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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

WESTERN RESOURCE ADVOCATES, Plaintiff, v. ARIZONA CORPORATION COMMISSION; LEA MARQUEZ PETERSON, in her official capacity as a member of the Arizona Corporation Commission; NICK MYERS, in his official capacity as a member of the Arizona Corporation Commission; JIM O'CONNOR, in his official capacity as a member of the Arizona Corporation Commission; KEVIN THOMPSON, in his official capacity as a member of the Arizona Corporation Commission; and ANNA TOVAR, in her official capacity as a member of the Arizona Corporation Commission, Defendants.	No. _____ **COMPLAINT** (Appeal pursuant to A.R.S. § 40-254) **Tier 3**

Plaintiff Western Resource Advocates ("WRA" or "Plaintiff"), by and through undersigned counsel, and for its complaint against Defendants Arizona Corporation Commission ("ACC" or the "Commission"), Lea Marquez Peterson ("Commissioner Peterson"), Nick Myers ("Commissioner Myers"), Jim O'Connor ("Chairman O'Connor"), Kevin Thompson

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("Commissioner Thompson"), and Anna Tovar ("Commissioner Tovar") (collectively, "Defendants"), alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. WRA is a § 501(c)(3) nonprofit organization focusing on environmental law and policy with offices in five states, including the State of Arizona.

2. The Commission is a five-member publicly elected body created under Article 15 of the Arizona Constitution. Defendants Lea Marquez Peterson, Nick Myers, Jim O'Connor, Kevin Thompson, and Anna Tovar are Commissioners of the ACC and are named solely in their official capacities.

3. The Commission is an agency of the State of Arizona under A.R.S. § 41-1001.

4. The Commission's principal office is located in Maricopa County, Arizona.

5. The actions of the Commission and its members that are the subject of this Complaint occurred in Maricopa County, Arizona.

6. Jurisdiction and venue are proper in this Court pursuant to, inter alia, A.R.S. §§ 40-254(A) and 40-360.07(C).

GENERAL FACT ALLEGATIONS

The ACC's Powers to Regulate Public Service Corporations and the Requirement for a Certificate of Environmental Compatibility

7. The Arizona Constitution established the Commission as a separate, popularly elected branch of state government with judicial, executive, and legislative powers to regulate, set rates, and make reasonable rules for public service corporations in the public interest.[1]

[1] *See State v. Tucson Gas Elec. Light & Power Co.*, 15 Ariz. 294, 300 (1914).

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8. The Commission has jurisdiction over private corporations and "public-service corporations," which the Constitution defines to include "all corporations other than municipal engaged in furnishing gas, oil, or electricity for light, fuel or power." Ariz. Const., art. 15 § 2.

9. The Commission is constitutionally empowered to, among other things, "make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of [public service] corporations." Ariz. Const., art. 15 § 3.

10. Pursuant to Title 40, Article 6.2, which contains the line-siting statutes, the Arizona Power Plant and Transmission Line Siting Committee (the "Committee") was established by the Commission. *See* A.R.S. § 40-360.01.

11. The Committee is comprised of members appointed by the Commission, the State Attorney General, Arizona Department of Water Resources ("ADWR"), Arizona Department of Environmental Quality ("ADEQ"), and the Office of Resiliency.

12. More than half the Committee is comprised of members appointed by the Commission.

13. The legislature explained that it created the Committee specifically to allow "individuals, groups interested in conservation and the protection of the environment, local governments, and other public bodies" with the ability to participate in the decision to locate "major new [generation] facilities" at specific sites. *See* Laws 1971, Ch. 67, § 1 ("Declaration of Policy").

14. Article 6.2 requires that "[e]very utility planning to construct a **plant**, transmission line, or both in this state shall first file with the commission an application for a **certificate of environmental compatibility**" ("CEC"). A.R.S. § 40-360.03 (emphasis added).

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15. A.R.S. § 40-360(9) defines "**plant**" to mean "each separate thermal electric, nuclear or hydroelectric generating unit with a nameplate rating of one hundred megawatts or more. . . ."

16. CEC applications are referred to the Committee "for the committee's review and decision." A.R.S. § 40-360.03.

17. The CEC process is intended "to provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding to which access will be open to interested and affected individuals, groups, county and municipal governments and other public bodies to enable them to participate in these decisions." *See* Declaration of Policy.

18. The filing of a CEC application begins a process which allows the people of Arizona, interested stakeholders, and local governments to voice concerns and collaborate with utilities to minimize the impacts that large energy projects can have on local communities.

UNSE's Project Plans to Add Four Interconnected Turbine Sets that Share Necessary Equipment on the Same Site, Will Affect the Surrounding Community and Environment in the Same Manner, and Will be Treated as a Single "Plant" by UNSE in Other Contexts

19. UNS Electric, Inc. ("UNSE" or the "Company") operates the Black Mountain Generating Station ("BMGS"), a natural-gas-fired power plant located near Kingman, Arizona, that has been in operation since in or around 2007.

20. Currently, BMGS has two natural-gas generator turbine sets, each with a nameplate capacity rating of approximately 61 megawatts ("MW") for a total of 122 MW.

21. It is common for a power plant generating station like BMGS to be comprised of multiple generator sets.

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22. Nameplate capacity rating is the maximum rated output of electricity that a generator, prime mover, or other electric power production equipment can produce under specific conditions designated by the manufacturer.

23. Installed generator nameplate rating is commonly expressed in megawatts and is usually indicated on a nameplate physically attached to the generator.[2]

24. UNSE aims to add **200 MW** of natural-gas-fired generation, comprised of **four additional natural-gas generator turbine sets** (the "Turbine Sets") each with a nameplate capacity rating of approximately 50 MW, to the existing BMGS (the "Black Mountain Expansion Project" or the "Project").

25. The Project and BMGS will be interconnected and located at the same site on the same plot of land, meaning that any logical consideration of the Project's effects on the surrounding community, the environment, nearby recreational areas and scenic or historic sites, the local wildlife, noise pollution, and/or the viability of that land for alternative uses should consider the Turbine Sets **collectively**, rather than individually.

26. The Project is an **interconnected** generating station, with its four Turbine Sets each **dependent** on and **supported by common infrastructure** without which it could not generate and transmit power to the grid.

27. The Turbine Sets will be physically connected and share numerous types of necessary equipment and facilities.

[2] The maximum power output of the generator is usually expressed on the nameplate in kilovolt-amperes ("KVA") which is the total apparent power that the generator can supply (different than real power). KVA can be converted to MW (MW = KVA/1000 * power factor).

28. The Turbine Sets will share cooling towers, to which they will be physically attached through piping and tubing.

29. The Turbine Sets will share and be interconnected with a single ammonia tank.

30. The Turbine Sets will share and be interconnected with a single fuel gas coalescing skid.

31. The Turbine Sets will share and be interconnected with a single raw water tank.

32. The Turbine Sets will share and be interconnected with a single reverse osmosis building and all four Turbine Sets will be served by the same reverse osmosis system.

33. The Turbine Sets will share and be interconnected with a single demineralized water tank and water pumps—a facility which will support auxiliary feed to the system and is necessary to improve efficiency.

34. The Turbine Sets will share and be interconnected with a single air compressor.

35. The Turbine Sets will share and be interconnected with a single raw water forwarding pipe.

36. The Turbine Sets will share and be interconnected with a single evaporation pond.

37. The Turbine Sets will share and be interconnected with a single well.

38. The Turbine Sets will share and be interconnected with a single "bus" of cabling attaching them to the transformers.

39. The Turbine Sets will receive natural gas through a single metering station.

40. The Turbine Sets will share some of these facilities and equipment with the two existing generator turbine sets at BMGS.

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41. The Turbine Sets will be connected to two shared power distribution centers and two shared power control modules.

42. The Turbine Sets will share and be interconnected with the same generator step-up transformers and service station transformers. Their connection to the transformers will be essential for efficient and safe transmission and distribution of electricity to UNSE customers.

43. The Turbine Sets will be connected to the same external gen-tie line running to the site.

44. UNSE will execute a single fuel purchase contract covering all four Turbine Sets, rather than individual fuel purchase contracts for each.

45. UNSE admitted that removing the shared equipment and facilities would result in the Turbine Sets not functioning.

46. UNSE's proposed Turbine Sets will be treated as a single plant by other Arizona and Federal agencies.

47. Arizona Department of Environmental Quality ("AZDEQ") issued a single air permit that presently covers the two existing generator turbine sets and UNSE plans to submit a single air permit application to AZDEQ that will cover all four proposed Turbine Sets.

48. UNSE has consistently reported the two existing generator turbine sets as a single plant in forms submitted to the U.S. Energy Information Administration and UNSE plans to report all four proposed Turbine Sets as a single plant on those same forms.

UNSE Files Application for Disclaimer of Jurisdiction and Asserts Novel Interpretation of A.R.S. § 40-360(9)'s Definition of "Plant"

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49. In accordance with Article 6.2, UNSE was expected to apply for a CEC, given that its Project would add 200 MW of generation which well exceeds the statute's 100-MW threshold.

50. However, in an attempt to evade the CEC requirement, on March 8, 2024, UNSE filed with the Committee an "Application for Disclaimer of Jurisdiction, or, in the Alternative, a Certificate of Environmental Compatibility Authorizing the Expansion of Black Mountain Generating Station, a Natural-Gas-Fired Combustion Turbine Power Plant" (the "Application for Disclaimer").

51. Title 14, Article 2 of the Arizona Administrative Code ("A.C.C.") allows an applicant to file such an Application for Disclaimer "in situations where the applicant is in doubt as to whether an application is required by law. In such circumstances the application shall request a disclaimer of jurisdiction from the Committee or, in the alternative, a [CEC]." A.A.C. R14-3-203(D).

52. UNSE's Application for Disclaimer argued that each 50-MW Turbine Set to be installed at BMGS was itself a separate "plant" under their reading of § 40-360(9)'s definition of the term and that each of these theoretical "plants" were therefore less than 100 MW. Consequently, UNSE argued that the Project did not trigger the need for a CEC.

Decades of Precedent Establishes that UNSE's Self-Serving Interpretation of § 40-360(9) Should be Rejected and that UNSE Should be Required to Apply for a CEC

53. It has been the historic practice of the Committee and Commission to hold that a "plant" includes **all** generator-turbine sets within the same proposed project and that a CEC is required where the total capacity of all generator turbine sets in a single proposed project is greater than 100 MW, regardless of whether each individual generator turbine set has a capacity below 100 MW.

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54. For decades, all parties that had engaged in the CEC process—including utilities, state regulators, intervenors, and members of the public—consistently understood this interpretation of the term "plant" and it has effectively guided the CEC process by ensuring that all "major new [generation] facilities" are built only after determining what effect the *entire* project will have on the surrounding environment and after giving the community and other stakeholders an opportunity to evaluate and mitigate any adverse effects.

55. A multitude of line siting cases exist involving "plants" comprised of generator-turbine sets that were *individually* less than 100 MW but *collectively* over 100 MW; in **all** those cases, the Committee and/or the Commission found that they had jurisdiction over the plants and that the plants were required to comply with the CEC process.

56. Line Siting Case 177, Decision No. 76638 required and granted a CEC for Tucson Electric Power's Rice Generation Plant, which consisted of ten generator-turbine sets with a nameplate capacity of 20 MW each for a total of 200 MW at the time of its CEC application.[3]

57. Line Siting Case 141, Decision No. 70636 required and granted a CEC to the original Coolidge Generating Facility, which consisted of 12 LM6000 PC Sprint simple-cycle natural gas combustion turbine generator sets, each with a nameplate capacity of 48 MW, totaling 575 MW.[4]

58. Line Siting Case 197, Decision No. 79020 required and granted a CEC to the Salt River Project for the expansion of the Coolidge Power Plant, which consisted of generator-turbine sets each with a nameplate capacity of 51.25 MW for a total of 615 MW.[5]

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[3] SC-20, 1; Decision No. 76638, at 5–12.
[4] SC-16, 3; Decision No. 70636, at 3.
[5] SC-15, 2; Decision No. 79020, at 2.

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59. Line Siting Case 107, Decision No. 63863 required and granted a CEC for the Sundance Generating Station, which then consisted of 12 LM6000 generator-turbine sets each less than 100 MW but totaling 540 MW.[6] The Commission has since reaffirmed its jurisdiction over Sundance Generating Station on two additional occasions, including as recently as December 2023.[7]

60. Line Siting Case 133, Decision No. 70108 required a CEC for the Northern Arizona Energy Project where the proposed generating station—a natural gas fired, simple-cycle generating facility like UNSE's Project in this case—had four generator-turbine sets each with a nameplate capacity of 45 MW for a total of 175 MW.[8]

61. Notably, in Line Siting Case 133, the Committee requested a memo from the Commission's Legal Division regarding the exact issue presented by UNSE's Application for Disclaimer in this case—whether the Northern Arizona Energy Project's proposed project would require a CEC given that its individual generator-turbine sets were each less than 100 MW.[9]

62. Commission Staff responded that the answer was unequivocally "**yes**," noting that the generator-turbine sets shared connecting land and infrastructure. Ultimately, the Commission agreed with Staff's assessment, issuing Decision No. 70108 which concluded that the Committee had jurisdiction to consider the application and to grant the CEC.[10]

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[6] SC-19, 3; Decision No. 63863, at 3.
[7] SC-18; Decision No. 67504, at 40, 52; SC 17, 3; Decision No. 79189, at 3.
[8] SC-34, 1–2; SC-33; Decision No. 70108.
[9] *Id.*
[10] *Id.*

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63. These prior cases demonstrate a consistent, historical understanding of § 40-360(9) in which the Commission has rejected UNSE's statutory interpretation time and again, including as recently as December 2023. No other case has ever concluded otherwise.

64. As explained further herein, the Commission's Decision in this case arbitrarily rejected fifty years of concrete precedent and adopted a novel interpretation of the statute without articulating a rational explanation supported by substantial evidence.

The Committee's Denial of UNSE's Request for Disclaimer of Jurisdiction

65. On April 24 and 25, 2024, the Committee held public hearings in accordance with A.R.S. § 40-360, *et seq.*, for the purpose of receiving evidence and deliberating on UNSE's Application for Disclaimer (the "Committee Hearing").

66. Although UNSE's Application for Disclaimer alternatively requested a CEC, the scope of the Committee Hearing was limited to the Application for Disclaimer's request for disclaimer of jurisdiction.

67. The Committee Hearing consisted of evidentiary presentations, public comment, oral argument, and deliberations.

68. WRA was granted intervention status pursuant to A.R.S. § 40-360.05. WRA was present at the Committee Hearing through counsel and participated in opposition to UNSE's Application for Disclaimer. Intervention status was also granted to Sierra Club, Arizona Solar Energy Industry Association ("AriSEIA"), and Southwest Energy Efficiency Project ("SWEEP")—all opposed to UNSE's Application for Disclaimer.

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69. Commission Utilities Division Staff ("Staff") was also granted intervention status pursuant to § 40-360.05 and was present at the Committee Hearing, participating in support of UNSE's Application for Disclaimer.

70. At the conclusion of the Committee Hearing, the Committee voted 9-2 to deny UNSE's Application for Disclaimer after considering the (i) Application for Disclaimer, (ii) evidence, testimony, and exhibits presented by UNSE and Intervenors, (iii) Stipulations of Facts adopted by UNSE and Intervenors, (iv) comments of the public, and (v) legal arguments of the parties.

71. On May 2, 2024, the Committee issued the Order Denying Application for Disclaimer of Jurisdiction (the "Committee's Order"). A true and correct copy of the Committee's Order is attached as **Exhibit 1**.

72. The Committee's Order began by setting forth the Arizona Supreme Court's guidance for statutory interpretation. *See* **Exhibit 1**, at 3–4.

73. First, the reviewer examines the statute's language to determine whether it is clear and unambiguous on its face.[11] This ambiguity analysis asks the reviewer to not just look at the words and phrases in question, but to consider the statutory text **in the context of the entire statute**, any **statements of legislative purpose and intent**, and **dictionary definitions** of important terms.[12]

74. If the statute is "reasonably susceptible to differing interpretations," it is ambiguous and the reviewer must consider **alternative methods of statutory construction** including historical

[11] *Bilke v. State*, 206 Ariz. 462, 464 (2003).

[12] *State v. Sweet*, 143 Ariz. 266, 269 (1985); *Planned Parenthood Ariz., Inc. v. Mayes*, 545 P.3d 892, 897 (Ariz. 2024); *Redgrave v. Ducey*, 493 P.3d 878, 884 (2021).

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background, the statute's spirit and purpose, and the effects and consequences of competing interpretations.[13] *See* **Exhibit 1**, at 3–4.

75. If the statute can only be read in one way—that is, if it is plain and unambiguous on its face—Arizona law **still** mandates that the reviewer consider whether the application of that plain meaning would lead to **impossible** or **absurd** results. If so, the review must consider the alternative methods of statutory construction.[14] *See* **Exhibit 1**, at 6.

76. After setting forth the relevant Arizona law concerning statutory interpretation, the Committee's Order **rejected** UNSE's argument that the statute's definition of "plant" in § 40-360(9) is clear and unambiguous, instead finding it is susceptible to different interpretations and thereby triggering the need to consider alternative methods of statutory construction. *See* **Exhibit 1**, at 4.

77. The Committee determined the statute was ambiguous in part by noting that UNSE's argument ***necessarily*** meant it was susceptible to two interpretations—the **novel** interpretation UNSE was urging the Committee to adopt, and the interpretation that had **existed for decades** as evidenced by the Commission's prior "issuance of CECs in Line Siting Cases 197, 177, 141, 133, and 107 (where the total capacities of the generating stations were greater than 100 MW, but each individual natural gas unit had a nameplate rating below 100 MW)." **Exhibit 1**, at 4.

78. After determining that the statute was ambiguous, the Committee's Order turned to other methods of statutory interpretation, finding:

- That the legislature's 1971 Declaration of Policy for the line-siting statutes declared that the "growing need for electric services" in the State "will require the construction of **major new facilities**";

[13] *Lewis v. Debord*, 238 Ariz. 28, 30–31 (2015); *Planned Parenthood*, 545 P.3d at 897.
[14] *Bilke*, 206 Ariz. at 464.

- That the legislature **clearly drew the line** for what constitutes a "major new facility" as being those with "nameplate rating of one hundred megawatts or more";
- That "the legislature chose 'nameplate rating' as the measure of the size of a plant instead of the plant's actual output because the actual output can vary depending on ambient conditions, such as temperature and elevation, whereas the nameplate rating is set by the manufacturer, is constant, and will always be greater than the actual output of the plant";
- That the legislature's Declaration of Policy also recognized that (i) these types of facilities necessarily affect the physical environment and quality of life of those residing where they are located, (ii) the public has an interest in minimizing such adverse effects, (iii) the then-existing "practices, proceedings, and laws" may be inadequate to protect that interest and take into account the "total effect" on society of such facilities, and (iv) the then-existing law failed to "provide adequate opportunity for individuals, groups interested in conservation and the protection of the environment, local governments, and other public bodies to participate in timely fashion in the decision to locate a specific major facility at a specific site."

Exhibit 1, at 5 (citing Declaration of Policy).

79. After considering the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose, the Committee's Order found:

> The definition of "plant" in A.R.S. § 40-360(9) is "each **separate** . . . generating unit," not each **individual** generating unit. The only logical interpretation of the statute is that if individual generating units share the same site, they are not separate. It is the aggregate of the nameplate ratings of the individual units that determines whether or not a CEC is required. Once the total amount of "thermal electric, nuclear or hydroelectric" nameplate capacity at a specific site reaches 100 MW, regardless of whether it is one 100 MW unit or four 50 MW units, **a CEC is required**. If an existing facility has less than 100 MW of "thermal electric, nuclear or hydroelectric" nameplate capacity and additional thermal electric generating units are added to that site, raising the aggregate nameplate rating to 100 MW or more, **a CEC is required**. This interpretation does not render the term "nameplate rating" in the statute meaningless. Nameplate ratings of individual units located at the same site are routinely aggregated and reported by the U.S Energy Information Administration as the total nameplate capacity for those plants.

Exhibit 1, at 5–6 (emphasis added).

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80. Next, the Committee's Order correctly noted that—under the absurdity doctrine—*even if* UNSE was correct that the statute is clear and unambiguous, that did not foreclose considering the other methods of statutory construction. **Exhibit 1**, at 6.

81. The Committee's Order found that applying the "plain meaning" as interpreted by UNSE would lead to a "transparently absurd result" because it "would require a CEC for a single natural gas unit with nameplate capacity rating of 100 MW but would allow the construction of 1000 MW of small modular nuclear reactors in a residential neighborhood without going through the line siting process to obtain a CEC as long as each individual reactor had a nameplate rating less than 100 MW." **Exhibit 1**, at 6.

82. Finally, the Committee's Order noted the purpose of the Committee and the line siting process is "to provide a single forum for the expeditious resolution of all matters concerning the location of electric generating plants and transmission lines in a single proceeding to which access will be open to interested and affected individuals, groups, county and municipal governments and other public bodies to enable them to participate in these decisions." **Exhibit 1**, at 6.

83. The Committee's Order found that UNSE's interpretation of the statutory definition of "plant" would "circumvent the manifest purpose of the line siting statutes and deprive the people of Arizona who are affected by the construction of these major facilities of their ability to participate in the process to mitigate the adverse impacts on the environment and their quality of life." **Exhibit 1**, at 6–7.

84. The Committee's Order is well-reasoned and thoroughly consistent with Arizona law and provides a legally sound interpretation of the statute in question that not only aligns with how

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the statute has been interpreted for decades but also reflects and compliments the Committee's purpose, which is to balance Arizona's need for additional energy generation with the effect that such generation will have on the surrounding communities.

85. The Committee's Order properly concluded that the Black Mountain Expansion Project is a "plant" under § 40-360(9) and denied UNSE's Application for Disclaimer.

The Commission's Decision Reversing the Committee's Denial of UNSE's Application for Disclaimer of Jurisdiction

86. On May 16, 2024, UNSE filed a request with the Commission to review the Committee's Order pursuant to A.R.S. § 40-360.07 and A.A.C. R14-3-214 ("Request for Review").

87. On June 3, 2024, Staff—a party to the proceeding—filed two "Sample Orders." Sample Order No. 1 reversed the Committee's Order and provided what Staff purported to be the legal rationale behind that denial. Sample Order No. 2 affirmed the Committee's Order.

88. On June 4, 2024, the Commission placed a review of the Committee's Order on the Agenda for the June 11, 2024, Open Meeting (the "Open Meeting").

89. In officially notifying the public of the open meeting topic, the Commission titled the Agenda Item as "Proposed Sample Orders In the Matter of the Application of UNS Electric, Inc. in Conformance with the Requirements of A.R.S. § 40-360, *et seq.*, for a Disclaimer of Jurisdiction, or in the Alternative, a [CEC] Authorizing the Expansion of the BMGS, a Natural Gas-Fired Combustion Turbine Power Plant near Kingman, Arizona in Mohave County. **Commission Approval of Sample Order No. 1**." (emphasis added).

90. On June 6 and 7, 2024, WRA filed (i) a 27-page response to UNSE's Request for Review laying out its legal positions supporting the Committee's Order and (ii) exceptions to Staff's

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Sample Order No. 1 illustrating the clear legal and factual errors contained therein. *See* WRA's Response to UNSE's Request for Review, attached as **Exhibit 2**.

91. The other Intervenors—including SWEEP, Sierra Club, and AriSEIA—also filed exceptions to Sample Order No. 1.

92. On June 11, 2024, the Commission held the Open Meeting.

93. When the Agenda Item for UNSE's Request for Review came up, the Commission heard statements from UNSE, Staff, WRA, SWEEP, Sierra Club, AriSEIA, and various members of the public.

94. Following oral argument and public comments, Chairman O'Connor made a motion to go into Executive Session that was approved by the majority of the Commission.

95. Tom Van Flein, general counsel to the Commission, and Renelle Paladino, the co-director of the utility division, joined the Commissioners in the Executive Session despite their active participation in the Open Meeting in favor of UNSE's Application for Disclaimer.

96. After returning from the Executive Session, the Commissioners voted 4-to-1 along party lines to reverse the Committee's Order and adopted an amended version of Sample Order No. 1, disclaiming jurisdiction over UNSE's Project.

97. On or about June 20, 2024, the Commission docketed Decision No. 79388 (the "Commission's Decision") on the matter. A true and correct copy of the Commission's Decision is attached as **Exhibit 3**.

98. The Commission's Decision was issued without proper authority, runs afoul of Arizona law, resulted from a violation of WRA's due process rights, and is inconsistent with the

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Commission's own constitutional mandates. Moreover, the Decision is arbitrary and capricious, unsupported by substantial evidence, and rises to the level of an abuse of discretion by the Commission.

99. On July 10, 2024, WRA timely filed a "Request for Rehearing" in accordance with A.R.S. § 40-253(A) which set forth the specific grounds on which it was based. *See*, WRA's Request for Rehearing, attached as **Exhibit 4**.

100. On July 30, 2024, after the Commission failed to grant WRA's Request for Rehearing within 20 days, it was deemed denied by operation of law pursuant to § 40-253(A).

101. Having exhausted its administrative remedies, WRA now commences this action in Maricopa County Superior Court against the Commission, seeking to vacate, set aside, and/or reverse the Commission's Decision on the grounds that it unlawfully and unreasonably reversed the Committee's Order and granted UNSE's Application for Disclaimer, pursuant to A.R.S. § 40-254(A).

102. Commission Decision No. 79388 is unlawful and/or unreasonable for the reasons set forth herein and in Plaintiff's Request for Rehearing, which is incorporated by this reference as if fully set forth herein. *See* **Exhibit 4**.

Commission's Decision Has Substantial and Far-Reaching Implications on the Continued Applicability and Effectiveness of the CEC Process

103. The Commission's Decision essentially exempts *any* future singe-cycle peaking generating station built by *any* developer in Arizona from the CEC process, so long as its generating turbine sets are individually below 100 MW. This opens the door for utilities to build major

generation facilities—far exceeding 100 MW in total capacity—yet avoid accountability to the environment and communities they affect.

104. Aside from allowing utilities to skirt the CEC process like UNSE has done in this case, the Commission's Decision also directly calls into question the validity and continued effectiveness of CECs that have already been issued to other utilities.

105. Rather than being a discrete, one-time certification that green lights a utility's project, CECs are effective for a term of years, during which time utilities are to finish constructing the project while ensuring compliance with numerous "conditions" set forth in the CEC. *See, e.g.*, Amended Certificate of Environmental Compatibility, Case No. 197, attached as **Exhibit 5**, at p. 3.

106. Additionally, consistent with their underlying purpose to identify and mitigate adverse impacts of major generation facilities on the environment and surrounding community, CECs impose other conditions that remain effective even after construction is completed and the project is operational. *See, e.g.*, **Exhibit 5**, at p. 4 (emphasis added) ("During the development, construction, **operation**, **maintenance** and **reclamation** of the Project, the Applicant shall comply with [listing standards, regulations, and statutes].").

107. Such conditions include, but are not limited to:

(i) Prohibiting the utility from constructing additional generator turbine sets beyond what they were authorized to build;

(ii) Prohibiting the utility from exceeding annual capacity factor limits;

(iii) Complying with air and water pollution control standards and regulations;

(iv) Complying with applicable federal, state, and local statutes, ordinances, master plans, and regulations of governmental entities having jurisdiction, including but not limited to land use regulations; zoning stipulations and conditions

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including landscaping and dust control requirements; water use, discharge, and/or disposal requirements of ADWR and ADEQ; noise control standards and light control standards; and regulations governing storage and handling of hazardous chemicals and petroleum products;

(v) Complying with Arizona Game and Fish Department guidelines for handling protected animal species, should any be encountered during construction and operation of the project;

(vi) Reporting any archeological, paleontological, or historical site or significant cultural objects discovered during construction or operation of the project to the Director of the Arizona State Museum;

(vii) Establishing a working group of community members and holding regular meetings to discuss and address issues that arise during construction and operation of the project;

(viii) Requiring that certain roads be paved by the utility;

(ix) Requiring that the utility establish annual scholarship programs for community residents;

(x) Requiring that the utility support community efforts to establish certain historical registration designations;

(xi) Requiring the utility to discontinue use of groundwater once the project becomes operational and thereafter use only stored surface water for power plant purposes;

(xii) Complying with all applicable federal, state, and local regulations relating to storage and transportation of chemicals used at the power plant;

(xiii) Maintaining certain safety and emergency plans on file with the city and county and reviewing and updating such plans as necessary;

(xiv) Requiring ongoing emissions monitoring and reporting to the public;

(xv) Investigating, identifying, and correcting all complaints of interference with radio or television signals caused by operation of the project;

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(xvi) Submitting ongoing annual compliance certification letters, identifying progress made with respect to each condition contained in the CEC; and

(xvii) Working with neighbors to the project on an ongoing basis regarding concerns about the impact of the project on residential property values.

See, e.g., **Exhibit 5**, at pp. 4–12 (listing ongoing conditions and obligations).

108. As a result of the Commission's Decision, utilities constructing or operating projects similar to UNSE's Project (*i.e.*, with multiple generating turbine sets below 100 MW individually but collectively over 100 MW) pursuant to an existing CEC may argue that the Committee and/or Commission lacked jurisdiction to issue the CEC in the first place and/or to enforce the CEC's ongoing conditions.

109. Such utilities may argue that they no longer have any obligation to comply with any or all of the conditions set forth in their respective CEC.

110. The Commission's Decision thus impacts not only utilities planning to construct facilities similar to UNSE's Project in the future, but also all utilities who are currently constructing and/or operating such facilities in accordance with a CEC that has already been issued.

COUNT ONE
(Appeal Pursuant to A.R.S. § 40-254)
Unlawful Determination: Action Contrary to Law or in Excess of Jurisdiction or Legal Authority

111. Plaintiff re-alleges and incorporates by reference all allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

112. The Commission exceeded its jurisdiction and legal authority when it considered and granted UNSE's Request for Review and subsequently reversed the Committee's Order and granted UNSE's Application for Disclaimer.

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113. UNSE sought Commission review of the Committee's Order pursuant to A.A.C. R14-3-214 and A.R.S. § 40-360.07, yet neither of these provisions—nor any other provision in the Administrative Code or Article 6.2—provide the Commission with authority to review a Committee decision granting or denying an application for disclaimer of jurisdiction.

114. A.A.C. R14-3-214(D), which creates the disclaimer of jurisdiction procedure, provides that "in situations where the applicant is in doubt as to whether an application is required by law" the applicant may file an application "request[ing] a disclaimer of jurisdiction **from the Committee** or, in the alternative, a [CEC]." (emphasis added).

115. R14-3-214(D) thus does not provide an avenue for an applicant to seek Commission review of the Committee's disclaimer of jurisdiction decision. Instead, it clearly states that only the Committee may grant such a disclaimer. *Compare with* A.A.C. R14-3-214(B) (specifying that "any party" to a CEC proceeding "may request a review thereof by the [] Commission").

116. Likewise, Section 40-360.07(A) only contemplates Commission review of Committee decisions concerning CECs, providing that any utility constructing a plant must first receive a CEC from the Committee, affirmed and approved by an order of the Commission, "except that within fifteen days after the committee has rendered its written decision any party **to a certification proceeding** may request a review of the committee's decision by the commission." (emphasis added).

117. Section 40-360.07(B) requires the Commission to "either **confirm, deny or modify any certificate** granted by the committee, or in the event the committee refused to grant a certificate, the commission may **issue a certificate** to the applicant." (emphasis added).

118. Section 40-360.07 thus contemplates review of only Committee certification

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decisions. It does not provide the Commission with any authority to review Committee decisions concerning disclaimers of jurisdiction.

119. The relevant statutory and regulatory provisions only contemplate Commission review of Committee decisions regarding certification. They do not confer jurisdiction to the Commission to review Committee decisions regarding disclaimers of jurisdiction.

120. The proceedings in this case solely concerned UNSE's request for disclaimer of jurisdiction and cannot be construed as certification proceedings.[15]

121. The Committee's Order denying UNSE's Application for Disclaimer of Jurisdiction was final, and the Commission lacked the authority to review it.

122. The Commission's Decision unlawfully exceeded the scope of the Commission's review authority under A.R.S. § 40-360.07.

Unlawful and Unreasonable Determination: Failure to Apply Correct Standard of Review

123. Plaintiff re-alleges and incorporates by reference all allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

124. A.R.S. § 40-360.07 sets forth the standard of review that the Commission must abide by in reviewing a Committee decision, requiring the Commission to conduct its review "on the basis of the record" and to "comply with the provisions of A.R.S. § 40-360.06 and [] balance, in the broad public interest, the need for an adequate, economical and reliable supply of electrical power with the desire to minimize the effect thereof on the environment and ecology of this state."

[15] Prehearing Conference Tr., 34:15–17 ("[T]his is not a hearing on the CEC application. We're not doing an environmental review in this case. This is just establishing the facts in the application and the legal argument for the disclaimer.").

125. The Commission's Decision failed to apply the correct standard of review by ignoring the record when it found that "The Controlling Facts Are Not in Dispute." *See* Commission's Decision, **Exhibit 3**, at p. 10.

126. Numerous factual issues were disputed including, but not limited to, the independence of the Turbine Sets, the connectedness of the Turbine Sets and generators, the definitions of various terms of art in the statute (such as "generating unit" and "nameplate rating"), and the manner in which UNSE's Project was to be classified.

127. The Commission's Decision also disregarded the record by failing to meaningfully address *the* central issue in this matter: whether the proposed Turbine Sets for the Black Mountain Expansion Project are separate "plants" as that term is defined in A.R.S. § 40-360(9).

128. Instead, the Commission's Decision adopted UNSE's arguments concerning the individual nature of the proposed Turbine Sets while ignoring all evidence to the contrary.

129. The Commission's Decision failed to acknowledge and consider the substantial evidence and argument put forth by Intervenors disproving UNSE's arguments.

130. For example, the Intervenors demonstrated the connected and shared nature of the proposed Turbine Sets through witness testimony which specifically identified necessary equipment shared between and physically connecting the Turbine Sets. *See supra* ¶¶ 26–48. The Commission's Decision does not address this evidence.

131. As another example, the Intervenors pointed to over fifty years of precedent consistently applying § 40-360(9)'s definition of "plant" to include utility projects identical to UNSE's proposed Project. *See supra* ¶¶ 53–64. The Commission's Decision does not acknowledge this concrete precedent, nor explain why it should be rejected now.

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132. By ignoring the record and adopting UNSE's arguments without subjecting them to any meaningful scrutiny, the Commission's Decision failed to comply with the § 40-360.07 standard of review and is arbitrary and unreasonable.

133. The Commission's Decision also failed to comply with the § 40-360.07 standard of review by disregarding the public's interest in balancing the need for electricity with the desire to minimize effects on the environment and the health and safety of affected communities.

134. By **rejecting** UNSE's request for a disclaimer of jurisdiction and requiring UNSE to obtain a CEC for the Project, **the Committee's Order** ensured that the environmental, health, and safety needs of affected communities will continue to be recognized and protected **just as they always have** through the CEC process, while also ensuring that utilities like UNSE are able to build necessary energy facilities so long as they do so after complying with the CEC process.

135. In contrast, by reversing the Committee and disclaiming jurisdiction over UNSE's Project, the Commission's Decision destroys this statutorily mandated balance, not only in this case but also in every future case involving natural gas generating stations with generator turbine sets that are individually under 100 MW but collectively over 100 MW.

136. The Committee's Decision also potentially destroys this statutorily mandated balance in previous cases where CECs were already issued, as utilities may argue that they no longer have any responsibility to comply with the numerous ongoing conditions set forth by the CEC. *See supra* ¶¶ 104–110.

137. During the Open Meeting and in the Commission's Decision, the Commission disavowed § 40-360.07's mandate to consider the broad public interest by repeatedly asserting that "policy concerns" should play no role in considering UNSE's Application for Disclaimer.

138. The Commission's Decision unreasonably and unlawfully disregarded the § 40-360.07 standard of review by ignoring substantial portions of the record and disregarding the public's interest in balancing energy needs with environmental, health, and safety concerns.

Unlawful and Unreasonable Determination: Disregard for and Misapplication of the Rules of Statutory Interpretation

139. Plaintiff re-alleges and incorporates by reference all allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

140. As the Committee correctly stated in its Order, the Arizona Supreme Court's approach to statutory interpretation first asks whether the statute is clear and unambiguous—that is, whether it is susceptible to differing interpretations—while considering the statutory language in the context of the entire statute, any statements of legislative purpose and intent, and dictionary definitions.

141. The Commission's Decision concluded that A.R.S. § 40-360(9) is "plain and unambiguous" **without engaging in any actual ambiguity analysis** whatsoever and instead improperly **assumed unambiguity** from the start.

142. The Commission's Decision failed to acknowledge its obligation to read the language of § 40-360(9) in the context of the entire statute and failed to perform that required analysis.

143. As just one example of surrounding context, A.R.S. § 40-360.09—which provides the fees which developers must pay when submitting a CEC application—describes the fees as being required not for each "plant" but for each "plant **site**" and expressly specifies a different category of fees for "**expansion[s]** of an existing plant site."

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144. Section 40-360.09's reference to "plant site" should have been considered when determining whether ambiguity exists regarding the definition of "plant." A reference to a "site" indicates a geographic footprint as opposed to a generating turbine set. However, the Commission never considered this because it ignored the surrounding statutory context altogether.

145. The Commission's Decision failed to acknowledge or perform its obligation to consider the relevant and available statements of legislative purpose and intent, such as the legislature's 1971 Declaration of Policy for the line-siting statutes.

146. By assuming unambiguity from the start, the Commission failed to even entertain the possibility that the definition—"each separate thermal electric, nuclear or hydroelectric generating unit with a nameplate rating of one hundred megawatts or more"—might be ambiguous because it fails to include the necessary context to clarify how the statute is to be applied to generating stations, which are commonly comprised of multiple generator turbine sets.

147. The Commission's Decision overlooked that the term "separate" in § 40-360(9) is patently unclear. "Separate" could mean not *physically* connected, not *operationally* connected, not on the same plot of land, or simply not located within the same generating station.

148. The Commission's Decision improperly failed to acknowledge that the statute is rendered further ambiguous because of its failure to define key terms of art like "generating unit" and "nameplate rating."

149. The Commission's Decision failed to consider the fact that UNSE was proposing a ***new*** interpretation of the statute, different from how it had been interpreted for more than 50 years, which is itself **proof** that the § 40-360(9) definition is reasonably susceptible to differing interpretations—namely, the reasonable and well-settled interpretation that has been utilized for

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more than 50 years by the Committee and the Commission, and the novel interpretation presented by UNSE.

150. Rather than conducting the required ambiguity analysis, the Commission improperly looked to other jurisdictions to derive the meaning of § 40-360(9). *See* Commission's Decision, at 10. Arizona's rules for statutory interpretation state explicitly what factors should be considered in assessing ambiguity. How other, non-Arizona state legislatures chose to frame their own statutes is **not** one of those factors.

151. The Commission's failure to conduct any meaningful ambiguity analysis with respect to § 40-360(9)'s definition of "plant" was an unlawful, unreasonable, and improper application of Arizona law concerning statutory interpretation.

152. As the Committee correctly recognized in its Order, even if § 40-360(9)'s definition of "plant" was clear and unambiguous, Arizona law still required the Commission to consider whether application of that plain meaning would lead to impossible or absurd results and, if so, consider alternative methods of statutory construction including historical background, the statute's spirit and purpose, and the effects and consequences of competing interpretations.

153. The Commission's Decision failed to meaningfully consider that UNSE's novel interpretation of § 40-360(9) creates, as the Committee recognized, a "transparently absurd result" by "requir[ing] a CEC for a single natural gas unit with nameplate capacity rating 100 MW but allow[ing] the construction of 1000 MW of small modular nuclear reactors in a residential neighborhood without going through the line siting process to obtain a CEC as long as each individual reactor had a nameplate rating less than 100 MW." *See* Committee's Order, **Exhibit 1**, at p. 6.

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154. Likewise, a developer constructing multiple generator turbine sets over 100 MW on the same, single site would have to file multiple CEC applications which would all study the same exact site and consider the effects of such a project on the exact same neighborhood or community—an inefficient and illogical result that is equally absurd.

155. Additionally, utilities which are currently constructing and/or operating a similar project under the terms of an already-issued CEC may argue that the Commission and Committee no longer have jurisdiction over their project and that they therefore no longer have any responsibility to comply with the ongoing conditions of their respective CEC—a perhaps unintended but assuredly absurd result.

156. Instead, the Commission's Decision disregarded the absurdity doctrine altogether, calling it an unnecessary consideration of "hypotheticals" and stating that the doctrine applies only when application of the plain meaning "actually results in an absurdity"—a conclusory and flatly improper recital of Arizona law. Commission's Decision, **Exhibit 3**, at ¶ 57.

157. The Committee was not "creating hypotheticals" but rather taking UNSE's statutory interpretation **to its logical and foreseeable conclusion** to assess whether that interpretation would lead to absurd or impossible results—***exactly*** what Arizona law requires before a purportedly "plain and unambiguous" interpretation can be adopted.

158. It was not the Committee that erred in its application of the absurdity doctrine, but rather the Commission that sidestepped the doctrine to avoid having to meaningfully consider the real implications of UNSE's novel interpretation.

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159. The Commission's failure to consider the absurdity that results from UNSE's novel interpretation of § 40-360(9) was an unlawful, unreasonable, and improper application of Arizona law concerning statutory interpretation.

160. By failing to meaningfully consider the statute's ambiguity and by sidestepping the absurdity doctrine, the Commission avoided step two altogether and adopted UNSE's novel interpretation without considering the alternative methods of statutory interpretation (*i.e.*, historical background, the statute's spirit and purpose, the statute's subject matter, and the effects and consequences of competing interpretations).

161. The Commission's failure to consider the alternative methods of statutory construction in this case amounts to additional reversible error.

162. The Commission's Decision unreasonably and unlawfully disregarded Arizona law regarding statutory interpretation by concluding that § 40-360(9) is plain and unambiguous without engaging in any meaningful ambiguity analysis, by ignoring the absurdity that results from UNSE's novel interpretation of the statute, and by failing to consider alternative methods of statutory construction.

Unlawful and Unreasonable Determination: *Ex Parte* Communications with Staff; Violation of A.A.C. R14-3-113 and WRA's Due Process Rights

163. Plaintiff re-alleges and incorporates by reference all allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

164. The regulations governing practice and procedure before the Commission prohibit any person from making "an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding or siting hearing to a commissioner or commission

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employee involved in the decision-making process for that proceeding or siting hearing." A.A.C. R14-3-113(C)(1).

165. In addition to violating the A.A.C., such *ex parte* communications violate due process by precluding parties from obtaining fair and impartial hearings.[16]

166. On April 10, 2024, Staff filed Notice of Intent to be a Party.

167. On April 16, 2024, Tom Van Flein, general counsel to the Commission, filed a letter which directly indicates that he is personally involved in the processing of the proceeding and that Staff was preliminarily concluding that no jurisdiction exists. *See* April 16, 2024 Letter, attached hereto as **Exhibit 6**.

168. Staff was granted intervenor status and, on April 24 and 25, Staff robustly participated in the Committee Hearing.

169. On June 3, 2024, Staff, now a party to the proceeding, filed two Sample Orders, including Sample Order No. 1 which reversed the Committee's Order and was ultimately adopted by the Commission after minor amendments.

170. During the June 11th Open Meeting before the Commission, Van Flein provided legal argument and suggested that he was speaking not for himself, but for Staff more broadly when he advocated on Staff's behalf that Sample Order No. 1 "chose a threshold that ***Staff thinks*** the Commission is obligated to follow. . . ." (emphasis added).

[16] *See Corbin v. Ariz. Corp. Comm'n*, 143 Ariz. 219, 226 (Ct. App. 1984); *W. Gillette, Inc. v. Ariz. Corp. Comm'n*, 121 Ariz. 541, 542–43 (Ct. App. 1979); *Morgan v. United States*, 58 S. Ct. 773 (1938) ("[A] 'fair hearing' is denied in quasi-judicial administrative proceedings when the finder of fact reaches his [or her] decision after ex parte communications from one side").

171. Renelle Paladino, the co-director of Staff, later stated that "Staff did work with legal in their preparation for the line siting hearing and ***Staff's position is represented by legal***." (emphasis added).

172. Following oral argument and public comments, the Commissioners went into an Executive Session following oral argument and public comments.

173. An Executive Session is, by definition, not open to the public in any capacity. *See* Rules of Procedure for ACC Open Meetings, Rule 3 ("Executive Session").

174. Van Flein and Paladino joined the Commissioners in the Executive Session.

175. Neither Van Flein nor Paladino qualify as "non-party staff," as each actively participated in Staff's preparation for the Open Meeting and provided argument and statements at the Open Meeting.

176. Notably, Commissioner Tovar expressed concern herself about the Executive Session with Staff's participation, asking prior to the Executive Session whether Van Flein was going to reiterate the legal advice he had already provided on the record.

177. Ignoring Commissioner Tovar's concerns, Commissioner O'Connor stated, "Let's go to the Executive Session and find out what he's got to say!"

178. When the Commission returned from the Executive Session, they promptly voted 4-to-1 to reverse the Committee's Order and grant UNSE's Application for Disclaimer, with Commissioner Tovar the only one in dissent.

179. The Commission engaged in direct communications off the record with the legal representatives of Staff, a party to the proceeding, and thereby violated the A.A.C's prohibition of

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ex parte communications and the due process rights of all parties not represented in the Executive Session.

Unlawful and Unreasonable Determination: Failure to Issue a Reasonable Order; Violation of Ariz. Const., art. 15, § 3

180. Plaintiff re-alleges and incorporates by reference all allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

181. Article 15, § 3 of Arizona's Constitution mandates that the Commission "make and enforce **reasonable** rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of [public service] corporations." (emphasis added).

182. The Commission's Decision is unreasonable because it fails to apply the correct legal standards, omits and ignores key provisions of the law governing statutory interpretation, ignores decades of established precedent, disregards the evidence in the record, departs from decades of precedent without explanation, and violates the due process rights of WRA and other Intervenors as a result of improper *ex parte* communications.

183. The Commission's Decision disregards the comfort, safety, and health of UNSE's patrons and the patrons of every other utility seeking to build a single-cycle peaker plant using multiple generator turbine sets each less than 100 MW (but collectively greater than 100 MW) in the future by removing this essential environmental review.

184. The Commission's Decision also disregards the comfort, safety, and health of the patrons of every utility currently constructing and/or operating a single-cycle peaker plant using multiple generator turbine sets each less than 100 MW (but collectively greater than 100 MW)

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pursuant to an existing CEC to the extent such utilities argue that they no longer have any responsibility to comply with the CEC's ongoing conditions and obligations.

185. The Commission's Decision violated its constitutional mandate to enact and enforce reasonable orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of public service corporations.

Unlawful and Unreasonable Determination: Commission's Reasoning is Arbitrary and Capricious, Unsupported by Substantial Evidence, and Constitutes an Abuse of Discretion

186. Plaintiff re-alleges and incorporates by reference all allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

187. Arbitrary action means "unreasoning action, without consideration and in disregard of the facts and circumstances."[17]

188. An agency abuses its discretion by acting arbitrarily and capriciously when it lacks substantial evidence to support its decision, and "when it does not examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choices made."[18]

189. An **unexplained departure from agency precedent** is arbitrary and capricious.[19]

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[17] *Pima Cnty. v. Pima Cnty. Merit Sys. Com'n*, 189 Ariz. 566, 568 (Ct. App. 1997).

[18] *Schmitz v. Ariz. State Bd. of Dental Examiners*, 141 Ariz. 37, 40 (Ct. App. 1984); *Compassionate Care Dispensary, Inc. v. Ariz. Dep't of Health Servs.*, 244 Ariz. 205, 213 (Ct. App. 2018) (quotations and citation omitted).

[19] *See Atchison, T. & S. F. Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973) (agency has "duty to explain its departure from prior norms"); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016) (holding that agency must "at least display awareness that it is changing position" and "show that there are good reasons for the new policy," and that "an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice."); *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017) ("A central principle of administrative law is that, when an agency decides to depart from decades-

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190. The Commission's Decision is arbitrary and capricious because it overturns fifty years of Committee and/or Commission practice and precedent without articulating a rational explanation for its adoption of UNSE's novel interpretation of the statute.

191. Rather than conducting a proper statutory interpretation analysis, the Commission's Decision took UNSE's novel interpretation and treated it as though it was the status quo, repeatedly mischaracterizing the Committee's rejection of the interpretation as an "exhaustive effort to rewrite" the statute and a gross, unsupported expansion of the Committee's jurisdiction. *See, e.g.*, Commission's Decision, **Exhibit 3**, at ¶¶ 42, 45, & 51.

192. The Committee did not expand its jurisdiction but rather interpreted and applied the statute's definition of "plant" exactly how the Committee—and the Commission—had interpreted and applied it for decades.

193. Rather than engaging in a meaningful statutory interpretation analysis and discussing the evidence disproving UNSE's novel interpretation of the statute, the Commission's Decision treats the statute's definition of "plant" as though it can only be understood in one way and uses the remainder of its analysis to falsely characterize this as a dispute over whether the Committee properly "expanded" its jurisdiction when it rejected UNSE's Application for Disclaimer.

194. The Commission's Decision is also arbitrary and capricious because it is completely unsupported by substantial evidence.

195. The Commission ignored ample evidence in the record that the proposed Turbine Sets for the Black Mountain Expansion Project are **interconnected** and **dependent** on the same

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long past practices and official policies, the agency must at a minimum acknowledge the change and offer a reasoned explanation for it.").

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shared equipment and facilities. *See supra* ¶¶ 26–48. Such evidence disproves UNSE's assertion that the proposed Turbine Sets for the Black Mountain Expansion Project are "separate" as necessitated by the statute for the Turbine Sets to be a "plant." *See* WRA's Request for Rehearing, **Exhibit 4**, at pp. 34–37 (listing evidence in record that was ignored by the Commission).

196. The Commission also ignored evidence in the record demonstrating that UNSE's own treatment of its facility in other contexts is at odds with the statutory interpretation UNSE urged before the Committee and the Commission. *See supra* ¶¶ 44, 46–48; *see also* WRA's Request for Rehearing, **Exhibit 4**, at p. 38.

197. The Commission's Decision is also arbitrary and capricious because it unreasonably deprives the statutory CEC process of its full effect.

198. The CEC process is concerned with the effect that **major generation facilities** have on surrounding communities and the environment, but the Commission's Decision allows a generation facility to employ an **infinite** number of generator turbine sets (each adding to the cumulative effects on the community and environment) without obtaining a CEC so long as each of those turbine sets is below 100 MW.

199. By suddenly deviating from a decades-old interpretation and application of Article 6.2, the Commission's Decision unreasonably limits the opportunity for stakeholders and communities to evaluate the effects that **major generation facilities** will have on the environment and surrounding community including the various factors that are statutorily mandated under A.R.S. § 40-360.06. Indeed, considering these issues is the entire purpose of the CEC process.

200. The Commission's Decision allows utilities like UNSE to build major generation facilities without having to comply with the CEC process and thereby depriving stakeholders and

communities of the ability to be heard on matters that may adversely affect them. Such a deprivation is unreasonable, arbitrary, and capricious.

201. The Commission's Decision also allows utilities already constructing and/or operating major generation facilities pursuant to an existing CEC to potentially ignore any or all of the conditions and obligations imposed by that CEC to the extent they argue that neither the Commission nor the Committee have any jurisdiction over their project. Such an upheaval of the CEC process is unreasonable, arbitrary, and capricious.

202. The Commission's Decision is arbitrary and capricious, unsupported by substantial evidence, and constitutes an abuse of discretion because it contains a multitude of procedural, factual, and legal errors including the Commission's disregard for the factual record, its failure to conduct a proper statutory interpretation analysis under Arizona law, its improper *ex parte* communications, and its abdication of its role in carrying out the purposes of Article 6.2 and the CEC process by opening the door for utilities to avoid accountability to the communities they affect when they build a major generation facility.

PRAYER FOR RELIEF

Based on the foregoing, Plaintiff requests that the Court grant the following relief:

a. Vacate, set aside, and reverse the Commission's Decision No. 79388 as unlawful and/or unreasonable;

b. To the extent the Commission did not have authority to review the Committee's Order in the first place, remand the matter to the Commission with instructions

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to remand the matter to the Committee for further proceedings regarding UNSE's alternative request for a CEC;

c. To the extent the Commission did have authority to review the Committee's Order, remand the matter to the Commission with instructions to (i) affirm, approve, and confirm the Committee's Order, (ii) deny UNSE's Application for Disclaimer to the extent it seeks a disclaimer of jurisdiction, and (iii) remand the matter to the Committee for further proceedings regarding UNSE's alternative request for a CEC;

d. Award WRA its attorneys' fees and costs incurred in bringing this action, pursuant to A.R.S. §§ 12-348, 12-1840, and other applicable statutes, as well as prejudgment and post judgment interest; and

e. Grant such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 29th day of August, 2024.

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By */s/ Shelton L. Freeman*
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