the constitution to regulate  
4 public service corporations, which TEP is. So -- and  
5 then they have -- they have -- there's different types.  
6 They have different types of constitutional authority.  
7 There's the -- ratemaking, and then they have permissive  
8 authority which gives them broad authority to regulate  
9 for public health and safety.

10 So I'm not going to make a ruling on what  
11 the Commission's authority is, but certainly under the  
12 terms -- in terms of the line siting statutes, it's --  
13 the Committee's jurisdiction is set by the statute.

14 MR. SCHWARZ: What I'm saying --

15 CHMN STAFFORD: The Commission's is in the  
16 scope, but it also has additional authority that the  
17 Committee lacks. So it sounds like you're conflating the  
18 authority of the Commission and the Committee. Because  
19 the Committee is subject to the Commission because  
20 everything the Committee does have to be blessed or has  
21 to be reviewed by the Commission and accepted, rejected,  
22 or modified.

23 MR. SCHWARZ: I'm just saying that the ACC  
24 attorney says that the ACC, and I would assume anything  
25 under the ACC that is connected with the ACC, does not

1 have jurisdiction over issues of undergrounding. That's  
2 the attorney's -- lead attorney's own position.

3 MS. GRABEL: Mr. Chairman, I can respond to  
4 this.

5 CHMN STAFFORD: Ms. Grabel.

6 MS. GRABEL: Mr. Chair and Mr. Schwarz,  
7 just to help you out there.

8 There's no doubt that -- TEP is not  
9 required to seek approval to construct an underground  
10 transmission facility from either the Committee or the  
11 Commission. That's not what's happening here.

12 TEP is seeking to build an aboveground  
13 transmission line, which does require a CEC, and in doing  
14 so is asking the Committee to make a finding authorized  
15 by statute that required undergrounding consistent with,  
16 if it is applicable, an applicable Tucson law is not  
17 feasible and is unreasonably restrictive. As part of  
18 meeting that statutory language, we are providing  
19 evidence of the cost and operational difficulties  
20 associated with it. Submitting that evidence does not  
21 mean that it all of a sudden deprives the Committee or  
22 the Commission of jurisdiction over the overlying  
23 application which is the construction of an aboveground  
24 line.

25 And I would also say that even though the

1 ACC legal staff did say that in a filing, the Commission  
2 did ultimately override Staff's argument in that regard  
3 because it did implement the policy.

4 And, further, to Mr. Dempsey's question  
5 about seeking to inquire maybe to ask questions about  
6 that counsel, that counsel no longer is employed at the  
7 Arizona Corporation Commission. They have a new chief  
8 counsel.

9 MR. DEMPSEY: So do they not stand by what  
10 they previously wrote?

11 MS. GRABEL: I don't know. I couldn't  
12 speak for her.

13 MR. DEMPSEY: So that's what -- so I want  
14 to be clear, Chairman. I'm sorry. It gets confusing  
15 because we say Commission when we mean Committee.

16 CHMN STAFFORD: Yeah, that seems to be --  
17 seems to be conflating the two. Because the Committee is  
18 separate from the Commission.

19 MR. DEMPSEY: Right. I completely  
20 understand. And if the ACC, when it comes to ratemaking  
21 process, has -- they can -- any expense of TEP's they  
22 can, you know, determine prudent whether it's  
23 undergrounding or a hot air balloon. It doesn't matter.

24 But the specifically referring to the Line  
25 Siting Committee process, Line Siting Committee

1 supposedly doesn't have jurisdiction over some of these  
2 issues. And they're -- I mean, there's an issue here  
3 where -- I don't -- again, I don't know if we're  
4 addressing it here or is it being addressed, or do we  
5 need to raise the jurisdictional stuff within the hearing  
6 itself, or how exactly that works. Because there are  
7 questions. There has been stuff written by the ACC's  
8 legal staff with regard to the Line Siting Committee --  
9 not the Commission, the Committee -- where they examined  
10 this issue and made statements that would seem to support  
11 what we're arguing.

12 MS. GRABEL: Mr. Chairman, if I can respond  
13 real quickly.

14 CHMN STAFFORD: Yes, please.

15 MS. GRABEL: So the request for the legal  
16 staff was whether or not the Commission should implement  
17 a policy. It didn't have anything to do with whether or  
18 not they had jurisdiction over aboveground transmission  
19 facilities. So I think you're trying to take an apple  
20 and prove an orange, and that just doesn't align.

21 But we can talk about this offline. I  
22 think that going on and on here probably is not very  
23 productive.

24 MR. DEMPSEY: So I got -- I need to respond  
25 to that.

1                   So, I mean, I disagree. That's what they  
2 wrote in response. So why did they write that in  
3 response? It wasn't -- you didn't ask about  
4 jurisdiction. They responded with points about the  
5 jurisdiction, and that's your -- that's the Line Siting  
6 Committee's attorney. So what were they worried about,  
7 and why did they say that? Because they didn't need to  
8 say that. They could have not said any of that; right?  
9 So there's something there, and the question is where do  
10 we get to examine that?

11                   And, yeah, we can take it offline. I just  
12 want to make sure we're not foreclosed from talking about  
13 this issue later on or if this is it. I was just trying  
14 to understand what's going -- what the process is.

15                   CHMN STAFFORD: Ms. Hill.

16                   MS. HILL: I'm sorry, Mr. Chairman, if I  
17 may just.

18                   We understand. You know, this was much  
19 like maybe the issue of statutory interpretation.  
20 Mr. Dempsey and Mr. Schwarz have a jurisdictional  
21 argument that I believe is appropriately put on the  
22 record and, you know, their opening statement and then in  
23 their closing statement. And so and, certainly, we as  
24 the applicant are prepared to respond with our  
25 interpretation of the statute and without briefing

1 without having to extend that.

2           So, essentially, you know, I agree --  
3 of course, Ms. Grabel's our attorney. We agree with her  
4 position about the fact that the Line Siting Committee  
5 statutes require it to consider costs; that  
6 undergrounding -- the undergrounding jurisdiction is  
7 related to the Committee and the Commission not having  
8 the authority to require us to seek a CEC before we build  
9 an underground transmission line; that in order to build  
10 an overhead transmission line, we do have to have a CEC;  
11 and that 30 -- 360.06(D) allows us to ask the Committee  
12 to consider any statute, ordinance, or local law that we  
13 consider to be unreasonably restrictive and not feasible  
14 in light of the technology available. That could be  
15 whether there's glitter, whether the line has to be pink  
16 glitter or a line that repels doves and attracts  
17 woodpecker or has an invisibility cloak on it or with an  
18 undergrounding ordinance.

19           And so that is our interpretation of it.  
20 We are happy to let Mr. Dempsey and Mr. Schwarz put that  
21 argument on the record in their opening statement and  
22 respond to it if you and the Committee so request. We  
23 just prefer that we not have to brief it.

24           CHMN STAFFORD: All right. Well, the  
25 Underground Arizona's request for denial of disclaimer or

1 jurisdiction has been denied. These are arguments you  
2 can make at the hearing about what the statute means and  
3 how it should apply to this case.

4 MR. DEMPSEY: Okay. Thank you.

5 CHMN STAFFORD: All right. Are there any  
6 other issues we need to address before the hearing on  
7 Monday?

8 MR. SCHWARZ: Is there a time limit on the  
9 opening -- excuse me, on the public comments per comment?

10 CHMN STAFFORD: Yeah. We usually limit it  
11 to about three minutes per person. We'll start the  
12 public comment at 5:30 on Monday evening and run until  
13 everyone's done or about 7:30, whatever occurs first, and  
14 then -- or maybe later, depends how close we are.

15 We may -- I may decide to take public  
16 comment at additional times throughout the hearing. I  
17 may designate a day or two maybe in the second week in  
18 the morning to have -- to open it up if there's enough  
19 interest for people to come in and do it. We can kind of  
20 play that by ear depending on public involvement.

21 But, as takeaways here, we're going to  
22 see -- the applicant's going to get me a spreadsheet with  
23 the party's positions on each segment. And then you were  
24 going to -- the parties were going to discuss amongst  
25 themselves which exhibits could be eliminated as



1 redundant and what official exhibits could be stipulated  
2 to to speed the hearing along.

3 Is that everyone's understanding?

4 MS. GRABEL: Yes, sir.

5 MR. DEMPSEY: Yes.

6 CHMN STAFFORD: Are there any other issues  
7 we need to cover before we adjourn?

8 MR. SCHWARZ: When will the opening  
9 statements occur?

10 CHMN STAFFORD: Well, if you look at the  
11 agenda, we'll have the call to order, roll call, I guess  
12 we won't need to vote on any requests to intervene  
13 because everyone's a party as a matter of right. And  
14 when we'll begin the hearing, we'll start with opening  
15 statements. Typically, it will be the applicant first.  
16 I'm looking at the hearing procedural order. It gives  
17 them 30 minutes and any other party five minutes.

18 MR. SCHWARZ: Thank you.

19 CHMN STAFFORD: All right. Anything else?

20 MS. GRABEL: The only thing, Mr. Chairman,  
21 that I want to let you know is I do have to represent  
22 another client at a rate case at the open meeting on the  
23 10th. I told you this, but I figured for the record I'd  
24 let you know that Ms. Hill will take first chair on that  
25 day in my absence.

1 CHMN STAFFORD: Okay. Remind me on  
2 the 9th.

3 MS. GRABEL: Will do.

4 CHMN STAFFORD: But you'll be back for the  
5 tour on the 11th?

6 MS. GRABEL: I will, yes. That's the thing  
7 I also wanted to ask, Mr. Chairman. Is it all right if  
8 we dress casually during the tour? Because it's going to  
9 be hot on buses.

10 CHMN STAFFORD: Yes.

11 MS. GRABEL: I think the Committee would  
12 like it as well. Okay.

13 CHMN STAFFORD: Yes. It's, yeah, casual.  
14 Not even business casual.

15 MS. GRABEL: Not business casual. Tennis  
16 shoes.

17 CHMN STAFFORD: I'm wearing tennis shoes  
18 the whole.

19 MS. GRABEL: That's true. You do.

20 MR. LUSK: Mr. Chairman, just for the City  
21 of Tucson, we may have some scheduling issues as well.  
22 We can discuss that ad hoc during the hearing. But I may  
23 defer to my colleague Ms. Stash on certain days. Just to  
24 make the Committee aware.

25 CHMN STAFFORD: Okay. So you'll both be

1 there the first day to appear, and then you can switch  
2 out as schedules demand.

3 MR. LUSK: Sure. We can do that.

4 CHMN STAFFORD: All right. Excellent. All  
5 right. Anything else?

6 (No audible response.)

7 CHMN STAFFORD: All right. With that,  
8 let's go off the record.

9 (Proceedings concluded at 4:06 p.m.)

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