

1 Louisa Eberle - AZ Bar No. 035973  
2 Matthew Gerhart (*Pro Hac Vice App. To Be Filed*)  
3 Patrick Woolsey (*Pro Hac Vice*)  
4 Sierra Club Environmental Law Program  
5 2101 Webster Street, Ste 1300  
6 Oakland, CA 94612  
7 louisa.eberle@sierraclub.org  
8 matt.gerhart@sierraclub.org  
9 patrick.woolsey@sierraclub.org  
10 *Attorneys for Sierra Club*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 SIERRA CLUB,  
14 Plaintiff,

15 vs.

16 ARIZONA CORPORATION COMMISSION; JIM  
17 O’CONNOR, in his official capacity as a member of  
18 the Arizona Corporation Commission; NICK  
19 MYERS, in his official capacity as a member of the  
20 Arizona Corporation Commission; KEVIN  
21 THOMPSON, in his official capacity as a member  
22 of the Arizona Corporation Commission; LEA  
23 MÁRQUEZ PETERSON, in her official capacity as  
24 a member of the Arizona Corporation Commission;  
25 and ANNA TOVAR, in her official capacity as a  
26 member of the Arizona Corporation Commission,  
27 Defendants.

No.

**COMPLAINT**

(Appeal pursuant to A.R.S. § 40-254)

**Tier 3**

28 Plaintiff Sierra Club makes the following allegations against Defendant Arizona  
Corporation Commission (“Commission”):

**INTRODUCTION**

1. Pursuant to A.R.S. § 40-254, Sierra Club appeals the Commission’s approval of  
an expansion of the Coolidge Generating Station (“Coolidge plant”), a gas-fired power plant  
owned by Salt River Project Agricultural Improvement and Power District (“SRP”).

1           2.       In 2021, SRP applied to the Commission for a certificate of environmental  
2 compatibility (“CEC”) for a proposed expansion of the Coolidge plant (“Original Project”).

3           3.       Evidence showed that the Original Project would have significant adverse  
4 environmental impacts, and that SRP failed to properly consider feasible, economical, and less  
5 environmentally harmful alternatives to the Original Project.

6           4.       In April 2022 and again in June 2022, the Commission voted to deny SRP’s  
7 CEC application for the Original Project because of the significant environmental impacts of the  
8 Original Project and SRP’s failure to present sufficient evidence on alternatives to the Project.  
9

10          5.       After SRP appealed the Commission’s decision, the Maricopa County Superior  
11 Court upheld the Commission’s denial of the CEC for the Original Project in January 2023,  
12 finding that the Commission’s decision was supported by substantial evidence.  
13

14          6.       On June 14, 2023, SRP requested that the Commission approve a CEC for a  
15 substantially different expansion project at the Coolidge plant (“Revised Project”). SRP did not  
16 file a new CEC application and did not file any analyses of the environmental impacts of the  
17 Revised Project, choosing to rely on environmental analyses of the Original Project that were  
18 several years old.  
19

20          7.       SRP contended that the Commission should approve the Revised Project because  
21 SRP had reached an agreement with a group of residents in the adjacent Randolph community.  
22 However, SRP did not provide the Commission or Sierra Club with a copy of that agreement.  
23

24          8.       Without conducting an evidentiary hearing on SRP’s request for a CEC for the  
25 Revised Project, the Commission voted on June 21, 2023 to rescind its prior denial of the CEC  
26 and approve a CEC for the Revised Project. The Commission allowed SRP representatives to  
27 make sworn statements regarding the Revised Project at the Commission’s June 21, 2023  
28

1 meeting, but did not allow other parties to cross-examine those representatives or offer their own  
2 sworn testimony. In granting the CEC for the Revised Project, the Commission failed to  
3 consider the same factors that it considered when it denied the CEC for the Original Project.  
4

5 9. The Commission's approval of a CEC for the Revised Project is unreasonable  
6 and unlawful because (1) the Commission's decision was not based on substantial evidence, (2)  
7 the Commission failed to conduct an evidentiary hearing regarding the Revised Project, and (3)  
8 the Commission's decisionmaking process violated due process requirements.  
9

10 10. Sierra Club therefore respectfully requests that this Court vacate the  
11 Commission's approval of the CEC for the Revised Project.

### 12 **PARTIES, JURISDICTION, AND VENUE**

13 11. Sierra Club is a nonprofit corporation organized and existing under the laws of  
14 the state of California.  
15

16 12. Sierra Club has over 14,600 members in the state of Arizona, including  
17 approximately 490 members who live in Pinal County. Approximately 2,640 Sierra Club  
18 members are residential utility customers of SRP.  
19

20 13. Sierra Club's Grand Canyon Chapter has its principal office in Phoenix, Arizona.

21 14. Defendant Arizona Corporation Commission is a five-member, publicly-elected  
22 body created under Ariz. Const. art. 15. Defendants Jim O'Connor, Nick Myers, Kevin  
23 Thompson, Lea Márquez Peterson, and Anna Tovar are Commissioners of the Arizona  
24 Corporation Commission and are named solely in their official capacities.  
25

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

27 16. The Commission's principal office is located in Maricopa County, Arizona.  
28





1 impacts on the “total environment of the area,” “[n]oise emission levels,” visual impacts, the  
2 “estimated cost of the facilities,” and other factors. A.R.S. § 40-360.06(A).

3           35.       While the Siting Committee makes an initial decision regarding CEC  
4 applications, the Commission has the ultimate authority to grant, deny, or modify a CEC  
5 application. The Commission must review Committee decisions upon request of any party to  
6 the Committee proceeding. A.R.S. § 40-360.07(A).

7  
8           36.       When a party requests Commission review of a Siting Committee CEC decision,  
9 A.R.S. § 40-360.07(B) requires the Commission to consider the environmental factors in A.R.S.  
10 § 40-360.06 (including a project’s impacts on the “total environment of the area,” noise impacts,  
11 and visual impacts, among others) and to “balance, in the broad public interest, the need for an  
12 adequate, economical and reliable supply of electric power with the desire to minimize the effect  
13 thereof on the environment and ecology of this state.” Thus, A.R.S. § 40-360.07(B) requires the  
14 Commission to balance the need for a proposed project against the environmental and other  
15 impacts of the proposed project.

16  
17           37.       Ninety days before a utility applies for a CEC, it must file a plan with the  
18 Commission describing the project and provide a power flow and stability analysis, a study  
19 which evaluates the proposed project’s effects on the transmission system. A.R.S. § 40-  
20 360.02(B), (C).

21  
22  
23                   **Siting Committee Review of SRP’s Original Project Proposal**

24           38.       SRP submitted a ninety-day plan for the Original Project on September 14, 2021,  
25 but SRP did not provide a power flow and stability analysis with its ninety-day filing in the  
26 docket as required by A.R.S. §40-360.02.  
27  
28

1           39.       On December 13, 2021, SRP applied to the Siting Committee for a CEC for the  
2 Original Project.

3           40.       Sierra Club, a group of residents of the Randolph community (“Randolph  
4 Residents”), and Western Resource Advocates (“WRA”) intervened in the Siting Committee  
5 proceeding regarding the Original Project.  
6

7           41.       In February 2022, the Siting Committee held eight days of evidentiary hearings  
8 on the CEC application. The Committee heard testimony from 23 witnesses and considered 85  
9 exhibits.  
10

11           42.       The record evidence presented to the Siting Committee demonstrated that the  
12 Original Project would have had significant, quantifiable negative environmental impacts,  
13 including increased air pollution and health impacts, noise impacts, light impacts and degraded  
14 views, and decreased property values.  
15

16           43.       Expert testimony indicated that the Original Project would have emitted air  
17 pollution that would have caused premature deaths, heart attacks, asthma attacks, and other  
18 respiratory diseases.

19           44.       A tool developed by the EPA showed that the premature deaths and diseases  
20 caused by air pollution from the Original Project would have resulted in increased healthcare  
21 costs between \$9.5 million and \$21.5 million per year and between \$137 million and \$309  
22 million over a 20-year period.  
23

24           45.       The record showed that SRP did not fully investigate feasible, economical, and  
25 less environmentally harmful alternatives to the Original Project. SRP did not present evidence  
26 on how the need for additional capacity could have been met through a broad range of  
27  
28

1 alternatives. Instead, SRP chose to provide evidence regarding only the Original Project and a  
2 very limited set of alternatives.

3 46. Expert testimony noted that an All-Source Request for Proposals (“All-Source  
4 RFP”) is an industry best practice in which a utility solicits and compares competitive bids for  
5 generating projects, capacity, or services using any technology. SRP did not conduct an All-  
6 Source RFP to evaluate alternatives to the Original Project before deciding to proceed with the  
7 Project.  
8

9 47. On February 23, 2022, the Siting Committee approved the CEC for the Original  
10 Project.  
11

12 **The Commission Repeatedly Determined that the Project’s Adverse Impacts Merited**

13 **Denial of the CEC**

14 48. Sierra Club and the Randolph Residents petitioned the Commission for review of  
15 the Siting Committee’s CEC decision.  
16

17 49. The Commission reviewed the record developed before the Siting Committee.  
18 After briefing by the parties, the Commission heard oral argument on March 16, 2022.

19 50. On April 12, 2022, the Commission voted 4 to 1 to reject the CEC for the  
20 Original Project. The four-Commissioner majority cited concerns about the Original Project’s  
21 environmental and health impacts, and SRP’s failure to adequately consider alternatives to the  
22 Project.  
23

24 51. On April 28, 2022, the Commission issued Decision No. 78545 denying the CEC  
25 for the Original Project. A true and correct copy of Decision No. 78545 is attached as Exhibit 1.  
26

27 52. Applying the statutory factors in A.R.S. § 40-360.06, the Commission found that  
28 the Project would have significant negative environmental impacts, including air pollution,



1 greenhouse gas emissions, noise, light, visual impacts, and lower property values. Decision No.  
2 78545 at 11:5-8.

3 53. The Commission also found that there was insufficient evidence in the record  
4 showing that SRP had considered whether there were feasible alternatives to the Project that  
5 would be less costly and have lesser environmental impacts. *Id.* at 10:26-11:4.

7 54. The Commission therefore concluded that the Project failed the balancing test  
8 under A.R.S. § 40-360.07, and that denial of the CEC was in the public interest. *Id.* at 11:15-27.

9 55. On May 16, 2022, SRP filed a request for rehearing of the Commission’s  
10 decision pursuant to A.R.S. § 40-253. In SRP’s request for rehearing, SRP stated that it had  
11 committed to provide various mitigation measures for the Original Project and committed to  
12 provide funding for improvements in the Randolph community. SRP also stated in its request for  
13 rehearing that it was “willing, at the direction of the Commission, to reduce the number of new  
14 units at the Coolidge location to twelve.” SRP Request for Rehearing at 3:16-17.

17 56. On June 6, 2022, the Commission voted to deny SRP’s request for rehearing,  
18 reaffirming its denial of the Original Project.

19 **The Superior Court Upheld the Commission’s Denial of the Project**

20 57. On July 6, 2022, SRP filed a lawsuit against the Commission in Maricopa  
21 County Superior Court challenging the Commission’s denial of the CEC pursuant to A.R.S. §  
22 40-254.

24 58. Sierra Club intervened in the Superior Court action to defend the Commission’s  
25 denial of the CEC.  
26  
27  
28

1           59.       Randolph United Council and Preacher Jordan’s Camp (together, “Randolph  
2 Intervenor”), two organizations whose members include Randolph residents, also intervened in  
3 the Superior Court action to defend the denial of the CEC.  
4

5           60.       The Superior Court examined the administrative record and held a two-day trial  
6 on January 4 and 5, 2023.

7           61.       On January 20, 2023, the Court issued a merits order affirming the  
8 Commission’s decision to deny the CEC. A true and correct copy of the Court’s order is  
9 attached as Exhibit 2.  
10

11           62.       The Court held that the Line Siting Statutes allow the Commission to consider  
12 whether an applicant has presented sufficient evidence on alternatives to a proposed project.  
13 The Court upheld the Commission’s finding that because SRP had not presented sufficient  
14 information on alternatives to the proposed project, the Commission was unable to determine  
15 whether the proposed project was needed. Superior Court Order at 6-8, 14-15.  
16

17           63.       The Court held that “[t]here is no real dispute that expanding the Coolidge  
18 Generating Station from 12 gas turbines to 28 would result in more noise, light, and air  
19 pollution,” and that “substantial evidence supports” the Commission’s conclusion that those  
20 impacts would be significant. *Id.* at 16.  
21

22           64.       The Court also held that substantial evidence supported the Commission’s  
23 conclusions that the Original Project would degrade air quality and cause adverse health effects,  
24 and that the Project would adversely affect property values. *Id.*  
25

26           65.       For these reasons, the Court concluded that the Commission acted lawfully in  
27 denying SRP’s application for a CEC for the Original Project. The Court affirmed the  
28 Commission’s denial of the CEC for the Original Project. *Id.* at 1, 17.

1           66.       On January 25, 2023, the Commission voted to direct the Legal Division to  
2 engage in discussions with SRP regarding the Superior Court’s decision. The Commission  
3 ratified that action on February 22, 2023, but took no further action.  
4

5           67.       On February 15, 2023, EPA announced a proposed determination that the West  
6 Pinal County “serious” PM10 nonattainment area did not attain the National Ambient Air  
7 Quality Standards for PM10 by its December 31, 2022 attainment deadline.  
8

9           68.       On February 17, 2023, SRP appealed the Superior Court’s decision regarding the  
10 Original Project.  
11

**SRP Proposed A Substantially Different Project But Did Not File a New or Amended CEC**

**Application and Did Not File New Studies on the Revised Project’s Impacts**

12           69.       On June 14, 2023, SRP filed at the Commission a request to amend Decision No.  
13 78545 pursuant to A.R.S. § 40-252.  
14

15           70.       SRP’s June 14 filing stated that SRP had reached an agreement with the  
16 Randolph Intervenors and asked the Commission to “(i) rescind[] the Commission’s prior denial  
17 of the certificate of environmental compatibility (CEC) for the Coolidge Expansion Project . . .  
18 under Decision 78545 and (ii) approv[e] the Expansion Project under the terms and conditions  
19 of a proposed amended CEC . . . that incorporates certain new terms and conditions agreed to by  
20 the Randolph Parties.” Application to Amend Decision 78545 at 1:25-2:2.  
21

22           71.       SRP’s June 14 filing described a revised proposal to expand the Coolidge plant,  
23 which differed significantly from the Original Project.  
24

25           72.       The Revised Project included 12 gas-fired turbines instead of the Original  
26 Project’s 16 turbines.  
27  
28

1           73.       SRP proposed relocating the Revised Project’s new turbines to a different part of  
2 the Project site at least 400 feet away from the location proposed in the Original Project.

3           74.       SRP proposed that the Revised Project’s turbines be permitted to operate at up to  
4 a 30% capacity factor (a ratio of a plant’s actual energy output relative to its maximum possible  
5 output) averaged across the 12 new turbines.

6           75.       SRP’s June 14 filing also proposed several mitigation measures for the Revised  
7 Project that differ from those proposed for the Original Project.

8           76.       SRP did not file a new or amended CEC application for the Revised Project.

9           77.       Although the Revised Project involved relocation of the turbines and other  
10 Project elements on the Coolidge site, SRP’s June 14 filing simply summarized those changes in  
11 general terms and did not provide detailed information regarding the Revised Project design.

12           78.       SRP’s June 14 filing did not contain any new or updated studies on the air  
13 pollution, noise, light, visual impacts, or other impacts from the Revised Project.

14           79.       SRP’s June 14 filing did not include a diagram, map, or any other visual  
15 representation of the Revised Project showing where the relocated turbines would be located.

16           80.       SRP’s filing extensively referenced SRP’s agreement with the Randolph  
17 Intervenor and asked the Commission to approve the CEC on the basis of that agreement.  
18 However, SRP did not provide a copy of its agreement with the Randolph Intervenor to the  
19 Commission or to other parties to the proceeding prior to the Commission vote on the CEC for  
20 the Revised Project.

21           81.       On June 20, 2023, Sierra Club filed a response in opposition to SRP’s request to  
22 amend Decision No. 78545. Sierra Club’s response explained that the Commission lacked a  
23 proper evidentiary basis to consider SRP’s request, because the Revised Project was  
24  
25  
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1 substantially different from the Original Project, yet SRP had failed to submit any updated  
2 studies on the need for the Revised Project or the environmental impacts of the Revised Project.  
3 Sierra Club explained that as a result, the Commission lacked a proper evidentiary basis for  
4 evaluating and granting a CEC for the Revised Project.  
5

6 82. Sierra Club's response urged the Commission to follow correct procedure by  
7 requiring SRP to submit a new CEC application and directing the Siting Committee to hold a  
8 new hearing regarding the Revised Project.  
9

10 **The Commission Reversed its Prior Decision and Summarily Approved the Revised**  
11 **Project Without A Hearing, Due Process, or Substantial Evidence**

12 83. SRP's request to amend Decision 78545 was scheduled for consideration at the  
13 Commission's June 21, 2023 open meeting, only one week after SRP filed its request for a CEC  
14 for the Revised Project.  
15

16 84. No staff memorandum or proposed order was docketed prior to the  
17 Commission's consideration of SRP's request.  
18

19 85. Counsel for Sierra Club and the Randolph Intervenors appeared at the June 21,  
20 2023 Commission meeting, along with members of the public.  
21

22 86. At the June 21 meeting, the Commission allowed two SRP executives, Associate  
23 General Manager and Chief Planning, Strategy and Sustainability Executive Bobby Olsen and  
24 Associate General Manager and Chief Legal Executive Michael O'Connor, to make statements  
25 under oath in support of SRP's request. However, the Commission did not permit counsel for  
26 Sierra Club or any other party to cross-examine or otherwise question those SRP representatives.  
27

28 87. Counsel for Sierra Club was permitted to make a single brief statement at the  
June 21 meeting. Sierra Club's counsel reiterated that the Commission lacked a proper

1 evidentiary basis to consider SRP’s Revised Project, and noted that the agreement between SRP  
2 and the Randolph Intervenors—which was the purported impetus for SRP’s request—had not  
3 been provided to the parties or made part of the record. Counsel for Sierra Club explained that  
4 the Commission must require SRP to submit a new CEC application and direct the Siting  
5 Committee to hold an evidentiary hearing.  
6

7 88. The Commission did not allow counsel for Sierra Club to ask any questions  
8 during the proceeding, rebuffing an attempted question from Sierra Club’s attorney.  
9

10 89. Neither Sierra Club nor any party other than SRP was given an opportunity to  
11 offer sworn testimony at the June 21 Commission meeting.

12 90. Counsel for SRP incorrectly asserted at the June 21 Commission meeting that the  
13 Randolph Intervenors now supported the Revised Project. Counsel for the Randolph Intervenors  
14 corrected SRP’s mischaracterization, clarifying that while they had withdrawn their opposition  
15 to the CEC pursuant to the agreement with SRP, the Randolph Intervenors did *not* support  
16 SRP’s Revised Project.  
17

18 91. In response to a Commissioner’s question, counsel for SRP acknowledged that  
19 SRP had not provided a copy of the agreement with the Randolph Intervenors to the  
20 Commission.  
21

22 92. Despite the lack of record evidence regarding whether there was a need for the  
23 Revised Project and the Revised Project’s environmental impacts, the Commission voted to  
24 rescind Decision No. 78545 and to grant an amended CEC for the Revised Project.  
25

26 93. On June 22, 2023, the day *after* the Commission voted to reverse its original  
27 decision and approve a CEC for the Revised Project, SRP filed a “notice of errata” to its  
28 application which for the first time included a diagram of the Revised Project.

1           94.       On June 28, 2023, the Commission issued a written order, Decision No. 79020,  
2 rescinding Decision No. 78545 and granting the amended CEC for the Revised Project. A true  
3 and correct copy of Decision No. 79020 is attached as Exhibit 3.  
4

5           95.       The Commission’s order concluded that reversal of the Commission’s prior  
6 denial of the CEC was warranted because of the changes that SRP had proposed to the Revised  
7 Project, including the change in the number, location, and operation of the turbines, and the  
8 commitments that SRP reportedly made under its agreement with the Randolph Intervenors.  
9 Decision No. 79020 at 13 ¶ 49.  
10

11           96.       On July 17, 2023, Sierra Club timely filed a request for rehearing and  
12 reconsideration of Decision No. 79020 pursuant to A.R.S. §§ 40-253(A) and 40-360.07(C). A  
13 true and correct copy of Sierra Club’s request for rehearing is attached as Exhibit 4.  
14

15           97.       Sierra Club’s request for rehearing reiterated that the Commission’s approval of  
16 the CEC for the Revised Project was not supported by substantial evidence. Sierra Club noted  
17 that the Commission’s failure to have the Siting Committee hold an evidentiary hearing  
18 regarding the Revised Project was inconsistent with Commission precedent and unlawful.  
19 Sierra Club also explained that the conduct of the Commission’s June 21 meeting violated due  
20 process requirements. Sierra Club urged the Commission to require SRP to submit a new or  
21 amended CEC application and direct the Siting Committee to hold evidentiary hearings  
22 regarding the Revised Project.  
23

24           98.       On July 21, 2023, EPA issued a final determination that the West Pinal County  
25 “serious” PM10 nonattainment area failed to attain the National Ambient Air Quality Standards  
26 for PM10 by its December 31, 2022 attainment deadline, based on PM10 emissions data from  
27 2020 through the end of 2022.  
28





1           107.     SRP’s Revised Project is substantially different than the Original Project. The  
2 Revised Project changed the number of generating turbines, the location of those generating  
3 turbines and other project elements, and the operational limits on the turbines.  
4

5           108.     Conditions in the Project vicinity, including ambient air pollution levels, have  
6 changed since SRP conducted environmental studies two years ago for its CEC application for  
7 the Original Project.  
8

9           109.     Despite these differences, SRP failed to update any of its original analyses or  
10 provide any new evidence regarding the need for the Revised Project, the Revised Project design  
11 and the locations of specific features, existing conditions in the area, or environmental impacts  
12 of the Revised Project.  
13

14           110.     The Commission therefore lacked substantial evidence on all of the factors  
15 needed to conduct the required balancing test for the Revised Project under A.R.S. § 360.07.  
16

17           111.     The Commission’s decision to rescind Decision No. 78545 and grant the  
18 amended CEC for the Revised Project is not supported by substantial evidence and is therefore  
19 unlawful and unreasonable.  
20

## COUNT II

### Unlawful and Unreasonable Determination: Failure to Conduct Evidentiary Hearing

21           112.     Sierra Club incorporates the foregoing allegations as if set forth fully herein.  
22

23           113.     The Commission acted unlawfully and unreasonably by approving a CEC for the  
24 Revised Project without instructing SRP to file an amended CEC application and without  
25 directing the Siting Committee to hold a new evidentiary hearing.  
26

27           114.     Under the Commission’s prior decisions, if an amended project is substantially  
28 different from one previously proposed in a CEC application or approved in a CEC, the





1 B. Vacate the CEC granted by the Commission on June 28, 2023.

2 C. Enter judgment in favor of Sierra Club.

3 D. Award Sierra Club its costs and attorneys' fees pursuant to A.R.S. § 12-348 and  
4 other applicable statutes or doctrines.  
5

6 E. Grant such further relief as the Court deems just and proper.  
7

8 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of September, 2023.  
9

10 /s/ Louisa Eberle

11 Louisa Eberle - AZ Bar No. 035973

12 Matthew Gerhart (*Pro Hac Vice App. To Be Filed*)

13 Patrick Woolsey (*Pro Hac Vice*)

14 Sierra Club Environmental Law Program

2101 Webster Street, Ste 1300

Oakland, CA 94612

louisa.eberle@sierraclub.org

matt.gerhart@sierraclub.org

patrick.woolsey@sierraclub.org  
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17 **COUNSEL FOR SIERRA CLUB**  
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