

1 BEFORE THE ARIZONA POWER PLANT LS-321

2 AND TRANSMISSION LINE SITING COMMITTEE

3

4 IN THE MATTER OF THE ) DOCKET NO.  
 APPLICATION OF RWE ) L-21261A-23-0219-00225  
 5 RENEWABLES DEVELOPMENT, LLC, )  
 IN CONFORMANCE WITH THE ) LS CASE NO. 225  
 6 REQUIREMENTS OF ARIZONA )  
 REVISED STATUTES, SECTIONS )  
 7 40-360, ET. SEQ., FOR ) PREHEARING CONFERENCE  
 CERTIFICATES OF )  
 8 ENVIRONMENTAL COMPATIBILITY )  
 AUTHORIZING THE FORGED ETHIC )  
 9 WIND ENERGY INTERCONNECTION )  
 PROJECT LOCATED IN COCONINO )  
 10 COUNTY, ARIZONA. )  
 )

11

12 At: Phoenix, Arizona

13 Date: August 29, 2023

14 Filed: September 1, 2023

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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(Pages 1 through 23)

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INDEX TO EXHIBITS

NUMBER	DESCRIPTION	IDENTIFIED	ADMITTED
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None

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 2:02 p.m. on August 29, 2023,  
5 with all participants appearing via videoconference.

6

7 BEFORE: ADAM STAFFORD, Chairman

8

9 APPEARANCES:

10 For the Applicant:

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12 Acken Law  
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14 Suite 1-172  
15 Phoenix, Arizona 85020

16

For the Intervenor:

17

18 PINNACLE WEST CAPITAL CORPORATION  
19 Linda J. Benally, Senior Attorney  
20 Jennifer Spina, Associate General Counsel  
21 400 North 5th Street, MS 8695  
22 Phoenix, Arizona 85004

23

24 ALSO PRESENT:

25 Zach Nelson, RWE  
Kimberly Camacho, RWE  
Dean Hazle, SWCA Environmental Consultants  
Jason Spitzkoff, APS  
Kelly Spence, APS  
Tod Brewer, Assistant to Chairman Stafford  
Lisa Glennie, Glennie Reporting Services, LLC

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

3 Now is the time set for the prehearing  
4 conference in the application of RWE Renewables  
5 Development, LLC, for a Certificate of Environmental  
6 Compatibility, Docket Number L-21261A-23-0219-00225 or, as  
7 we refer to it, Line Siting Case 225.

8 Let's start by taking appearances from the  
9 applicant and then APS.

10 MR. ACKEN: Thank you, Mr. Chairman. I  
11 certainly like the line siting's conventions for case  
12 numbers. That's a lot easier for me to remember.

13 Bert Acken of Acken Law on behalf of the  
14 applicant RWE Renewables Development, LLC. With me today  
15 is Zach Nelson and Kimberly Camacho of RWE; and Dean Hazle  
16 of SWCA, who has been a project manager for the  
17 environmental studies and the application for this  
18 process.

19 CHMN. STAFFORD: Can you identify -- Okay.  
20 Never mind. That's the court reporter.

21 And Ms. Benally?

22 MS. BENALLY: Good afternoon, Mr. Chairman.  
23 It's nice to -- to be on a call with the team today.

24 I -- my name is Linda Benally. I am here  
25 representing Arizona Public Service Company. We have

1 filed a motion to intervene in the case and will be  
2 appearing at the hearing. We will request that the chair  
3 and the Commission grant our intervention. With me on the  
4 call is Jason Spitzkoff, who is -- who you heard from  
5 before in the prior case. He will be the subject matter  
6 expert or witness, if you will, if there is a need to  
7 respond to questions on behalf of -- by the -- during the  
8 course of the hearing. The other individual who isn't on  
9 the call right now is Jennifer Spina. She is co-counsel.  
10 She is in-house counsel in the law department at APS.  
11 Thank you.

12 CHMN. STAFFORD: Thank you.

13 All right. So do we all agree that  
14 January 20th of '24 is the time limit for the Committee to  
15 act in compliance with the A.R.S. 40-360.04(D)?

16 MR. ACKEN: Yes.

17 CHMN. STAFFORD: And the applicant has  
18 complied with the notice of affected jurisdictions as  
19 required by the procedural order?

20 MR. ACKEN: We have. There's a little  
21 nuance on that. You know, typically the notice of  
22 affected jurisdictions is actually sent out by Dockets  
23 after they receive the notice from the applicant's  
24 counsel. That was done. And so there are two affected  
25 jurisdictions: State Land and Coconino County. Dockets

1 did send those notices out, but if you look in the docket  
2 itself there's no response from State Land. And so we  
3 weren't sure what happened there, but Mr. Hazle was able  
4 to do some reconnaissance and determine that the certified  
5 mail receipt from State Land for this project was -- was  
6 attached to the certified mail receipt for Case 224. And  
7 so, you know, we'll address that in the testimony. It's a  
8 long way of saying yes, but if you're looking in the  
9 docket for it that's why you won't see it.

10 CHMN. STAFFORD: Well, it's attached to your  
11 outreach summary, isn't it?

12 MR. HAZLE: Yes, it is. It is attached to  
13 the summary. And the version that you see attached to the  
14 summary was downloaded from the docket room for  
15 Case 224.

16 CHMN. STAFFORD: Okay.

17 MR. HAZLE: That's the origin of that image  
18 you are seeing in the summary exhibit.

19 CHMN STAFFORD: All right. Okay. But the  
20 result, what you're saying, is that the notice provision  
21 has been complied with.

22 MR. ACKEN: Correct.

23 CHMN. STAFFORD: And then you also said that  
24 you complied with the (indecipherable) publishing --

25 THE COURT REPORTER: I'm sorry, I didn't

1 hear that.

2 CHMN. STAFFORD: Oh, yes. And it's also  
3 that you have -- you have complied with the publishing  
4 notice requirement in the Daily Sun July 29th and  
5 August 1st; correct?

6 MR. ACKEN: That's correct.

7 CHMN. STAFFORD: Now, I'm assuming both you,  
8 Mr. Acken, and you, Ms. Benally, have reviewed the agenda.

9 MR. ACKEN: I have.

10 MS. BENALLY: Yes, Chairman.

11 CHMN. STAFFORD: Thank you.

12 Any objections or additions?

13 MR. ACKEN: No, Mr. Chairman.

14 MS. BENALLY: No, Mr. Chairman.

15 CHMN. STAFFORD: Thank you.

16 All right. So the hearing -- We're set to  
17 start next Tuesday in Flagstaff; correct?

18 MR. ACKEN: Yes. At the High Country  
19 Conference Center there. We're in an auxiliary space,  
20 that 1899 space, but it's affiliated with the High Country  
21 Conference Center, adjacent to the Drury Inn. It's in  
22 that complex.

23 CHMN. STAFFORD: Okay. And we currently  
24 have the hearing set for two days; right? That should be  
25 sufficient?

1 MR. ACKEN: Yes.

2 And I'm sorry, I think Jill has got a  
3 question. I'm getting a lot of feedback, too, Jill.

4 Thank you, Linda.

5 CHMN STAFFORD: Can we hear now? Is it  
6 good?

7 Okay. Please proceed, Mr. Acken.

8 MR. ACKEN: So, yes, just to recap, we are  
9 going to be in the auxiliary space for the High Country  
10 Conference Center. Beautiful facility that the Committee  
11 has heard numerous cases at. We'll be in the 1899  
12 conference space. I had a case, 1 -- Oh, shoot. 182 was  
13 there. And so it's a little bit more intimate space, but  
14 it certainly gets the job done. And then it's adjacent,  
15 again, to the Drury where we have lodging for the  
16 Committee members.

17 CHMN. STAFFORD: Okay. That's another thing  
18 on my list, to confirm that you have the lodging  
19 arrangements made for the Committee members. Excellent.

20 And so you have -- I assuming we're using  
21 the same AV company that we use.

22 MR. ACKEN: We are.

23 CHMN. STAFFORD: Okay.

24 MR. ACKEN: Peaks -- Peaks comes to us  
25 originally from the High Country Conference Center.



1 That's how I first met them.

2 CHMN STAFFORD: Oh.

3 MR. ACKEN: And so they do a lot of work up  
4 there and so we're on their home turf and they are  
5 prepared and ready to go.

6 CHMN. STAFFORD: All right. And you'll have  
7 sign-in forms for public comment?

8 MR. ACKEN: We will.

9 CHMN. STAFFORD: With a wish to speak?

10 MR. ACKEN: Forms that make sense. Yes, we  
11 will.

12 CHMN. STAFFORD: Excellent. All right. And  
13 the public comment's set for 5:30 on Tuesday evening?

14 MR. ACKEN: Yes.

15 CHMN. STAFFORD: It will be business casual  
16 for attire for the hearing. And then --

17 MR. ACKEN: Thank you.

18 CHMN. STAFFORD: All right. So I don't  
19 suppose there's any like issues of dispute between APS and  
20 the applicant.

21 MR. ACKEN: No, I certainly hope not. I  
22 mean, you know, we're seeking two CECs. One for the APS  
23 switchyard so that we can specifically assign it to them.  
24 We have been in coordination with Ms. Benally and  
25 Ms. Spina regarding the form of that. Now, did they have

1 a whole lot of time to review? No. And so there may --  
2 they may have some additional edits. Then -- and pursuant  
3 to the procedural order, we're going to work with them on  
4 that.

5 (Ms. Spina joined the hearing via  
6 videoconference.)

7 MR. ACKEN: I have given them most -- or I  
8 should say many of our exhibits. We're still fine-tuning  
9 a couple of the hearing slide decks, and so I've got a  
10 commitment to them to get those as soon as they are ready,  
11 as well as, you know, there's one or two exhibits that we  
12 don't have in our hands yet that we will provide to them  
13 on receipt.

14 But from our standpoint there's no  
15 conflicts. You know, we're doing this in a very  
16 collaborative fashion with the goal of getting a -- two  
17 CECs. One that APS can use for their own purposes for the  
18 interconnection.

19 CHMN. STAFFORD: All right. So you haven't  
20 completed exchanging the witness -- the exhibits yet then?

21 MR. ACKEN: That's correct. So I have yet  
22 to share our hearing slides, which are going through final  
23 review both for our main deck and our potential  
24 supplementary witness, and I'm still awaiting a staff  
25 letter response.

1 CHMN. STAFFORD: Okay. And when will you  
2 have those?

3 MR. ACKEN: I am shooting to have the  
4 hearing exhibit slides to the APS team by tomorrow. I  
5 mean, I could -- I could send them a draft now if they  
6 wanted to. I just thought it would be easier if I just  
7 sent them something that we felt was final.

8 Same with the supplementary witness slides  
9 for the witness that we are holding in reserve.

10 As far as the staff letter, you know, I've  
11 been in close conversations with ACC legal. My  
12 understanding is that that letter is done and just  
13 awaiting final review. So as soon as I have it it will be  
14 forwarded.

15 CHMN. STAFFORD: All right. So staff, they  
16 intend to file their response prior to the hearing?

17 MR. ACKEN: They -- Yes. That's my  
18 understanding. That's my ask of them. And I have been in  
19 very close contact with them, as you might imagine, in  
20 light of what happened in another recent case.

21 CHMN. STAFFORD: All right. And you have  
22 made the financial arrangements with the Commission?

23 MR. ACKEN: Yes, we have.

24 CHMN. STAFFORD: Excellent.

25 And then, Ms. Benally, have you -- do you

1 have any exhibits? Do you need to exchange those with the  
2 applicant as well?

3 MS. BENALLY: Mr. Chairman, APS does not  
4 have any exhibits that we will be producing for the  
5 hearing. We do have the witness summary, which was filed  
6 in docket and shared with Mr. Acken.

7 We have been working collaboratively with  
8 the applicant in this case. And in answer to sort of the  
9 initial question about any disputes in the case, I  
10 don't -- there are none identified at this time. I don't  
11 anticipate any at hearing.

12 I'll also state further, Mr. Chairman, that  
13 APS does not intend to put on a direct case. We're really  
14 intervening in the sense of the fact that there will be a  
15 CEC that will be transferred to APS at a future date.

16 CHMN. STAFFORD: Yes. And in all  
17 likelihood -- Well, I'm sure the Committee will have  
18 questions for Mr. Spitzkoff.

19 MS. BENALLY: And we will be prepared to lay  
20 the foundation for his participation and answer any  
21 questions the Committee or you have.

22 CHMN. STAFFORD: All right. So in case you  
23 do want to introduce anything the numbering convention for  
24 your exhibits will be APS-1 and so forth.

25 MS. BENALLY: Noted, Mr. Chair.

1 CHMN. STAFFORD: All right. Now, the one  
2 thing I'm not seeing in the procedural order is in  
3 Paragraph 19 about a tour protocol.

4 MR. HAZLE: I apologize, that slipped  
5 through. I think I have a draft of that but did not  
6 finalize it in time for today's meeting. We could get it  
7 by end of day today, though.

8 CHMN. STAFFORD: All right. That will work.

9 MR. HAZLE: Apologies.

10 CHMN. STAFFORD: Given the remote setting I  
11 think that an actual, physical tour is unlikely, but still  
12 we need to be prepared.

13 MR. HAZLE: Uh-huh.

14 CHMN. STAFFORD: All right. And then you  
15 sent us the proposed CEC?

16 MR. ACKEN: Yeah, two of them for this  
17 project.

18 CHMN. STAFFORD: Yes.

19 MR. ACKEN: Both in PDF and Word.

20 CHMN. STAFFORD: And then, APS, you have no  
21 objections to or disagreement with the draft CECs filed by  
22 the applicant?

23 MS. BENALLY: Mr. Chair, we have been  
24 working collaboratively with Mr. Acken and his client, so  
25 our changes have been proposed and incorporated into the

1 CEC 2 that's going to be applied to APS.

2 CHMN. STAFFORD: Excellent. Thank you.

3 MR. ACKEN: And let me just add, you know, I  
4 appreciate that. It certainly was our goal and intent to  
5 incorporate everything that needed to be. If it turns out  
6 that we missed something, you know, we'll -- we're going  
7 to coordinate and we will certainly let the Committee know  
8 if there's any updates.

9 CHMN. STAFFORD: All right. Now, you --  
10 Now, the wind facility's already got the permit or is  
11 pending but then the line itself doesn't require a permit?  
12 Is that -- Is my recollection correct?

13 MR. ACKEN: It has -- Neither the wind nor  
14 the line have gone through a County entitlement process.  
15 Mr. Hazle can correct me. He's more familiar with the  
16 County entitlement process, but I do think they include  
17 the line in Coconino County. He's shaking his head yes.  
18 But that process is under development but not yet  
19 submitted.

20 CHMN. STAFFORD: So there's -- The  
21 conditional use permit application is --

22 MR. ACKEN: To be filed.

23 CHMN. STAFFORD: Has it -- has it been filed  
24 with the County or not?

25 MR. ACKEN: It has not.

1 CHMN. STAFFORD: Okay. And the line  
2 doesn't -- doesn't need a permit; correct?

3 MR. HAZLE: The Coconino County CUP process  
4 includes the gen-tie. That's different from many other  
5 counties in Arizona.

6 MR. ACKEN: I may have a different view as  
7 to whether that is legally appropriate, but that's -- you  
8 know, that is how they approach it. And it's not the  
9 applicant's intent to fight that battle.

10 CHMN. STAFFORD: Okay. So the special use  
11 permit under the -- for Coconino County will include both  
12 the plant and the line then? Okay.

13 MR. ACKEN: Correct. It's called a  
14 conditional use permit with Coconino. So when you hear  
15 the testimony, that's what you will hear.

16 CHMN. STAFFORD: Excellent.

17 And then the NEPA process, that's --

18 MR. ACKEN: So that will be pending.  
19 Hasn't -- hasn't -- Waiting the results of a system impact  
20 study. So, you know, some preliminary work has been done.  
21 We'll testify as to that. We'll be prepared to testify as  
22 to what our expectations are for that process, based on  
23 the team's experience in this area with other projects  
24 that are going through that process. But the Bureau of  
25 Reclamation will not move forward until a system impact

1 study in place.

2 CHMN. STAFFORD: All right. And I see on  
3 your witness list you have a Mr. Stephen Foster from  
4 R.K. Saline & Associates.

5 MR. ACKEN: Yes. So Mr. Foster is with  
6 K.R. Saline. So before the situation occurred in  
7 Case 222, the RWE team had already commissioned the  
8 preliminary feasibility study from K.R. Saline that  
9 contained a power flow stability -- no, power flow and  
10 short-circuit analysis. Okay? So that was done in  
11 July by K.R. Saline. That was provided to Commission  
12 staff in response to a data request. It has since been  
13 supplemented and the supplement has been provided to  
14 Commission staff to include the results of a stability  
15 analysis as well.

16 So, you know, I want to be very clear that  
17 we have a different factual predicate in Case 222.

18 Now, I also want to be very clear that my  
19 legal position is that a power flow and stability analysis  
20 is not legally required for a CEC application. But  
21 understanding that the -- And I plan to preserve that  
22 argument. But notwithstanding that, you know, we are --  
23 we do have a power flow and stability analysis that we  
24 will present the results from. We will not present the  
25 power flow and stability analysis itself because it



1 contains critical energy infrastructure information and  
2 cannot be shared in a public forum. But certainly we can  
3 provide a summary of the results. Our plan is to do that  
4 with the testimony of Mr. Nelson, who has reviewed the  
5 reports and spoken with Mr. Foster, and see if we can  
6 address it then.

7 But, again, I do -- I am concerned -- I  
8 think is a fair word -- for what happened in Case 222. I  
9 think -- In a couple ways. I think that there was -- In  
10 some respects there was a drift into a NEPA-type analysis  
11 of, well, we can't act as the Committee, you know, for the  
12 same reasons that Reclamation can't act. And as you know,  
13 we don't do connected actions in line siting matters. We  
14 never have. Otherwise, you would be reviewing the wind  
15 turbines.

16 And so there's a long-standing precedent,  
17 and I think it's legally correct, that we don't look at  
18 connected actions. And so that kind of NEPA analysis is  
19 not appropriate.

20 And then at the appropriate time I'd like to  
21 give you -- share my thoughts on why I don't think a  
22 system impact study and power flow and stability analysis  
23 is part of the Committee's jurisdiction. I want to get  
24 that on the record even though we have it. I don't want  
25 us -- I am very concerned about not getting this done in a

1 timely fashion or some -- being delayed because the other  
2 one is. We have different facts. We have a power flow  
3 and stability analysis. So even if the Committee  
4 disagrees with me on the legal authority to consider it,  
5 you will have that information to consider it. But I  
6 definitely want to preserve the argument that it's not  
7 appropriate for the Committee's review.

8 So with that said, how would you like me to  
9 present that? Because I really want to leave next  
10 Wednesday with a decision from the Committee. I know you  
11 are briefing the issue in a different matter, but I would  
12 like to address this matter now as it relates to this  
13 project and its separate set of facts.

14 CHMN. STAFFORD: All right. Well, I think  
15 you can certainly do that in your presentation in your  
16 closing. I guess the closing would probably be more  
17 appropriate for the legal argument. But, yeah.

18 MR. ACKEN: Okay.

19 CHMN. STAFFORD: Are you intending to file  
20 briefs in the other matter, the 222?

21 MR. ACKEN: My hope is I don't have to. I  
22 have -- Again, I have different facts. And I hope that by  
23 Wednesday I will have a Certificate of Environmental  
24 Compatibility issued by this Committee and by Friday I'll  
25 have it in the other one and it will be a moot issue,

1 again, because of the different facts. So that's my plan.  
2 You know, if things change, you know, we'll be prepared to  
3 address, but I very much want to get in the record in this  
4 proceeding our legal position.

5 Now, I understand what you are saying about  
6 doing it in closing argument. I'm a little concerned  
7 about doing it in closing because it's, you know, late in  
8 the day and the Committee will want to take it under  
9 advisement. Is it -- Can I file like a legal brief on  
10 jurisdiction now? Can I give it -- to you, my thoughts,  
11 in the prehearing conference? I would very much like the  
12 Committee to have my perspective on that before they get  
13 together on Tuesday.

14 CHMN. STAFFORD: Yes, by all means. If you  
15 would -- if you would like to file a brief addressing the  
16 legal issue, I would certainly welcome that in advance of  
17 the hearing.

18 MR. ACKEN: Okay. Then -- then what I  
19 will -- Thank you for the opportunity.

20 And so what I will do -- I had some talking  
21 points today. I will plan to file a brief. And it may be  
22 a joint brief in both dockets, but that is something I can  
23 figure out. But it just kind of sets forth our legal  
24 argument for why it's not legally required. But, again,  
25 you know, I don't want to lose sight of you have -- you

1 will -- the Committee will have power flow and stability  
2 analyses in front of them in both cases on which to make a  
3 decision, even if they disagree with my legal position.

4 CHMN. STAFFORD: All right. I think it's --  
5 I think it's important that the Committee address the  
6 legal issue and render a decision that's consistent with  
7 the law and the facts and that will be -- be able to apply  
8 universally to applicants moving forward. But certainly,  
9 you know, from your perspective I understand that you  
10 are -- you are limited to the facts of this case and this  
11 is your client and this is whose interest you are  
12 primarily concerned with this time.

13 MR. ACKEN: Well, and that's why, you know,  
14 I understand the Committee may be reluctant to weigh on  
15 the ultimate legal questions until the briefing in that  
16 other matter is complete. And so that's why I'm going to  
17 preserve the argument, but we're also going to give them  
18 that information so that there is a -- no matter which way  
19 the Committee comes down, you've got a record in front of  
20 you in which to make a decision on next week. And so  
21 certainly that's what we're going to be asking the  
22 Committee to do.

23 CHMN. STAFFORD: All right. And then so for  
24 the hearing you'll have the -- the tablets with all the  
25 exhibits for the members?

1 MR. ACKEN: We will.

2 CHMN. STAFFORD: And then --

3 MR. ACKEN: Yeah. You know, the standard  
4 suite of all the tech that you've come to expect, we're  
5 going to have it, sure.

6 CHMN. STAFFORD: All right. And a binder  
7 with exhibits for me and then another set of hard copies  
8 for the court reporter?

9 MR. ACKEN: We will. We will have several  
10 more in case, you know, folks want to see copies.

11 CHMN. STAFFORD: Okay. All right. I think  
12 that's everything I have.

13 Tod, is there anything I missed?

14 MR. BREWER: I don't believe so,  
15 Mr. Chairman. Thank you.

16 CHMN. STAFFORD: All right. Mr. Acken,  
17 Ms. Benally, anything further?

18 MR. ACKEN: From my standpoint, again, I  
19 just thank you -- thank you for listening to me on this  
20 one issue which -- which is unique I think. And we  
21 appreciate the opportunity to brief this. And just I -- I  
22 want to reiterate that we're going to have a case to  
23 present to this Committee to make a decision on Wednesday  
24 and that's my commitment and that's -- and that's what --  
25 I hope the Committee agrees.

1 CHMN. STAFFORD: Excellent.

2 Anything from you, Ms. Benally?

3 MS. BENALLY: I don't have anything right  
4 now, Mr. Chairman. Thank you.

5 CHMN. STAFFORD: All right. Well, nothing  
6 further then, with that we can adjourn the prehearing  
7 conference and I will see you all back here -- or most of  
8 you back here at 3:00 o'clock for the next one.

9 MR. ACKEN: Thank you, Mr. Chairman.

10 (Whereupon, at 2:27 p.m. the proceedings  
11 ended.)

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

3 BE IT KNOWN that the foregoing proceedings are a  
4 full, true, and accurate record of the proceedings, all  
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8 I CERTIFY that I am in no way related to, nor  
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11 I CERTIFY that I have complied with the ethical  
12 obligations set forth in ACJA 7-206(F)(3) and ACJA  
13 7-206(J)(1)(g)(1) and (2).

14 Dated at Prescott, Arizona, this 31st day of August,  
15 2023.

16 

17 \_\_\_\_\_  
18 JILL MARNELL  
19 Certified Reporter #50021  
20 Registered Professional Reporter

21 \* \* \* \* \*

22 I CERTIFY that GLENNIE REPORTING SERVICES, LLC, has  
23 complied with the \_\_\_\_\_th in ACJA  
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