

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, at 1275 West Washington Street, Phoenix,
5 Arizona, commencing at 2:00 p.m. on the 8th of December,
6 2011.

7
8 BEFORE: JOHN FOREMAN, Chairman

9 APPEARANCES:

10 For the Applicant:

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12 By Messrs. Jason D. Gellman and John Matthew
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17 and

18 TUCSON ELECTRIC POWER
19 By Mr. Marc Jerden, Senior Counsel
20 One South Church Avenue, Suite 200
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22 (Appearing via teleconference)

23 For the Tohono O'odham Nation:

24 OFFICE OF THE ATTORNEY GENERAL
25 By Ms. Laura Berglan, Assistant Attorney General
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26 For Elizabeth Webb:

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1 APPEARANCES:

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For Marshall Magruder:

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For Rosemont Copper Company:

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FENNEMORE CRAIG

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By Messrs. Norman D. James and Patrick J. Black

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For Save the Scenic Santa Ritas Association, Sky Island
Alliance, Center for Biological Diversity, and Tucson
Audubon Society:

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and

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MUNGER CHADWICK

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By Mr. Robert J. Metli

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20 ALSO PRESENT:

21

Ms. Laurie A. Woodall, K.R. Saline & Associates, PLC

Mr. Ed Beck, Director, Line Siting Services, TEP

22

Ms. Lauren Weinstein, Principal, EPG

Ms. Chelsea Johnson, Senior Visual Resource

23

Specialist, EPG

Ms. Julia Fonseca, Pima County, appearing via

24

teleconference

25

1 ALSO PRESENT:

2 Ms. Beverly Everson, Coronado National Forest,
3 appearing via teleconference

4 Mr. Robert Harris, Interested Public, appearing via
5 teleconference

6 Mr. Peter MacIlvaine, Assistant to Chairman Foreman

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COLETTE E. ROSS
Certified Reporter
Certificate No. 50658

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1 CHMN. FOREMAN: By my watch, which is
2 occasionally right, it is 2:00. It is the time
3 scheduled for our prehearing conference in the matter of
4 the application of TEP for a Certificate of
5 Environmental Compatibility to build a transmission line
6 from a proposed Toro switchyard to the proposed Rosemont
7 Copper Mine.

8 First let me ask folks who are present to
9 identify themselves. I think I will start with the
10 applicant.

11 MR. GELLMAN: Good afternoon, Mr. Chairman.
12 Jason Gellman and Matt Derstine from the law firm Roshka
13 DeWulf & Patten on behalf of the applicant. Also
14 present are Ed Beck from the applicant, Lauren
15 Weinstein, Chelsea Johnson from EPG, and on the phone is
16 Mark Jerden, for the applicant.

17 CHMN. FOREMAN: All right. Counsel.

18 MR. BLACK: Good afternoon, Chairman. Patrick
19 Black and Norm James from the law firm Fennemore Craig
20 on behalf of Rosemont Copper Company.

21 MS. WOODALL: Laurie Woodall from K.R. Saline &
22 Associates assisting Rosemont.

23 MR. ROBERTSON: Good afternoon, Mr. Chairman.
24 Lawrence V. Robertson, Jr. of counsel to the law firm
25 Munger Chadwick and Robert J. Metli of the law firm

1 Munger Chadwick on behalf of Save the Scenic Santa Ritas
2 Association, the Sky Island Alliance, the Center for
3 Biological Diversity, and the Tucson Audubon Society,
4 who I will refer to collectively as Scenic Santa Ritas.

5 CHMN. FOREMAN: Very good.

6 MS. BERGLAN: Good afternoon, Mr. Chairman.
7 Lauren Berglan representing the Tohono O'odham.

8 MS. WEBB: Mr. Chairman, Elizabeth Webb, pro
9 per.

10 CHMN. FOREMAN: All right. Now, on the
11 telephone, I think I have heard Mr. Magruder. Are you
12 still there, sir?

13 MR. MAGRUDER: Yes, Chairman. Marshall Magruder
14 representing himself.

15 CHMN. FOREMAN: All right. And I have heard
16 Mr. Harris. Are you there?

17 MR. HARRIS: Yes, sir.

18 CHMN. FOREMAN: All right. And for the record,
19 your full name is?

20 MR. HARRIS: Robert W. Harris.

21 CHMN. FOREMAN: All right. And you are an
22 interested member of the public?

23 MR. HARRIS: Yes, sir.

24 CHMN. FOREMAN: Okay. Very good. And I think I
25 heard Mr. Jerden.

1 MR. JERDEN: Yes, I am here.

2 CHMN. FOREMAN: Very good. And then we had
3 someone come in just at the end. And it was?

4 MS. EVERSON: Beverly Everson. And I am with
5 the Coronado National Forest.

6 CHMN. FOREMAN: Right. Is there anybody else on
7 the phone that we have missed?

8 (No response.)

9 CHMN. FOREMAN: Does anybody know of anybody
10 else who was planning on attending either in person or
11 by telephone this hearing who is not here?

12 (No response.)

13 CHMN. FOREMAN: All right. Then I am going to
14 go ahead and get started. We have got a very full plate
15 to deal with. And --

16 MS. FONSECA: Julia Fonseca.

17 CHMN. FOREMAN: Ah. Ms. Fonseca, we have just
18 gotten started. Do you want to enter your appearance
19 for the record?

20 MS. FONSECA: Please do so.

21 CHMN. FOREMAN: Would you give us your full name
22 and who you represent for the record, please.

23 MS. FONSECA: Yes. Julia Fonseca, Pima County.
24 And I am a witness for two intervenors.

25 CHMN. FOREMAN: Okay. Very good.

1 Now, we have had a notice of intervention filed
2 by Mr. Robertson.

3 You are referring to your collective group as
4 the Scenic Santa Ritas?

5 MR. ROBERTSON: That's correct, sir. We filed a
6 notice of intent to be a party on behalf of all four of
7 our clients.

8 CHMN. FOREMAN: And statutorily all of your
9 clients fall within the description of organizations who
10 are allowed to intervene as of right by A.R.S. Section
11 40-360.05.A.3?

12 MR. ROBERTSON: In my opinion they do, yes, sir.

13 CHMN. FOREMAN: Okay. I will accept your
14 avowal.

15 We have requests for intervention from Ms. Webb,
16 Mr. Magruder, the Tohono O'odham Nation, which
17 interestingly does not fit within any of the statutory
18 groups that are authorized to intervene as of right.

19 And just for the record, Ms. Berglan, I have
20 noticed in the pleadings that have been filed on behalf
21 of the Nation neither you nor Mr. Jantzen have given an
22 Arizona State Bar number. Are you both admitted to
23 practice?

24 MS. BERGLAN: Yes, Mr. Chairman, we both are. I
25 can provide my number today, and Mr. Jantzen I can

1 provide --

2 CHMN. FOREMAN: In your pleadings in the future
3 I would appreciate it if you would provide me that
4 number. That keeps me from having to go through the
5 website and try and confirm your status.

6 And then we have a request for intervention from
7 the Rosemont Copper Company. Mr. Black has submitted
8 that.

9 Now, we will consider the requests as probably
10 one of the first orders of business on Monday. But
11 basically, if any member of the Committee has a question
12 about what your interest is in intervening -- I will get
13 to you in a moment, ma'am -- I will give you the
14 opportunity to make that pitch at the time the Committee
15 decides whether or not to allow intervention.

16 Now, Ms. Webb, you wanted to ask a question?

17 MS. WEBB: Did you say Marshall Magruder is?

18 CHMN. FOREMAN: If I didn't, I am sorry.

19 Mr. Magruder is requested to intervene, also.

20 So both you, Ms. Webb, and Mr. Magruder will
21 have gone through this before and know what the basic
22 procedure is. So you also should be available to
23 articulate your interest and reason for wanting to
24 intervene. There are some rulings I am going to make
25 today and there are some decisions I made about how the

1 hearing is going to proceed that will impact you, impact
2 everybody here as we go along. And we will loop back
3 and talk about those later on.

4 The first issue that I want to address is a
5 series of motions that would basically allow into
6 evidence evidence relating to the environmental impact
7 of the Rosemont Copper Mine that is separate and apart
8 from evidence relating to the environmental impact of
9 the transmission line that is the subject of the
10 application. And I guess there is a related question,
11 and that is whether or not the Committee can or should
12 consider the environmental impact of the mine when it
13 considers the balancing that it has to do that relates
14 to the environmental impact of the transmission line.

15 I have had a chance to read all of the
16 pleadings. Is there anybody who would like to add
17 anything in addition to what has been submitted in the
18 pleadings and replies?

19 (No response.)

20 CHMN. FOREMAN: Ms. Webb, okay.

21 Mr. Magruder, is there anything you wanted to
22 add?

23 MR. MAGRUDER: Not on that subject. I believe
24 my reply memorandum was clear.

25 CHMN. FOREMAN: Okay. Mr. Robertson.

1 MR. ROBERTSON: I believe that in our initial
2 memorandum and in our reply memorandum, Mr. Chairman, we
3 endeavored to anticipate initially and thereafter
4 address most of the arguments that we thought we might
5 be receiving from those who were opposing our position
6 on the scope of the evidence. We have not had an
7 opportunity to file anything in response to the reply
8 memorandums that were filed by Tucson Electric Power
9 Company and Rosemont Copper Company. And I am not going
10 to ask you to sit here as I go through a long recitation
11 of where we disagree with them. I believe in many
12 respects we had anticipated in our two memorandums
13 arguments that they would make.

14 We do believe some of the cases that they cite
15 in support of their preemption theory are not really on
16 point in support of the arguments they are making. But
17 with that comment, I don't have anything to add. We
18 will rest on our memorandums.

19 CHMN. FOREMAN: Okay. Is there anything that
20 Rosemont mines would like to add?

21 MR. JAMES: Your Honor, Norm James again. Let
22 me, if I could, just ask a question. Do you anticipate
23 actually having an argument on this issue Monday morning
24 also at the commencement of the hearing?

25 CHMN. FOREMAN: No. I anticipate I am going to

1 rule in about 90 seconds.

2 MR. JAMES: Okay. Well, I think we are standing
3 by what is in our briefs. I think the only thing I do
4 want to clear up is Rosemont has not argued preemption.
5 Although we agree with TEP's argument on the preemption,
6 as we explained, we simply don't think importing NEPA
7 concepts into the line siting statutes is appropriate or
8 lawful.

9 CHMN. FOREMAN: Okay. Does the applicant have
10 anything you want to add?

11 MR. GELLMAN: Just that our arguments still
12 stand and we urge the motion in limine.

13 CHMN. FOREMAN: Okay. To me this is a fairly
14 simple legal issue, but a fascinating one and one for
15 which there obviously is no controlling Arizona
16 authority. And I make my ruling, and as I will explain
17 as I go along, in a way that does not encourage you to
18 seek appellate review of it but will anticipate that
19 possibility or eventuality.

20 The Arizona Power Plant and Transmission Line
21 Siting Committee is a creature of the Arizona
22 legislature. It is solely authorized to act by the
23 statutes, the line siting statutes. The Arizona
24 Corporation Commission is authorized by the legislature
25 to review certain decisions of the Committee and to

1 promulgate procedural rules for it that are not
2 inconsistent with the statutes. The Commission has
3 authority granted to it by the constitution to do other
4 things, like, for example, ratemaking, but its line
5 siting authority comes from the very same statutory
6 source as the Committee, A.R.S. Section 40-360 and
7 following statutes.

8 Before I go any further, I didn't ask whether
9 the Nation had anything further you wanted to say.

10 MS. BERGLAN: No, Mr. Chairman. Thank you.

11 CHMN. FOREMAN: Okay. And I apologize. We have
12 too many parties floating around here.

13 CHMN. FOREMAN: But don't be afraid to wave a
14 hand. Ms. Webb certainly is not.

15 MS. WEBB: Now I am.

16 CHMN. FOREMAN: The various potential parties
17 and counsel for the Save the Scenic Santa Ritas or for
18 the Scenic Santa Ritas have argued that the Committee,
19 as a part of the balancing it has to do using the
20 statutory factors and the statutes passed by the
21 legislature, can consider the environmental impact of
22 the mine, which is in essence the use to which
23 electricity is being turned, when it considers the
24 environmental impact of the line, which is the
25 conveyance that conveys the electricity to the load or

1 source of use.

2 And there is a -- Mr. Robertson has made a very
3 creative argument about bringing in federal authority
4 that would certainly support that. I view this
5 decision, however, as strictly an Arizona statutory
6 authority issue. And I find that there is no statutory
7 authority for the Committee to consider the
8 environmental impact of the mine.

9 The line siting statute is very broad about the
10 types of environmental factors of a project that may be
11 considered. But it is very precise about the project.
12 And 40-360.06.A says that it has to be with respect to
13 the suitability of the transmission line siting plans.
14 It does not in any way suggest that you would go beyond
15 to with whatever use is being made of the electricity.

16 In this case it would be a real simple thing
17 because there is only one use to which this electricity
18 has been apparently dedicated or would be dedicated, and
19 that's the mine. But we have other projects that deal
20 with whole cities. Where would you draw the line in a
21 situation like this? I think as a matter of logic, as
22 well as a matter of statutory law, it would be very
23 difficult for this Committee to embrace in its
24 environmental consideration all of the potential
25 environmental impacts from all the potential users of

1 electricity that would go through a particular
2 transmission line.

3 So the decision that I have made is that the
4 various motions to allow evidence of the environmental
5 impact of the Rosemont mine are not material to the
6 application filed. And the line siting statute is
7 pretty clear that the Committee is to, quote, receive
8 material, nonrepetitive evidence. And that's out of
9 A.R.S. Section 40-360.04.C.

10 So evidence relating solely to the mine is not
11 going to be admissible. And I am also going to advise
12 the other members of the Committee at the hearing that
13 Arizona law does not authorize the Committee to consider
14 the environmental impact of the proposed mine in
15 evaluating the environmental impact of the proposed
16 transmission line.

17 Now, it should be clear that I am not a judge
18 instructing a jury when it comes to the other members of
19 the Committee. They are all co-equal members of the
20 Committee and free to make up their own decision, their
21 own mind about the matters that are presented to them.
22 So I am going to go over this, along with my reasoning,
23 with my fellow Committee members at the time of the
24 hearing. And if they have questions, we will talk about
25 them at that time. And you folks will be there and

1 privy to those discussions. That will all be a matter
2 of public record. But I don't view the decision that I
3 am making as being similar to a judge instructing a
4 jury, familiar as that feeling may be to me.

5 I am, however, as I said, sensitive to the fact
6 that, because there is no controlling Arizona authority
7 on this, that the possibility for court review exists.
8 So I am going to allow documentary proof that is
9 nonrepetitive and relevant to the environmental impact
10 of the mine as an offer of proof.

11 Now, I note that the draft environmental impact
12 statement for the Rosemont Copper mine project is
13 pending before the United States Department of
14 Agriculture, Forest Service, Coronado National Forest.
15 And I think the document number is MB-R3-05-3. And it
16 was published, I believe, September 28, 2011. That
17 document, on a DVD, is now Exhibit B-3 to what I am
18 assuming will be TEP's Exhibit No. 1, the application in
19 the case.

20 Am I correct in that assumption?

21 MR. GELLMAN: Correct.

22 CHMN. FOREMAN: All right. If it is offered, I
23 would admit that portion of the document that relates to
24 the environmental impact of the transmission line. And
25 I have not read all nine hundred and however many pages

1 of it, but I have read it enough and those portions that
2 relate to the environmental impact of the transmission
3 line to be able to see that there is potentially
4 material evidence in that exhibit. But I would admit
5 that portion of the exhibit into evidence and the rest
6 of the exhibit I would allow into the record as an offer
7 of proof.

8 Now, I bring this up, and I want to come back to
9 Ms. Magruder -- to Ms. Webb, Mr. Magruder, the Tohono
10 O'odham Nation and to Mr. Robertson and his clients,
11 because I will allow documentary offers of proof that
12 are not repetitive of what is in the draft environmental
13 impact statement.

14 So if you have got something that's not already
15 covered by the environmental impact statement that's in
16 the application, I am willing to accept that as an offer
17 of proof. We are not going to have testimonial evidence
18 on the environmental impact of the mine. And we are not
19 going to have documentary offers with regard to the mine
20 that duplicate what is already in the environmental
21 impact statement.

22 Now, does that make sense to everybody? Does
23 anybody have any question about where I am drawing the
24 line?

25 Mr. Robertson.

1 MR. ROBERTSON: Yes. Actually, Mr. Chairman,
2 Mr. Metli and I had anticipated just by way of
3 participation the nature of the ruling you might make
4 today and we were prepared to make an offer of proof
5 either today or beginning at the hearing on Monday,
6 whichever you would prefer. In fact, I have a
7 memorandum we proposed on the subject of offer of proof.

8 But what I am uncertain about, we filed the
9 prepared testimony of three different witnesses. And
10 they talk about both what is in the draft environmental
11 impact statement and what is not as it relates to the
12 mine. I don't know whether you have actually reviewed
13 it, that prepared testimony or not. I, just per
14 guidance, I want to be sure our offer of proof that we
15 will be making conforms to the parameters you have
16 outlined.

17 Where we talk about what the draft environmental
18 impact statement has found and our witnesses view with
19 respect to that information, would that be suitable for
20 inclusion within an offer of proof under your thinking?

21 CHMN. FOREMAN: I would not allow oral testimony
22 except if they were talking about the environmental
23 impact of the line.

24 I have not had the opportunity to review with
25 care the mountain of documents that I have received in

1 the last couple of days. So what I am going to do is
2 ask you, number one, to make your offer of proof on
3 Monday; number two, between now and Monday, go through
4 your offer and the evidence that you have given notice
5 that you would intend to present and see if there is
6 anything that relates solely to the transmission line.
7 If there is, then I will certainly allow you to present
8 that when the appropriate time comes for you to make an
9 evidentiary presentation at the hearing.

10 If it, if all you have is oral testimony that
11 relates to the environmental impact of the mine that is
12 supplemental to what is in the environmental impact
13 statement, then I would ask you to reduce that to
14 writing and submit it at the appropriate time as an
15 offer of proof that supplements the environmental impact
16 statement.

17 MR. ROBERTSON: Let me restate my question. I
18 may not have been sufficiently clear when I initially
19 posed it.

20 CHMN. FOREMAN: It is also possible I was not
21 sufficiently clear when I answered. Go ahead.

22 MR. ROBERTSON: No, your response was very
23 helpful. Thank you, Mr. Chairman.

24 Mr. Metli worked on the testimony with our
25 witnesses. But to the best of my recollection, the

1 testimony of our witnesses focused primarily, if not
2 exclusively, on environmental impacts associated with
3 Rosemont mining activities. So against that assumed
4 background, what I had visualized was that our offer of
5 proof would consist of submitting the previously filed
6 prepared written testimony of the three witnesses as
7 well as the previously filed prepared summary of the
8 testimony of those three witnesses.

9 CHMN. FOREMAN: That would be perfect. I am
10 just going over this because I want to extend to you the
11 opportunity in case there is something that you want --
12 and I understand that summaries of proposed testimony
13 are just that, summaries -- and if there is something
14 that you wanted to add in addition to the summary, to
15 the testimony, I am giving you that opportunity.

16 MR. ROBERTSON: Well, and we appreciate that
17 because we gave a great deal of thought to our prepared
18 testimony, and the anticipation was that, under the
19 offer of proof avenue, it would become part of the
20 record. So I just want to be sure that we would be in a
21 position we could offer that on Monday morning.

22 CHMN. FOREMAN: Okay.

23 MR. ROBERTSON: And, secondly, would that be the
24 time to offer it as opposed to right now?

25 CHMN. FOREMAN: Yes.

1 MR. ROBERTSON: Thank you.

2 CHMN. FOREMAN: Yes, because I want the
3 Committee -- I have given you the basic outlines of my
4 procedural ruling. What I want is for the Committee to
5 be able to hear not only this basic ruling but to hear
6 the fuller development of it as it may impact the case.

7 MR. ROBERTSON: Yes.

8 CHMN. FOREMAN: And I think the appropriate time
9 to do that is Monday.

10 MR. ROBERTSON: Thank you. And we will be
11 making an offer of proof on Monday. And I appreciate
12 the clarification and the guidance.

13 CHMN. FOREMAN: Okay. Now, as far as the Tohono
14 O'odham Nation is concerned...

15 MS. BERGLAN: Mr. Chairman, I think we have a
16 bit of a different issue. The prefiled testimony that
17 we submitted goes to the cultural resources impact. And
18 there is this issue of impact on the traditional
19 cultural place as a whole. I don't know if you are
20 going to consider that to be specific to the mine as
21 well. We have site specific issues related to the line,
22 but the impact overall to the traditional cultural place
23 encompasses both the line and the mine itself. So they
24 are pretty interconnected in the testimony that we
25 filed. So maybe a little guidance on that as well.

1 CHMN. FOREMAN: Very easy for me to resolve. I
2 am not going to sit down and parse out in advance what
3 goes in this pile and what goes in that pile. If they
4 are interrelated, as you have represented, then we will
5 just hear them all orally and go from there.

6 Now, if it, if during your presentation it
7 appears that we are getting into an area that's pretty
8 clearly related solely to the mine and duplicates what
9 has been said before, then I will entertain an objection
10 or I will tell you to move on at that time myself. But
11 I am assuming that you want to present something that's
12 succinct and efficient and that you will do that at the
13 appropriate time.

14 MS. BERGLAN: Yes. Thank you, Mr. Chairman.

15 CHMN. FOREMAN: And we don't need to, you know,
16 to say 60/40 mine versus line and go down through it
17 like that.

18 MS. BERGLAN: Okay.

19 CHMN. FOREMAN: If you, let me encourage you, if
20 there is something that your witnesses were intending to
21 say that deals specifically with the mine, I would
22 encourage you to submit something in a documentary form,
23 and so that will make sure that you get into the record
24 the -- into the offer of proof what you want said about
25 the impact of the mine. And it may also at that point

1 shorten your presentation with regard to the
2 transmission line.

3 MS. BERGLAN: Okay. Understood. Thank you,
4 Mr. Chairman.

5 CHMN. FOREMAN: Okay. Now, Ms. Webb, do you
6 understand?

7 MS. WEBB: Can I talk?

8 CHMN. FOREMAN: Actually, at this point it would
9 be really good for you to talk.

10 MS. WEBB: Absolutely. Okay. This really isn't
11 an issue for me because my entire case was based on the
12 transmission line. But it sounds like there is going to
13 be a good part for me, which is that I can offer this
14 evidence of proof about impacts related to the proposed
15 copper mine that are not part of the DEIS. And did I
16 understand that part correctly?

17 CHMN. FOREMAN: Well, let me put it this way.
18 If you haven't already indicated that you are going to
19 offer something as evidence, then you are not going to
20 be offering it into evidence in the hearing anyway. So
21 we don't need to worry about that.

22 MS. WEBB: Okay. That clarifies that. So I
23 don't need guidance on that particular part.

24 Now, there are some things --

25 CHMN. FOREMAN: If something you have already

1 indicated you would like to introduce at the hearing
2 relates solely to the mine, then you are going to -- I
3 will allow you to submit documentary evidence but not
4 testimonial.

5 MS. WEBB: The only thing I can see that might
6 be a problem with that, and I think we are going to
7 discuss a little bit later, we have a difference of
8 opinion about the proposed Rosemont substation. That
9 aspect of it I think we are going to have a discussion
10 about. And that was part of my planned oral testimony.
11 But aside from that, all the rest of my issues are
12 transmission line specific.

13 CHMN. FOREMAN: Okay. Well, we will -- let's
14 get over this bridge before we go on to any others.

15 All right. Mr. Magruder.

16 MR. MAGRUDER: I believe I understand your
17 statements in between the fadeouts. Are you going to
18 have a written statement that we can read?

19 CHMN. FOREMAN: Well, I hadn't been planning on
20 it but maybe I will. I don't know. Would you like one?

21 MR. MAGRUDER: Yes, sir, I really would
22 appreciate one so I have clear guidance because I could
23 read the words and try to interpret them correctly. And
24 maybe I am wrong but I will try hard.

25 I do not plan to have data that's just related

1 to the mine. But I will talk about and plan to talk
2 about electricity, which all comes from this power line.
3 And without the transmission line, there is no
4 electricity. So I intend to talk about the impacts of
5 electricity that will be transmitted through this line.

6 CHMN. FOREMAN: All right. Well, we will just
7 have to deal with that as we go along. I do have some
8 written notes that I have prepared and I will try and
9 generate something in writing tomorrow and circulate it
10 to the distribution list that will hopefully be somewhat
11 similar to what I just articulated on the record.

12 MR. MAGRUDER: Thank you, Mr. Chairman. I am
13 sorry to have to ask you to do that.

14 CHMN. FOREMAN: That's all right. I just want
15 to make sure that everybody understands my ruling,
16 because I am going to expect everybody to have
17 understood it when we start next week.

18 Ms. Webb.

19 MS. WEBB: I am sorry. I spoke in an absolute.
20 In some of my documents are about the transmission line
21 and might have mine stuff in it, but that was not the
22 focus of my testimony. I just didn't want to lie on
23 the, my video thing and the transcriber thing. So some
24 of my documents might have both things in it, but my
25 focus is on the line.

1 CHMN. FOREMAN: Okay. Well, again, the same
2 recommendation that I gave to the Nation, if you have
3 material that relates to the mine, submit it into
4 documentary form and limit your presentation at the
5 hearing to what relates solely to the line.

6 MS. WEBB: Can I give you an example so I make
7 sure I do it right?

8 CHMN. FOREMAN: Not now. I am sure we will have
9 an opportunity --

10 MS. WEBB: Okay.

11 CHMN. FOREMAN: -- to deal with the real life
12 matter next week.

13 MS. WEBB: Okey dokey.

14 CHMN. FOREMAN: Mr. Robertson.

15 MR. ROBERTSON: Yes, thank you, Mr. Chairman.
16 Mr. Metli suggested a follow-up question by way of
17 clarification on our part.

18 It is our understanding you are making the
19 ruling today with regard to the scope of evidence issue
20 and, as a result, we do not need to have our witnesses
21 there on Monday. One of our witnesses was coming in
22 from Nevada. And if we are going to be submitting our
23 testimony simply through the offer of proof avenue, we
24 didn't want to inconvenience the witnesses. But he
25 suggested I clarify that point just to be sure.

1 CHMN. FOREMAN: He has identified exactly why I
2 made the ruling today rather than waiting until Monday,
3 because I didn't think it was fair for you folks to have
4 the expense of bringing people in for a hearing where I
5 made a ruling that effectively precluded their
6 testimony. So if there was anybody that fit into that
7 testimony, I thought it was fair for me to make the
8 ruling today rather than wait until Monday.

9 MR. ROBERTSON: We appreciate your
10 considerateness in that regard. And we also appreciate
11 your comment about the creativeness of our legal theory.

12 CHMN. FOREMAN: That's the only way the law
13 grows.

14 All right. Now, is there anybody on the line
15 that is appearing by telephone, I am especially
16 interested in the representative of Coronado National
17 Forest, any questions about my ruling, any issues that
18 you want to raise?

19 MS. EVERSON: No questions and no issues.

20 CHMN. FOREMAN: Great, great. And I would hope
21 that we would be able to call upon you, or I think there
22 is a gentleman who may be there on Tuesday, I think you
23 said or -- I am trying --

24 MS. EVERSON: That's correct. Our primary point
25 of contact is Jim Copeland, who is our Nogales district

1 ranger. And I am just working with him to be able to
2 provide information to him and to our other staff on the
3 hearing.

4 CHMN. FOREMAN: I know that the members of the
5 Committee would appreciate an up-to-date status report
6 on the environmental impact statement or the application
7 for the decision with regard to the mine. And so I do
8 not have any reason to believe there is anything in
9 addition to what is already in the record, but if there
10 is, we want to certainly give you folks the opportunity
11 to articulate that next week during the hearing. So I
12 just raise that --

13 MS. EVERSON: Okay.

14 CHMN. FOREMAN: -- as a point for you.

15 MS. EVERSON: Okay.

16 CHMN. FOREMAN: All right.

17 MS. WEBB: When you are ready. Sorry.

18 CHMN. FOREMAN: Now, with regard to the mine, do
19 you have any questions?

20 MR. BLACK: Yeah. Patrick Black. I would like
21 just some clarification on some of the testimony that
22 has been filed to date.

23 As you are aware, on November 4th we received an
24 e-mail from Pima County stating that they provided
25 notice that they did not intend to intervene in this

1 proceeding. I believe it was yesterday that they filed
2 a notice of limited appearance in which they filed
3 basically a position. Some of the position is with
4 respect to the mine but some of it is with respect to
5 the line as well.

6 The clarification that we seek is that two of
7 the intervenor groups, Ms. Webb and Mr. Robertson's
8 clients, they have solicited one employee from the
9 county as their witness. And if you look -- also, also
10 a consultant that prepared a report for the county.

11 If you look at the, if you look at the testimony
12 that was provided by Ms. Fonseca and the question and
13 answers, the positions that were solicited from her were
14 positions of the county. The questions and answers were
15 what is the county's position in this.

16 I understand that, pursuant to the rule, any
17 party that files a notice of limited appearance is
18 precluded from providing oral testimony or
19 cross-examining witnesses. So we would like
20 clarification as to what capacity Ms. Fonseca is
21 testifying in.

22 CHMN. FOREMAN: Well, my understanding of the
23 rules --

24 And, Ms. Fonseca, are you there?

25 MS. FONSECA: I am, Mr. Chairman.

1 CHMN. FOREMAN: Okay. My understanding is that
2 you don't plan to call witnesses. Is that correct?

3 MS. FONSECA: That's correct. We don't have an
4 attorney who is intervening. We have filed for a
5 limited appearance. And if you would allow
6 intervention, I guess I, Ms. Webb at this point, I would
7 be a witness for Ms. Webb.

8 CHMN. FOREMAN: Okay. Well, we don't know yet
9 whether Ms. Webb will be a party or not. We will find
10 that out on Monday all at the same time.

11 And I apologize for the interesting process that
12 is the Arizona line siting process. It is not something
13 that I drafted myself but it is something that I have to
14 creatively try to make work every time I have one of
15 these hearings.

16 So I see nothing that disqualifies you from
17 being a witness who testifies for someone else. And so,
18 and if as a witness for someone else you articulate a
19 position that purports to be that of your employer,
20 that's something that obviously will be subject to
21 cross-examination and subject to rebuttal. And if that
22 means that there need to be new witnesses or new
23 potential documentary evidence that would be submitted
24 on that limited issue alone in order to respond to
25 something that the mine just learned, then we will cross

1 that bridge when we come to it. But you are going to
2 need to -- before I will allow that in, I will have to
3 be persuaded that it is, in fact, there is good cause
4 for late notice. And one of the obvious reasons for
5 good cause is that you just found out about it and it is
6 necessary to respond to an issue that was raised.

7 It also, of course, is true that the mine will
8 find out whether it is going to be a party to these
9 proceedings on Monday also. Again, that's not the way I
10 would have drafted the statute but we all play the cards
11 we are dealt. So we will determine those things on
12 Monday.

13 MR. BLACK: Your Honor, can I follow up on that?

14 CHMN. FOREMAN: Sure.

15 MR. BLACK: We don't have an opportunity to
16 cross-examine Ms. Fonseca, though, because her testimony
17 goes to DEIS issues and the impacts of the environmental
18 impacts of the mine with respect to Mr., with respect to
19 Mr. Robertson's clients. So her testimony is going to
20 be provided as an offer of proof on behalf of the Scenic
21 Santa Ritas -- sorry about that, Larry -- but her
22 testimony, if you read the testimony, she has provided
23 testimony on behalf of the county.

24 CHMN. FOREMAN: Okay.

25 MR. BLACK: And that's precluded, that's

1 precluded by the statute.

2 CHMN. FOREMAN: I humbly disagree with you.

3 MR. BLACK: Okay.

4 CHMN. FOREMAN: And I will, I mean I will need
5 to see the testimony, and, again, I haven't read all of
6 the documents that have been submitted to me, but if as
7 you tell me this written testimony is relating to the
8 environmental impact of the mine, it is going to be in
9 the "offer of proof" basket rather than the "evidence
10 upon which the Committee makes its decision" basket in
11 any event.

12 MR. BLACK: Okay.

13 CHMN. FOREMAN: Now, I am sensitive to the fact
14 that an offer of proof, sometimes there is an abuse of
15 that process that can occur when the party against whom
16 the proof is offered does not have the opportunity to
17 cross-examine or does not have the opportunity to rebut
18 that which is offered. And so I will extend to the
19 mine, if the mine in fact becomes a party, the
20 opportunity to make, we will call it, reply or rebuttal
21 offers of proof. But that's something that, again, we
22 will just have to address on a case-by-case basis or an
23 issue-by-issue basis as it arises.

24 MR. JAMES: Your Honor, just a related issue to
25 what Mr. Black was talking about.

1 CHMN. FOREMAN: Sure.

2 MR. JAMES: We don't know -- and I think we
3 indicated this in our notice of filing witness
4 summaries, that we had not intended to put on witnesses
5 unless we were faced with having to address the issue of
6 the impacts of the mine itself. Again, it is Tucson
7 Electric's application, and, you know, we think their
8 application is a good application, et cetera.

9 So what I would ask, if it is possible for the
10 reasons that you just indicated a moment ago, if we
11 could go, and again this of course all assumes we are
12 admitted, allowed to intervene on Monday, assuming we
13 are, we would like the opportunity, if we do put on the
14 witnesses that had been indicated in our notice, to put
15 those on last. Again, I don't think we are going to be
16 putting on witnesses, but we are almost in more of a
17 rebuttal mode here as you sort of suggested a moment
18 ago. I am not talking -- I am just about the order of
19 testimony during the hearing next week.

20 CHMN. FOREMAN: Well, the statute and rules do
21 not allow that. The applicant starts first and ends.
22 So, so --

23 MR. JAMES: I apologize. I didn't mean to
24 preclude Tucson Electric's right to conclude the
25 hearing. Again, we have a number of intervenors.

1 Assuming Your Honor allows all of them to be, to
2 intervene, we are going to have to decide in what order
3 the intervenors provide testimony. I am simply
4 requesting, Your Honor, that we be allowed to be the
5 last intervenor.

6 CHMN. FOREMAN: Well, there is some sense to
7 that. However, I have found in trying cases and in
8 doing hearings that the best witness is the one that's
9 available. And so we will take the witnesses as they
10 are available. And if that means that there are some
11 witnesses who might come later than other witnesses, we
12 will try and work out whether or not there are reply or
13 rebuttal issues related to that.

14 As a working hypothesis, I think you can work
15 with a hypothesis that you will be the last of the
16 intervenors to make your presentation, do your
17 cross-examination and that sort of thing because of your
18 association with the applicant. Or I guess I would also
19 offer you the first position. But we will put the
20 opposing intervenors together and we will try and make
21 sure that everybody has a fair opportunity to make their
22 presentation --

23 MR. JAMES: Okay.

24 CHMN. FOREMAN: -- and get all the issues
25 related. Anything else then that you folks need to

1 address?

2 MR. JAMES: No, Your Honor.

3 CHMN. FOREMAN: Okay.

4 MR. GELLMAN: Mr. Chairman, regarding
5 Ms. Fonseca and Pima County, it is our understanding
6 that Ms. Fonseca has also provided prefiled testimony on
7 behalf of Ms. Webb in terms of the transmission line or
8 the project. At the same time, we also have this
9 request for limited appearance of Pima County in
10 relation to the project. And what the applicant wanted
11 to make clear is that Ms. Fonseca is testifying in her
12 official capacity as an employee of Pima County for
13 Ms. Webb at the same time the Pima County attorney is
14 not intending on conducting that examination, making
15 cross-examination, the things that would be done
16 typically as a full party.

17 It is a little confusing. It is a little
18 confusing given the ruling with the Santa Rita parties.
19 But I just wanted to raise that issue and make sure that
20 that's clear for the record.

21 CHMN. FOREMAN: Yes. You have heard me comment
22 before about, and as I have done already here today,
23 about the process. Again, we are trying to make it
24 work. I think it would be inappropriate to preclude a
25 party from calling a witness with an interest like

1 Ms. Fonseca. And the fact that they have, in addition,
2 used a statutorily authorized process, the limited
3 appearance process, I do not think disqualifies a
4 representative of Pima County from being a witness for
5 another party.

6 Mr. Robertson.

7 MR. ROBERTSON: Mr. Chairman, thank you.

8 Point of clarification with respect to
9 Mr. James' request. I have a distinct recollection from
10 the prefiling conference you conducted that you said one
11 of the purposes of the prehearing procedures you were
12 outlining is to facilitate disclosure and to avoid last
13 minute surprises. And I must confess at this point I am
14 not sure what the nature or the scope would be of the
15 rebuttal or reply testimony that Rosemont would be
16 allowed to put on in the event they are granted
17 intervention. Would it be confined to what they
18 prefiled on December 5th or would they have a complete
19 wide open playing field?

20 And the reason I ask --

21 CHMN. FOREMAN: The answer to the questions are
22 no and no. They can go beyond but they do not have a
23 complete open field. The line will be the one that I
24 articulated earlier. They will be able to provide
25 something new, not previously disclosed that responds

1 specifically and directly to that which was raised that
2 they did not reasonably anticipate. And I expect them
3 to disclose it as soon as they reasonably can.

4 MR. ROBERTSON: Thank you.

5 MR. DERSTINE: Your Honor, just so I have a
6 sense of how my day will start on Monday, you are going
7 to, as an open matter, deal with the intervention
8 issues, then address this legal ruling that you have
9 just made, and then request that the intervenors make
10 their offers of proof regarding mine impacts, is
11 that -- no, okay.

12 CHMN. FOREMAN: Not necessarily make their
13 offers of proof at that time.

14 MR. DERSTINE: Okay. It sounded like you were
15 asking them to make their offers of proof on Monday at
16 the outset of the hearing.

17 CHMN. FOREMAN: No.

18 MR. DERSTINE: When they get to their case, they
19 can make their offer at that time?

20 CHMN. FOREMAN: I was thinking more opening
21 statement. I do not anticipate the offers of proof
22 being long or involved.

23 MR. DERSTINE: All right.

24 CHMN. FOREMAN: I mean I will allow opening
25 statements that relate to what they are going to present

1 at the hearing, which would be environmental impact of
2 the line.

3 MR. DERSTINE: The line.

4 CHMN. FOREMAN: And I will certainly allow them
5 to say in addition we are making an offer of proof with
6 regard to the environmental impact of the mine and it
7 can be found in Exhibits ta-da ta-da ta-da. And then we
8 will move on.

9 MR. DERSTINE: Very good. Thank you.

10 MS. WEBB: Mr. Chairman.

11 CHMN. FOREMAN: And before we go beyond, one of
12 the things I said that I would do would be to give each
13 party a unique designation for their exhibits. This has
14 been challenging, because we have TEP and Tohono
15 O'odham, and then we have the almost endless
16 alliteration associated with the acronyms of
17 Mr. Robertson's clients.

18 So I have come up with TEP-1, 2, 3, 4, et cetera
19 for the applicant; O-1, 2, 3, 4, et cetera for the
20 Tohono O'odham Nation; R-1, 2, 3, 4, et cetera for
21 Rosemont Copper Company; S, and just one S -- I thought
22 of two, then I thought of three, then I thought of five,
23 then I thought of 12 -- for the Scenic Santa Ritas
24 Association; W for Webb; and M for Magruder.

25 Mr. Magruder --

1 MR. MAGRUDER: Yes, I heard that.

2 CHMN. FOREMAN: Okay, good. You get to be M
3 again.

4 MR. MAGRUDER: Mr. Chairman, I have already in
5 my testimony used MM, but I will correct it and use M
6 from now on.

7 CHMN. FOREMAN: MM is okay.

8 MR. MAGRUDER: Thank you.

9 CHMN. FOREMAN: All right.

10 MS. WEBB: Mr. Chairman.

11 CHMN. FOREMAN: Yes, Ms. Webb.

12 MS. WEBB: Okay. And, I am sorry, I don't know
13 how to use the right legal way to talk, so if I come
14 across wrong I apologize. I would like some guidance on
15 this. If we are not allowed to use the environmental
16 impacts of the mine when testifying orally, I would like
17 to ask that the environmental impacts that are used by
18 the applicant in the CEC application are not allowed
19 when used for mitigation of negative impacts related to
20 the transmission line. Particularly the waterline is
21 one example because they do not address --

22 CHMN. FOREMAN: This is premature.

23 MS. WEBB: So this is not a time to address this
24 particular issue?

25 CHMN. FOREMAN: That's right.

1 MS. WEBB: Okay. That's number one.

2 Number two, my recollection of when I sat here
3 at the prefiling conference when Mr. Black spoke about
4 whether or not they were going to file for or they were
5 going to have any witnesses planned was that, and also
6 in their filing for witnesses, was that they didn't know
7 how they could have witnesses, not knowing whether or
8 not the mine was going to be allowed, the environmental
9 impact of the mines was going to be allowed in the
10 testimony, the oral testimony at the hearing.

11 CHMN. FOREMAN: That's another reason I ruled
12 today.

13 MS. WEBB: Right. But then what I heard now is
14 that they are requesting that they be allowed to speak
15 after the people who have put all their exhibits
16 forward. And those exhibits have already been out
17 there. And I don't think that's fair. And I don't know
18 the right words but that's what I am saying.

19 CHMN. FOREMAN: I understood exactly what you
20 said. Okay.

21 MS. WEBB: That's it.

22 CHMN. FOREMAN: Very good.

23 Now, let's go on to the question that I raised
24 in reading the application. And I confess that I have
25 had my attention diverted by another line siting hearing

1 in the recent past and that when I earlier started
2 reading material on this case I was focusing on the
3 routes and not on the precise detailed language. So I
4 started reading the detailed language. And I think two
5 times within the first five or six pages there is an
6 explicit reference to this application not being for a
7 substation at the Rosemont mine that would take the
8 electricity that is brought on the transmission line and
9 reduce it to a voltage level that could be used in the
10 mine. Now, I did also notice in the application that
11 the cost of that substation was nevertheless listed in
12 the application.

13 So I was kind of curious about what had happened
14 here and the scope of the language in any CEC that we
15 deal with. And so I thought I would confirm. I just
16 want to make sure that this is to, this application
17 deals with a 138kV transmission line that ends at a
18 proposed substation and the facility, the materials, the
19 switchyard that is to be used therewith and related
20 thereto, to use the language of 40-360(11), in
21 parenthesis, is not part of this application. Is my
22 understanding correct?

23 MR. BECK: Mr. Chairman, that is correct. The
24 intent of the, or the way that the application was
25 written, the transmission line project is from the Toro

1 switchyard, includes the 138 line that goes up to the
2 Rosemont mine site, and then will terminate in a breaker
3 and three switches owned by TEP adjacent to the Rosemont
4 substation.

5 And TEP considers the Rosemont substation to be
6 an industrial facility belonging to the mine over which
7 we have no control. And we really have no interest in
8 having any part of that substation. So our delivery
9 point would be at the breaker adjacent to the Rosemont
10 substation.

11 I believe the costs that are included in the
12 application are for the breaker and switches and the
13 little fenced area that's adjacent to the Rosemont
14 substation.

15 CHMN. FOREMAN: So are the breaker and the
16 switches part of this application, or no?

17 MR. BECK: They are. They are intended to be.
18 If we were not clear, I apologize for that, but the
19 intent was that the breaker and switches would be part
20 of the application.

21 CHMN. FOREMAN: It is not clear, or it wasn't
22 clear to me. So I think that needs to be made clear.

23 Now, it is not the legal -- this Committee, and
24 me as the chairman, the Committee is not authorized to
25 pass upon the legality of building a switchyard to be

1 used with a new transmission line, that relates to a new
2 transmission line. And I don't intend to get into
3 whether it would be legal therefore for the mine to
4 build the switchyard that is beyond the facilities to
5 which you have just made reference.

6 Now, I want to make sure that everybody is on
7 the same page with me, because I don't want --

8 MR. MAGRUDER: Mr. Chairman.

9 CHMN. FOREMAN: -- I don't want to get bogged
10 down in this legal issue or have it occur at the
11 hearing.

12 Okay. Mr. Magruder.

13 MR. MAGRUDER: Mr. Chairman, Marshall. Can I
14 talk?

15 CHMN. FOREMAN: Yes.

16 MR. MAGRUDER: Okay. I submitted a data request
17 to ask for the demark point. And the response from
18 Rosemont is that it might be in the Toro switchyard. I
19 wanted to know where that point was. Neither TEP has
20 answered it to my satisfaction -- I still have
21 outstanding data requests to both Rosemont Copper and to
22 TEP trying to figure out where that point is. And it is
23 not clear in their responses.

24 CHMN. FOREMAN: Okay. Well, we are talking
25 about an issue of law here. And the issue of law is

1 where does the -- where is the limit of the Committee's
2 consideration of this application, or, to put it another
3 way, where does this application end. Does it end at
4 the end of the 138kV conductors? Does it end at some
5 breakers that are beyond, into which the end of those
6 conductors attach? Does it end in a switchyard that
7 then steps down that voltage to a more usable level of
8 voltage? That's what I am trying to get worked out now,
9 if I can.

10 And so these are factual matters that you are
11 going to need to address with the parties to whom you
12 have addressed your data requests. And we will address
13 those next week if there is still a problem. But this
14 is -- I am talking about an issue of law here right now.

15 MR. MAGRUDER: Yes, sir.

16 CHMN. FOREMAN: Okay? Do you have, do you have
17 any thoughts you want to share on that?

18 MR. MAGRUDER: Well, Rosemont said that the line
19 would be under their control and may be at the Toro
20 substation and, therefore, which is really one of the
21 reasons I wrote my motion. And I don't know if I can
22 talk about that yet.

23 CHMN. FOREMAN: Well, I am going to deal with
24 that, I am going to deal with your motion in just a
25 little -- well, I was going to go deal with it in a

1 little bit; maybe now is the time to deal with it.

2 Why don't you -- is there anything that you want
3 to add to the written pleading that you submitted?

4 MR. MAGRUDER: Chairman, I read through the
5 initial memorandum from Rosemont Copper and from TEP.
6 And when I finished reading those, in particular I
7 quoted Rosemont Copper statutes concerning a utility.
8 And the definition of a utility is anybody who
9 transmits. And I will leave it at that.

10 The other part was the definition that the CEC
11 has to be granted to a utility. And I, therefore, maybe
12 I am wrong, but it was very clear to me that Rosemont is
13 a utility; they are not a public service company. They
14 don't have rates and all that. But they just -- and
15 anybody, the law also says any person can be a utility.
16 So Marshall Magruder could be a utility. I don't
17 personally want to do that. But I think that, I just --
18 since I don't know where their ownership starts, I don't
19 know if they should be -- we should have a joint
20 application or not, which is why I submitted the motion.

21 CHMN. FOREMAN: Okay. So you are trying to help
22 them make sure that their application is complete?

23 MR. MAGRUDER: Well, I don't believe,
24 Mr. Chairman, you want to have an incomplete
25 application.

1 CHMN. FOREMAN: Well --

2 MR. MAGRUDER: And I think having a complete
3 application -- and because it will change the role in
4 these proceedings if we have a joint applicant instead
5 of one applicant, one being a public service company
6 that's required to furnish electricity, another -- and
7 the other two, and both of them are utilities. And I
8 think I can understand those definitions. They are
9 fairly clear in my mind, the difference.

10 CHMN. FOREMAN: All right. Well, I am going to
11 deny your motion --

12 MR. MAGRUDER: Okay.

13 CHMN. FOREMAN: -- for a couple of good legal
14 reasons. One is, as I indicated earlier, the Committee
15 is a creature of statute. It is not authorized to
16 compel people to file applications for CECs.

17 Now, if there is a legal problem with the mine
18 not being an applicant, either jointly with TEP or
19 separately for the switchyard, that's something, that's
20 a right that needs to be pursued in a forum which could
21 grant a remedy that had legal meaning. We have no
22 ability to pursue that. And so we are not, we are not
23 the appropriate place to address that concern. So I
24 don't intend --

25 MR. MAGRUDER: Can I have --

1 CHMN. FOREMAN: I am sorry?

2 MR. MAGRUDER: Can I have a slight rebuttal? I
3 tried to just use the line siting law.

4 CHMN. FOREMAN: Mr. Magruder, Mr. Magruder, you
5 and I are not in a negotiation. And we are not in an
6 argument.

7 MR. MAGRUDER: Okay.

8 CHMN. FOREMAN: You ask; I rule. I just ruled.

9 MR. MAGRUDER: I understand.

10 CHMN. FOREMAN: Do you understand my ruling?

11 MR. MAGRUDER: Yes, I do.

12 CHMN. FOREMAN: Very good. All right.

13 MS. WEBB: Can I make a legal argument?

14 CHMN. FOREMAN: About what?

15 MS. WEBB: What the Line Siting Committee is
16 allowed to consider in regard to the application.

17 CHMN. FOREMAN: No, not now. If you want to
18 submit a written pleading to that effect before the
19 hearing, you can do that and I will consider it at that
20 time, but no.

21 MS. WEBB: Okay. And I just need some guidance.
22 So we are done with the substation issue? It is not
23 considered part of the application?

24 CHMN. FOREMAN: I don't know the answer to that
25 question. I think the answer is no, but we are done

1 with me asking questions about it, because they just
2 indicated that the application is the way they wanted it
3 written and they have indicated that next week they will
4 articulate precisely what equipment at the end of the
5 transmission line is a part of the application and what
6 equipment is not.

7 MS. WEBB: Okay.

8 CHMN. FOREMAN: And as I said, this Committee is
9 not in the business of passing on whether or not
10 additional certificates of -- additional applications
11 for certificates of environmental compatibility should
12 be filed or whether the applications that are filed
13 should be for more than what they were. This
14 Committee's job is to determine whether the applications
15 that are filed should legally be granted. And that's
16 what we will do.

17 MS. WEBB: Okay. Just one more clarifying
18 question. What I understood them to say is that they
19 are going to build a switchyard at the end of the line.
20 From reading through the CEC several times, there has
21 not been any indication of discussion of environmental
22 impacts associated with the switchyard. When would be
23 the time for me to raise that concern?

24 CHMN. FOREMAN: Next week.

25 MS. WEBB: And then in regard to the question

1 Mr. MacIlvaine sent out regarding whether or not the
2 application could be amended under the Arizona code,
3 which if it does not significantly change the
4 application where you have to provide new notice, are we
5 going to discuss that issue?

6 CHMN. FOREMAN: Not unless somebody wants to
7 amend the application.

8 MS. WEBB: Okay. So --

9 CHMN. FOREMAN: And I have heard no request to
10 do that today.

11 MS. WEBB: I would like to request that they
12 amend the application because the switchyard for Toro is
13 three acres.

14 CHMN. FOREMAN: You would like to request that
15 they withdraw the application.

16 MS. WEBB: They can amend.

17 CHMN. FOREMAN: You unfortunately are not in a
18 position -- if you would like to talk to them afterwards
19 and ask them to withdraw their application or change
20 their application, you may do so. I am not in a
21 position to grant you a legal request to force them to
22 do that. And so that's not something I am going to
23 entertain now or next week.

24 MR. JAMES: Your Honor.

25 MS. WEBB: I am just trying to understand.

1 That's why I am taking the notes down. So I need to ask
2 them if they would like to amend the application. But
3 as it stands --

4 CHMN. FOREMAN: You may do that later.

5 MS. WEBB: After the meeting.

6 CHMN. FOREMAN: Yes.

7 MS. WEBB: After the meeting, or prefiling, or
8 prehearing conference now I can ask them if they would
9 like to amend the application to indicate that they
10 would be building a switchyard adjacent to the
11 substation on the eastern side of the Santa Ritas but
12 that there will be no consideration of amending the
13 application for me as an intervenor to put forward to
14 you under the regulations that said if there is a
15 substantial change.

16 CHMN. FOREMAN: Is that --

17 MS. WEBB: I am just trying to understand.

18 CHMN. FOREMAN: Well, you have managed to
19 confuse me, so...

20 MS. WEBB: If I may have a moment to find the
21 regulation.

22 CHMN. FOREMAN: No. We are going to go ahead.

23 MS. WEBB: Okay.

24 CHMN. FOREMAN: If you want to raise this issue
25 next week, you should submit something to me in writing

1 Monday morning and we will deal with it then. All
2 right.

3 MS. WEBB: Thank you.

4 CHMN. FOREMAN: Yes, sir.

5 MR. JAMES: Your Honor, Norm James again. Very
6 quickly, and I know you don't want to belabor this, but
7 just to correct the record, we are, we, Rosemont is
8 building the substation. It is shown in the draft
9 environmental impact statement. It is part of the plant
10 that's going to be used to process ore, if you look at
11 Chapter 2. I have got handouts.

12 But, again, I don't want to belabor the point,
13 but I think Ms. Webb said it is going to be built by TEP
14 but owned my Rosemont. That's not correct. As part of
15 our --

16 MS. WEBB: No, I didn't say that.

17 MR. JAMES: Okay. I just want to make sure.

18 CHMN. FOREMAN: Don't interrupt.

19 MS. WEBB: Sorry.

20 MR. JAMES: I am just trying to make sure the
21 record is clear.

22 CHMN. FOREMAN: Okay. And, again, I am not
23 going to, I am not going to rule in favor of you guys or
24 I am not going to rule against you on this. We are not
25 going to rule on the question of whether what you are

1 doing is legally appropriate.

2 The decision that I have made is, number one, I
3 want to know precisely what decision the Committee is
4 supposed to be making. That's the reason I have raised
5 this issue. And I leave it for others in another forum
6 to determine whether the way you have sliced this up is
7 something that can legally be done. So I am not, I am
8 not wanting to get into that. I am just wanting to know
9 precisely what it is we have to do. And I want to find
10 that out in advance. I don't want this popping up in
11 the middle of the hearing next week.

12 MR. BLACK: Thank you.

13 CHMN. FOREMAN: All right. We do have the
14 proposed CEC. Thank you for that. I think the proposed
15 CEC is going to perhaps need a little elaboration to
16 more precisely define the extent of the application or
17 what it is exactly you are asking for. And I would like
18 to have something in writing on Monday or Tuesday, if we
19 can.

20 We have limited appearance statements. I think
21 we have two now. We will have a separate limited
22 appearance file. By statute and rule limited appearance
23 statements are part of the record upon which the
24 Committee can base its decision.

25 Public comment will also be kept. There will be

1 a public comment pile. Public comments are matters upon
2 which the Committee cannot make its decision. And I
3 will have to explain this again at the public comment
4 times. Now, the Committee can take information from the
5 public comment session, ask questions of witnesses who
6 are sworn and subject to cross-examination and in that
7 way have information that originates in the public
8 comment session end up in the record that the Committee
9 can use to make its decision. But that to my knowledge
10 is the only way. And it is an option that's available
11 to the Committee. Or I guess it is also available to
12 the parties if the parties happen to ask questions of
13 witnesses during the hearing. Then you can have the
14 public comment session indirectly affect the record upon
15 which the Committee make its decision, but only in that
16 indirect way.

17 All right. Let's go now to -- has anybody
18 received from the Arizona Corporation Commission, either
19 from Mr. Olea or Ms. Alward, a response to my letter,
20 which I believe you all got a copy of, requesting or
21 offering them the opportunity to take a position on some
22 specific questions that I asked and then also anything
23 else that they wanted? I have not.

24 MR. GELLMAN: Mr. Chairman, I believe they filed
25 something in docket late last week. I am not sure if it

1 was last Thursday or Friday.

2 CHMN. FOREMAN: I have not yet received a copy
3 of those. Could you see, could you see that I get that?

4 MR. ROBERTSON: I don't recall seeing it either.

5 MR. GELLMAN: Okay.

6 CHMN. FOREMAN: If there is something that
7 exists, I would very much like to have it.

8 We have gone over -- ah. We apparently do have
9 something. It just hasn't reached my desk yet. Good.
10 All right. We have something from Ms. -- we have
11 something from Mr. Olea. I assume that will be a part
12 of the exhibits that are offered. Thank you.

13 MR. ROBERTSON: What is the date on that letter,
14 Mr. Chairman?

15 MR. MacILVAINE: December 5th.

16 CHMN. FOREMAN: December 5.

17 MR. ROBERTSON: December 5? Thank you.

18 CHMN. FOREMAN: What is the status of exhibits?
19 Has everybody disclosed all of the exhibits that they
20 intend to try to use next week?

21 MR. GELLMAN: Mr. Chairman, the applicant has.

22 CHMN. FOREMAN: Okay.

23 MR. ROBERTSON: Mr. Chairman, Scenic Santa Ritas
24 has disclosed all the exhibits it intended to use next
25 week.

1 CHMN. FOREMAN: All right. And if it comes up
2 with new ones, I assume it will be disclosed promptly.

3 MR. ROBERTSON: Certainly.

4 CHMN. FOREMAN: Okay.

5 MR. ROBERTSON: Your assumption is correct.

6 CHMN. FOREMAN: Okay.

7 MR. JAMES: Your Honor, ours were not disclosed
8 because, in part, we weren't sure what they were going
9 to be. We hoped to disclose early next week. Now we
10 are not going to be testifying in response to
11 Mr. Robertson's clients so I don't think we are going to
12 have any exhibits.

13 CHMN. FOREMAN: Okay. That's, those kinds of
14 decisions are the easiest ones for me to make.

15 All right. Does the Nation have any exhibits
16 that it has not already disclosed that it intends to
17 make reference to next week?

18 MS. BERGLAN: No, Mr. Chairman. We disclosed
19 all witnesses.

20 CHMN. FOREMAN: And, Ms. Webb.

21 MS. WEBB: I have disclosed all my exhibits.

22 CHMN. FOREMAN: And I received from you today a
23 DVD.

24 MS. WEBB: It is a CD.

25 CHMN. FOREMAN: A CD. And what is on that CD?

1 MS. WEBB: Mr. Chairman, that was a witness list
2 from my first set of exhibits that were submitted. That
3 was the hand-carried version. But I do have a question,
4 if it is all right to ask, regarding docketing or
5 submitting that as evidence.

6 I did not call and check with Docket Control
7 before I tried to submit the CDs. And so although the
8 Tucson office, I have been told, is not an official
9 docketing, it is not the Docket Control, so they did
10 not -- they stamped it and sent it up here. Fortunately
11 Rachel called me and she saved them for me. So now I
12 have 21 copies.

13 But I do not want to get in trouble for sending
14 them to people on that list. So I need some guidance
15 how to get them to the people that are on the list. Or
16 should I just give them to you, or how do I do this?

17 CHMN. FOREMAN: No and no. You must give them
18 to the people who are seated at this table and --

19 MS. WEBB: So I --

20 CHMN. FOREMAN: -- and Mr. Magruder --

21 MS. WEBB: Absolutely.

22 CHMN. FOREMAN: -- the people who are going to
23 be parties. The other people on the distribution list,
24 if you want to send them an e-mail out saying if you
25 would like a copy of my CD give me your address and I

1 will send it to you, that's fine. If they get it,
2 that's fine. If they don't, we can still proceed.

3 MS. WEBB: And, in particular, I am referring to
4 the Commissioners, because that's something I really
5 don't want to do by mistake. So I understand that the
6 Commissioners are on that 26-party list or 25-party list
7 that comes out from Docket Control. So how do I make
8 sure that they get those, or does it --

9 CHMN. FOREMAN: I don't know the answer to that.
10 Docket Control handles that. If -- I mean there are
11 five offices over there. I am sure if you walked over
12 and handed one to the, or handed five to the
13 receptionist over there and said you would like to have
14 each one of the Commissioners get one, that would be one
15 way. I am not --

16 MS. WEBB: That's what I observed Mr. Gellman
17 did. So if that's acceptable, then I will just do the
18 same thing.

19 MR. GELLMAN: Mr. Chairman, I will be happy to
20 speak to Ms. Webb about how we did it. We simply
21 submitted a letter to the five Commissioner offices and
22 docketed that letter.

23 CHMN. FOREMAN: Okay. That's fine.

24 All right. Now, Mr. Magruder.

25 MR. MAGRUDER: Yes, sir.

1 CHMN. FOREMAN: Do you have any exhibits?

2 MR. MAGRUDER: I have some exhibits I have not
3 submitted. And the way I read your procedural order, we
4 can submit them during the hearing as long as we
5 disclose them in advance. And that's my intent.

6 For your information, I am just entering
7 Washington Street. And I am coming from Mayo Hospital.
8 And I should hopefully be able to get into the room in
9 the next five or ten minutes.

10 But on the subject of exhibits, it is very
11 confusing. Can I send them to the list? I call it the
12 164 list. Then I have to docket it. Some of the
13 exhibits have a lot of pages and it becomes extremely
14 expensive. I don't mind e-mailing anything. It is
15 making 25 copies that's the, is the challenge. And
16 that's what is a big problem.

17 CHMN. FOREMAN: Okay. Well, I encourage you to
18 disclose your exhibits as soon as possible, because the
19 chances that they will be allowed into the record next
20 week depend upon disclosure to the other parties. If
21 they don't have advanced notice and fair opportunity to
22 figure out what the exhibit is and how to deal with it,
23 then they can move to exclude them. And the later you
24 wait to disclose them the greater the chance that I will
25 preclude them. So --

1 MR. MAGRUDER: They have all, I think they have
2 all been disclosed because they have been an e-mail and
3 everybody had to submit copies of their e-mails to the
4 docket. But I just haven't been able to get them all --
5 it is making the copies that's the hard part.

6 I am outside your building and I would like to
7 come in, if I can just come into your meeting.

8 CHMN. FOREMAN: Well, you certainly can, and
9 there is room for you. But we, we have been going for
10 almost an hour and 20 minutes and we need to keep going.
11 So we will see you shortly.

12 MR. MAGRUDER: Okay.

13 CHMN. FOREMAN: All right. Let's talk about
14 notebooks. I assume that we are going to have notebooks
15 for the Committee members that will contain the
16 exhibits.

17 MR. GELLMAN: Mr. Chairman, the applicant has
18 three-ring binders with all of our exhibits that we
19 intend to introduce as well as the proposed form of CEC
20 alternative language and the maps for the CEC.

21 CHMN. FOREMAN: Good. Do the other --

22 MR. GELLMAN: I am sorry, and also the route
23 itinerary is included.

24 CHMN. FOREMAN: Okay. We will get to the tour
25 route in a minute.

1 Do the other parties have documents that would
2 be a part of your exhibits that are either in separate
3 binders or three-ring --

4 (Teleconference operator interruption.)

5 CHMN. FOREMAN: That's not fair.

6 Mr. Robertson.

7 MR. ROBERTSON: Thank you, Mr. Chairman.

8 Mr. Metli had been assembling notebooks for each
9 of the Committee members that would have the prepared
10 testimony of our three witnesses as well as the summary
11 of those testimony and also our proposed form of
12 decision. Would you like us to continue to have those
13 available to hand out?

14 They will now be the subject of the offer of
15 proof, and that's why I would like to get some guidance.
16 But we had intended to provide notebooks for each of the
17 members of the Committee.

18 CHMN. FOREMAN: Yes. What I would encourage is,
19 if for example the Nation is also going to have
20 documentary materials, that we try and kill as few trees
21 or try and use as few notebooks as we can. So if you
22 want to collocate exhibits together, that would be
23 helpful.

24 In a case like this it is very hard from just a
25 physical point of view to cart around all of the

1 exhibits. And I know the members want to be able to
2 have them to refer to. And just I think keeping track
3 of all of the documents that are going to be related to
4 this case is going to be a challenge.

5 MR. ROBERTSON: Mr. Chairman.

6 CHMN. FOREMAN: Yes.

7 MR. ROBERTSON: We would be happy to accommodate
8 the Nation and anyone else in our notebooks. It will be
9 a question of the thickness of the materials they would
10 like to include. I don't think I can offer on behalf of
11 our client to create a second set of notebooks, but we
12 would be happy to include materials that would fit
13 within our notebooks.

14 CHMN. FOREMAN: Well, then let me ask then the
15 intervenors and potential intervenors to meet after this
16 meeting and attempt to integrate together your
17 documentary evidence so that we have as few notebooks as
18 possible.

19 MS. BERGLAN: Yes, Mr. Chairman.

20 MR. DERSTINE: Mr. Chairman, could I --
21 clarification purposes. My understanding, that the
22 Scenic Santa Ritas documentary evidence falls within the
23 offer of proof pile.

24 CHMN. FOREMAN: Yes.

25 MR. DERSTINE: And so, for clarity purposes, can

1 we at least have those exhibits separately marked or so
2 that it is clear what is part of the record and what is
3 part of the separate offer of proof exhibits?

4 CHMN. FOREMAN: I think that's a really good
5 suggestion. So let's have, and I understand there are
6 going to be offer of proof materials from the Nation,
7 possibly and from Mr. Magruder and Ms. Webb, so let's
8 have a notebook that has offer of proof in it, and let's
9 have a notebook that has exhibits that are intended to
10 be used as evidence in the hearing.

11 MR. ROBERTSON: All right. And in the case of
12 Scenic Santa Ritas, the notebook that has our materials
13 and anyone else's offer of proof will be an offer of
14 proof notebook.

15 CHMN. FOREMAN: Great, great. Same thing for
16 the company, if you want to try and work together with
17 the Scenic Santa Ritas, that would be great.

18 MR. BLACK: We will, Your Honor.

19 MR. ROBERTSON: This could be a groundbreaking
20 event.

21 MR. DERSTINE: Sharing notebooks.

22 CHMN. FOREMAN: Could be. Just, the party would
23 be, what, the Scenic Rosemont Mine?

24 All right. Let's go to the tour now. We are
25 going to have a Google flyover, is that correct?

1 MR. GELLMAN: Yes, Mr. Chairman.

2 CHMN. FOREMAN: All right. And we have had a
3 map and an itinerary filed for the tour.

4 MR. GELLMAN: We had an itinerary filed for the
5 tour. We have a map that was not filed on Monday but we
6 have it here that we can pass out for the demonstrative
7 purposes.

8 CHMN. FOREMAN: Okay. Was this map previously
9 circulated? It seems to me --

10 MR. BECK: Not this one. We had signage maps
11 and so on.

12 MR. GELLMAN: Not this particular one.

13 CHMN. FOREMAN: All right. I would like to see
14 a copy of the map.

15 MS. EVERSON: Mr. Chairman.

16 CHMN. FOREMAN: Yes, Ms. Fonseca or --

17 MS. EVERSON: No, this is Beverly Everson.

18 CHMN. FOREMAN: Oh, I am sorry, Ms. Everson.

19 MS. EVERSON: I wanted to let you know, I am
20 sorry to interrupt, I wanted to let you know I am going
21 to be leaving the call. The Forest Service will not be
22 submitting any evidence to the hearing. However, at
23 your request, I will be prepared to do a briefing on the
24 status of the environmental impact statement and present
25 the scheduling.

1 CHMN. FOREMAN: Thank you very much. We really
2 appreciate that.

3 MS. EVERSON: You are welcome.

4 MR. MAGRUDER: Mr. Chairman, as we get to the
5 map, can I just show you, this is the way we submitted
6 the list of exhibits with my testimony. Does that meet
7 your satisfaction?

8 CHMN. FOREMAN: Actually, you have anticipated
9 something that I was going to get to. We can do that
10 now.

11 I would like each person, party, purported
12 party, hopeful party, people who want to submit exhibits
13 to have for me on Monday morning a list of exhibits that
14 is numbered and has a brief description of the exhibit.
15 And I want you to break them down into two sets: one,
16 offer of proof; one, hearing evidence. And that will
17 help me a great deal. I always am concerned in a large
18 case to make sure that I have rulings on the record on
19 each offered piece of evidence. And that will help me
20 greatly. I am sure it will also help the court
21 reporter.

22 All right. So the answer to your question is
23 yes, that would be great. And we will look forward to
24 seeing a complete one on Monday.

25 Now, with regard to the tour --

1 MR. BECK: Mr. Chairman, maybe a brief
2 explanation of the map you have in front of you.

3 CHMN. FOREMAN: Sure.

4 MR. BECK: On the one side you see three
5 separate little maps. The larger one at the top is
6 intended to be an overall picture of the project area
7 basically. And you can see up in the upper left corner
8 there is a little box with the label of 1. The
9 reference is to Detail 1, which is then down below,
10 specifically how we leave the Holiday Inn hotel and get
11 onto the freeway.

12 Then you go back up to the upper map. We are
13 heading down I-19. This all corresponds to the written
14 description. We would go down to where you see
15 Detail 2, which is then the other little box down at the
16 bottom. It just shows how you get from I-19 across
17 Sahuarita Road over to Santa Rita Road.

18 And then at that point you can turn the map over
19 and we are into the actual project area that we are
20 going to be making the stops at. And you will see
21 Stop 1 -- the stop sign labeled 1, that's the first
22 stop -- going down Santa Rita Road to No. 2, which is
23 kind of in the middle right side of that map; then
24 backtracking and down to Stop 3, which is at the
25 intersection of some of the alternative routes; heading

1 easterly, southeasterly there over to where you see Stop
2 No. 4 down in the bottom right corner. Then when you
3 look at the actual route itinerary that was laid out, we
4 identified the next stop as optional. It is going to
5 take quite a bit more time. But to the extent the
6 Committee wants to go there, we would continue down the
7 right, down to the right bottom corner of the map. We
8 could flip over to the other map but basically we are
9 getting onto Highway 83, heading north on 83 to a point
10 where we turn into the Rosemont property, basically
11 Helvetia Road. Then, as you see back on the detailed
12 map, we head in by Rosemont substation and then up to
13 Stop 5, which is basically at the top of the hill on the
14 Santa Ritas where you can look down and see both the
15 west side of the mountain as well as back to the east.

16 CHMN. FOREMAN: All right. This will get
17 presented to the Committee on Monday. This is helpful
18 to me, though, for preparing them, and we will make a
19 decision about this on Monday.

20 MR. DERSTINE: Mr. Chairman, you may want to
21 hear from Mr. Beck about estimated times of the basic
22 routes and the options.

23 CHMN. FOREMAN: I must say this looks like it
24 was prepared by an engineer.

25 MR. BECK: A couple of engineers.

1 Basically what we have identified is it is
2 probably a five-hour trip just to go down through
3 Stop 4, and anywhere from another one to two hours to go
4 into Stop 5 and then get back to the hotel, so somewhere
5 from five to seven hours. It is, these are all dirt
6 roads but they are all passable. And we have a van set
7 up for the Committee to ride in.

8 An maybe one other further question for you,
9 Your Honor, is that we have arranged to have security
10 for the hearings themselves Monday, Wednesday, Thursday,
11 Friday. But to the extent we do the field tour, we
12 didn't intend to have security along on that as a
13 ride-along. I don't know if you have a position on
14 that.

15 CHMN. FOREMAN: Do we need camouflage outfits?

16 MR. BECK: Other than the fact that the region
17 of the country where we are in could lead to some
18 issues.

19 CHMN. FOREMAN: We will deal with that on
20 Monday.

21 MR. BECK: Okay.

22 CHMN. FOREMAN: I would like for you also to
23 give me an estimate or have for us on Monday an estimate
24 of time to go through Stop 3, taking Helvetia Road down
25 to White House Canyon Road and White House Canyon Road

1 back over to the interstate.

2 MR. BECK: Okay.

3 MS. WEBB: Mr. Chairman, are we allowed to
4 comment on this, or no? In writing?

5 CHMN. FOREMAN: Yes. Is there something you
6 want to say today as opposed to Monday?

7 MS. WEBB: I would prefer to say it now so that
8 there is time for it to be taken into consideration.

9 CHMN. FOREMAN: Okay.

10 MS. WEBB: No. 2, the blue, green -- blue is the
11 preferred route. I believe it is in the best interest
12 to making a decision, doing the balancing test, to
13 actually go down the preferred route. This is the route
14 that is indicated in the recently released Federal
15 Register notice for the Army Corps of Engineers where
16 they actually indicated where three poles are going to
17 be placed, have already been sited on the preferred
18 route. When you are on the --

19 CHMN. FOREMAN: Ms. Webb, let me interrupt you.

20 MS. WEBB: Okay.

21 CHMN. FOREMAN: It sounds to me like what you
22 are trying to do is to make an argument for changing the
23 route.

24 MS. WEBB: Yes.

25 CHMN. FOREMAN: Is that true?

1 MS. WEBB: I have been making the argument since
2 the very beginning.

3 CHMN. FOREMAN: Yes, you have. And if you make
4 it you are going to make a record on it, and it is
5 really going to be worthless. I am going to make this
6 decision on Monday, but I am going to make it after I
7 talk to my fellow Committee members and poll them as to
8 what their interests are.

9 So rather than having to repeat this again on
10 Monday, I encourage you to wait, make your comments on
11 Monday, when we consider this on Monday. And then your
12 comments, I think, will have more value and be more
13 directed towards what it is you want them to be directed
14 towards, which is actually influencing the route of the
15 tour. Okay.

16 MS. WEBB: Okay.

17 CHMN. FOREMAN: Very good.

18 Now, I think I wanted to talk about security and
19 about the evening public comment session. You have
20 already talked to me about security. Is there anything
21 else about security that I need to know other than this
22 is an application about which people feel strongly? I
23 mean, have there been any specific threats or any
24 specific concerns about particular individuals?

25 MR. GELLMAN: Mr. Chairman, we haven't received

1 any specific threats. We anticipated that the level of
2 security would be similar to that that was provided in
3 the Case 157, which was the Tucson Demoss Petry case,
4 which was our last case that was held in late January.

5 CHMN. FOREMAN: Okay. All right. If anybody
6 learns of something that would indicate that there was a
7 potential public safety threat associated with this
8 hearing or the tour, I expect you to articulate that as
9 soon as possible to me and to the applicant. And I will
10 expect the applicant to provide appropriate security.
11 Right now it sounds to me like it is under control and
12 so I don't plan to go there again unless there is a
13 reason for me to go.

14 I have already talked about the NEPA process.
15 And we will get a report on that apparently next week.

16 And I think that's the end of my list of things
17 to consider. Are there issues that any of you would
18 like to address today?

19 MR. ROBERTSON: It is not an issue; it is a
20 question.

21 CHMN. FOREMAN: Yes, sir.

22 MR. ROBERTSON: It is occasioned by Mr. Beck's
23 indication there would be security provided for Monday,
24 Wednesday, and Thursday, and Friday. If the Committee
25 decides to do the --

1 CHMN. FOREMAN: Let me stop you. It is entirely
2 possible that the Committee will either not go on a tour
3 or go on a tour that will provide time for having a
4 hearing also on Tuesday. So we may be, we may be in the
5 hearing on Tuesday. And, of course, the tour, because
6 we will have our court reporter along, will involve some
7 testimony. We are going to have, I assume, somebody
8 from the applicant along to guide us on the tour and
9 that we will be allowed to question at the end of the
10 tour. And my expectation is that, if we do take the
11 tour, we will go directly back to the location of the
12 hearing and sort of debrief, where we are able to put
13 stuff on. So I will expect there will be security on
14 Tuesday, although maybe not somebody in the van with us.

15 Anyway, I am sorry, I interrupted you have.

16 MR. ROBERTSON: Actually you I anticipated my
17 question, which had nothing to do with security on
18 Tuesday but more whether or not there would be any
19 hearing time on Tuesday in the event the tour was
20 conducted.

21 CHMN. FOREMAN: And the answer is yes.

22 MR. ROBERTSON: Thank you.

23 CHMN. FOREMAN: The only question is how much,
24 and that variable will be quantified Monday afternoon
25 after I have a chance to talk to my Committee members

1 and make a decision about how long the tour will be.

2 MR. ROBERTSON: I must say, Mr. Chairman, if you
3 will indulge in a moment of levity, as one who lives
4 approximately 20 miles north of the border, I didn't
5 know whether to be concerned by Mr. Beck's
6 characterization of the area or not.

7 MR. BECK: We have had some interesting stories.
8 Anyway, leave it at that.

9 CHMN. FOREMAN: All right. Any other questions
10 or concerns that we need to raise?

11 Mr. Magruder.

12 MR. MAGRUDER: Normally in prehearings we go
13 through who is going to talk and how long do people have
14 for their presentations and how long -- and who -- how
15 long each one of us want to ask witnesses questions. If
16 you don't want to do that, that's fine. But I have been
17 to prehearing conferences before and they said
18 witness 1, 2, 3, and 10 minutes, 40 minutes, two hours,
19 so that you can plan the timing. That's all. If you
20 don't want to do that, that's fine.

21 CHMN. FOREMAN: That's reasonable. Let's try
22 and plan Monday. I didn't do it today because frankly
23 there are more moving parts in this --

24 MR. MAGRUDER: I know.

25 CHMN. FOREMAN: -- application than I have had

1 in others, and I am going to be happy to get through
2 Monday getting any testimony in. But --

3 MR. MAGRUDER: That's good.

4 CHMN. FOREMAN: Who is going to testify and
5 approximately how long do you anticipate the direct
6 examination will be on Monday?

7 MR. GELLMAN: Mr. Chairman, we, and I think we
8 indicated this in our notice of filing, we intended to
9 have Mr. Beck, Ms. Weinstein, and Ms. Johnston testify
10 as a panel, because that, particularly Mr. Beck's
11 testimony, will involve the Google flyover and typically
12 there are questions from Committee members regarding
13 that flyover. We anticipate our direct presentation to
14 take the bulk of Monday, assuming we start on or around
15 the regular time given public comment and the other
16 matters.

17 CHMN. FOREMAN: Okay. Does that give you the
18 best estimate you can get? Okay. That gives you some
19 idea.

20 I would guess that I will probably go to the
21 Save the Santa Ritas after the applicant. And we will
22 see if there is any testimony that Save the Santa Ritas
23 has; then the Tohono O'odham Nation, if the Tohono
24 O'odham Nation is granted party status; Ms. Webb and
25 Mr. Magruder, if they are granted party status; then the

1 mine, if the mine is granted party status.

2 And so I would expect that, I would hope that we
3 would not have much in the way of public comment during
4 the day, but I am willing to accommodate folks who can't
5 make it to the evening session and would not be able to
6 make it to any of the other sessions during the week.

7 As far as the public comment session in the
8 evening is concerned, if there are people who are going
9 to be there and articulating basically similar
10 positions, a more effective way of doing that would be
11 to have a letter that everybody signs and stand up and
12 say, you know, I am here, these are 47 people in my
13 subdivision -- I think we had one, wait, my first one,
14 No. 138, we had people coming in in buses, and some of
15 them had shirts on. The shirts are optional, obviously.
16 But if you want to have a group come in and say, have a
17 spokesperson come up and say we are representing or we
18 are from a certain subdivision or a certain area or a
19 Nation and we feel this way, it is set forth in writing
20 in this letter and all of our names are signed down
21 here, and here are, everybody stands up and says here
22 are the folks who are in support of this, that's a way
23 that you can get out a consistent reasoned articulation
24 of a position in the public comment session. And it
25 helps also to allow time for other people who want to

1 make their feelings known to do that. So I encourage
2 group presentations in that way.

3 And, I don't know, you know, we have had labor
4 unions come in and do something similar to that. We
5 have had commercial interests come in and do that. We
6 have had subdivision people come in and do that. So
7 there are a variety of ways that can be addressed.

8 I am going to be repeatedly advising people as
9 we go along, and I will do it again at the beginning of
10 the public comment session, that the hearing is about
11 the line and not about the mine. And we will, I am sure
12 that there will be some people who will have difficulty
13 with that, and we will just have to deal with that as it
14 comes up.

15 All right. Any other issues then that we need
16 to address here today?

17 (No response.)

18 MR. MAGRUDER: I didn't.

19 On the last subject we are talking about, Your
20 Honor, and it was mine versus line, and let me just give
21 you an example. Many jobs will be created by the mine.

22 CHMN. FOREMAN: Are you wanting to make an
23 argument or what is it you are wanting --

24 MR. MAGRUDER: I am trying to ask is this a
25 problem. If somebody says that many jobs will come with

1 the mine, I really think that what I understand your
2 ruling is, the jobs that will come with the installation
3 of the transmission line is what is good testimony, not
4 that it will be so many jobs with the mine. Is that a
5 reasonable interpretation of your ruling?

6 CHMN. FOREMAN: Well, actually, of course, there
7 is no explicit authorization for testimony on the number
8 of jobs or economic impact of any project. We have
9 allowed and I would probably allow limited testimony
10 about the economic impact of the line, but I will not
11 allow testimony about the economic impact of the mine.

12 MR. MAGRUDER: Thank you.

13 CHMN. FOREMAN: And I am sure that can be
14 included in the offer of proof. I know it is in the
15 EIS, the draft EIS, so, or at least I think it was in
16 there. I know I read something that I thought was the
17 EIS that had something about that in it. But it is all
18 beginning to flow together in my mind.

19 MR. MAGRUDER: Thank you. I just wanted to pick
20 a subject that we probably weren't talking about, but I
21 just wanted to ask for that type of clarification.
22 Thank you.

23 CHMN. FOREMAN: All right. Very good.

24 MR. DERSTINE: My kids want me to ask if we are
25 going to go all day on Friday.

1 CHMN. FOREMAN: Thank your kids for raising
2 that. We will not go on Friday.

3 MR. DERSTINE: We are not going to go on Friday.

4 CHMN. FOREMAN: We are going to lose at least
5 one and I think perhaps two members on Friday. We may
6 lose one on Thursday. And I may be unable to function
7 by the end of the day on Thursday. So I would guess
8 that the chances that we will go on Friday are slim.
9 Now, it is noticed and I am going to keep it noticed.
10 And we will discuss that more on Monday. But I would
11 say that the chances of going on Friday now are looking
12 pretty slim.

13 MR. DERSTINE: Thank you.

14 CHMN. FOREMAN: I have -- I think the best case
15 scenario is that we finish up either late Wednesday or
16 more likely on Thursday, Thursday afternoon. Worst case
17 is we end up coming back in, we go through Thursday and
18 we end up coming back in January. There are, as I said,
19 too many moving parts in this case for me to be able to
20 do anything more than give you those outside limits.

21 (Teleconference operator interruption.)

22 CHMN. FOREMAN: All right. Well, I think most
23 everybody here is going to leave, too. So if there is
24 nothing else, we will see you folks on Monday at 9:30.

25 (The proceeding concluded at 3:47 p.m.)

1 STATE OF ARIZONA)
) SS.
2 COUNTY OF MARICOPA)
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7 I, COLETTE E. ROSS, Certified Reporter No.
8 50658 for the State of Arizona, do hereby certify that
9 the foregoing printed pages constitute a full, true and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.

13
14 WITNESS my hand this 9th day of December,
15 2011.

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COLETTE E. ROSS
Certified Reporter
Certificate No. 50658