



1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on to be heard as Agenda Items Nos.  
3 10 and 11 at Open Meeting before the Arizona Corporation  
4 Commission, in Hearing Room 1 of said Commission, 1200  
5 West Washington Street, Phoenix, Arizona, commencing at  
6 10:55 a.m. on the 10th of May, 2012.

7  
8 BEFORE: GARY PIERCE, Chairman  
9 BOB STUMP, Commissioner  
10 SANDRA D. KENNEDY, Commissioner  
11 PAUL NEWMAN, Commissioner  
12 BRENDA BURNS, Commissioner

13 APPEARANCES:

14 For the Applicant:

15 Messrs. Matthew Derstine and Jason Gellman

16 For Rosemont Copper Company:

17 Messrs. Patrick Black and Norman James

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

21 Messrs. Lawrence V. Robertson, Jr. and Robert J.  
22 Metli

23 For the Tohono O'odham Nation:

24 Ms. Laura Berglan

25 For Marshall Magruder

Mr. Marshall Magruder

1 APPEARANCES:

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For Elizabeth Webb:

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Ms. Elizabeth Webb

4

5 For Pima County:

6

Mr. Scott Wakefield

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For the Arizona Corporation Commission:

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Ms. Janet Wagner

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COLETTE E. ROSS  
Certified Reporter  
Certificate No. 50658

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1 CHMN. PIERCE: We are going to take Item U-10  
2 and U-11 together.

3 There have been a number of things filed. I am  
4 going to go ahead and go to public comment first, since  
5 I think we can. And we will start out with -- and,  
6 public commenters, cover 10 and 11. You have three  
7 minutes, but I think you should be able to do it with  
8 both items on this.

9 So we will start with Rick Grinnell, Southern  
10 Arizona Business Coalition. And after Rick, we will go  
11 to Bob Quick, president of the Arizona Mine Association.

12 COM. NEWMAN: No more podium.

13 CHMN. PIERCE: Okay. Let me explain what we are  
14 going to do. We are going to bring you up.

15 Do we have a mike?

16 SECRETARY BERNAL: Yes.

17 COM. NEWMAN: Yes, we have a mike at the witness  
18 stand.

19 CHMN. PIERCE: So, when you come up, find your  
20 way over to this side to our witness stand. We are not  
21 going to swear you in.

22 COM. NEWMAN: But I will be happy to be the  
23 bailiff.

24 CHMN. PIERCE: Much as we would like to, but we  
25 are not going to swear you in. We expect you to make

1 your comments. And pull the mike up close to you so  
2 everyone can hear. And you have three minutes.

3 COM. NEWMAN: Mr. Chairman, point of personal  
4 privilege. I was a bailiff in the Court of Appeals in  
5 California and regularly recorded proceedings and helped  
6 people into their seats. So that was a flashback for  
7 me.

8 CHMN. PIERCE: Okay. Mr. Grinnell.

9 MR. GRINNELL: Thank you. I don't believe the  
10 microphone is working.

11 SECRETARY BERNAL: It is on.

12 CHMN. PIERCE: Just --

13 MR. GRINNELL: Mr. Chairman, members of the  
14 Commission, thank you for the opportunity to be here  
15 today as vice president of the Southern Arizona Business  
16 Coalition.

17 CHMN. PIERCE: Hold on a second. We are not  
18 hearing it over the system. And it may be working as  
19 far as everyone outside but it is not working over our  
20 system.

21 SECRETARY BERNAL: I turned it up.

22 CHMN. PIERCE: Go ahead, Rick.

23 MR. GRINNELL: Yes, sir. As the vice president  
24 of the Southern Arizona Business Coalition, one of the  
25 many considerations for any business is the cost, time,

1 energy and effort to expand, open, or invest. There is  
2 one process that we go through through the banks and  
3 make sure our financials are all in order. There is  
4 another process that we have to appropriately deal with  
5 with the government.

6 CHMN. PIERCE: I need to stop you.

7 SECRETARY BERNAL: Hold on.

8 CHMN. PIERCE: We are going to get you another  
9 mike. I am sorry. We will let you start over.

10 MR. GRINNELL: That's all right.

11 (Brief pause.)

12 CHMN. PIERCE: Okay. We can pull another chair  
13 up there.

14 Laurie, if you could, move back just a little  
15 bit.

16 Thanks, Rick. Go ahead and go down there. We  
17 will use that mike that's right in the middle and we  
18 will let the public commenters have a seat, not have to  
19 stand today. And we will do it that way. We know those  
20 mikes work just fine.

21 COM. NEWMAN: That's the last time I am a  
22 bailiff.

23 CHMN. PIERCE: And we are going to let you start  
24 over; although, the court reporter has it all down.  
25 Okay.

1 MR. GRINNELL: Chairman Pierce, members of the  
2 Commission, thank you for the opportunity to be here.

3 Is that better?

4 CHMN. PIERCE: Yes.

5 MR. GRINNELL: I am the vice president of the  
6 newly formed Southern Arizona Business Coalition. One  
7 of the various issues that we are concerned with is the  
8 time, energy and effort that it takes for a new business  
9 to open, particularly in southern Arizona.

10 And if anybody just recently heard, Tucson  
11 unfortunately was named as one of the five worst places  
12 for a business to open by CNN. This is an embarrassment  
13 to me, to our business environment. And it is a  
14 stressful environment of which we have to deal with our  
15 government who doesn't seem to understand the process.  
16 We want to change rules in order to appease a certain  
17 audience.

18 There are rules in place for a reason. And as  
19 business owners, as people that are trying to put people  
20 to work, invest our hard work and resources back into a  
21 community to pay taxes, to generate jobs, we are being  
22 continually deflated by opposition to a process.

23 This body is engaged legally in a process. It  
24 approved a process. It was approved by the Line Siting  
25 Committee. And any additional information over and

1 above that specific data is not part of the process.

2 So on behalf of businesses trying to do  
3 business, particularly in southern Arizona, I ask you to  
4 stick to the rules. We all have to play by them. And,  
5 on a personal note, when my grandkids want to go to  
6 grandma for something and they want grampa to change the  
7 rules, that doesn't happen in our household. The rules  
8 are the rules. Okay, some grandparents do. But the  
9 fact is it is really pretty simple. I am asking you on  
10 behalf of these businesses.

11 And on an opposing note, yesterday we had  
12 30 businesses. 25 of them five years ago employed over  
13 10,000 people. Today those same 25 businesses employ  
14 less than 1,000 people. They have left Tucson. They  
15 have left Arizona. They have been -- unfortunately many  
16 had to be taxpayer recipients of unemployment. It is  
17 time to put southern Arizona back to work.

18 Thank you for your time, sir.

19 CHMN. PIERCE: Thank you.

20 Okay. Bob Quick, and then I am going to go to  
21 Dr. Raymond Smith who is on the phone after Mr. Quick.

22 MR. QUICK: Mr. Chairman, members of the  
23 Commission, my name is Bob Quick. I am president of the  
24 Arizona Mining Association.

25 On behalf of our 42 members we submitted



1 comments, testimony for the record. And that went in  
2 yesterday so it may not have actually made it into the  
3 docket. So I just wanted to mention that to you.

4 We are very concerned about what is going on and  
5 we believe that the rehearing, the request for the  
6 rehearing exceeds the authority of the ACC, that it is  
7 not authorized by statute. Fundamentally we believe  
8 that it is all covered by the federal EIS process, and  
9 the ACC has neither the authority nor the expertise to  
10 decide such matters and, at a minimum, that they would  
11 be duplicative.

12 The environmental considerations related to  
13 actual mine development and mining activities are highly  
14 regulated by the State of Arizona, primarily the ADEQ,  
15 federal government in the form of EPA, the U.S. Forest  
16 Service, the Bureau of Land Management, U.S. Army Corps  
17 of Engineers, and the U.S. Fish & Wildlife Service,  
18 among others. Adding a new level of environmental  
19 review for the entire project, not just the power line,  
20 under the purview of the ACC would create a new  
21 precedent, be unnecessarily duplicative, and further  
22 exacerbate on already ponderous and lengthy regulatory  
23 permitting process.

24 The Arizona Mining Association respectfully  
25 urges the ACC to grant the rehearing request of TEP and

1 Rosemont Copper by ruling that the consideration of a  
2 customer's business operations including environmental  
3 and land use impacts is beyond the jurisdiction of both  
4 the Siting Committee and the ACC.

5 Thank you, Mr. Chairman.

6 CHMN. PIERCE: Thank you.

7 COM. NEWMAN: Mr. Chairman.

8 CHMN. PIERCE: Why don't you stay there for a  
9 moment.

10 Commissioner Newman, do you have a question?

11 COM. NEWMAN: Yeah. Since, I since have read  
12 some of the statements that appeared in the Arizona  
13 Daily Star and other places regarding the company's  
14 position, Mining Association's position, even some  
15 elected officials' position that, that the Commission is  
16 not allowed to review the public interest decisions that  
17 the, that the Line Siting Committee reviews under the  
18 aegis of the AG's Chairman designate. And the reason  
19 for this hearing is, I wanted to make clear before, I  
20 don't know what is going to happen today, I want to make  
21 clear the reason for holding this, we had a long debate  
22 about whether to go back to the Line Siting Committee or  
23 come here. And that was a very difficult interaction.  
24 But there are new avenues that we wish to explore.

25 One is the legal, what is the legal definition

1 of public interest in terms of our review, which we have  
2 every right to do as elected Commissioners, and we  
3 really should. And so that's where it gets a little  
4 unclear, number one. And then number two, there are  
5 some due process concerns, at least I personally have,  
6 about things that happened in the record that need to be  
7 clarified. Because I do not in any way want intervenors  
8 and members of the public to be in fear of coming to the  
9 Line Siting Committee and being part of our transparent  
10 public process. Those are the reasons for this. It has  
11 nothing to do with stopping jobs or anything like that.

12 Now, with regard to the public interest review,  
13 you know, whether you need to build a transmission line  
14 before the water even gets to the project, you know,  
15 that is something subject to a cost/benefit analysis and  
16 I think the ACC has a right to do. I will be hearing  
17 from some lawyers on that today.

18 I realize you have a different point of view.  
19 It is not an election, but it is comments. And I wanted  
20 to, since I haven't seen you in such a long time,  
21 Mr. Quick, we have not seen each other in at least a  
22 decade, I wanted to give you a chance to respond to my,  
23 I thought, I think, fairly reasonable expressed desires  
24 for review.

25 CHMN. PIERCE: Mr. Quick, the reality is there

1 is not really a question about --

2 COM. NEWMAN: Mr. Chairman, I wanted him to  
3 respond to my, to me, please --

4 CHMN. PIERCE: Well --

5 COM. NEWMAN: -- if you don't mind.

6 CHMN. PIERCE: Well, if you can.

7 COM. NEWMAN: He could definitely respond. He  
8 has been around for a long time.

9 CHMN. PIERCE: Well, it is -- you are a public  
10 commenter. So respond as you feel like you need to.

11 COM. NEWMAN: He is more than a public  
12 commenter. He represents the mining associations.

13 MR. QUICK: Mr. Chairman, Commissioner Newman,  
14 it is also good to see you. It has been a long time.

15 COM. NEWMAN: I forget even the last time,  
16 somewhere when we were trying to help the mining  
17 industry together.

18 MR. QUICK: Yes, indeed.

19 COM. NEWMAN: We worked on many projects  
20 together.

21 MR. QUICK: Yes, we have. And we appreciate  
22 that.

23 We are concerned overall about the long-term  
24 effect that -- of the potential impact of where this is  
25 going for the entire industry, not just for Rosemont.

1 We are very concerned for Rosemont and support their  
2 activity, but we believe that this could potentially  
3 jeopardize all manner of mining expansions and new mines  
4 in the state.

5 COM. NEWMAN: Okay.

6 MR. QUICK: So that is, that's the -- excuse me,  
7 Mr. Chairman. I am sorry.

8 COM. NEWMAN: No, no, no. I interrupted you. I  
9 understand your philosophical reasons for being here, so  
10 we get each other. I wanted you to understand --

11 MR. QUICK: I understand.

12 COM. NEWMAN: -- at least this Commissioner's  
13 philosophical reasons for being here today. And I do  
14 hope that we have a full hearing. And, you know,  
15 regardless of people expressing the fact that they don't  
16 want a hearing and want a quick vote just to abort this,  
17 this is important public discussion that could happen  
18 today in the context of this hearing. I agree with you  
19 it has potential ramifications for future analysis. But  
20 I look forward to legal advice that we get today from  
21 various parties.

22 CHMN. PIERCE: Okay. Dr. Raymond Smith, you are  
23 on the phone, sir. Can you hear me?

24 Just wait a minute until we get you off of mute.

25 COM. NEWMAN: Good to see you.

1 MR. QUICK: Likewise.

2 Thank you, Mr. Chairman.

3 CHMN. PIERCE: And he is still on mute.

4 Okay. Dr. Smith, can you hear me?

5 MR. SMITH: I can hear you well.

6 CHMN. PIERCE: Please move your voice -- move  
7 closer to the microphone so we can hear you a little  
8 better.

9 MR. SMITH: Well, that's as close as I can --

10 CHMN. PIERCE: Oh, that sounds -- that's  
11 perfect. So go ahead. You have three minutes.

12 MR. SMITH: Well, I am highly in favor of the  
13 project.

14 My bachelor's degree was in mining engineering  
15 at the University of Alaska. My Ph.D. was at -- in  
16 science, Doctor of Science, at Penn. I have several  
17 honorary degrees.

18 I know the field very well. I have been in  
19 mining not as a paid person but on boards of directors.  
20 I have been the chairman of a water company, never,  
21 again, as a paid member but as a volunteer. So I know  
22 the field very well.

23 I have never seen a mine planned any better for  
24 environmental protection than Rosemont mine. They have  
25 gone through the hoops. And I must admit that I am

1 ashamed of the board of supervisors for appealing or  
2 throwing things in the way to create the jobs. There  
3 are not enough jobs. Tucson is a bad place to try and  
4 open up a mine, let alone anything else. So I am very  
5 sorry that you have to go through all of this. I am  
6 very proud of the Commission that they take this job on.

7 That's about all I have to say, unless you have  
8 some specific questions that are technical.

9 CHMN. PIERCE: No, thanks. I mean thank you.  
10 No one is on the board. I didn't mean to dismiss you  
11 that way, Dr. Smith, but no one is on the board to ask a  
12 question. But thank you for participating. And if you  
13 want to listen in on this, do that on our listen line or  
14 by virtual computer. The line you are on is one we pay  
15 30 cents a minute. So you will probably get  
16 disconnected on that line, but you can certainly call  
17 in.

18 MR. SMITH: Thank you very much.

19 CHMN. PIERCE: Like I said, bring us up on the  
20 computer because we are live on your computer. All  
21 right. Thank you.

22 Now, I don't have anyone else after Dr. Smith.  
23 Someone checked out. So I don't have anybody listed.  
24 We will go back to people in the audience.

25 David Jones, president/CEO of Arizona

1 Contractors Association, and then Kelly McLear, board of  
2 directors, MAATR.

3 And before we go down memory lane with  
4 everybody, Mr. Jones, thank you for being here. We were  
5 all legislators and we appreciate that you are here.

6 MR. JONES: It is good to be here today. First  
7 of all, on behalf of the Arizona Contractors  
8 Association, we were founded in 1956. We represent  
9 general contractors, subcontractors, suppliers, and  
10 those individuals and professionals who work in the  
11 construction industry.

12 It is good to see you, Commissioner. I haven't  
13 seen you for awhile. I have worked with most of you in  
14 the past. I am familiar with the work you have done. I  
15 thank you for the work you are doing and the work you  
16 will do in the future.

17 I am here today to represent on behalf of our  
18 members and our board of directors our position of  
19 support for Rosemont Copper. Most of you are probably  
20 aware of the fact that we have lost 108,000 construction  
21 jobs in Arizona. That has been devastating.

22 The construction industry in Arizona is the  
23 second largest contributor to the revenue streams  
24 through the DPT tax. We have lost about 47 percent of  
25 our members. And we have lost them because they can't



1 afford to pay dues or they have either just closed their  
2 doors.

3 Construction, construction jobs are important.  
4 In the five Cs of our economy in this state, they left  
5 out one big one; that C is construction. We have been a  
6 generator of jobs and a generator of revenue. And we  
7 want our people to go back to work.

8 Rosemont Copper will be putting up \$2 billion of  
9 construction work on their project when the mine opens  
10 over a 10-year period. We have people who want to work.  
11 They are willing to work. And they are ready to do it.  
12 Further delays, further obstructions, it could be  
13 interpreted as abuse of the system.

14 I fully understand your responsibilities. But I  
15 am telling you, on behalf of our people, they are  
16 starving out there. They are dying on the vine every  
17 day. We need help. We want -- we have people who want  
18 to go to work. And I solicit your support in anything  
19 you can do to facilitate the operations of Rosemont so  
20 we can start putting people to work.

21 I thank you today. I will answer any questions.

22 CHMN. PIERCE: Thank you. We are good.

23 COM. NEWMAN: Thank you.

24 CHMN. PIERCE: Kelly McLear, and then Michael  
25 Varney from Tucson Metro Chamber.

1 Are you wanting us to be able to see it?

2 MS. McLEAR: I will hold it up.

3 CHMN. PIERCE: Okay.

4 MS. McLEAR: Thank you.

5 My name is Kelly McLearn. I am from Tucson,  
6 Arizona. And I am here today on behalf of the board of  
7 directors of a nonprofit organization that goes by the  
8 acronym MAATR, which stands for Mid-American Association  
9 for Autism Training and Research. That's why we have an  
10 acronym.

11 I live in Tucson. And the reason is not to talk  
12 about the pros and cons of Rosemont mine but because  
13 Item No. 10 has to do with the process with TEP and  
14 siting lines.

15 Yesterday in the Arizona Daily Star, which I  
16 read online every day, it said that TEP would need to  
17 follow a state law requiring it to consider other  
18 development plans in the area of the line and that the  
19 law requires the Commission to consider plans for other  
20 developments that are at or in the vicinity of a  
21 proposed power line.

22 MAATR has for 20 years been working with the  
23 autism community in Arizona to develop a major project  
24 on behalf of individuals with autism and their families.  
25 We have 80 acres that are near the siting line, within

1 about a half a mile. And I will hand you some pictures  
2 and some information as soon as I am finished.

3 Our ranch, which is called MAATRhorn Ranch, sits  
4 very close to where the preferred and I believe route  
5 number 1, as well, siting lines are designated. This  
6 ranch project -- I am going to stand up. This ranch  
7 project would consist of not overnight residential but  
8 overnight weekend stays for family as well as a full  
9 arsenal of outdoor activities that benefit their  
10 community of adults and children with autism.

11 If any of you know anything about this disorder  
12 or are familiar with SARRC in the Phoenix area, we have  
13 consulted with them starting about 15 years ago to help  
14 us develop this project. The project was approved by  
15 Pima County Development Services in 2011. TEP should  
16 have provided that information to the Siting Committee,  
17 according to what I read yesterday in the paper. And  
18 that information was never provided, that our  
19 development project sits very, very close to the  
20 proposed power lines.

21 So I have, I don't have the stamped plans with  
22 me today, but I do have, you know, preliminary, if you  
23 would like to look at them. But I am going to give you  
24 some further information.

25 If someone could pass these out to the

1 Commissioners, that would be helpful. In here will be a  
2 letter describing MAATR and what we are intending to do.

3 This is extraordinary, this project. Nothing  
4 like it exists in the state. Many, many hundreds of  
5 families are desperate for resources in southern  
6 Arizona. It is our intention to reach out to all of the  
7 southern half of the state because we had so few  
8 resources. And, as I said, this has been 20 years in  
9 the making.

10 We have been busy raising funds. And the  
11 Rosemont mine was never considered when we began. But  
12 when we had the plans finalized after lots of money and  
13 effort by a lot of people, we felt that we should bring  
14 it forward in the public process and that it should have  
15 been done prior to this by TEP. But that's why I am  
16 here today.

17 I am happy to answer any questions. And I am  
18 happy to pass around this wonderful rendering of what  
19 this project is if you would like to see it.

20 CHMN. PIERCE: Okay. There is a -- if you --  
21 you can do that; I don't know if that's necessary.

22 I am on the board and then Commissioner Newman.

23 I just wanted to thank you for being here.

24 Commissioner Stump and I in 2005, when we were at the  
25 House of Representatives, had the wonderful opportunity

1 to work with a lady by the name of Gretchen Jacobs --

2 MS. McLEAR: I know Gretchen.

3 CHMN. PIERCE: -- who -- and I was in  
4 leadership. And Commissioner Stump, I think, was  
5 chairman of health or something like that.

6 COM. STUMP: Yes.

7 CHMN. PIERCE: And we, and we actually took heat  
8 from a number of conservatives because we participated  
9 in getting an appropriation for autism children.

10 MS. McLEAR: I do recall very well.

11 CHMN. PIERCE: Yes. And it was something that  
12 we are happy to do. And I think it had a, from what I  
13 understand, it had a great benefit.

14 MS. McLEAR: Yes, it has, as do most funding  
15 issues, as well as projects that are privately funded.  
16 By the way, this is a privately funded project at this  
17 time.

18 CHMN. PIERCE: Great.

19 MS. McLEAR: But the plan number is in the  
20 documentation there if you need to get with Pima County  
21 Development Services for proof of that. And we have  
22 commenced the construction; although, we have kind of  
23 stalled it because of this siting plan.

24 We are very, very concerned about the effects of  
25 these lines on what we are going to be doing with the

1 people and as well as the families, the volunteers, the  
2 donors. There will be a lot of changes in the area  
3 considering what this, these power lines will consist  
4 of.

5 So I would really appreciate it if you would  
6 just take this under consideration, which should have  
7 been at the Siting Committee prior to this. But I  
8 appreciate the opportunity today.

9 Any questions?

10 COM. NEWMAN: I do.

11 CHMN. PIERCE: Commissioner Newman is on the  
12 board.

13 MS. McLEAR: Yes. Thank you.

14 COM. NEWMAN: First of all, the first question I  
15 have, this is a question of new information. When is  
16 the first time you contacted the Commission with your  
17 information?

18 MS. McLEAR: Today. And I must say that I did  
19 attend the public hearings and read through or skimmed  
20 through the entire documentation, all the manuals.

21 I never knew, none of us knew that this was in  
22 the rule, a state rule, that TEP should have provided  
23 this. And I actually spoke to people at the siting line  
24 section of those public hearings and said that we had  
25 something that was developed right there. No one ever

1 mentioned that this should have been brought forward.

2 COM. NEWMAN: Okay. I would like to approach --  
3 Madam, your name is?

4 MS. McLEAR: Kelly.

5 COM. NEWMAN: Kelly, Ms. Kelly.

6 CHMN. PIERCE: Kelly McLearn.

7 MS. McLEAR: Kelly McLearn. It is a very Irish  
8 name.

9 COM. NEWMAN: I am showing you a document that  
10 was in your package.

11 MS. McLEAR: Yes.

12 COM. NEWMAN: And that is, that is the --

13 CHMN. PIERCE: Well, come back here.

14 COM. NEWMAN: I am going to go back.  
15 Okay. I am showing you that document.

16 MS. McLEAR: And I will explain it.

17 COM. NEWMAN: Would you please describe the  
18 document.

19 MS. McLEAR: Certainly. In the document you  
20 will see two yellow highlighted parcels. Those are each  
21 40 acres. This is the last item in your packet. Those  
22 are the parcels of land that we own for the MAATR Ranch.  
23 The one that looks as if it is on the north of the top  
24 of that paper is actually pointing south. And that is  
25 where the main facility is designated, where the

1 development plan is. On the left of that you will see  
2 some slash marks that I just penciled in, just long  
3 slash marks in pencil. That's an approximation of where  
4 that preferred siting line will be.

5 COM. NEWMAN: Okay. That's very important. So  
6 for the record, I want you to go over that slowly.

7 MS. McLEAR: Okay.

8 COM. NEWMAN: Do you know how many feet, do you  
9 know how many --

10 MS. McLEAR: Rough approximation of a half a  
11 mile. And I am not --

12 COM. NEWMAN: It is a half mile from your  
13 property.

14 MS. McLEAR: Yes, from --

15 CHMN. PIERCE: Okay. We are, we are getting --

16 MS. McLEAR: We are going over.

17 CHMN. PIERCE: We really are. This is like  
18 taking testimony. And intervenors have a right to  
19 really question a lot of this and they will get a chance  
20 to go into this. But I think we should be careful,  
21 because these lines are drawn on here. And so --

22 MS. McLEAR: Absolutely. Because I had less  
23 than 24 hours to prepare something for you, this was the  
24 best I could do at 11:00, 12:00 at night.

25 COM. NEWMAN: Mr. Chairman, the purpose of this



1 question is I want this document introduced into  
2 evidence. It is the first time I heard about it. And I  
3 would like it to be part of the record so that all the  
4 parties can see it.

5 CHMN. PIERCE: What I would ask you to do is  
6 simply docket all this information.

7 MS. McLEAR: Certainly.

8 CHMN. PIERCE: And you can do that here.

9 MS. McLEAR: I can do that certainly.

10 CHMN. PIERCE: That's what we want to do.

11 COM. NEWMAN: Docketing would be good, but for  
12 the purposes of today's discussion, that document I  
13 would like to be considered. For the purposes of --

14 CHMN. PIERCE: No.

15 COM. NEWMAN: -- clarification just name it this  
16 woman's name so we can talk about it again.

17 There is a representative from Pima County here  
18 today who may be able to give us some enlightenment as  
19 to the notice problems or potential notice problems that  
20 you brought to light. And I am -- it is totally new  
21 information to the Commission and I think even to the  
22 line siting commission that there is any planned  
23 communities in the line, in the way of this line siting.  
24 It is the first we have heard of it.

25 I even asked a representative of the tribe in

1 the last hearing whether or not there were some sites  
2 associated technically with traditional use in the  
3 siting of the line particularly because of that issue.  
4 I understand that there is a grander view of holy site,  
5 but I wanted to know whether there were holy sites next  
6 to there.

7 So I am asking you the same thing. This is  
8 something that really fell out of the record. So it  
9 needs to be included in the record some way. And I  
10 guess we will deal with that procedurally. But I thank  
11 you so much for coming today.

12 MS. McLEAR: Certainly.

13 CHMN. PIERCE: We have more questions.

14 COM. NEWMAN: And then I wanted to just ask a  
15 question. Your objections, you have a community of  
16 disabled --

17 MS. McLEAR: Certainly, yes.

18 COM. NEWMAN: -- people, both adult and  
19 children.

20 MS. McLEAR: Yes.

21 COM. NEWMAN: And part of your, I am just  
22 speculating that part of your therapeutic situation is  
23 to have a lifestyle of peace and quiet. It helps  
24 autistic children. I have friends with autistic kids.  
25 I know some of it. But would you care to clarify for

1 the record?

2 MS. McLEAR: Some of that is in the letter.  
3 Clearly we selected this site because of its  
4 tranquility. It was away from the urban environment,  
5 which is very conducive to individuals with autism and  
6 environmental sensitivities. And that is the bottom  
7 line. That is why we selected this. We purchased it  
8 over 20 years ago for that reason. And we know that  
9 that is a very appropriate environment for individuals  
10 with autism.

11 And we are not here to oppose the mine. I am  
12 here today because of item No. 10, which pertains to the  
13 siting line.

14 COM. NEWMAN: Yes.

15 MS. McLEAR: The siting line is directly close  
16 to our project. And we are very concerned about what  
17 that will result in. And you will see in the letter a  
18 number of issues that we have brought forward.

19 COM. NEWMAN: And I want to tell you, in all the  
20 time I have been doing line siting for the last three  
21 years, I don't remember a situation where a case got  
22 through the Line Siting Committee without, without all  
23 landowners around where the lines transgress, the major  
24 landowners or interested parties were not part of the  
25 Line Siting Committee or that process. We would call

1 them essential stakeholders. And in a sense you really  
2 should be an intervenor in this case. But I am -- at  
3 least we know that you are here.

4 MS. McLEAR: And you have to understand that  
5 because I just read this yesterday I am here as an  
6 individual and I don't --

7 COM. NEWMAN: Yes.

8 MS. McLEAR: -- didn't have time for legal  
9 counsel or any other items to give you today.

10 COM. NEWMAN: You have legal --

11 MS. McLEAR: That's all I can do.

12 COM. NEWMAN: You have legal interests at risk  
13 and you should be represented by legal counsel. But you  
14 did an excellent job representing yourself today. Thank  
15 you.

16 And I didn't cross-examine you. I am just  
17 trying to --

18 MS. McLEAR: No, you didn't.

19 COM. NEWMAN: -- help your process.

20 MS. McLEAR: No. And I must say I have been an  
21 advocate for people with disabilities for over 30 years  
22 in Arizona, helped craft a lot of legislation. And this  
23 is not tied to anything like that, but it is part of the  
24 larger picture of how our state does help individuals  
25 with special needs by working together to make sure

1 things aren't impacted negatively that were designed for  
2 those individuals. So that's really why we are here.

3 COM. NEWMAN: Well, in the spirit of the  
4 legislature sweeping 50 -- a lot of money out of working  
5 with disabled or troubled youth, that's a great  
6 statement to make as well. Sometimes we don't look at  
7 the big picture. But this is news to me and news to  
8 everybody in the room. And I think it is significant.  
9 And thank you for coming.

10 MS. McLEAR: And thank you for giving us the  
11 opportunity here.

12 CHMN. PIERCE: Commissioner Burns.

13 COM. BURNS: Thank you, Mr. Chairman.

14 I would like at some point, either before or  
15 after I ask my questions, to understand how far we are  
16 going to go in some of these kinds of questions. This  
17 is not a hearing. This is just bringing to light  
18 perhaps some ideas as to why we may or may not go to  
19 hearing or what the breadth of it would be.

20 CHMN. PIERCE: Right.

21 COM. BURNS: So I don't know what the caution is  
22 there, but --

23 CHMN. PIERCE: Well, I think -- you know, I  
24 understand. And we are going to stop here pretty quick  
25 with this.

1 COM. BURNS: Okay.

2 CHMN. PIERCE: Go ahead.

3 COM. BURNS: My question -- and, first of all,  
4 thank you for all that you do. It is very important.

5 MS. McLEAR: Certainly.

6 COM. BURNS: Everybody is touched with autism, a  
7 growing issue. And just about everybody somewhere is in  
8 their life suffering.

9 MS. McLEAR: Just everybody is.

10 COM. BURNS: But I am a little bit concerned  
11 about being here at this point and you saying that you  
12 only had 24 hours to prepare, yet you were at the line  
13 siting, you knew that the process was going on, the  
14 hearings at the Line Siting Committee, they were having  
15 public comment sessions, and there were opportunities  
16 for intervening and so on.

17 So I am a little bit -- I don't really  
18 understand why there was all of a sudden a rush and yet  
19 you were there. And I don't know why you didn't go to  
20 the Line Siting Committee or someone from your  
21 organization to bring this issue to light.

22 MS. McLEAR: At the beginning when the public  
23 meetings took place I did send in a letter, you know,  
24 that sort of thing, written. I may have done more than  
25 one of those. And that was what I understood was the

1 opportunity that we had.

2           So whatever was out there for us that we should  
3 have known was very obscure, very veiled in terms of  
4 what it was that we could have participated in. And I  
5 am not stretching the truth here at all. I am -- I read  
6 religiously about this because I knew that it was near  
7 our project. And I never saw an opportunity other than  
8 the letter writing to participate on any other levels.  
9 This is the first time that yesterday's paper stated  
10 that. And I said this looks like a window, I am going  
11 to be there.

12           COM. BURNS: So you sent a letter to the Line  
13 Siting Committee?

14           MS. McLEAR: I don't know that it went to the  
15 Siting Committee. I believe it went to, I am going to  
16 say it was early on, probably one letter went to the  
17 Forest Service and some other large entity.

18           You know, there were sort of calls and deadlines  
19 for those things that came over the internet and I just  
20 responded to them. I apologize for not having copies of  
21 anything like that with me today.

22           COM. BURNS: So if you sent a letter --

23           MS. McLEAR: But I don't know that I  
24 specifically contacted anyone at the Siting Committee.  
25 However, I did speak to people at the public meetings

1 who were there in that section where they were directly  
2 involved with that, asked lots of questions. They gave  
3 me the map, I showed them where we were, you know, those  
4 kinds of things on a personal level. It wasn't a large,  
5 our whole organization there. I am the one that lives  
6 in Tucson. I am sort of the support person in touch.  
7 The rest of the board of directors happens to live in  
8 Kansas because that's where the money was raised. So,  
9 you know, long story made short, I am it in Tucson.

10 And that's as much as I can clarify. And I  
11 don't feel like I did anything inappropriate or wrong in  
12 missing a turn here. I really do feel like if there was  
13 an open door, an invitation out there to participate in  
14 the Siting Committee, I probably would have known that  
15 and I would have done something.

16 COM. BURNS: You did send a letter to someone?

17 MS. McLEAR: Oh, yes. Oh, yes.

18 COM. BURNS: So that should be docketed and on  
19 the record.

20 MS. McLEAR: Somewhere. I would have to  
21 check my e-mail.

22 COM. BURNS: Somewhere. That would be important  
23 to find out where that was and where it might be  
24 docketed and on the record. Thank you.

25 CHMN. PIERCE: Commissioner Kennedy.



1 COM. KENNEDY: Thank you, Mr. Chair. I actually  
2 have a question for Legal, if they could help me,  
3 respond to my question.

4 The information that Ms. McLear just presented  
5 to us, how can we get this information entered into the  
6 record?

7 MS. ALWARD: Chairman, Commissioners, there are  
8 two ways you can consider this, I think, from what I  
9 have heard presented by the public commenter. You could  
10 take it as public comment and then use it to inform  
11 yourself about this matter and the process. I also  
12 think, because the commenter indicated that Pima County  
13 has formally approved the project, you could take  
14 judicial notice of the fact that Pima County has entered  
15 some decision on this project, because I think that's  
16 within the ambit of the Commission. If you take  
17 judicial notice of a matter of another public agency,  
18 you can then use it, I believe, more as an evidentiary  
19 matter.

20 COM. KENNEDY: Okay. One more question for you.  
21 If the Pierce Amendment, the Recommended Draft Order  
22 passes, then this information will not be entered into  
23 the record, correct?

24 MS. ALWARD: My view is that you can take this  
25 public comment to inform yourselves of this particular

1 commenter's view. I also think you can take judicial  
2 notice --

3 CHMN. PIERCE: Hold it. Hold it. She asked you  
4 what my amendment does.

5 COM. KENNEDY: No.

6 CHMN. PIERCE: Well, you said, in relation to my  
7 amendment, will this be, will this be brought in, could  
8 this be brought in as -- if my amendment passes. That's  
9 what --

10 MS. ALWARD: Chairman, Commissioners, maybe I  
11 misunderstood. Whether or not your amendment passes,  
12 Commissioner Pierce, I think this public comment session  
13 permits you to be informed by this public comment. And  
14 I believe you could take judicial notice today of this  
15 matter irrespective of any amendment that passes.

16 CHMN. PIERCE: Okay. Yeah, I think. But do you  
17 mean more like does the judge, if it goes to hearing,  
18 not coming back to us, but the amendment, how it impacts  
19 what the judge hears in her hearing?

20 COM. KENNEDY: Correct.

21 MS. ALWARD: Chairman, Commissioners, you could  
22 just say we take judicial notice that Pima County has  
23 approved this proposed plan. And then in the docket,  
24 because you have asked her to docket these matters, or  
25 one Commissioner has, and that would be the approval

1 number or the plan that was approved -- I think she said  
2 she didn't have a document that shows -- oh, you do?

3 MS. McLEAR: The project number is here.

4 MS. ALWARD: Right.

5 Then you could take judicial notice that Pima  
6 County had approved this plan. And you could do that  
7 today.

8 COM. NEWMAN: Mr. Chairman --

9 CHMN. PIERCE: Well, hold on.

10 COM. NEWMAN: -- point of procedure. I have a  
11 point of procedure: Oh, Ms. Kennedy has the floor?

12 CHMN. PIERCE: Yeah.

13 COM. NEWMAN: I am sorry.

14 CHMN. PIERCE: Are you finished or do you  
15 need --

16 COM. NEWMAN: Oh, Commissioner Kennedy, I am  
17 sorry. I have a point of procedure only because we  
18 started talking about the amendment.

19 CHMN. PIERCE: Well, she had a question about  
20 what the amendment does to her, how -- you know. Okay,  
21 we understood what it is.

22 COM. NEWMAN: Yeah, we started getting into the  
23 amendment.

24 CHMN. PIERCE: No, we are not getting into the  
25 amendment.

1 COM. NEWMAN: Okay, we are not. I got a little  
2 uncertain about where we were going today. I actually  
3 feel like we are on a merry-go-round; wherever it stops,  
4 somebody is going to get off, because your major  
5 amendment would preclude a lot of people from saying  
6 what they want to say. And I think that we should -- I  
7 wanted, the point of procedure is I want the parties to  
8 be able to say what they want to say and that the Pierce  
9 Amendment seems to be a shortcut to --

10 CHMN. PIERCE: You are talking about the  
11 amendments. So it is not really a point of procedure --

12 COM. NEWMAN: I am not --

13 CHMN. PIERCE: -- technically right now.

14 COM. NEWMAN: I am talking about the amendment.  
15 It is a point of procedure. Your amendment seemingly  
16 would stop us from talking. So I ask counsel what we  
17 do. Because all these people are going to be talking  
18 about the environmental --

19 CHMN. PIERCE: Okay.

20 COM. NEWMAN: -- aspects of the case. I would  
21 like that argued. And if we are just going to have an  
22 amendment to cut off argument, I would like to know.

23 CHMN. PIERCE: We are doing public comment. So  
24 we are going to stop. There is no point of procedure.  
25 We are finished with this.

1 MS. McLEAR: Thank you very, very much.

2 CHMN. PIERCE: Thank you very much.

3 COM. NEWMAN: Mr. Chairman, I know we are  
4 finished with her, but I take the advice of counsel.  
5 And I thank Commissioner Kennedy for her very astute  
6 question.

7 I absolutely take judicial notice of the parcel  
8 number that she set out. And I would like Pima County  
9 to do some quick homework on confirming that. And I  
10 would like by judicial notice to take that into the  
11 record. From what I know about how this project  
12 proceeded, I know a lot of private land parcels were  
13 purchased by Rosemont Copper as they, as they --

14 CHMN. PIERCE: Commissioner Newman, you are  
15 going to have time for this. You are interrupting  
16 public comment stuff. I have someone else on deck --

17 COM. NEWMAN: I want to know --

18 CHMN. PIERCE: -- who wanted to speak.

19 COM. NEWMAN: I want to know if there are other  
20 similarly situated property owners because I knew that  
21 the company assiduously took care of that and  
22 obviously didn't permit a witness.

23 CHMN. PIERCE: Okay. We are in recess.

24 (A recess ensued from 11:35 a.m. to 11:43 a.m.)

25 CHMN. PIERCE: Okay. We have a quorum. Let's

1 go ahead and get seated, if we could. Our next person  
2 will be Michael Varney, president/CEO of Tucson Metro  
3 Chamber.

4 Let's give the other Commissioners a moment to  
5 get back here. Hopefully we can...

6 We are waiting on Commissioner Stump.

7 COM. NEWMAN: Mr. Chairman, if I may have the  
8 record with you for awhile, I wanted to apologize. I  
9 really was trying to clarify a point of procedure about  
10 the amendment and how we are going to proceed here. I  
11 hope all parties at least get a chance to give their  
12 positions here today before the amendment is --

13 CHMN. PIERCE: Sure.

14 COM. NEWMAN: -- acted on. That was my point of  
15 procedure and the reason for me trying to clarify.

16 CHMN. PIERCE: What we are going to do is finish  
17 the public comment session. And I will outline where we  
18 are going for the rest of the day because we are going  
19 to get into the lunch hour.

20 So Mr. Varney, president and CEO of Tucson Metro  
21 Chamber of Commerce, thank you for being here.

22 MR. VARNEY: Thank you for the opportunity.  
23 Good morning, Mr. Chairman, members of the Commission.  
24 As stated, my name is Michael Varney. I am the  
25 president and CEO of the Tucson Metro Chamber. And I am

1 speaking today on behalf of the 1350 member businesses  
2 of the Tucson Metro Chamber representing more than  
3 105,000 employees.

4 A matter of serious concern has come to our  
5 attention. And we feel we must make our voices heard.  
6 It is our understanding that the Arizona Corporation  
7 Commission has, without precedent or statutory authority  
8 to do so, decided to include land uses and business  
9 operations of an electricity customer in their decision  
10 to authorize or deny the siting of an electric power  
11 line. We consider this action to be a gross overreach  
12 of authority.

13 Involvement in these kinds of matters does not  
14 fall under the purview of anything we can find in the  
15 statutory scope of the ACC. There are other governing  
16 bodies that have the expertise, the background, and the  
17 statutory authorization to oversee land uses,  
18 environmental impact, and business operations matters.  
19 Involvement by the ACC in the areas managed by other  
20 agencies is not only duplication of effort, but will  
21 ultimately lead to confusion, contradiction, needless  
22 delays and have a negative impact on the economic  
23 development in the State of Arizona.

24 With an economy that is suffering from  
25 unprecedented levels of unemployment and a crushing

1 level of regulatory burden, the last thing we need is  
2 additional bureaucracy to forestall the commencement of  
3 the operations of a new business and the resulting  
4 employment of thousands of our citizens.

5 Unless clear statutory authority can be shown  
6 that allows land use and business operations to be  
7 included in a decision about siting a power line to a  
8 new business and employer, we urge the ACC to attend to  
9 their duties as outlined by law and leave ancillary  
10 considerations to the proper authorities. We need  
11 Rosemont. We need the jobs they will create and we need  
12 them now. We do not need regulatory creep. And we do  
13 not need another layer of bureaucracy.

14 Thank you.

15 CHMN. PIERCE: Thank you. Commissioner Newman  
16 has a question.

17 Were you -- okay.

18 COM. NEWMAN: I wanted to, I wanted to thank him  
19 for attending today with his testimony. I actually  
20 didn't have a question.

21 CHMN. PIERCE: Okay. We are getting close to  
22 noon. Here is what we are going to do. We are going  
23 to -- we will go to, we are going to actually come in  
24 here, go right back up into exec session -- there is  
25 some legal questions that need to be resolved -- come



1 down here. We will take comments from everyone. You  
2 can make those comments about each of the amendments; as  
3 we go, make your comments. We will -- but then we are  
4 going to, we are going to move amendments. And  
5 obviously, if certain amendments pass, then that ends  
6 the debate really.

7           So we are -- but we will let, we will let you  
8 have comments. We will go down the row of comments  
9 about the amendments. We will get through that, take  
10 your positions. But we are going to come back at 1:00.  
11 We will go ahead and come in here. We will start us.  
12 Then we are going to go up into exec session. So you  
13 can time yourselves however you want to. Then we will  
14 come back and take your opening statements and get to  
15 the amendments. That's where we are headed.

16           All right. We are in recess for lunch.

17           (A recess ensued from 11:49 a.m. to 1:02 p.m.)

18           CHMN. PIERCE: Okay. We have a quorum. And the  
19 others will be here, but they might as well meet us  
20 upstairs.

21           We are back in session. We are going to recess  
22 for a few minutes to go upstairs for some legal advice.  
23 And then we will be coming right back here. I don't  
24 anticipate it is going to take long, but that's what we  
25 told you we are going to do, and then we will get into

1 the parties. Okay. So we are in recess.

2 Wait. I need a motion to go into executive  
3 session.

4 MS. WAGNER: You can do that upstairs.

5 CHMN. PIERCE: Okay. Go into recess and we will  
6 go upstairs and do that.

7 Okay. Hold on a second.

8 (Brief pause.)

9 CHMN. PIERCE: Okay. Hold on a second. We are  
10 going to have to clear this room then to do a session,  
11 is that what you are telling me?

12 (Brief pause.)

13 CHMN. PIERCE: Okay. We are going to vote on a  
14 motion to go into executive session.

15 COM. BURNS: I so move.

16 CHMN. PIERCE: It has been moved we go into  
17 executive session. All those in favor say aye.

18 (A chorus of ayes.)

19 CHMN. PIERCE: Opposed.

20 (No response.)

21 CHMN. PIERCE: Okay. We are in recess. We are  
22 in exec session.

23 (The Commissioners left the hearing room.)

24 (A recess ensued from 1:04 p.m. to 1:59 p.m.)

25 (The Commissioners returned to the hearing

1 room.)

2 CHMN. PIERCE: Okay. We are reconvening in exec  
3 session. Would you move to leave the executive session.

4 COM. STUMP: Mr. Chairman, I move we leave exec  
5 session.

6 CHMN. PIERCE: Okay. It has been moved we leave  
7 exec session. All those in favor signify by saying aye.

8 (A chorus of ayes.)

9 CHMN. PIERCE: Opposed.

10 (No response.)

11 CHMN. PIERCE: All right. Thank you. We are  
12 now back in regular session. How is that?

13 Okay. We are going, we are going to start with,  
14 we will start with the parties. Let's start with the  
15 company. And then we are -- well, let me tell you what  
16 is going to happen.

17 We are going to go down the row. We want to let  
18 everybody speak. We are not going to ask questions. We  
19 are going to let everybody speak. Then we are going  
20 to -- I know Commissioners have -- a lot of  
21 Commissioners are concerned about how much time we are  
22 going to spend today. We may have Commission questions.  
23 We will move the amendments. We will have an order of  
24 that.

25 But during this, go ahead and address the

1 amendments because that's probably going to answer a lot  
2 of our questions. And so we probably won't have to  
3 spend a lot of time asking them. You will just go  
4 through it. And then, if there are some outlying  
5 questions, we will get those asked and then we will get  
6 to the amendments.

7 Okay. Start with the company.

8 MR. DERSTINE: Good afternoon, Mr. Chairman,  
9 Commissioners. Matt Derstine and Jason Gellman on  
10 behalf of Tucson Electric Power Company.

11 I am going to keep my comments brief. You have  
12 certainly heard from the company on our position  
13 concerning Decision 73074 before. And I want to simply  
14 note that the company and its counsel appreciate you  
15 taking the time to go back and look at that decision and  
16 reconsider what we think are very important and  
17 concerning aspects of that decision.

18 You know from our papers that the primary  
19 concern that Tucson Electric Power Company has is the  
20 decision, or the language of Decision 73074 to go back,  
21 reopen the case for the purpose of taking evidence on  
22 the environmental impacts of the Rosemont mine. Our  
23 view is simply that those impacts, the impacts of the  
24 mine as opposed to environmental impacts of the  
25 transmission line and the associated facilities, are not

1 material, they are not relevant, and they are not  
2 authorized by the statute.

3 We concur and agree with Chairman Foreman of the  
4 Siting Committee, who was here before you at your Staff  
5 open meeting, that taking that evidence, evidence of the  
6 environmental impacts of the mine as opposed to focusing  
7 on the environmental impacts of the transmission line,  
8 is beyond the jurisdiction of the Commission and, to use  
9 the Chairman Foreman's words, illegal under the statute.

10 So if your concerns are really about due  
11 process, and I heard that term used at the time of the  
12 original open meeting, that there were due process  
13 concerns that drove you in approving and voting in favor  
14 of 73074, then certainly with respect to the language of  
15 Decision 73074 that directs new hearings and further  
16 proceedings to take in mine impact evidence, evidence  
17 not directed to the transmission line and the facilities  
18 but the use to which Rosemont will put the power that's  
19 transmitted over that line, that language in that  
20 decision violates due process. It goes beyond the  
21 jurisdiction of the, of this Commission. It goes beyond  
22 the statute.

23 You will also know from our papers that we have  
24 urged that there is really no further proceedings  
25 necessary, that the concerns over Pima County

1 participating I think are easily answered by the fact  
2 that Pima County declined to participate. They had the  
3 right to intervene in the Siting Committee proceedings.  
4 They chose not to. Instead, they filed a limited  
5 appearance. That limited appearance was taken into  
6 evidence, considered by the Siting Committee in  
7 rendering its decision and issuing a CEC.

8 I certainly understand and heard the concerns  
9 over the removal of Ms. Webb as an intervenor.  
10 Undoubtedly that was an unfortunate situation, I think  
11 unfortunate for all the participants and the members of  
12 the Committee. The members of the Committee, of the  
13 Siting Committee, at the time that they voted to, in  
14 their discretion, to allow Ms. Webb to intervene  
15 cautioned her about following the rules and the  
16 procedures. And that was done even earlier by the  
17 Chairman of the Siting Committee when she appeared for a  
18 prehearing conference.

19 So the decision to admit Ms. Webb as a  
20 discretionary intervenor and ultimately to remove her as  
21 an intervenor based on what transpired before the Siting  
22 Committee, it seems to me, accorded Ms. Webb all the due  
23 process she was entitled to. And she certainly, her --  
24 the evidence that was not available to the Committee  
25 through her continued participation came in through

1 public comment.

2 So, in short, our position as we have urged you  
3 on rehearing is to approve the CEC, approve the CEC as  
4 written.

5 You know, at the same time, we read the  
6 amendments, or the proposed Pierce Recommended Draft  
7 order and Commissioner Kennedy's amendments, No. 1, 2,  
8 and 3. And I would say that the company is supportive  
9 of any decision that puts this case on a sound footing,  
10 a sound footing in terms of affirming the decision of  
11 the Line Siting Committee, that mine impact evidence was  
12 properly excluded, and then that moves this case along,  
13 to the extent that members of this Commission think that  
14 some further proceedings are required, that moves this  
15 case along to a resolution without undue further delay.  
16 And on that basis, we would certainly support the Pierce  
17 Recommended Draft Order.

18 And with that, I will conclude my comments.  
19 Thank you.

20 CHMN. PIERCE: Thank you. Thank you.

21 Ms. Webb.

22 MS. WEBB: Mr. Chairman, members of the  
23 Commission, in the interest of time, I will begin with  
24 the semantics of this particular case.

25 I think in regard to myself, when I spoke of the

1 proposed Rosemont copper mining operations, it has been  
2 in the context of activities associated with the  
3 proposed mining operations that were also included in  
4 the impacts of the transmission line, not the mine as in  
5 the actual pit or any of those other impacts that would  
6 occur as a result of the mine being mined out of the  
7 ground. It has always been, and I think you can go back  
8 and look at the record, the proposed mining operations  
9 when I have spoken of them.

10           Secondly, I am just going to put this out here  
11 as a request, I do have an ADA request, an Americans  
12 with Disabilities Act request, that I am working on with  
13 Ms. Bernal. And one of the things that was in the 2007,  
14 I mean the 27 April procedural order was that filings  
15 were to be in OCR or accessible format. And when I  
16 received the document last night that everybody else  
17 received with the proposed order, it was not in the OCR  
18 format. And it wasn't in the docket yet because Docket  
19 scans everything into an OCR format. So I was not able  
20 to do any work with that last night.

21           So I would like to ask that, if the decision  
22 isn't to lift the stay on the first decision, that we at  
23 least have time to go over that and I understand it a  
24 little better.

25           Secondly, in the April 2007 revised procedural



1 order, we were asked to brief two specific issues. And  
2 so that was my understanding of what I needed to do, was  
3 to talk about whether or not the environmental impacts  
4 of the proposed mining operation were to be discussed or  
5 not, and then, additionally, whether to include  
6 intervenors aside from me. That was my understanding  
7 from the 27 April procedural order. It was very  
8 specific in the footnote. So I didn't address a lot of  
9 the issues that came through in the opening briefs from  
10 TEP and Rosemont Copper. If I had known that I was  
11 supposed to discuss procedural, or the issues that had  
12 occurred with me, I would have definitely gone back and  
13 notated and spent considerably more time on that, but I  
14 understood the procedural order to say that we were only  
15 supposed to discuss other intervenors aside from me. So  
16 I would just like to request again that we are allowed  
17 to brief those issues if need be.

18 In regard to Pierce recommended proposed  
19 order -- I am sorry, I don't have the exact wording  
20 right in front of me -- Condition No. 26:

21 Notwithstanding the foregoing, we will hold  
22 additional proceedings pursuant to A.R.S. 40-252 to  
23 review the evidence that Ms. Webb wanted the Committee  
24 to consider. We understand that Ms. Webb filed, on  
25 December 6, 2011, the evidence she intended to present

1 before the Committee. We will hold this additional  
2 proceeding only for the purpose of allowing the  
3 presentation and consideration of the evidence that  
4 Ms. Webb filed on or before December 6 with Docket  
5 Control.

6 The second part is really not an issue. I  
7 didn't have anything other than some documents that I  
8 had to bifurcate because they had both mine and line  
9 information in them.

10 The problem with that is I was the only party  
11 who submitted evidence to the docket by January, I mean  
12 December 6, with the exception of exhibits that were  
13 included as part of the prefiled testimony. So that,  
14 again, starts to get into a situation where I believe I  
15 am being asked to do something that other parties  
16 weren't required to do.

17 If you look at the list on Docket Control, the  
18 exhibits are not actually filed until they are presented  
19 and are part of the case with the exhibit list. I was  
20 the only one, again, that put -- so anything that  
21 happened above and beyond that, as I explained in my  
22 prefiled summary and prefiled testimony, I could not  
23 finish it because I had not received all of my data  
24 responses. So I would just like to have that  
25 considered, that I should be able to present a full

1 case.

2 Right here we have about 900 pages of data  
3 responses from Rosemont Copper. A significant number of  
4 these, what I pulled out right now, are missing the  
5 attachments. When I sent my data request I asked for  
6 everything, including attachments. So these are  
7 outstanding data responses.

8 So if I am allowed to present a case, again, I  
9 am not necessarily saying I have to have new discovery,  
10 but I would like to at least have complete discovery  
11 from previously. And the same occurred with the TEP  
12 data responses; the attachments were missing. So I  
13 would at least like to have that included to be able to  
14 present a full case.

15 Now, in the recent reply brief, and I have --  
16 Rosemont did OCR theirs so I was able to look at it a  
17 little bit and work on it a little bit harder last  
18 night -- on page 17 at lines 14 through 17 it says:

19 As explained below, the reality is that limited  
20 evidence about Rosemont mine was presented to the Siting  
21 Committee. And that evidence was relevant and material  
22 to statutory criteria in A.R.S. 40-360.06a.

23 And then there is a footnote to that. And it  
24 says: Notably, none of the parties objected to this  
25 evidence when it was introduced and received into the

1 record by the Siting Committee.

2 Now, on a technical basis, at the time the CEC  
3 was entered as an exhibit, I don't recall objecting to  
4 it at that time. However, previously, in my initial  
5 memo, I mentioned existing plans, my two-page, my short  
6 two-page memo.

7 In my reply memo I also indicated that there  
8 were lessening or softening effects of the proposed  
9 mining operations upon the transmission line project.

10 Number three, the third time that I mentioned it  
11 was in that same reply brief when I talked about the  
12 Rosemont EIS being amended as a result of the NEPA  
13 process as well as a new management plan and a new  
14 management area being submitted, which comes after the  
15 NEPA. You know, it is part of the NEPA process but it  
16 does not occur until there is a decision to allow mining  
17 to occur.

18 So I would just like to ask, if I have a case, I  
19 would like to be able to talk about those environmental  
20 impacts. That's what I have been about from the  
21 beginning, being able to talk about the environmental  
22 impacts of the proposed mining operation that relate to  
23 the transmission line. I think that's fair.

24 Moreover, Rosemont has now acknowledged, and TEP  
25 both have acknowledged -- I didn't know about this until

1 yesterday from Rosemont Copper and then within the last  
2 two weeks from TEP. This is new evidence that has come  
3 to light. I could not have reasonably known about it.  
4 And I think that it is reasonable to allow me to present  
5 that evidence because I couldn't have known about it.  
6 It has only been, if you go back through the entire  
7 record, in the last two weeks that anybody has  
8 acknowledged that those impacts were used as part of a  
9 statutory scheme, or what have you.

10 Sorry, I shouldn't have gum in my mouth.

11 Number four, in my prefiled witness summary and  
12 testimony, I indicated again that I -- they are using  
13 these impacts, these environmental impacts of the  
14 proposed mining operation in conjunction with the  
15 transmission line. In my opening statement on the 12th  
16 of December at the hearing, I mentioned again, I asked  
17 the Committee members not to consider the mitigatory  
18 effects of the proposed mining project in relationship  
19 to the transmission line if we were not allowed to talk  
20 about the environmental impacts of the proposed mining  
21 operation. I did the same as well at the prehearing  
22 conference on December 8th.

23 So I have a clear record of objecting to not  
24 being able to present the environmental impacts of the  
25 proposed mining operation in relationship to the

1 transmission line.

2 On March 15th, 2012, here in front of the  
3 Commission, I also said, in the interest of fairness, so  
4 this is -- I don't mean to beat this issue to death. I  
5 just wanted to show that there is a clear record that I  
6 have asked several times to not allow me not to talk  
7 about the environmental impacts of the proposed mining  
8 operation in relationship to the transmission line if we  
9 are not allowed to talk about it at all.

10 And, again, it has only been in the last two  
11 weeks, actually less than two weeks, that we have heard  
12 from the applicant or with Rosemont Copper that indeed  
13 they did use the environmental impacts as part of what  
14 is required of the statutory mandate.

15 Again, if I am allowed as a single person, I ask  
16 that I am able to present my case. I ask that I am able  
17 to cross-examine Mr. Magruder. I ask that my  
18 outstanding data responses are completed.

19 And here is the problem with Pima County. Well,  
20 I mean here is the problem with the situation with Pima  
21 County. We got here because of a lot of confusion about  
22 their role. And I have worked with them in the past.  
23 137 was the first one. I remember you, Chairman Pierce,  
24 there. That was the first one. I asked them to give me  
25 information. And I worked with Pima County. I have

1 done that on subsequent cases as well.

2           If I am the only one that's allowed to intervene  
3 and present a case and present my witness, which --  
4 witnesses -- which is myself and Ms. Fonseca, it seems  
5 to me we are going to be back here with a lot of  
6 confusion again. Because I have specifically requested  
7 exhibits and evidence. And it just seems we are going  
8 to end up back in the same situation. It seems like it  
9 would be a lot cleaner to allow, at a very minimum, Pima  
10 County to be able to intervene regarding the proposed  
11 transmission line and the associated impacts related to  
12 the proposed transmission line.

13           In the Pierce Amendment as well, I haven't  
14 really been in the mine versus line issue so I stayed  
15 out of a lot of the NEPA arguments, but there are some  
16 issues in here that I can go over with Staff that are  
17 not accurate regarding NEPA. And they are in the draft  
18 environmental impact statement. But the reason why I  
19 didn't get into that was because that hasn't been my  
20 fight. I have been about the transmission line.

21           I am going to go through the Kennedy amendments  
22 right now.

23           Okay. I think in the interest of -- again, due  
24 process isn't about the way you feel you have been  
25 treated or your perception of how you weren't treated

1 very nicely, any of that stuff, because it just doesn't  
2 matter. The reason why in this case it does matter is  
3 because the statutes require that material and  
4 nonrepetitive evidence is received by the Committee.  
5 And I -- it is my opinion that there was not a legal way  
6 to remove me in the way that it occurred. But that  
7 said, that's just an opinion, but not the part about the  
8 statutory requirements. That part is not an opinion.

9 Now, of the Kennedy proposed amendments, No. 2  
10 in my opinion would provide the most opportunity for  
11 everybody to get their say in and to get the most full  
12 and complete record. And I want to circle back to that  
13 really quickly.

14 Now that we have had Rosemont Copper and TEP  
15 both saying that this line is not needed from an  
16 engineering perspective, I understand that you, the  
17 Commission, have the latitude to determine what need  
18 means.

19 So I do understand when you say that the need is  
20 there because the customer requested it. I accept that.  
21 That is what has been said. However, we have now had  
22 testimony that it is not needed from an engineering  
23 perspective. So I ask, because I am a taxpayer, that we  
24 get the most information in the record that we possibly  
25 can to make sure this can be as clean as possible so, if



1 there are appeals, they can be squashed right at the  
2 beginning and we save everybody a lot of money.

3 Again, I am in support of most of No. 1;  
4 however, No. 2 has its merits as well.

5 And I, I do remember reading that Rosemont  
6 Copper had some concerns about the 252 taking forever.  
7 I think it was six months. If you go back and you  
8 reapply, first of all, you can take care of those issues  
9 related to the environmental impacts, the proposed  
10 mining project. But initially they have a statutory  
11 requirement under the law and they know when that time  
12 frame is going to end. So I can see that could also  
13 work as well and it would save time.

14 I am opposed to No. 3. And it is not because I  
15 do not believe that all permits and so forth should be  
16 required before construction can commence. I think that  
17 is a very appropriate condition. But I think the term  
18 should be changed to Rosemont copper mining operations,  
19 not mine, because I think that's where a lot of  
20 confusion is here.

21 But philosophically, because I believe it is  
22 very important that the public is allowed to be involved  
23 in this as an intervenor, this would preclude me that  
24 opportunity to do it except for at an appeal later on.  
25 And I really believe in this process. So I would prefer

1 to see -- so, again, it is not because I don't believe  
2 that this, that sentence should be in there on No. 23.  
3 It is because philosophically I can't agree with it  
4 because it would not allow me to come back in and  
5 present my evidence and testimony.

6 So I think that's pretty much it. And I  
7 appreciate you taking time to hear what I have to say.

8 COM. NEWMAN: Thank you.

9 CHMN. PIERCE: Go ahead. Let's pass the mike  
10 over to Pima County.

11 Hold on just a second.

12 (Brief pause.)

13 MS. WAGNER: Mr. Chairman.

14 CHMN. PIERCE: Take five minutes. We are going  
15 to take a five-minute recess.

16 (A recess ensued from 2:24 p.m. to 2:40 p.m.)

17 CHMN. PIERCE: We are back on.

18 Let's go ahead and we are going to get through,  
19 we have had a request and I am going to honor it, but we  
20 are going to get through everybody else's statements and  
21 come back over to Patrick who we will finish off with  
22 because we started with the company and we will come  
23 back around over here. And we will see where we are.

24 We are going to, we are going to end up  
25 finishing this off on another day, so, but what we will

1 do, we will start with the county, with Pima County.  
2 Mr. Wakefield.

3 MS. WEBB: Mr. Wakefield told me that I may have  
4 misspoken when I was talking about my numbers in support  
5 based on what I have got written on the top of these  
6 instead of the numbers.

7 So very quickly, number one, my number one  
8 support is No. 2 of the Kennedy amendments. My number  
9 two support is the No. 1 Kennedy Amendment. And my  
10 fourth would be the Chairman's recommendation I am  
11 opposed to.

12 CHMN. PIERCE: You are opposed to Kennedy 3 and  
13 Pierce 1.

14 MS. WEBB: Yes. Thank you.

15 CHMN. PIERCE: Okay. And I am keeping a  
16 scorecard up here.

17 MS. WEBB: I was so worried.

18 CHMN. PIERCE: Mr. Wakefield.

19 MR. WAKEFIELD: Thank you, Chairman,  
20 Commissioners. Scott Wakefield from Ridenour Hienton &  
21 Lewis on behalf of Pima County.

22 I would just like to briefly touch on revisiting  
23 one of the legal issues that was set forth in the  
24 briefs. And that is the scope of Section A.R.S.  
25 40-360.06a and whether that statute requires you to look

1 at, to examine impacts of the mine. And as I indicated  
2 in the brief, the County believes that it does.

3 In Rosemont's reply brief they discuss at page 9  
4 the degree to which the application already looked at  
5 foreseeable impacts on the landscape that would be  
6 caused by the mine and how it would, it was appropriate  
7 to look at those so that, so that one could take an  
8 accurate view of other environmental impacts of the  
9 line. That is exactly what A.R.S. 40-360.a1 requires  
10 them to do.

11 For instance, if there was a development  
12 near -- so let me reiterate what is in my pleadings,  
13 that the reason you need to consider the mine is not  
14 because it is a customer. It is because it is in the  
15 vicinity. Whether it was a customer or not, you need to  
16 look at the impacts of things in the vicinity of the  
17 project that's being applied for. And you look at the  
18 impacts of the project and evaluate them in the  
19 context -- in the context of what else is planned and  
20 the impacts of what else is planned in the area. And  
21 that's exactly what, what the Committee did with the  
22 viewshed issues. And it is what you should do with  
23 respect to all the issues.

24 For instance, if there was a historical site, if  
25 there were two historical sites, one directly impacted

1 by the mine, I am sorry, one directly impacted by the  
2 line and another that was impacted, that was in the area  
3 and that would be impacted by another development but  
4 not the project that you are siting, if you just looked  
5 at the impacts of the project you are siting on  
6 historical site number one, you might decide, well,  
7 there is some impacts on that historical site but there  
8 is a nearby historical site that is from the same period  
9 and sort of presents the same history and so maybe it is  
10 not so bad that we have some impacts on historical site  
11 number one. And if you ignore the fact that other  
12 planned development might have impacts on historical  
13 site number two, then you would be failing to consider  
14 impacts of other planned developments and look at the  
15 impacts of historical site number one in the context of  
16 maybe historical site number two won't exist anymore  
17 based on what else is being planned. Not that you have  
18 jurisdiction over those other plans, but you need to  
19 look at the impacts of those other plans as you evaluate  
20 the impacts of the project that you are being asked to  
21 site.

22 With that, let me just go through the amendments  
23 briefly.

24 The County is most supportive obviously of  
25 Kennedy Proposed No. 2; although, we would ask that it

1 be amended to specifically grant the County's  
2 intervention in the proceeding. We note that even  
3 Chairman Pierce's amendment grants the County  
4 intervention for the scope of the proceeding that the  
5 Commission would be considering. And we would ask that  
6 you do the same for any of the amendments, that you  
7 grant our intervention and permit us to participate in  
8 whatever process lies ahead.

9 Our second preference would be Kennedy Proposed  
10 No. 1, again, asking that you grant the County  
11 intervention as a part of that.

12 Third would be Kennedy Proposed Amendment No. 3.  
13 That, if you grant the County's intervention, would be  
14 our third preference.

15 Among the four, and finally, Pierce's proposed  
16 amendment, we do appreciate that you recognize the  
17 appropriateness of involving the County in what you are  
18 even proposing to be a limited scope of proceedings, and  
19 we appreciate that.

20 So unless there is any question, I think that's  
21 all I need.

22 CHMN. PIERCE: We are not --

23 COM. NEWMAN: Oh, you are going to go all the  
24 way through. Sorry.

25 CHMN. PIERCE: That's all right.

1 MR. METLI: Thank you, Mr. Chairman.

2 Mr. Chairman, fellow Commissioners, Robert Metli  
3 and Lawrence V. Robertson on behalf of Save the Scenic  
4 Santa Ritas Association, Sky Island Alliance, the Center  
5 for Biological Diversity, and the Tucson Audubon  
6 Society, which collectively I will refer to as Scenic  
7 Santa Ritas.

8 Throughout this process we have made legal  
9 arguments regarding what we believe was admissibility of  
10 environmental impact evidence related to the mine. I am  
11 not going to continue and address that issue. I think  
12 all the parties have briefed it. We have briefed it on  
13 numerous occasions. Our position is clear on it. It  
14 becomes a legal question and it is a legal question that  
15 this Commission will have to decide.

16 But because that is our position, we certainly  
17 support the Kennedy Amendment No. 2. We believe it  
18 reflects our position that the evidence associated with  
19 the mine is material and relevant. And it should be  
20 entertained by this Commission.

21 Specifically within the Amendment No. 2 I  
22 believe what is pertinent is on page 2, line 18, which  
23 states: Without a balanced evidentiary record  
24 concerning the application, the Commission properly  
25 determined that further proceedings were necessary so

1 that the Commission would have a full and balanced  
2 record to conduct its required statutory balancing of  
3 the public interest.

4 (Cellphone rings.)

5 MR. METLI: And I would like to apologize for  
6 the interruption.

7 MR. ROBERTSON: I thought it was off.

8 CHMN. PIERCE: It is a rookie mistake.

9 MR. ROBERTSON: Marshall is the engineer.

10 MR. METLI: I told you to stay in the car.

11 COM. STUMP: With the windows rolled up.

12 COM. NEWMAN: He came all the way up from Tubac.

13 MR. METLI: There are, there are two issues that  
14 I do want to, do want to address. And they are really,  
15 one concerns the condition and one concerns  
16 intervention.

17 We appreciate the Kennedy Amendment No. 3 which  
18 modifies Condition No. 23. I also note that at the  
19 previous open meeting we had in March 15th, Commissioner  
20 Newman proposed a similar amendment.

21 The point I want to make, I think maybe  
22 rightfully so, maybe not a mischaracterization of what  
23 the intent of that condition was, and I did try to  
24 explain the intent in my closing argument, but it kind  
25 of got misconstrued that we were trying to delay. And



1 really, the purpose of this amendment was to just ensure  
2 that there be would no construction on that line until  
3 the mine is approved. And whether or not that means a  
4 record of decision being issued is a question, there are  
5 certain permit requirements, our intent wasn't to delay  
6 the project.

7 I note Mr. James indicated that if you have all  
8 the permits, there are permits that are due in five  
9 years. We recognize that and we acknowledge that. That  
10 wasn't our intent. And that wasn't the type of permits  
11 we intended.

12 And specifically with respect to the closure and  
13 the reclamation piece, that would cause these permitting  
14 issues to be pushed out. And I think appropriately  
15 Commissioner Kennedy modified that to just to include  
16 construction and operation.

17 With respect to Condition No. 23, I think it is  
18 important to understand the Commission's stewardship  
19 role in this. You are responsible for ensuring that  
20 there are minimal environmental impacts, environmental  
21 impacts associated with the construction of this line.  
22 I think it would be tragic if we started commencement on  
23 a line which ultimately had to be torn down. And that  
24 is our concern.

25 At the March 15th open meeting, and Mr. Derstine

1 can speak for himself, I also, I thought I heard him say  
2 they certainly would be amenable to conditions or a  
3 condition that would be reasonable to them. And I  
4 assume the intent from TEP all along is they don't want  
5 to construct this line until the approvals are -- the  
6 mine will be moving forward. And I think that was  
7 always the intent. The question was whether the record  
8 of decision does that.

9 I would also like to point out wherein there was  
10 a speaker today from the Tucson Metro Chamber of  
11 Commerce, a Michael Varney, and I just wanted to cite to  
12 you from their July 2010 newsletter:

13 In that spirit, the Chamber supports the  
14 proposed Rosemont mine. Our support is contingent on  
15 the anticipated acceptable results of the upcoming EIS  
16 report and on the presumption that the mine's  
17 construction is lawful.

18 The way we read this is there are two  
19 conditions, one, the record of decision, number two, the  
20 mine is lawful. We interpret that as all requisite  
21 permitting being approved.

22 The other issue I wanted to discuss was  
23 intervention and specifically intervention of Pima  
24 County. In our initial opening brief, we didn't address  
25 the intervention of Ms. Webb because we were under the

1 impression that her intervention was granted at the  
2 previous procedural conference. But we did make some  
3 argument regarding her intervention in our reply brief.  
4 But with respect to the Pima County, I don't think there  
5 would be a party more competent to address environmental  
6 impacts of the line, let's put the mine aside, the line,  
7 than Pima County. I think there they would be a  
8 valuable asset to any further hearings.

9 I can't speak for the County. I don't know why  
10 they didn't intervene in the original case. Maybe it  
11 was too close to the holiday time. Maybe they were busy  
12 on other projects. Maybe they didn't have the  
13 resources. As you know, as an agency, your resources  
14 are limited. But they are willing to engage now. I  
15 believe the Commission would be prudent to take  
16 advantage of their expertise when you make your  
17 decision.

18 Just one second. I want to make sure I covered  
19 everything.

20 And just in closing, we, unfortunately, we don't  
21 support the Pierce Amendment. And we will reserve  
22 judgment on Kennedy -- well, we would support Kennedy 1  
23 over Kennedy 3 because it would allow -- excuse me. I  
24 misspoke. We would -- no, that's right.

25 CHMN. PIERCE: You already said you support

1 Kennedy 2.

2 MR. METLI: That's our first choice. And we  
3 don't support the Pierce Amendment. You know, I will  
4 reserve judgment on Kennedy 1 and Kennedy 3.

5 CHMN. PIERCE: All right. Thank you.

6 MS. BERGLAN: Thank you, Commissioner, members  
7 of the Commission. Laura Berglan here on behalf of the  
8 Tohono O'odham Nation.

9 And as the Nation set out in our brief already,  
10 we believe the Decision 73074 is legally sound and  
11 correct. And for those reasons the Nation supports  
12 Amendment No. 2 as it helps to clarify Decision 73074.

13 The Nation also agrees with the reasoning set  
14 out in Amendment 2 that the evidentiary record is not  
15 currently balanced and that A.R.S. 40-360.06 factors are  
16 not narrow in scope and, therefore, they would provide  
17 for the allowance to consider the environmental impacts  
18 of the mine.

19 The real issue here for the Nation is this idea  
20 of chunking off these projects so just to minimize the  
21 impacts on the cultural resources. As I mentioned  
22 previously, there are 110 cultural resource sites that  
23 the Nation considers to be significant in the project  
24 area, that is, the Rosemont mine area. However, in the  
25 preferred site there are only seven sites that may seem

1 minimal. But if you keep chunking seven to ten at a  
2 time, you can minimize all 110 sites.

3 It is the Nation's position that these all need  
4 to be viewed together so you can get the full impact of  
5 how negative an impact this is going to have on the  
6 Nation as a whole. For that reason, we do support  
7 Amendment No. 2.

8 If the Commission is inclined to approve the CEC  
9 without any further proceedings, we would like the  
10 Nation's Condition 26 to be in place. And that was  
11 Newman's Proposed Amendment No. 3 from the March 15th,  
12 2012 open meeting. I have got copies here. And, again,  
13 that condition is, and I will quote:

14 Applicant shall engage the services of a Tohono  
15 O'odham cultural monitor during any construction  
16 activities on or within 100 feet of known prehistorical  
17 cultural resource sites that are eligible for the  
18 National Register of Historic Places as identified in  
19 Table E-3 of the application with the addition of  
20 Huerfano Butte.

21 So, again, that condition would allow a cultural  
22 resource monitor out there, and those services should be  
23 paid for by the applicant.

24 Thank you.

25 CHMN. PIERCE: Okay. Mr. Magruder.

1 MR. MAGRUDER: Good afternoon, Chairman and  
2 Commissioners. My name is Marshal Magruder. I am from  
3 Tubac and intervenor.

4 I want to talk about a couple things. The first  
5 is I am supporting Kennedy Amendment 2, followed by 1  
6 and then 3. And I oppose the Pierce Amendment.

7 I have submitted four briefs in this case so  
8 far. I am not sure how many people have read them. I  
9 do provide a lot. But I have written comments with  
10 respect to the details, in particular the comments that  
11 I think are relevant, legal, and show errors in the  
12 discussions from many of the comments from Rosemont and  
13 from TEP. I really think they need to be looked at.  
14 And if we delay final decision until the next time,  
15 please take a look at my brief. I think they are pretty  
16 good.

17 I am for continuing the 252. And I am for  
18 continuing the 252 hearings leaving it up to the judge,  
19 the ALJ, to make the decision when things are relevant  
20 and when things aren't relevant. That's what judges do.  
21 And if we start trying to constrain through artificial  
22 barriers the definition between the line and the mine,  
23 it doesn't make sense.

24 In one of my briefs I said without this proposed  
25 transmission line, there will be no mine, and without

1 the mine, there is absolutely no reason for the line.  
2 There are dozens of overlaps between the line and the  
3 mine. From an environmental, safety, reliability,  
4 resource, use, water, roads, et cetera, et cetera,  
5 segregation into little buckets with artificial  
6 boundaries, it does not meet the purpose of looking at  
7 the environmental impacts of the line. Some things will  
8 be 100 miles away. Other things will be 100 feet away  
9 from the mine. That needs to be looked at. Those are  
10 relative interactions.

11 We have, for example, a 500 foot corridor that  
12 has been sited where the line is supposed to go. It is  
13 not defined in terms of a location other than it is  
14 along the water line. And no one knows where the water  
15 line is. And if you don't know where the -- which is  
16 considered to be part of the mine and covered in the  
17 mine, operations of the mine and the environmental  
18 impact statement. So if the transmission line goes  
19 along the water line, and we don't know where the water  
20 line is, what are the impacts, well, are they related?

21 In fact, they are in the same 100 foot corridor  
22 that also includes a 15 to 25 foot access road, which I  
23 have tried not to have put in and I can show you that it  
24 is not required, which gives more dust than a road that  
25 isn't required, and at least one fence, maybe two cheap

1 fences that are specified by the University of Arizona  
2 inside the experimental range but not discussed  
3 elsewhere.

4           The experimental range wants dust control to be  
5 taken into account. Well, is it dust control from the  
6 electric company driving on the road or is it from the  
7 water company, water people driving on the road? How  
8 can we separate those two inside 100 feet?

9           I am not talking about the 2900 feet deep pit  
10 mine. I am talking about stuff that's relative to the  
11 transmission line.

12           The last time I talked before this group, I gave  
13 12 items that I considered relevant. I don't want to go  
14 through that list again because they should be in the  
15 record. But there is another 12 or more that are  
16 missing.

17           For example, we heard about autism today and the  
18 problems about worrying about people who have autism and  
19 radiation from the transmission line, electromagnetic  
20 frequency and electric radiation. It is not covered.  
21 It is required.

22           I have since day one tried to have 40-360.a3  
23 covered. That is the noise impact of the transmission  
24 line in terms of noise levels. TEP, I have said at  
25 least 10 times, doesn't know how to give us that number.



1 I want to know that number. Pima County has a county  
2 ordinance that requires 45 DB or less, decibels or less.  
3 I want to say, TEP, tell me that number, because that's  
4 a part of the issue. Because those autistic kids are  
5 going to ride horses. They are going to go hiking. And  
6 that's why they have the ranch there. I can see it.  
7 That's exactly why you want to put them in an isolated  
8 place, a place that has the quiet environment. But I  
9 don't know what quiet is because it is not defined.

10 And so those are the issues that I want to bring  
11 up. I couldn't. I feel that my due process, Marshall  
12 Magruder's due process was limited starting, starting  
13 before -- at the prehearing conference and kept on  
14 getting worse. I think those items that I have just  
15 mentioned, and I can give you more, are items that the  
16 Line Siting Committee should look at. They didn't.  
17 They wouldn't let me talk. If I mentioned the word  
18 water, whoops, objection, we are not talking about  
19 water, we are talking about electricity. But wait a  
20 second, there is a 30-inch water line that goes parallel  
21 to the electric line.

22 The electricity radiates, goes through two feet  
23 of soil or three feet of soil that has copper in it,  
24 which is noted to be a reasonably good conductor of  
25 electricity, and might induce electricity into the water

1 line. And also we have a fence. What you do, you put,  
2 make it so that the fence doesn't carry electricity and  
3 kill the animals.

4 I had one little thing that I think is so small  
5 and so easy, and they beat me up so bad it is  
6 unbelievable. I saw 21 raptors one day sitting on top  
7 of two TEP utility poles. And they are sitting right  
8 there on that little flat, little perch, that little  
9 perch on top driving past the pecan groves. All I  
10 suggested was put a little cap on there so that the  
11 raptors don't land on top of the utility poles. Why?  
12 Because there is over 100 years of very scientific  
13 technical studies done on the experimental range, on the  
14 impacts, long-term impacts on the environment. It was  
15 too hard. They said I wasn't a wildlife biologist. I  
16 don't think you have to have a wildlife biologist to do  
17 that.

18 CHMN. PIERCE: But you do need to wrap this up.

19 MR. MAGRUDER: Let me just talk about  
20 intervening for example.

21 The procedural order was issued by the, by the  
22 Chairman on the 9th, put on the docket on the 10th. The  
23 11th was a Thursday. If TEP -- if Pima County wanted to  
24 intervene, and their only board of supervisors meeting  
25 before the 18th was on the 15th, they had to issue their

1 agenda on the 11th, because the 12th was Veteran's Day,  
2 of November. They had one day to answer if they wanted  
3 to intervene.

4 And you guys are politicians. How long does it  
5 take you guys to make that decision? Can you do it in  
6 one day? First of all, you have got to get on the  
7 agenda. And then you have got to make the decision. I  
8 am just saying they had some reasons why they couldn't  
9 intervene.

10 Let me go on to some of this other stuff. I  
11 think we need to have discovery. We were very time  
12 pressed. There were exactly 25 workdays between the  
13 time the 800 or so page CEC application came out and the  
14 hearing started. That's not a lot of time.

15 Expedited in my view for a line siting means it  
16 meets the requirements of the Arizona Revised Statutes,  
17 which is 180 days, not -- starting the thing on day 41,  
18 or workday, we had 25 workdays to get the job done.

19 When we heard that they were only going to have  
20 four days instead of five days of hearing, I said, my  
21 initial response was hooray, hooray, we are going to  
22 come back in January and finish. Because most line  
23 siting cases that are complex take two sessions; get a  
24 lot of questions, then you come back and you get them  
25 answered the second time. I have been through as many

1 as four sessions on line siting cases.

2 I am not trying to delay things. There is no  
3 time crunch for Rosemont. Their environmental impact  
4 statement is unsatisfactory. The Forest Service has not  
5 yet issued the outline of --

6 CHMN. PIERCE: Mr. Magruder, I am going to stop  
7 you. You are arguing the case and that's not what I  
8 want you to do.

9 MR. MAGRUDER: Okay. I am saying we need to  
10 have that stuff argued. And by using the -- and I will  
11 go back to the Pierce Amendment.

12 I am sorry, Chairman Pierce, but if you look at  
13 paragraphs 18, 19, 20, 21, 22, 23, 24, 25, you are  
14 writing in those paragraphs material that will be used  
15 for 50 years sited by other Line Siting Committees,  
16 words that are written by utility companies for their  
17 benefit. And the balance is not just the utility  
18 company.

19 If I go to the last page, next to last page, in  
20 No. 27 it uses my name. And it said that the motions  
21 that I submitted were denied.

22 I submitted a motion to compel Rosemont to be an  
23 applicant. I don't want to go through the details but I  
24 thought I was legally right. The Chairman said he can't  
25 change the application. And since he can't change the

1 application, he then said it belongs to the broader  
2 authority of the Commission. I accepted that at that  
3 time. I said okay.

4 So about two weeks ago, because the 252 hearings  
5 are coming up, I refiled the same document I filed  
6 before because we were getting ready for 252 hearings.  
7 It was not denied as stated here. And so I think that  
8 this, this section is wrong. And I think it is just  
9 plain wrong. And so that should be fixed. Because I  
10 think, if we go back to 252, I have already got a  
11 motion. We are in stay, so the time is not counting on  
12 motions, but I would like to discuss it in the proper  
13 audience.

14 Thank you.

15 CHMN. PIERCE: Okay. Let's go on over to  
16 Rosemont. Mr. Black.

17 MR. BLACK: Thank you, Chairman, members of the  
18 Commission. Patrick Black and Norm James on behalf of  
19 Rosemont Copper Company. I will take a few minutes to  
20 discuss some of our legal positions.

21 This case is about siting of a transmission line  
22 and a determination by the Siting Committee and the  
23 Commission that balances the need for electricity with a  
24 desire to minimize the impacts on the environment and  
25 ecology of the state.

1           In Decision 73074, the Commission found that the  
2 evidence presented to and considered by the Line Siting  
3 Committee warranted approval of TEP's application for a  
4 CEC. That CEC contains 26 separate conditions designed  
5 to address various issues ranging from environmental and  
6 visual impacts of the transmission line to prohibition  
7 against construction until Rosemont receives approval  
8 from the U.S. Forest Service on its mining plan of  
9 operation under the ongoing federal NEPA review process.

10           Today Rosemont is requesting the Commission lift  
11 the stay on Decision No. 73074 and amend the decision to  
12 eliminate any 40-252 proceeding designed to allow the  
13 Commission to take evidence concerning the potential  
14 impacts of Rosemont's mine. Rosemont's legal position  
15 on the issue concerning this evidence remains unchanged.

16           A.R.S. Section 40-360.06a specifically directs  
17 the Siting Committee to consider factors in determining  
18 the suitability of a new power plant or transmission  
19 line, not the mine. One factor, the existing plans of  
20 the state, local government, and private entities for  
21 other developments at or in the vicinity of the proposed  
22 site is to consider how the new electric facility will  
23 impact those planned developments, not how those planned  
24 developments will impact the environment in general. As  
25 argued by mine opponents and Commission Staff, there is

1 simply no factor in A.R.S. Section 40-360.06 that allows  
2 the Siting Committee or Commission to consider an end  
3 user's land use activity as a means to deny a CEC.

4 To more fully appreciate how this statute would  
5 work based on the mine opponents and Staff's  
6 interpretation, let's assume for a moment that the  
7 transmission line is intended to provide electric  
8 service to a new 20,000 lot residential subdivision.  
9 Intervening in the line siting application is a group  
10 against urban sprawl.

11 Under the interpretation offered by mine  
12 opponents and Staff, an organization opposing the new  
13 development could present evidence in a line siting  
14 proceeding concerning the environmental impacts that 40-  
15 to 50,000 new residents will bring, including reduction  
16 in groundwater tables, biological disturbance, or the  
17 carbon footprint created by that new subdivision,  
18 matters under the jurisdiction of other agencies.

19 Can the Commission deny a CEC because it  
20 disapproves of the new subdivision without any nexus to  
21 the environmental impacts of the transmission line?  
22 Rosemont does not believe so.

23 In its reply brief Pima County takes the  
24 argument one step further. Using that same example,  
25 according to Pima County, the Commission can deny a CEC

1 based on the assessment of the environmental impacts of  
2 a soon to be sited cement plant or a municipal landfill  
3 in the vicinity of the proposed route even if that  
4 facility will not receive service from the line. It  
5 does not matter that the Commission is powerless to stop  
6 the construction of either facility and thus prevent the  
7 environmental impacts that would occur. Instead of  
8 focusing on the potential impacts of the transmission  
9 line, the Commission can simply find that an unrelated  
10 development and its impact on the environment is enough  
11 to prohibit the construction of a transmission line.

12 This defies reason, especially in light of the  
13 legislative intent behind the siting statutes. And I am  
14 going to read the first three sentences from the  
15 legislative intent. It states:

16 The legislature finds and declares that there is  
17 at present and will continue to be a growing need for  
18 electric service which will require the construction of  
19 major new facilities. It is recognized that such  
20 facilities cannot be built without in some way affecting  
21 the physical environment where the facilities will be  
22 located. The legislature further finds that it is  
23 essential, in the public interest to minimize any  
24 adverse effect upon the environment and upon the quality  
25 of life of the people of the state which such new





1 the mine's environmental impacts as a mitigation to the  
2 visual impacts of the line in support of its  
3 application. However, this is a red herring argument  
4 for several reasons.

5 First, Staff concedes that the evidence  
6 presented by TEP was to address the visual impacts of  
7 the transmission line. There is a nexus between the  
8 physical condition of the land which happens to be on  
9 Rosemont's property under its control and the visual  
10 impacts of the transmission line, that same nexus that's  
11 implicated in A.R.S. 40-360.06a1.

12 By contrast, mine opponents want the Commission  
13 to consider the potential environmental impacts of the  
14 mine only as they relate to the surrounding area with no  
15 nexus to the transmission line itself. It is an apples  
16 to oranges comparison.

17 For these reasons, Rosemont requests that the  
18 Commission reject this argument as a reason to pursue  
19 further hearings on the potential environmental impacts  
20 of Rosemont's mine.

21 With respect to the process, Staff argues that  
22 administrative agencies are more inclined to allow all  
23 evidence during administrative proceedings, to be sorted  
24 through by the decision makers, in an effort to ensure  
25 full public participation. However, both the siting

1 statute and the Administrative Procedure Act strictly  
2 prohibit the taking of nonmaterial, repetitive evidence.  
3 Furthermore, nothing in the record, Rosemont contends,  
4 suggests that the public did not have an opportunity to  
5 fully participate.

6 Now, if the Commission chooses to hold further  
7 hearings to take evidence of potential mine impacts, I  
8 want you to consider for a moment the procedural  
9 schedule alluded to at the April 25th Staff meeting.

10 During the April 19th procedural conference  
11 intervenors and prospective intervenors requested  
12 another four to six weeks to prepare and update  
13 testimony, despite the fact that a month had already  
14 passed since the Commission issued Decision 73074.  
15 During the April 25th Staff meeting the chief hearing  
16 officer stated that the Division was looking at  
17 potential hearing dates in August. Assuming that the  
18 hearing can be concluded in mid August and providing  
19 another 60 to 90 days for parties to file briefs and the  
20 hearing officer to issue a recommended opinion and  
21 order, a final decision might not be reached until  
22 sometime between October and November of 2012. This  
23 project timeline does not factor in what mine opponents  
24 may do to cause further delay. Unfortunately, this does  
25 not resemble the timely and expeditious proceedings

1 envisioned by the Arizona legislature when it passed the  
2 siting statutes nor statements made by Commissioners  
3 during the March 15th securities open meeting that there  
4 was no intent to create undue delay.

5           In the final analysis, evidence concerning the  
6 environmental impacts of Rosemont's mine is not material  
7 to this line siting case, just as evidence concerning  
8 the economic impacts of the mine is not relevant as  
9 well.

10           The fact that Rosemont is bringing thousands of  
11 jobs to southern Arizona, will be paying roughly  
12 \$32 million in state and local taxes on an annual basis,  
13 and will have an economic statewide impact of about  
14 900 million annually for 20 years, all this information  
15 is immaterial to the analysis required under the siting  
16 statutes.

17           With respect to the proposed amendments, while  
18 it prefers the form of order proposed by TEP in  
19 Appendix A of its opening brief, Rosemont is supportive  
20 of Chairman Pierce's Proposed Amendment No. 1 as a  
21 reasonable compromise. Rosemont does not support the  
22 proposed amendments by Commissioner Kennedy but would  
23 reserve time to discuss at least her Proposed Amendment  
24 No. 1 if discussed by the Commission.

25           Thank you.

1 CHMN. PIERCE: Okay. We, just procedurally, we  
2 are going to end up having to come back. And my intent  
3 would be for that to be on the second day of open  
4 meeting, on Wednesday, the 25th, probably about 10:00  
5 a.m. We would let you know.

6 The problem I think that we -- we want to make  
7 sure that there is, there is a timeline and people have  
8 everything filed and done so people have a chance to  
9 read this and come -- you know, if we want to do this  
10 expeditiously, that's as early as we are going to get to  
11 it.

12 Does anybody have a problem with that schedule?

13 COM. KENNEDY: Mr. Chairman.

14 CHMN. PIERCE: Yes, Commissioner Kennedy.

15 COM. KENNEDY: I am looking at the calendar.  
16 You said Wednesday, the 25th. Do you mean Friday?

17 CHMN. PIERCE: I am sorry. Wednesday -- oh, I  
18 am sorry. I am sorry. Let me get to the top part. I  
19 was looking at the April down here on this calendar.  
20 Wednesday, the 23rd. The open meeting is 22nd, 23rd, so  
21 Wednesday, the second day, 23rd, second day of open  
22 meeting in May. That way we have taken it on just as  
23 fast as we can.

24 I don't know. We have got Commissioner Newman  
25 on the board. We could probably see --

1 COM. NEWMAN: I don't have to.

2 CHMN. PIERCE: Because I think what we probably  
3 want to do, everybody said their peace, we probably want  
4 to come back. Everybody will have a chance to digest.  
5 If anybody is going to offer another amendment, by the  
6 way, Commissioners, and, Commissioner Newman, I think  
7 there is one you might want to, just make sure it is  
8 out, you know, this week or next week so that everybody  
9 has got it. I don't think they are hard. I think you  
10 have already got them.

11 COM. NEWMAN: Just a point of procedure. I  
12 think it is a good idea to wait on the questions because  
13 this could be another hour of grilling. And it is much  
14 better to happen the next time. I think that's a good  
15 idea.

16 CHMN. PIERCE: I don't want to repeat them next  
17 time.

18 COM. NEWMAN: But I do want to say, I wanted to  
19 reply to the amendment that I had in the first case,  
20 about costs associated with doing a full historical  
21 review of the line in question, which, after hearing  
22 from Mr. Magruder, I am not even sure exactly where the  
23 line in question is myself today. But I will, I will  
24 try to add that to another one of the amendments before  
25 the next hearing. Okay? I heard you loud and clear.

1 CHMN. PIERCE: Go ahead.

2 CALJ FARMER: Mr. Chairman, Lyn Farmer from the  
3 Hearing Division. I won't be here at that open meeting  
4 so I would just like to say something so the  
5 Commissioners can think about it.

6 This case is similar to a previous case we had,  
7 which was the Line Siting Case 151, which that was the  
8 Hualapai Solar, which also involved a similar situation  
9 with some intervenors and a reopening pursuant to a  
10 40-252 process.

11 The decision that you have issued in this case  
12 requires the Hearing Division to conduct a hearing and  
13 prepare a recommended opinion and order. And I would  
14 like to ask the Commissioners to consider not requiring  
15 the Hearing Division to issue a recommended opinion and  
16 order.

17 And I went back and I looked at the transcript  
18 from that previous open meeting. And I kind of  
19 explained the reasons why, because the ALJ has not heard  
20 the evidence from the Line Siting Committee. She has no  
21 familiarity with any of that evidence. And we have  
22 never made a recommendation about whether to grant a CEC  
23 or not.

24 So the previous case like this, the ALJ  
25 conducted the hearing, the evidentiary hearing, for the

1 Commission. And I believe that the process in that case  
2 was that the parties had the opportunity to file  
3 whatever recommended additional conditions they wanted  
4 the Commission to consider when it came back to an open  
5 meeting. That way, if the Commission wanted to modify  
6 the decision, they had some language or conditions that  
7 they could adopt or not. But I think it would  
8 substantially shorten the time frame, because, if there  
9 has to be a recommended opinion and order, it will take  
10 a lot more time and effort from the ALJ before it could  
11 get to the Commission.

12 So that's something I think that I would like  
13 for you to think about, is maybe modifying your previous  
14 decision here to just say have the Hearing Division  
15 conduct proceedings but not direct us to prepare an  
16 opinion and order.

17 CHMN. PIERCE: So you mean, well, we would have,  
18 you would have the minutes or the, well, the transcript  
19 and then the parties would --

20 CALJ FARMER: File whatever they wanted to do --

21 CHMN. PIERCE: And then we would have that.

22 CALJ FARMER: -- to modify that CEC. That's the  
23 process that occurred previously.

24 CHMN. PIERCE: I remember that.

25 CALJ FARMER: And Legal Division may have a



1 position on this. But, you know, that's, that's our  
2 preference.

3 MS. WAGNER: Janet Wagner for the Legal  
4 Division. I was just going to add that any of these  
5 amendments that have been filed by the Commissioners  
6 could be amended to include that. That wouldn't be  
7 difficult to do.

8 CALJ FARMER: And we have drafted some language  
9 already, both yours and the Kennedy ones.

10 CHMN. PIERCE: Commissioner Newman.

11 COM. NEWMAN: Kind of point of procedure and it  
12 sort of gets into some of the -- it becomes, it gets  
13 into some legal due process issues. I have just been  
14 using due process as a word when I don't want to tell  
15 the whole story.

16 So I wanted to ask the judge. One of the  
17 reasons for having a 252 is because, and this has  
18 already been briefed about the scope of the relevancy  
19 hearing, you are not suggesting in the second hearing  
20 that that, those matters wouldn't be considered by Judge  
21 Rodda who presumably would be the judge?

22 I am all for saving time, but I also want to  
23 make sure that Judge Rodda has the independence to  
24 consider relevancy questions as a unique adjudicator.  
25 It is not exactly like Hualapai. In that case, I

1 respectfully disagree.

2 CALJ FARMER: Mr. Chairman, Commissioner Newman,  
3 I am aware that one of the amendments, I believe, does  
4 make some rulings about what is relevant or material.  
5 And I believe, just in briefly reading it, it would, it  
6 would more specifically define what kind of hearing the  
7 Commission is directing us to conduct.

8 So it depends upon which amendment you adopt  
9 exactly what kind of hearing you are telling the Hearing  
10 Division to conduct.

11 COM. NEWMAN: Yeah. And I want to make sure  
12 that we were not kind of passing each other in the night  
13 in statements. I wanted to make sure you haven't given  
14 up on the fact that you, in this case Judge Rodda, could  
15 be swayed by the briefs talking about public interests  
16 being viewed in a different way and relevancy being  
17 viewed in a different way.

18 I hope, because, just because you say in the  
19 interest of the time -- that is critically important,  
20 and I think if we don't have time to explore those  
21 issues, that would cause us to be in an appellate  
22 situation.

23 CALJ FARMER: That's not the issue I was talking  
24 about. The scope of the hearing I wasn't addressing. I  
25 was talking about whether we write a recommended opinion

1 and order or not. That was the issue that I am talking  
2 to you about, not the scope of the kind of hearing that  
3 we have.

4 COM. NEWMAN: Well, it would be helpful to have  
5 recommended, a recommended order. I am just sort of  
6 chatting with you. It would be helpful, in a procedural  
7 way, it would be helpful to have a recommendation and an  
8 order, depending on which amendment passed, given the,  
9 given that there will be an opinion and order with 1  
10 through 25, like usual, and instead of taking it from  
11 another record, the 1 to 25 here, if some of the  
12 complainants' points are taken would be totally  
13 different from the Line Siting Commission's conclusions.  
14 So...

15 CALJ FARMER: And, Mr. Chairman, Commissioners,  
16 that was the difficulty that -- I mean, from the  
17 transcript from that previous open meeting, the  
18 challenge that it posed for the Hearing Division is that  
19 we are not the Line Siting Committee. And to -- there  
20 is already a decision based upon that evidence. And you  
21 are adding additional evidence. It puts an ALJ in an  
22 almost impossible position to write a ROO based upon  
23 someone else's decision and then whether it should be  
24 changed or not.

25 COM. NEWMAN: And you are not -- well,

1 respectfully, Judge, some of the decisions that are  
2 being made, at least by this Commissioner, I can't speak  
3 to the minds of all the Commissioners, are trying to  
4 protect due process here, perhaps trying to understand  
5 relevancy from the stewardship perspective. That might  
6 be different from the line siting perspective.

7           So I know that puts the judges in a difficult  
8 position. It puts the Commissioners in a difficult  
9 position. But I think that that is, that is the road  
10 that we may have to go down to truly play our  
11 stewardship role as we should.

12           CALJ FARMER: And I look forward to seeing what  
13 the Commission directs us to do.

14           CHMN. PIERCE: There you go.

15           All right. That's it for today, everyone. We  
16 are adjourned.

17           (The proceeding concluded at 3:32 p.m.)

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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA ) SS.

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I, COLETTE E. ROSS, Certified Reporter No. 50658 for the State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 12th day of May, 2012.

COLETTE E. ROSS  
Certified Reporter  
Certificate No. 50658