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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION)
 OF TUCSON ELECTRIC POWER COMPANY)
 FOR A CERTIFICATE OF) DOCKET NO.
 ENVIRONMENTAL COMPATIBILITY) L-00000C-11-0400-00164
 AUTHORIZING THE CONSTRUCTION OF A)
 138kV TRANSMISSION LINE AND) CASE NO. 164
 ASSOCIATED FACILITIES FROM THE)
 PROPOSED TORO SWITCHYARD,)
 SECTION 29, TOWNSHIP 17 SOUTH,)
 RANGE 14 EAST TO THE ROSEMONT)
 SUBSTATION, SECTION 30,)
 TOWNSHIP 18 SOUTH, RANGE 16 EAST,)
 EACH LOCATED WITHIN PIMA COUNTY,)
 ARIZONA.) OPEN MEETING

At: Phoenix, Arizona
 Date: March 15, 2012
 Filed: March 28, 2012

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AGENDA ITEM NO. 5

ARIZONA REPORTING SERVICE, INC.
 Court Reporting
 Suite 502
 2200 North Central Avenue
 Phoenix, Arizona 85004-1481

Prepared for: By: COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard as Agenda Item No. 5
3 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 10:06 a.m. on the 15th of March, 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
26 Mr. Marshall Magruder

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APPEARANCES:

For Elizabeth Webb:

Ms. Elizabeth Webb

For the Line Siting Committee:

Mr. Paul Walker

For the Arizona Corporation Commission:

Ms. Janice Alward

COLETTE E. ROSS
Certified Reporter
Certificate No. 50658

1 CHMN. PIERCE: And we will begin right in with
2 Tucson Electric Power's application for a certificate of
3 environmental compatibility authorizing construction of
4 a 138kV transmission line and associated facilities from
5 the proposed Toro switchyard. So let's everybody take a
6 moment to get where they need to be. This is Item No.
7 5.

8 I want to welcome everyone here. We are going
9 to do public comment in just a little bit. What I am
10 going to do is take, go ahead and we will take
11 appearances, everybody that's here, give you a moment or
12 two to make opening statements and then -- brief opening
13 statements.

14 We are going to come back to you. I just want
15 to make sure we have time for public comment this
16 morning. We are going to get through this today. There
17 are Commissioners that need to be out of here earlier
18 this afternoon rather than later. So we want to make
19 sure we get through any public comment.

20 And we need to know how many, for those in
21 Tucson, how many are actually there so we can kind of
22 balance the time. I would like to make sure we are
23 through public comment by lunch, so if we have to go
24 into, towards 12:30 or something like that, we will.
25 But I just want to make sure we do that. Once we end

1 public comment, we are going to move into the rest of
2 this.

3 So let's just go through and have appearances.
4 We will get back to anything you might want to say after
5 public comment. I just want to make sure we get started
6 over here with the company.

7 MR. DERSTINE: Mr. Chairman, members of the
8 Committee, Matt Derstine, Jason Gellman, Roshka DeWulf &
9 Patten. Also present on behalf of the committee is
10 Edmond Beck. Mr. Beck is director of transmission
11 policy and contracts.

12 CHMN. PIERCE: Thank you.

13 COM. BURNS: Which, I am sorry, which committee?

14 MR. DERSTINE: Tucson Electric Power.

15 COM. BURNS: I thought you said committee. I am
16 sorry.

17 CHMN. PIERCE: The company.

18 Go ahead.

19 MR. BLACK: Good morning, Chairman, members of
20 the Commission. Patrick Black and Norm James with the
21 law firm Fennemore Craig on behalf of Rosemont Copper
22 Company.

23 CHMN. PIERCE: Okay.

24 MR. ROBERTSON: Good morning, Mr. Chairman,
25 members of the Commission. My name is Lawrence V.

1 Robertson, Jr., of counsel to the law firm of Munger
2 Chadwick. Also with me today is my co-counsel, Robert
3 J. Metli, of the law firm of Munger Chadwick. We are
4 appearing on behalf of Save the Scenic Santa Ritas
5 Association, Sky Island Alliance, Tucson Audubon
6 Society, and the Center for Biological Diversity. Thank
7 you.

8 CHMN. PIERCE: Thank you.

9 MS. BERGLAN: Good morning, Mr. Chairman,
10 members of the Commission. Laura Berglan from the
11 Tohono O'odham Nation, Office of the Attorney General,
12 Assistant Attorney General on behalf of the Tohono
13 O'odham Nation.

14 MR. MAGRUDER: Good morning, Chairman and
15 Commissioners. My name is Marshall Magruder. I am from
16 Tubac, Arizona. And I am an intervenor.

17 MS. WEBB: Mr. Chairman, members of the
18 Commission, I am Elizabeth Webb appearing on behalf of
19 myself. And I am from Vail, Arizona.

20 CHMN. PIERCE: Okay. I understand that you are
21 not an intervenor, but we are going to have you sit
22 there, Ms. Webb, just to -- we understand the
23 circumstances and we will just move on that way.

24 Okay. Thank you, everyone, for being here.

25 Now, I need to hopefully be interactive with

1 Tucson and find out just how many people we have that
2 have come in to do public comment.

3 Reg, are you there?

4 SECRETARY BERNAL: There is no public comment.

5 CHMN. PIERCE: There is no public comment in
6 Tucson?

7 MR. HOGAN: That's not true.

8 SECRETARY BERNAL: No one is present.

9 CHMN. PIERCE: No one is present there.

10 COM. NEWMAN: Point of procedure. Just not
11 everyone knows what is going on, but we made
12 arrangements to have the Tucson office open for public
13 comment for people who didn't want to drive that. That
14 was recently done.

15 And so just for the record, let the record
16 reflect that we attempted, I know that my office
17 certainly attempted, to make that available. And I
18 actually had no idea until this moment whether people
19 would be there. But I just wanted the record to reflect
20 what we are, what we are discussing at this moment.

21 CHMN. PIERCE: We just want to make it -- that's
22 something we did awhile back to make sure that this and
23 actually a case tomorrow that we are going to do on
24 TEP's energy efficiency, same opportunity in Tucson, so
25 we just want to make sure they have that opportunity.

1 I don't have any requests to speak here, which
2 are outside, on this case. So if I don't have them, we
3 are going to close public comment and move right on to
4 the case.

5 COM. NEWMAN: Are there people who would like to
6 speak?

7 CHMN. PIERCE: Excuse me.

8 COM. NEWMAN: I am sorry.

9 CHMN. PIERCE: So if you have a public speaking
10 slip, I would like to have it. Just hand it right over
11 here.

12 COM. NEWMAN: I am sorry, Mr. Chairman.

13 CHMN. PIERCE: We need to bring it forward.
14 That's okay. Bring it over there and they will get it
15 over here. Thank you.

16 All righty. Thank you. We have Mr. Bill Hogan.
17 Why don't you come up to that. Is it Hogan, H-O-G-A-N?

18 MR. HOGAN: Yes, it is.

19 CHMN. PIERCE: Okay. Come on up. And you have
20 three minutes, sir.

21 MR. HOGAN: Well, I am just --

22 CHMN. PIERCE: Come on up to the mike. Make
23 sure the green light is on and make sure you speak right
24 into it, please.

25 MR. HOGAN: I haven't done this kind of thing in

1 a long time.

2 CHMN. PIERCE: Thank you for being here.

3 MR. HOGAN: Several of you I know when I worked
4 with the AFL-CIO as a state COPE director back in the
5 '90s. Representative, or Commissioner Newman,
6 Commissioner Burns I know, and Commissioner Kennedy in
7 fact.

8 CHMN. PIERCE: All those old-timers.
9 Commissioner Stump, we weren't there.

10 MR. HOGAN: Bunch of old-timers, representatives
11 in the legislature.

12 I went back to my tools and now I work as a
13 steel worker as the contract coordinator for Mission and
14 Silver Bell Mines at ASARCO.

15 We are here today to raise our support in
16 response to Rosemont. And after talking to Mike
17 Verbout, he is the business manager at 570 and 1160 IBEW
18 locals, I wanted to make sure that the Commissioners
19 knew that we are highly in favor of moving forward on
20 the transmission piece of this particular thing, and for
21 a number of reasons.

22 First of all, and from my perspective, it means
23 a whole bunch of really good high-paying jobs once the
24 project is done. And from the environmental standpoint,
25 we don't really weigh in one way or another on which one

1 of the various proposals are. And we would certainly
2 hope that the most environmentally sensitive choices
3 appropriate are made by the Commissioners.

4 But at the end of the day, even as -- the
5 union's perspective is always mindful of the
6 environmental impacts of copper mines. It has been in
7 our blood for 100 years in Arizona. And one of our
8 locals, which 937 was the BHP local, it was shut down
9 several years back, which basically was one of my home
10 locals originally. And when you look at the reclamation
11 work that has been done at that place, that says a lot
12 about the environmental impact potential.

13 And one thing that I know and my brother from
14 the IBEW reminded me yesterday when he found out about
15 it, evidently he was not able to attend because he
16 hadn't read the memo at that particular point, but one
17 of the things that is part of the project is the
18 potential for solar generated power. And when the
19 shutdown process, when the mines actually are closed and
20 is not using a lot of electricity downstream, then
21 upstream the electricity has a potential for being used,
22 utilized in this particular project for upstream power
23 generation from solar things. And the IBEW is currently
24 working on some of those projects in various different
25 areas already in Arizona. And we would like to see more

1 of them.

2 So that's enough.

3 CHMN. PIERCE: Thank you, Mr. Hogan.

4 Okay. Now we will go right into -- I want to
5 recognize Staff here, too, as well.

6 What we are going to do is begin with the
7 company. And do we have anyone here from the Line
8 Siting Committee?

9 Okay. Mr. Walker, do you want to join us?

10 COM. NEWMAN: Who? That's interesting.

11 CHMN. PIERCE: I mean I think that it would be
12 helpful if there is any questions to have a perspective
13 there. Thank you.

14 Okay. Let's go ahead and start with the
15 company.

16 MR. DERSTINE: Thank you, Mr. Chairman. Again,
17 good morning, members of the Commission. I wanted to
18 note at the outset that we do have the placemats that
19 contain maps and certain diagrams from the original
20 Siting Committee hearing. If those would be helpful to
21 members of the Commission, we --

22 COM. NEWMAN: Might as well have them.

23 MR. DERSTINE: Okay.

24 CHMN. PIERCE: I think, yeah, over the period of
25 time I think we have all seen it. Some of us actually

1 have been out to the site to --

2 MR. DERSTINE: Okay.

3 CHMN. PIERCE: -- to visualize it from the top
4 down. I know Commissioner Kennedy and I participated in
5 a tour of that, found out it was very windy up there.
6 Okay.

7 MR. DERSTINE: All right. Last November Tucson
8 Electric Power Company filed an application to construct
9 a 138kV transmission line to serve the proposed Rosemont
10 mine, serve the mine if and when the mine is approved
11 through its ongoing NEPA process.

12 As a public service company, Tucson Electric
13 Power has an obligation to serve customers within its
14 service territory. The proposed Rosemont mine is within
15 TEP's service territory. Rosemont has requested
16 service. Rosemont's request for service is the purpose
17 and the need for this project.

18 In advance of filing the application, there was
19 a long public process, public outreach process. That
20 process was initiated in 2009 with a stakeholder group.
21 Members of the stakeholder group included Coronado
22 National Forest, BLM, Santa Rita Experimental Range,
23 Arizona State Land, and included Mr. Magruder and
24 Ms. Webb who participated in this case, as well as
25 Mr. Robertson's, another one of Mr. Robertson's clients,

1 Farmers Investment. There were a number of stakeholder
2 group meetings. There was even a visit out to the site
3 of the mine and the project area.

4 In addition to the stakeholder group, there were
5 four rounds of public open houses, six total. Two of
6 those rounds included open houses in two different
7 locations at the same time. There were anywhere from 40
8 to 66 attendees at all of those open houses.

9 There were also five newsletters that were sent
10 out to a very broad mailing list. Over 27,000 addresses
11 were included in each mailing. Those newsletters
12 apprised the public of developments in the route
13 selection and route development as well as alerted
14 members of the public to the open houses.

15 Project information was also included on a
16 website and there was a telephone information line.

17 Through the public process a preferred route and
18 four alternative routes were ultimately presented in the
19 application. And those routes are set forth on the map
20 that was just handed out to you.

21 The record from the siting hearing is clear that
22 the preferred route is the best route, the most
23 environmentally compatible route to provide electric
24 service to the mine. The preferred route creates the
25 least amount of ground disturbances. And it creates the

1 least amount of ground disturbance for a number reasons.

2 It is one of the shortest routes. It follows
3 the Santa Rita Road and the proposed water pipeline that
4 will be used to serve the line. It collocates the
5 transmission line with distribution lines that will be
6 used to serve the pumps for the water pipeline.

7 The preferred route also carries the greatest
8 amount of support from the largest landowner, Santa Rita
9 Experimental Range. According to the range, quote, the
10 preferred route will not significantly change existing
11 conditions in the range or adversely impact range
12 facilities or its operations. That's TEP Exhibit 13 in
13 the siting record.

14 Arizona Game & Fish also considered the
15 preferred route the best route to provide service to the
16 mine. According to Game & Fish the preferred route
17 represents the minimum disturbance of all the proposed
18 alternative routes primarily through its siting along
19 existing roadway and collocation with any shared
20 corridor.

21 In addition, despite the Tohono O'odham Nation's
22 opposition to the granting of any CEC in this case,
23 Peter Steere on behalf of the Nation testified that the
24 preferred route was the best route, most environmentally
25 compatible route to serve the mine. And Mr. Magruder

1 also testified in the same manner.

2 In short, all of the evidence presented to the
3 Siting Committee and in the record before you supports
4 the conclusion that the preferred route is the best
5 route to provide service to the mine.

6 But despite the overwhelming support and
7 evidence in favor of granting a CEC for the preferred
8 route, the intervenors have argued against granting any
9 CEC. The same individuals and groups that oppose the
10 mine oppose the transmission line, because they view
11 this as an opportunity to halt or delay the mine. The
12 Tohono O'odham Nation, Scenic Santa Rita group,
13 Mr. Magruder, Ms. Webb are all vocal mine opponents.
14 These parties did not intervene in this case to argue in
15 favor of one route over another. Their principal
16 position is that the CEC should be denied for any route.

17 To that end, these parties have argued that the
18 impacts of the mine must be considered in addition to
19 the environmental impacts of the transmission line and
20 that those combined mine and line impacts require the
21 denial of a CEC.

22 At the outset of this case, at our initial
23 prehearing or prefiling conference, Chairman Foreman, as
24 the presiding officer of the Siting Committee, asked for
25 briefs on this threshold legal issue of whether

1 environmental impacts of the mine can or should be
2 considered in evaluating the impacts of the transmission
3 line under the siting statute. After briefing, Chairman
4 Foreman ruled that under the statutory siting authority
5 granted to the Siting Committee and granted to this
6 Commission only impacts of the transmission line are
7 material and will be considered in evaluating the CEC
8 application.

9 The Chairman got it right and the Siting
10 Committee got it right in affirming the Chairman's
11 ruling by a ten to one vote that environmental impacts
12 of the mine would not be considered in evaluating the
13 factors and doing the balancing under the siting
14 statute.

15 All electric customers, subdivisions, shopping
16 malls, manufacturing facilities, mines, and even
17 churches cause environmental impacts. And each customer
18 must obtain various regulatory and government approvals
19 before they can build or operate. The various land use
20 impacts caused by any customer are taken into account
21 and governed by a variety of statutes and jurisdictions.
22 But they are not governed by the siting statute. The
23 analysis under the statute is limited to determining if
24 there is a need and the most environmentally compatible
25 means to serve the need, balancing the factors

1 identified in the statute.

2 The fact that the Scenic Santa Ritas and others
3 have attempted to argue that the NEPA concept of a
4 connected action should somehow be grafted onto the
5 siting statute is an obvious concession that there is no
6 authority under the siting statute for that type of
7 extension or that type of analysis.

8 As stated by Chairman Foreman, our business is
9 to make a determination of whether there is a need, not
10 what the need is, not is it a good need or a bad need,
11 but is there a need and, if so, balancing the
12 environmental impact of the line against that need, does
13 that militate in favor of granting the application. And
14 that's what the Committee did in this case.

15 The Committee took extensive evidence on the
16 environmental impacts of the transmission line through
17 prefilled testimony, live testimony and
18 cross-examination, a Google Earth presentation of the
19 various routes and what the structures would look like
20 in the landscape, and various exhibits that were entered
21 into evidence and are a part of the record.

22 The Committee took testimony concerning the
23 impacts of the line to plant and wildlife species,
24 biological resources, scenic areas, historic sites,
25 archeological sites, existing plans of state and local

1 government and private entities.

2 And after four days of hearings, the Siting
3 Committee voted unanimously 11 to zero in favor of
4 granting a CEC for the preferred route while, at the
5 same time, placing 26 conditions on the construction of
6 the line. These conditions include requiring that TEP
7 file a construction mitigation and restoration plan
8 before commencing any construction, retain a qualified
9 biologist to monitor all ground clearing and disturbing
10 construction activities that may affect sensitive
11 species or habitat, avoid or minimize impacts to
12 properties list at the time or eligible for listing on
13 the National Register of Historic Places sites including
14 sites significant to the Tohono O'odham Nation, consult
15 with the Nation's cultural affairs office during any
16 construction activities on or within 100 feet of a known
17 prehistoric cultural resource, and, most importantly,
18 prohibiting construction of this line until a record of
19 decision is issued by the United States Forest Service
20 regarding Rosemont's mining plan of operations.

21 It is no secret that the proposed Rosemont Mine
22 is controversial. It has its vocal and outspoken
23 opponents and supporters. But this case is not about
24 the mine or its environmental impacts. The mine's
25 impacts are covered by the ongoing NEPA process, and

1 that NEPA process also takes into account and considers
2 the impacts of the transmission line. But this case
3 under Arizona siting statute is about TEP's obligation
4 to serve and siting a line to provide service.

5 So with that, on behalf of Tucson Electric Power
6 Company, I would ask you to enter an order approving the
7 CEC issued by the Siting Committee in this case. Thank
8 you.

9 CHMN. PIERCE: Thank you.

10 Mr. Black.

11 MR. BLACK: Thank you.

12 Good morning, Chairman, members of the
13 Commission. I think Mr. Derstine provided a very
14 thorough summary of the proceedings and the CEC that was
15 approved in this case, so I won't reiterate those.

16 I would just like to say on behalf of Rosemont
17 Copper that we do support the CEC that was approved by
18 the Line Siting Commission, or Committee, which, along
19 with 26 conditions, properly balance the need for
20 electricity with a desire to minimize the impact of the
21 proposed transmission line on the environment and
22 ecology of the surrounding area. Rosemont also supports
23 the amendment proposed by Staff.

24 Thank you.

25 CHMN. PIERCE: Thank you.

1 Mr. Robertson.

2 MR. ROBERTSON: Thank you, Mr. Chairman, members
3 of the Commission. Perhaps not surprisingly, my opening
4 statement will be somewhat longer than Mr. Black's.

5 As I indicated at the time we entered
6 appearances this morning, Mr. Metli and I are
7 representing four clients in this proceeding, the Save
8 the Scenic Santa Ritas Association, Sky Island Alliance,
9 the Tucson Autobahn Society, and the Center for
10 Biological Diversity. For purposes of brevity and
11 simplicity during the course of my opening statement
12 today, I will refer to our clients as either Scenic
13 Santa Ritas or SSR.

14 Following the Siting Committee's issuance of its
15 decision in this matter granting a CEC for the TEP
16 Rosemont line, Scenic Santa Ritas filed a request for
17 review with the Commission pursuant to the statutes,
18 specifically A.R.S. 40-360.07. The request for review
19 specified three separate grounds for review. The nature
20 of those is as follows:

21 The first ground involves a question of law
22 which has not previously been considered by either the
23 Siting Committee or the Commission and includes
24 consideration of the connected action concept, which has
25 been recognized and utilized by other agencies with

1 environmental analysis responsibilities, including the
2 United States Forest Service in its draft environmental
3 impact statement which was prepared for the Rosemont
4 Mine. The second and third grounds in our request for
5 review involve the reasonableness of the Siting
6 Committee's exercise of discretion based upon the
7 evidentiary record in the underlying proceeding. Let me
8 briefly summarize those three grounds for review and
9 then I will proceed with a discussion of each.

10 Ground number one, in evaluating TEP's
11 November 2nd, 2011 application for a CEC for the
12 proposed line, the Siting Committee erred in failing to
13 consider evidence of environmental impacts associated
14 with the proposed mine within the context of A.R.S.
15 40-360, et seq. As the evidentiary record indicates,
16 but for the mine, the line would not be proposed or
17 constructed and thus the relationship between the two is
18 in the nature of a connected action.

19 Ground number two, the Siting Committee erred in
20 the discharge of its responsibilities under A.R.S.
21 40-360.06 when it failed to include in the CEC a
22 condition that would preclude the commencement of
23 construction on the line until after all federal, state
24 and local permits or approvals necessary for
25 construction, operation, reclamation and closure of the

1 mine have been obtained and are no longer subject to
2 judicial review.

3 Ground number three, the Siting Committee erred
4 in the discharge of its responsibilities under A.R.S.
5 40-360.06 when it adopted a CEC condition granting a
6 term of 10 years for the CEC given an evidentiary record
7 which indicates that, one, TEP would need only eight
8 months to construct the line; two, Rosemont anticipates
9 it will request power from TEP to begin construction of
10 the mine in 2013; three, TEP in all likelihood would not
11 incur meaningful expense in obtaining an extension of
12 the duration of the term of the CEC if an extension
13 should become necessary; and, four, change in the
14 surrounding circumstances within the next 10 years
15 conceivably could alter what is currently perceived to
16 be the preferred route for the line.

17 Given these considerations, a 10-year CEC term
18 is excessive and unwarranted. Now let me proceed to a
19 discussion of each of these grounds for review.

20 Ground number one, the Siting Committee failed
21 to consider evidence of environmental impacts associated
22 with the mine within the context of A.R.S. 40-360, et
23 seq. The relationship between TEP's proposed line and
24 Rosemont's mine is such as to make them a connected
25 action within the analytic framework of the connected

1 action concept. It is a classic example of a "but for"
2 relationship. Because the line and the mine are
3 connected actions, due to their interdependent
4 relationship, the connected action concept is suitable
5 for recognition and use as an analytical tool by both
6 the Siting Committee and the Commission within the
7 context of the statutory scheme set forth at AR
8 S-40-360, et seq.

9 Some have characterized that statutory scheme
10 and the related legislative policy objectives as
11 Arizona's little NEPA. However, as contrasted with
12 NEPA, which is essentially procedural in nature, A.R.S.
13 40-360, et seq. also provides substantive authority and
14 decision making functions for both the Siting Committee
15 and the Commission. In that regard, a principal
16 underlying policy objective of the Arizona statutory
17 scheme is to minimize the adverse impact upon the
18 environment and quality of life resulting from
19 satisfaction of a given need for an electrical supply.
20 In discharging their respective statutory roles, the
21 evidentiary record is of critical importance to both the
22 Siting Committee and the Commission. More specifically,
23 the Siting Committee applies the statutory decision
24 making factors prescribed by A.R.S. 40-360.A and B to
25 the record developed by the Siting Committee.

1 Pursuant to A.R.S. 40-360.07.B, the Commission's
2 review and consideration of Siting Committee decisions
3 and related requests for review shall be based on the
4 record developed by the Siting Committee. In that
5 regard, in this instance, Scenic Santa Ritas' offer of
6 proof contains information relating to environmental
7 impacts of the mine and such information is a part of
8 the record now before the Commission in connection with
9 its consideration of Scenic Santa Ritas' request for
10 review.

11 When examined, that information contained in the
12 offer of proof convincingly demonstrates that
13 substantial and long-lasting adverse environmental
14 impacts from the mine clearly outweigh any benefits
15 associated with the mine when examined from a broad
16 public interest perspective, which is the statutory
17 standard the Commission is to consider in discharging
18 its functions.

19 In connection with the foregoing, the connected
20 action concept is appropriate for use as an analytical
21 tool by both the Siting Committee and the Commission
22 within the context of A.R.S. 40-360, et seq. In that
23 regard, the Siting Committee has discretion to consider
24 factors in addition to the minimum decision making
25 criteria prescribed by A.R.S. 40-360.06. For example,

1 in the Grand Canyon Trust decision rendered by the
2 Arizona Court of Appeals, the court confirmed that the
3 latitude of the Siting Committee's discretion extends to
4 it being able to consider need for the proposed
5 facilities in question although the word need does not
6 appear anywhere within A.R.S. 40-360.06. Similarly, the
7 Commission has wide discretion as to what it may
8 consider under A.R.S. 40-360.07 incident to determining
9 what is in the broad public interest.

10 In that regard, the instant proceeding
11 represents a unique situation where environmental
12 impacts resulting from satisfaction of a specific need
13 for a supply of electrical power can be specifically
14 identified with probative evidence. More specifically
15 here, the sole purpose of the line is to serve the mine,
16 and environmental impacts associated with the mine can
17 and should be considered. Under said circumstances, use
18 of the connected action concept as an analytical tool is
19 within the discretion of both the Siting Committee and
20 the Commission and is appropriate.

21 Accordingly, evidence of environmental impacts
22 associated with the mine is relevant in connection with
23 the Siting Committee's responsibilities and functions
24 under A.R.S. 40-360, et seq. And in that regard, the
25 Siting Committee erred in its failure to consider the

1 information contained in what is now Scenic Santa Ritas'
2 offer of proof. Such information included the prepared
3 testimony of three Scenic Santa Rita witnesses and
4 portions of the Forest Service's draft environmental
5 impact statement relating to the mine. Similarly,
6 evidence of environmental impacts associated with the
7 mine is relevant in connection with the Commission's
8 responsibilities and functions under A.R.S. 40-360, et
9 seq., and the Commission is thus in a position to
10 correct the Siting Committee's error at this time.

11 In that regard, federal law does not prohibit
12 the Siting Committee or the Commission from considering
13 environmental impacts of the mine with discharging their
14 functions pursuant to the Arizona statutory siting
15 scheme. And there is no federal preemption because
16 neither the Siting Committee nor the Commission would be
17 regulating activities of Rosemont Mine for seeking to
18 replace or supersede federal agency decisions related to
19 the mine. Indeed, the Forest Service acts under
20 authority of regulations that, one, instructed to
21 consider whether an action threatens violation of state
22 or local laws or requirements, and, two, directed to
23 undertake the fullest possible cooperation between
24 federal, state and local agencies in complying with
25 environmental laws.

1 Let me now proceed to a discussion of ground
2 number two.

3 The Siting Committee erred when it failed to
4 include in the CEC a condition precluding commencement
5 of construction of the line until all federal, state and
6 local permits necessary for construction, operation,
7 reclamation and closure of the mine have been obtained
8 and are no longer subject to additional review
9 Commission review.

10 Construction of the line will cause adverse
11 environmental impacts which cannot be fully mitigated in
12 the event the mine never becomes operational. There is
13 no need for the line until the mine is legally in a
14 position to commence construction and operation. The
15 mine has no need for power until all necessary federal,
16 state and local permits or approvals have been obtained
17 and are no longer subject to judicial review. As of
18 this juncture, Rosemont has yet to obtain the following
19 permits or approvals which are prerequisites to
20 construction and operation of the mine.

21 First of all, there is the record of decision,
22 which needs to be issued by the Forest Service under the
23 National Environmental Policy Act. As Mr. Derstine
24 indicated during his opening statement, that has yet to
25 be obtained. And the DEIS, which has been prepared now

1 subject to review, is just the first step in that
2 process.

3 In that regard, the EPA's February 21st, 2012
4 letter to the Forest Service sharply criticizing and
5 commenting upon serious deficiencies in the Forest
6 Service DEIS strongly suggests that issuance of a record
7 of decision in the near future is most unlikely. Copies
8 of that letter from the EPA were filed with the
9 Commission's Docket Control by Scenic Santa Ritas on
10 February 27, 2012.

11 Second, the air quality permit required under
12 the Clean Air Act has not been obtained. To the
13 contrary, Pima County, as the designee of the
14 Environmental Protection Agency, has denied that permit
15 thus far.

16 Third, the Section 404 permit required under the
17 Clean Water Act to be issued by the Army Corps of
18 Engineers has not been obtained. In that regard, EPA's
19 February 13, 2012 letter to the United States Army Corps
20 of Engineers discussing perceived deficiencies in
21 Rosemont Copper Company's Section 404 permit application
22 clearly demonstrates Rosemont's acquisition of necessary
23 permits and approvals should not be assumed to be a
24 given. Copies of this letter were also filed with
25 Docket Control by Scenic Santa Ritas on February 16,

1 2012.

2 Fourth, successful completion of the Section 7
3 consultation process required under the Endangered
4 Species Act, which involves the Forest Service and the
5 United States Fish & Wildlife Service, has not been
6 completed.

7 Fifth, the aquifer protection permit required
8 from the Arizona Department of Environmental Quality has
9 not been obtained.

10 And sixth, the completion of procedures under
11 the Arizona Historic Preservation Act, which involves
12 the Arizona State Historic Preservation Office, has not
13 been completed.

14 Furthermore, there is no evidence in the record
15 which demonstrates that either TEP or Rosemont would be
16 injured if a condition of the nature proposed by Scenic
17 Santa Ritas was included in the CEC.

18 In addition, given that the record indicates
19 Rosemont likely will succeed to TEP's position as the
20 holder of the CEC, perhaps even before construction of
21 the line begins, it is imperative that a condition of
22 this nature be included in the CEC to avoid other risk
23 of a precipitous action by Rosemont in constructing the
24 line with a resulting environmental consequences.

25 Commencement of construction of the line before all

1 permits and approvals have been obtained for the mine
2 and are no longer subject to judicial review would
3 constitute such a precipitous action.

4 In summary, the Commission has the
5 responsibility for preventing or mitigating as much as
6 feasible adverse environmental impacts resulting from
7 siting and construction of a power plant or a
8 transmission line. Stated differently, the Commission
9 has what may accurately be characterized a stewardship
10 responsibility to avoid or mitigate environmental
11 impacts resulting from the granting of a CEC whenever
12 and wherever possible. In that regard, Scenic Santa
13 Ritas' proposed substitute Condition No. 23 of the CEC
14 is designed to protect the area that construction of the
15 line would adversely environmentally impact until the
16 need for power proposed to be supplied can conclusively
17 be shown to legally exist.

18 By adopting the CEC condition proposed by Scenic
19 Santa Ritas, the Commission would be fully discharging
20 its stewardship responsibility with respect to
21 protection of the area that the line would transect. In
22 so doing the Commission would not be second guessing
23 future decisions of other agencies related to the mine.
24 Rather, it would simply be fulfilling its stewardship
25 role under A.R.S. 40-360, et seq. with respect to the

1 line.

2 Let me finally move to a discussion of ground
3 number three.

4 The Siting Committee erred when it granted a CEC
5 for a 10-year term given the factual circumstances of
6 the instant proceeding. First, TEP testified it would
7 take only eight months to construct the line. Second,
8 it was indicated Rosemont anticipates it will be
9 requesting construction power from TEP in 2013. This
10 suggests Rosemont confidently anticipates it will have
11 all necessary federal, state and local permits and
12 approvals by then. Third, TEP testified, in the event
13 of a future need to seek an extension of the term of the
14 CEC, it probably would not incur meaningful expense in
15 doing so. Fourth, changes in surrounding circumstances
16 during the next ten years could alter what is currently
17 the preferred route for the line. Given these
18 considerations, a term of ten years for the CEC here in
19 question is excessive and the same should be reduced to
20 five years.

21 In conclusion, the Commission should exercise
22 its discretion to use the connected action concept as an
23 analytical tool within the factual circumstances of this
24 case. And following that balancing of the
25 considerations prescribed by A.R.S. 40-360.07.B, the

1 Commission should conclude in the broad public interest
2 that TEP's request for a CEC for the line should be
3 denied.

4 In the alternative, the Commission should
5 decide -- in the event the Commission should decide to
6 grant TEP a CEC for the line, the Commission should
7 adopt Scenic Santa Rita's request that the form of CEC
8 granted by the Siting Committee be modified as follows:

9 First, strike the language currently contained
10 in Condition No. 23 of the CEC and substitute the
11 following language, quote: Applicant will not commence
12 construction on the project until all permits and
13 approvals required to allow construction and operation
14 of the Rosemont Copper Mine have been obtained and are
15 no longer subject to judicial review. Close quote.

16 Second, in the event the Commission decides to
17 grant TEP a CEC, it should strike the language currently
18 contained in Condition No. 6 of the CEC and substitute
19 the following language, quote: This authorization to
20 construct this project shall expire unless the
21 transmission line is capable of operation within five
22 years from the date the certificate is approved by the
23 Arizona Corporation Commission; however, prior to
24 expiration, the applicant may request that the
25 Commission extend this time limitation. Close quote.

1 In that regard, Mr. Chairman, and members of the
2 Commission, Commissioner Kennedy has filed two
3 amendments for consideration. With respect to the
4 alternative part of our conclusion, in the event the
5 Commission decides to grant a CEC, Commissioner
6 Kennedy's proposed amendment as it relates to Sample
7 Order No. 2 would be such that the two conditions we are
8 proposing be included in said CEC, as might be granted
9 conditionally and on a temporary basis, that they could
10 be included in that manner.

11 Sample Order No.3, as you are aware, or
12 Commissioner Kennedy's amendment as it relates to Sample
13 Order No. 3, would recommend a denial at this juncture,
14 so our conditions would not need to be considered at
15 that point.

16 That concludes my opening statement on behalf of
17 the Scenic Santa Ritas group. I would like to thank you
18 for your attention and for your consideration of our
19 arguments and our request.

20 CHMN. PIERCE: Thank you.

21 Ms. Berglan.

22 MS. BERGLAN: Thank you, Mr. Chairman, members
23 of the Commission.

24 Just by way of brief background, the Tohono
25 O'odham Nation is an Indian nation with approximately

1 28,000 enrolled members. The reservation is the second
2 largest Indian reservation in the United States.

3 This project area is located within the
4 Papogueria, the Spanish word for traditional O'odham
5 territory. The Tohono O'odham have lived in this basin
6 for thousands of years and used it for food gathering
7 for living and for spiritual purposes. And the
8 footprint on the ancestors of the O'odham are located
9 within the basin. And that renders this area as sacred
10 to the Nation. Those are the reasons why the Nation is
11 interested in this project.

12 I would like to address, briefly reply to TEP's
13 response to the Nation's positions in their brief.

14 First, I turn to the Committee's refusal to
15 consider the environmental impacts of the mine. The
16 Commission, the Committee should have, and certainly can
17 under the plain language of the line siting statutes,
18 considered other environmental impacts of the mine.
19 When you read the line siting statutes in total, it is
20 clear that they do want to consider the impact of the
21 environment. And that's what is under the state
22 environmental case law as well, that you shouldn't be
23 considering projects in piecemeal or in a vacuum so that
24 you can't see the broad environmental impacts of the
25 project. And that is supported in the Nation's offer of

1 proof as well.

2 Peter Steere indicates that in consideration of
3 the entire mine, 110 cultural resource sites would be
4 impacted; whereas, if you just look at this project in a
5 vacuum, seven cultural sites will be impacted. While we
6 do still think seven sites is a big impact, 110 is
7 certainly a lot more and culturally devastating to the
8 Nation.

9 For those reasons we believe, particularly when
10 you look at the statute, at 40-360.07.B, that that's
11 intended, that the cultural and the environmental
12 impacts in the whole ought to have been considered.

13 Now turning to the cultural sites in particular,
14 TEP argues that the denial of the CEC is not justified
15 simply because the project might impact sites. Although
16 the Nation does believe that the project does place an
17 undue burden on the Nation, we believe also that the
18 cultural resource surveys missed some important pieces
19 of information; therefore, the Committee wasn't able to
20 consider the cultural impacts in line with the line
21 siting statutes. And those items are discussed in our
22 brief. Particularly, Huerfano Butte wasn't addressed.
23 Also culturally significant sites and Ce:wi Duag as a
24 traditional cultural place wasn't specifically
25 addressed.

1 I would also point out to the Commission that
2 the State Historic Preservation Office has filed, sent a
3 copy to the Docket Control on March 5th, 2012, Document
4 No. 134927, which quite similarly takes some issues with
5 the cultural resources that were, surveys that were
6 completed. And the State Historic Preservation Office
7 brings out, as did our witness, Mr. Peter Steere, that
8 the Santa Rita Experimental Range wasn't analyzed for
9 its eligibility for the National Register. That's
10 transcript page 599.

11 I would also point out Huerfano Butte is clearly
12 within the environment of the project area. It is
13 approximately 500 feet from the utility corridor. And
14 therefore it should have been considered under the line
15 siting statute since the language is specifically
16 anything within the vicinity of the project. 500 feet
17 is certainly within the vicinity and should have been
18 considered, as Mr. Steere testified. Huerfano Butte
19 continues to be used by Nation members as a sacred site
20 and the impact on that should have been considered by
21 the Committee. But it wasn't able to because the
22 cultural resources surveys didn't analyze it.

23 And turning to Ce:we Duag as a traditional
24 cultural property, TEP seems to take issue, and the
25 Committee perhaps as well, with the timing of the

1 nomination of the traditional cultural place by the
2 Nation. I would like to point other that Mr. Steere in
3 his testimony did explain how that timing came about.
4 They seem to affirm that the nomination process was a
5 reaction to the mine. And it was. Mr. Steere pointed
6 out that these projects are generally project driven
7 because these cultural resource surveys are only done
8 when there is a project in the queue. We don't go out
9 and do cultural resource surveys when there isn't a
10 project that's being proposed. So it is not unusual
11 that the traditional cultural place nomination was in
12 reaction to the mine being proposed.

13 I would also point out that TEP makes a blanket
14 statement in their brief that even if Ce:wi Duag is
15 designated as a TPC, the project has minimal impact,
16 that there is no analysis to support that statement.
17 You need to have that analysis to determine whether or
18 not it is going to have an impact and whether or not
19 that impact would be minimal. And we believe that that
20 supports the denial of the CEC at this time.

21 Therefore, the Nation is requesting the denial
22 of the CEC at this time. If the Commission is inclined
23 to grant the CEC, we would like the reinstatement of the
24 Condition 26 as described in our brief, which provides
25 for the Nation's cultural monitor on-site during any

1 disturbance of sites that are significant to the Nation.

2 Thank you.

3 CHMN. PIERCE: Thank you.

4 Mr. Magruder.

5 MR. MAGRUDER: Good morning, Chairman and
6 Commissioners.

7 My brief presents four exceptions necessary to
8 resolve serious deficiencies in the CEC that require
9 corrective actions by TEP and Rosemont Copper, probably
10 in a new or revised CEC application. Before going into
11 these exceptions, understanding the background is
12 important.

13 Based on this CEC and the companion draft EIS, a
14 dozen miles of tailings west of Sahuarita and Green
15 Valley visualize what is proposed in the Santa Rita
16 Mountains 50 or so years from now. This CEC authorizes
17 400 to 500 megawatts capability in a 50-year
18 right-of-way lease from the State Land Department for
19 this transmission line and its planned growth shown in
20 Exhibit A-3 of the CEC application. That includes three
21 additional mines.

22 This CEC makes those intentions obvious. This
23 transmission line, without change, provides excess
24 capacity way beyond the need of 120 to 133 megawatts.
25 One committee member said, quote:

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1 That kind of blows my mind. It is at the tail
2 end of your system really, isn't it? Why would you have
3 such tremendous excess capacity there, anticipating
4 what?

5 If the public today knew and understood that
6 this Commission is considering to authorize a
7 transmission line for 50 years with planned service for
8 Rosemont and three additional mines in the eastern Santa
9 Rita Mountains, and giving the company ten years to wait
10 before it starts construction, this exceeds the CEC
11 application. The public has never been notified of this
12 fact. All substantial comments that Marshall Magruder
13 made with respect to changes in the CEC were denied. I
14 was able to get the title of some people added.

15 I have four exceptions. Let me summarize them
16 one at a time.

17 First, this CEC is erroneous, incomplete, and
18 legally deficient as it fails to meet the Arizona
19 statutes and code. As a layman reading the clear words,
20 that's obvious. It must be either denied or modified or
21 resubmitted.

22 Two, this Committee did not consider many
23 relevant environmental factors, specifically those
24 required in 40-360.06, resulting from this transmission
25 line.

1 Third exception, both substation ends of this
2 line are missing or conflict, or they conflict between
3 words in the CEC application and the draft environmental
4 impact statement and the mining law.

5 Fourth exception, premature starting of this
6 project must be avoided, as a draft EIS was rejected as
7 both being unsatisfactory and incomplete by the
8 Environmental Protection Agency required review, a
9 rating received by less than two-tenths of a percent of
10 all EISs submitted for review, a remarkably low grade.

11 Now for exception 1 in my brief, this is an
12 erroneous, incomplete and deficient CEC. It is obvious
13 Rosemont will transmit 138 kilovolt electricity. It is,
14 as a layman, it is clear that the line siting statutes
15 require Rosemont to be a utility and, therefore,
16 Rosemont must hold a CEC in order to hold -- to operate
17 and construct any part of this transmission line system.
18 The testimony was clear Rosemont will own, operate,
19 maintain, and eventually remove this transmission system
20 based on filings. TEP cannot even apply to transfer a
21 CEC to Rosemont as Rosemont is not a public service
22 company or an electric company as specifically stated in
23 40-360.08.A for a transfer. Rosemont must be an
24 applicant before granting the CEC because they will
25 transmit electricity above 115 kilovolts. This serious

1 legal defect -- this is a serious legal defect in this
2 CEC. Their excuses are definitely misleading. However,
3 the line siting statutes are very specific and very
4 clear in their definition of certain terms in Section
5 40-360. This should not be confused with the rest of
6 Title 40.

7 This exception also is concerned about an
8 erroneous description of siting of the right-of-way.
9 The CEC refers to Figure ES-3 in the draft EIS. And
10 that figure, shown in my brief, is wrong. It shows the
11 line starting at a place called the Santa Rita South
12 substation, which was never mentioned in proceedings or
13 in the application. A Toro switchyard was considered as
14 this line's starting point.

15 TEP testified it will use power from this
16 transmission line for Rosemont's water pumps. If it
17 uses power from this transmission line, it will require
18 a transformer because no pumps operate at 138 kilovolts.
19 A transformer defines a substation. There is a
20 substation at the northwest corner of this line.

21 The CEC application draft EIS and other
22 documentation presented did not include an adequate
23 description of the line's right-of-way. Frankly, the
24 right-of-way was not sited so that, 50 years from now,
25 someone could survey its boundary. The Siting Committee

1 did not site, that is did not determine, the specific
2 locations for this line. And TEP, for example, had a
3 case last week concerning a right-of-way sited in 1943.
4 This will come back and bite some day, some decade.

5 Rosemont's assertion that it owns private land
6 is quite an exaggeration for a mining and a mineral
7 claim, mostly unpatented, that have never been validated
8 or verified in court. Transmission lines are sited on
9 private land all the time. They don't have any specific
10 rights because they have private land on site. The
11 hearings proved that some of this private land is not
12 even Rosemont's. A residential landowner's public
13 comments supported that assertion because that person
14 was upset.

15 The right-of-way siting east of the Santa Rita
16 Experimental Range is poorly described. And this is
17 where the line is of most significant concern to the
18 Tohono O'odham Nation. That's where the cultural sacred
19 historical resources are located. Sorry. A planned
20 tour to Lopez Pass was cancelled. The Committee never
21 saw this high point in the line. I think you should see
22 where they are siting. They didn't.

23 Exhibit -- Exception 1A, the utility status for
24 Rosemont Copper Company as a CEC applicant is essential.
25 Rosemont does not have any experience in operating or

1 building transmission lines, as testified by TEP, or
2 when asked did it even indicate it was going to have
3 union members from IBEW operating that system. If they
4 were union members, I would understand apprentice,
5 journeyman and master. I don't think they have anything
6 right now, at least according to their testimony.

7 Rosemont must legally be defined as a utility
8 based on the line siting statutes. Rosemont should be
9 an applicant or have its own CEC. Many mines have
10 these, are utilities. Rosemont will not be unique. The
11 Chairman did not agree and he ruled otherwise. Briefs
12 submitted by TEP and Rosemont just recently show that
13 this issue is not closed. Both of their briefs conflict
14 with the law.

15 My motion to compel, in my brief Exhibit B, to
16 be an applicant, for Rosemont to be an applicant was
17 submitted prior to the prehearing conference. The
18 Chairman said his authority was limited by the line
19 siting statutes 40-360 to 360.13. He said the
20 Commission should consider its broader authority to make
21 that call. The Chairman also could evaluate what was
22 presented but he could not tell Rosemont to apply.
23 Frankly I agree. Now it is up to the Commission to
24 decide how to interpret the definitions in the line
25 siting statutes.

1 Without Rosemont in the CEC, and without proper
2 siting, no one knows what and who are authorized for
3 this CEC. For this reason, Exception 1 requires denial
4 of this version of the CEC. My motion to compel gave
5 them an opportunity to fix it while we were still having
6 proceedings. Unfortunately those have been completed.

7 The second exception involves electrical
8 environmental issues, how will the electricity get to
9 this mine from remote generation sources with a single
10 transmission line and what are its total environmental
11 impacts.

12 First, there are serious reliability concerns
13 with over 17 hours, 17 and a half hours of annual outage
14 expected on this radial line, exceeding the maximum
15 allowed for rural cooperatives of four hours by
16 340 percent. Most cooperatives want to have less than
17 two and a half hours of outage per customer per year.

18 Rosemont has no backup capability. The use of
19 diesels for local generation is a serious concern, as
20 shown in one exhibit by the Forest Service, for an urban
21 mine with visible obscuration of other significant
22 national park sites. Rosemont has a critical air permit
23 issued so using diesels is a problem. See Magruder
24 Exhibit C for discussions about the air permit.

25 Based on CEC's application for 120 megawatts of

1 power at 138 kilovolt, a true balance has not been
2 established with the total environment. TEP testified
3 that a smaller 69kV distribution system is fully
4 adequate to meet the load requirements. Until I
5 realized what this was, what was happening in the
6 record, my concern about this transmission line as a
7 gateway to a much larger four-mine mine development
8 program in the Santa Rita Mountains that are described
9 in the EIS in Appendix A is now my focus, is now clear.
10 Rosemont or TEP did not present these impacts during the
11 hearings.

12 Reliability also involves flooding of both the
13 TEP South station and the Santa Rita South substation,
14 or the Toro switchyard, as both are inside the 100-year
15 floodplain. A critical facility, one of the three major
16 facilities for the City of Tucson, should be clear of
17 the 500-year floodplain. It is adjacent to the Santa
18 Cruz River and opposite of the large Molybdenum
19 Processing Plant that the river passes between the two.
20 A berm constructed to protect South substation pushes
21 water into the Moly plant which then floods this plant's
22 chemicals onto the San Xavier district of the Tohono
23 O'Odham Nation across the Pima Mine Road, across the
24 street, just downstream.

25 Second, the concern for groundwater needed to

1 support the power requirements for this transmission
2 line will consume billions of gallons per year. For a
3 base-load 24/7 customer, where will that be and where
4 will air be polluted?

5 TEP uses coal for over 90 percent of its power
6 consumed today. Magruder brief Exhibit F (sic) shows
7 the statutes, shows that in the statutes Section 45-157
8 states that mine and power users are in third place, are
9 the third in priority order when it comes to water
10 allocations. People are first, agriculture second,
11 mines and power are third.

12 Third point, TEP is protecting its new largest
13 customer. Rosemont will be its largest customer.
14 However, TEP does not have local power for this demand
15 because Tucson is a sink, as described in the biennial
16 transmission assessment. Those numbers were not
17 presented by the applicant but by this party. However,
18 the obviously larger load demand, greater transmission
19 losses, and line stresses require more imported power
20 with additional generation infrastructure. And this
21 will result in urgent capital costs for TEP necessary to
22 meet 31 percent more power in the next few years.

23 Fourth, TEP's other ratepayers will pay more, as
24 it is, as it -- as it now has two and a possible third
25 large base rate. Mines are continuing to be subsidized

1 by the other ratepayers. A Committeeman felt otherwise,
2 but I really believe that at less than 3 cents a
3 kilowatt hour the mines are getting their power cheap.
4 Who is going to pay? TEP residential and small
5 businesses, they are going to pay the infrastructure
6 required to support the power for this mine and for this
7 transmission line.

8 Fifth, these 70 to 199 foot tall utility poles
9 will be in a natural habitat within the Santa Rita
10 Experimental Range and areas studied for long-term
11 environmental changes for the past century. It is a
12 unique national landmark. It is the oldest such range
13 in our country. Man-made utility poles are not natural
14 and will skew future data analysis with unknown
15 consequences, especially raptor predications. Magruder
16 Condition 11 for utility pole cap was not accepted.

17 Six, the night lighting pollution will be so
18 significant that our world class southern Arizona
19 astronomical communities may relocate elsewhere and will
20 cause a serious loss of high skilled jobs compared to
21 the 278 required to operate Rosemont full time. The
22 Commission should assure this transmission system does
23 not contribute to light pollution and negatively impact
24 this important scientific community, including our
25 famous comet watching astronomer Levy from Vail.

1 Magruder Condition 3 was denied. Rosemont will not
2 comply with the Pima County lighting ordinance; however,
3 TEP will.

4 Seventh, the Santa Cruz River Valley is a
5 continuous archeological site. However, the CEC
6 analysis states that these are minor sites with the
7 major one mentioned by our representative to my left.
8 This party supports the Nation's proposal to assure that
9 hundreds of these sites are properly protected and,
10 frankly, if necessary, evacuated and evaluated by
11 professional archeologists before destruction.

12 Eighth, the pole finish should be made to make
13 them hard to see by reducing the contrast between the
14 pole and background. Magruder Condition No. 12 was
15 denied.

16 Ninth, the transportation impacts,
17 transportation impacts to the environment, in particular
18 the combined water and transmission line construction
19 road parallel to Santa Rita Road. A 14-foot wide
20 post-construction road is to remain for these
21 facilities, when a simple, less environmentally
22 intrusive solution is available. After construction,
23 for example, a narrow right-of-way perpendicular to the
24 road -- to the poles would allow access instead of
25 having 700 feet of road between poles. Not -- Magruder

1 Condition 6 was denied.

2 Tenth, Rosemont Copper, in data request response
3 2-3 found in Magruder Exhibit, testimonial Exhibit
4 MM-17, stated that none of the A.R.S. 40-360.06 factors
5 were relevant in these proceedings.

6 And the 11th issue from my testimony involves
7 safety, in particular induced electric current into
8 parallel lines, into parallel fences and steel posts.
9 See Magruder Condition 18. The present CEC condition is
10 meaningless and has become so eroded over time it does
11 not resolve the original concerns I raised during case
12 No. 111, where it originated. This Staff proposed
13 amendment still misses my concern about induced
14 electricity. A house blows up every so often due to
15 this problem.

16 12th, as required by A.R.S. 40-360.06.A.4, noise
17 levels were not included in the CEC application or
18 testimony. Noise levels are required, not nonspecific
19 words, but quantitative noise levels and decibels. This
20 is the third consecutive siting case where TEP has not
21 complied that I have been involved with. It appears
22 they cannot predict noise levels. I even gave TEP an
23 example on how to report noise levels, but they still
24 haven't been provided.

25 These topics were presented in my testimony,

1 much of which was not allowed to be fully presented to
2 the Committee. These 12 exceptions, two issues are
3 clearly relevant to the decision factors in 40-360.06
4 and were deemed not relevant. And most of my
5 testimonial exhibits were not allowed in the official
6 record of the proceedings. They are in the expanded
7 record. If we reconvene with a new comprehensive joint
8 CEC application, these 12 relevant issues must be
9 presented.

10 Third exception, much shorter, involves
11 substations. This party's concern about substations and
12 switchyards remains unresolved and continually becomes
13 more confused.

14 First, TEP did not comply with the Town of
15 Sahuarita's request for the Toro switchyard information.
16 See Magruder information MM-8 to provide a missing
17 artist's or architect's conception, which is required
18 information according to the Arizona Administrative
19 Code, Section R14-3 so forth. And it is incomplete.

20 Second, the Rosemont Copper substation remains
21 hidden behind mining law and other pseudo curtains or as
22 a proprietary company secret to avoid letting anyone
23 understand its capabilities. If these are substations
24 or switchyards, the results are conflicts between my
25 testimony and the EIS discussed earlier.

1 Third, the mining law does not pertain to siting
2 transmission lines on private property. Rosemont's
3 assertion that it does is not true. See Magruder
4 Exhibit E which indicates that the U.S. Supreme Court
5 feels otherwise.

6 Fourth, TEP fabricated a new switchyard nearly
7 in real-time during the CEC proceedings at the Rosemont
8 Copper substation trying to end that discussion.

9 Fifth, Rosemont feels this substation is covered
10 in the draft EIS. However, the EIS says that the ACC
11 and Line Siting Committee are going to determine the
12 transmission line impacts. Neither the CEC application
13 or the EIS covered -- they are each pointing in the
14 opposite direction. There is lack of coordination and
15 synchronization between the two.

16 Fourth exception involves timing to start the
17 construction of the line. My initial memo of 18
18 November 2011 indicated that TEP was 27 months late in
19 the last line siting case for a final EIS to be issued.
20 It now appears we are on the same tardy time frame in
21 this case. When can TEP or whomever Rosemont selects
22 commence construction of this transmission line is a
23 critical issue. The CEC bases this just on the issuing
24 of the record of decision of the Coronado National
25 Forest. Two additional records of decision are

1 required, one by the Corp of Engineers and one by the
2 Bureau of Land Management. Either can kill the project.
3 The Forest must also, after the record of decision,
4 modify its Forest management plan before it can
5 authorize construction. It is another process that
6 requires public review and participation.

7 The draft environmental impact statement
8 proposed a Management Area No. 16, Titled The Rosemont
9 Copper Mine, has serious flaws. Besides authorizing all
10 four mines, it creates an Area 16 way beyond that
11 considered by Rosemont. And the draft environmental
12 impact statement states that the forest supervisor can
13 assume this will be approved because it is a minor
14 change. Others are, others are arguing this issue
15 separately.

16 Presently we have heard Rosemont had an
17 unsatisfactory EPA review on its draft EIS and its
18 Section 404 permits, and denial by Pima County of an air
19 pollution permit and a denial by Pima County of an air
20 pollution permit. In this party's opinion, a most
21 unsatisfactory aquifer protection plan is now also being
22 reviewed by the Arizona Department of Environmental
23 Quality and I expect it to be denied. All are
24 essential, and a resultant CEC is also required.
25 Unfortunately, changes caused by these other processes

1 can have significant factors on siting for this
2 transmission line. Of all of the processes mentioned,
3 only the line siting process is time limited to a
4 nominal 180 days. A prudent commission might want to
5 consider letting these other draft applications continue
6 and, about six months prior to their expected approval,
7 then go into the -- then review a new and compliant CEC
8 application submitted by Rosemont and TEP.

9 Also, changing authority from ten to five years
10 after the Commission determines an event or milestone to
11 start construction is wise. There are too many decades
12 old CECs remaining to be implemented with such changes
13 and environmental impacts that they are now meaningless.
14 Springerville plants 3 and 4 are a recent example.

15 A final EIS is required -- a final EIS requires
16 an additional review. And if the project is not started
17 after five years, then a similar requirement for the CEC
18 could coordinate both federal and state processes with
19 respect to timing. This is at least a step towards
20 synchronizing our federal and state environmental review
21 and permit processes because they don't -- Mr. Derstine,
22 I would like to finally finish talking about some of the
23 comments from Mr. Derstine.

24 I have never said I am against this mine. I
25 have always offered ways to have this mine approved.

1 There are ways and grounds that I will agree to have
2 this mine approved. I think that's a little strong.
3 And this, the preferred option was not my first choice.
4 It was about my fifth choice. I am, frankly, if we have
5 to put the line in, I am for the northern route, but
6 that one was the one they eliminated and wasn't even
7 considered later on.

8 Just to quote Barry Goldwater when he first
9 heard of this transmission line, of this mine project,
10 he said not over my dead body will I be for a mine in
11 Rosemont. Pretty strong statement. It maybe it still
12 echoes.

13 Thank you very much for your patience. I
14 appreciate it. And, of course, I am always available
15 for questions.

16 CHMN. PIERCE: Okay. Thank you.

17 Ms. Webb.

18 MS. WEBB: Chairman Pierce, members of the
19 Commission, thank you for this opportunity to speak
20 regarding --

21 Is this working?

22 COM. NEWMAN: Yeah.

23 MS. WEBB: -- regarding Line Siting Case 164,
24 the proposed Rosemont Copper transmission line project
25 previously heard before the Arizona Power Plant and Line

1 Siting Committee.

2 My name is Elizabeth Webb and I am here today
3 acting on behalf of myself as a party to these line
4 siting proceedings. I am a TEP ratepayer, user of
5 public lands, and resident of the largest community to
6 the east of the proposed transmission line and
7 associated facilities.

8 CHMN. PIERCE: I want to clarify you are not a
9 party. You are speaking as a member of the public.
10 Well, I think party to -- I just wanted to make sure
11 that's clear.

12 Did you say -- didn't you say you were a party
13 to it?

14 MS. WEBB: Yes.

15 CHMN. PIERCE: Okay. Making clear you are
16 speaking as a member of the public.

17 MS. WEBB: I filed this short initial memorandum
18 regarding the Committee's ability to consider the
19 environmental impacts of the proposed copper mine to
20 strengthen my ability to write a reply brief. Sometimes
21 if you don't do an initial brief, you are not allowed to
22 do a reply brief. And I wanted to be able to be sure to
23 do that. The record shows it was simply two sentences,
24 two or three sentences. And to be on the safe side, I
25 will say under five sentences.

1 In my reply brief it is quite clear that I
2 sought to assure fairness as the applicant considered
3 the environmental impacts of the proposed Rosemont
4 Copper Mine multiple times within the CEC application to
5 its benefit. I did not address or advocate for a NEPA
6 concept or a concept of a connected action. For many
7 years I have been involved in transmission line issues
8 and environmental and cultural issues in southern
9 Arizona. This is clearly on the record.

10 The stakeholder group was a nondecision making
11 body. My understanding is that it worked very well in
12 the DeMoss-Petrie case that was recently approved in
13 front of the Commission. Those folks contacted Marshall
14 and I at the beginning of that case. And I was very,
15 very excited to see the stakeholder process working so
16 well.

17 In this particular case, as you heard today,
18 there were many, many meetings with the public, with the
19 stakeholder group and through various avenues to put in
20 public comment within the CEC. There are less than 2
21 pages of references to those public comments.

22 More specific details and statutory references
23 regarding the course of this case can be found in my
24 filed request for review and requested follow-up brief
25 on the Commission Docket.

1 This case is important, not only because it
2 involves a transmission line but permanently and
3 irrevocably destroys the integrity of a site not only
4 eligible under the national historic, the National
5 Register of Historic Places but quite possibly eligible
6 as a national historic landmark as well, not only
7 because it would create an irretrievable loss of scenic
8 quality along State Route 83, Santa Rita Mountain ridge
9 top trails and the Santa Rita west slope rural routes
10 until the power lines were removed, but also because the
11 public's trust in its government is shaky at best in
12 these current times.

13 Members of the public have to know when a line
14 siting case is taken on by the Committee that it is
15 going to apply the rule of law to all parties in a just
16 manner, that the law will be applied evenly. The public
17 needs to know that project notice signs that are posted
18 to encourage involvement are accurate, that the website
19 is available to find that information. The public needs
20 to know it can speak fairly at a Committee hearing
21 during open comment and not feel belittled. The public
22 needs to have faith that a party and intervenor with
23 relevant evidence relating to the transmission line will
24 not be denied the ability to present that evidence at
25 the whim of the Committee. The public needs to have

1 faith that laws and procedures set in place to assure a
2 single forum for the expeditious resolution of all
3 matters, matters concerning location of electric
4 generating plants and transmission lines in a single
5 proceeding to which access will be open to interested
6 and affected individuals to participate in these
7 decisions, are applied evenly.

8 Very applicable to this situation is this, this
9 quote:

10 Neither laws nor the procedures used to create
11 or implement them should be secret and the laws must not
12 be arbitrary. The U.S. Court of Appeals Judge Diane
13 Wood, "The Rule of Law in Times of Stress," 2003.

14 Unfortunately, the rules of procedure, policy
15 and law were applied arbitrarily and unequally in this
16 case.

17 My request, this proposed transmission line
18 should be denied. It should be denied based on the
19 requirements in the Arizona Revised Statutes 40-360 and
20 the Arizona Administrative Code R14-3-201 for the
21 following reasons:

22 Arizona Revised Statute 40-360.01 (sic), the
23 Commission shall comply with the provisions in this
24 section and shall balance in the broad public interest
25 the need for an adequate, economical and reliable supply

1 of electricity with the desire to minimize the effect
2 thereof on the environmental and ecology of this state.

3 While the Committee can consider need, "can" was
4 given unequal weight against the "shalls" required under
5 40-360.06. This line is for a single use with a
6 discretionary arrangement wherein Rosemont Copper may
7 purchase and construct the line and become a distributor
8 of electricity to its water pumping stations several
9 miles from the proposed Toro switchyard. As
10 Mr. Magruder indicated earlier, it is not exactly clear
11 how that electricity would be distributed to those water
12 pumping stations. There may have been some discussion
13 in the record about it coming back to the west, but I am
14 not entirely sure.

15 Additionally, Rosemont Copper is the applicant
16 for the Arizona State Land Department right-of-way
17 lease, and the party who contracted with the
18 environmental contractor, according to the cultural
19 resources report, asked for and was given intervention
20 status although it had an attorney that was representing
21 this line and was given this intervention status as a
22 party before the Committee.

23 He argued that the end use must not be
24 considered, that this is simply a line extension, simply
25 an extension cord. Regardless, the Committee must still

1 consider the factors listed under Arizona Revised
2 Statute 40-360.06 because, quite simply, it is a 138
3 transmission line, proposed 138 kilovolt transmission
4 line.

5 The possible use of the line as a backup to the
6 fort is a complete diversion to justify some sort of
7 broad public interest. In reality, there is an existing
8 138kV line serving it. Additionally, the fort is trying
9 to become self sufficient and net zero in electricity.
10 There is no applicant or customer requesting this
11 condition. Mr. Beck testified that there is no one to
12 pay for this condition and that the residential load
13 from this particular line has been reduced. In fact, he
14 testified:

15 A very small number of customers are served out
16 of Greaterville. We used to serve more. Some of that
17 load was transferred to our system up north.

18 Moreover, one of the individual industrial users
19 on that 46kV line has recently installed a large solar
20 array for its facility's use. In a letter on record
21 from the Coronado National Forest in the CEC
22 application, the Forest Service says it doesn't want
23 additional lines. As one who lives with an engineer, I
24 know that anything can be overbuilt. The Statcom device
25 testified to by Mr. Beck probably will increase

1 reliability for other customers, but the fact is it is
2 specifically needed to deal with the issues created by
3 the proposed mine.

4 With that, the applicants have no other
5 justification showing broad public interest.

6 Two, environmental impact provision of Section
7 40-360.06. The Committee shall consider existing
8 historic sites and structures or archeological sites,
9 360.06.A.5. The Committee failed to consider historic
10 sites over in the vicinity of the proposed project, some
11 because they were outside the 500-foot corridor; some
12 because the environmental contractor did not disclose
13 them and failed to provide the environmental report as
14 required by Corporation Commission Rules of Practice and
15 Procedure, Title 14, Chapter 3, exhibits to application,
16 Exhibit B; and some because the Committee denied me the
17 opportunity to present direct material, nonrepetitive
18 evidence as required by Arizona Revised Statutes
19 40-360.04, Hearings and Procedures.

20 The Committee shall consider existing scenic
21 areas at or in the vicinity of the proposed site,
22 06.A.5. The Committee could not consider scenic areas
23 at or in the vicinity of the proposed site on the east
24 side of the Santa Rita Mountains because it refused to
25 take a tour of the proposed routes due to rain and

1 refused to schedule it. Even if the Committee had taken
2 the tour, it did not plan to visit those areas
3 considered to have the highest scenic integrity along
4 the preferred route, the highest scenic integrity. In
5 fact, the Chairman at the prehearing conference told me
6 it would be worthless, it would be worthless to try and
7 create a record of advocacy for an appropriate site tour
8 over Lopez Pass.

9 I am not sure if you know, but it was pouring
10 rain the night of the main public comment period. Some
11 of the small number of people who attended drove there
12 at night after work in the pouring rain from the areas
13 considered too dangerous for the Committee to view in
14 the daytime.

15 I am not saying the Committee should have gone
16 out in the rain. I am saying the Committee should have
17 rescheduled the tour. This is a very complicated,
18 important issue. The public deserved the consideration
19 of those existing scenic areas of high integrity.

20 Additionally, the Committee could not consider
21 all existing scenic areas, again, because I was denied
22 the opportunity to present direct material,
23 nonrepetitive evidence as required by Arizona Revised
24 Statute 40-360.04, Hearings, Procedures. And the
25 environmental contractor for Rosemont Copper did not

1 provide information regarding forest lands in the areas
2 of high and very high scenic integrity to the north of
3 and adjacent to the 500-foot proposed corridor on the
4 east side of the Santa Ritas. There was a complete
5 failure to consider users of public land. These
6 numbered over, over and above a thousand up to,
7 according to the DEIS, 199,000 visitors visited Madera
8 Canyon within the last few years.

9 A.R.S. 40-360.06.A.2, fish, wildlife and plant
10 life and associated forms of life on which they were
11 dependent. Again, the Committee was unable to consider
12 wildlife, plant life and associated forms of life on
13 which they are dependent as required by the statutes as
14 I was denied the ability to present this evidence.

15 Again, the same for A.R.S. Revised Statute
16 40-360.06.A.4, the proposed availability of the site to
17 the public for recreational purposes consistent with
18 safety considerations and regulations. Moreover, the
19 Committee was unable to fully consider the proposed
20 availability of those site to the public for
21 recreational purposes, consistent with safety
22 considerations and regulations required by the statute,
23 because it didn't take a tour. The failure to take a
24 tour of the proposed routes was an integral part of this
25 absence of consideration. You can only know what it

1 looks like if you go where those people, users,
2 thousands of users of public land go. Lighting at the
3 new east side switchyard was not evaluated when
4 considering the proposed availability of this site to
5 the public for recreational purposes.

6 Again, under Arizona Revised Statute 06.A.6,
7 total environment; A.7, technical practicability; A.9,
8 additional factors; and A.9.B, shall give special
9 consideration to the protection of areas unique because
10 of biological wealth or because they are habitats for
11 rare and endangered species. The reference in the DEIS,
12 the DEIS has listed that there is a maternity roost for
13 the lesser long-nosed bat in the Helvetia area. Over
14 200 agave and agave clusters were reported in the
15 references to the DEIS. The flowers from the agave are
16 what feed those endangered lesser long-nosed bats.

17 Denial due to, number 2, denial due to
18 incomplete application of procedural irregularities. As
19 mentioned above, I was not able to present direct
20 material, nonrepetitive evidence before the Committee as
21 required by Arizona Revised Statute 40-360.04, Hearing,
22 Proceedings. I was denied this ability to present my
23 direct material, nonrepetitive evidence before the
24 Committee based on unsubstantiated allegations,
25 allegations I was not allowed to rebut, and apparently

1 for disobeying the procedural order.

2 I am not exactly sure why I was the only one,
3 the only one punished for disobeying the procedural
4 order because there is not one other party that obeyed
5 it to the letter of the law. It would seem more prudent
6 to enforce the statutes, or for the Committee to enforce
7 the statutes set in place for a CEC application than to
8 deny a party the right to testify for what was
9 essentially a clerical error.

10 The Chairman ruled at the prehearing conference
11 on December 8th, 2011 to deny parties the ability to
12 present evidence regarding the environmental impacts of
13 the proposed Rosemont Copper Mine and the Committee
14 voted to confirm that ruling on December 12th, 2011.
15 The Chairman also ruled to allow nonrepetitive evidence
16 from the DEIS, draft environmental impact statement,
17 regarding the transmission line. This was okay by me.
18 I was ready to go. This line has more environmental
19 impacts that are negative to southern Arizona than any
20 other line that I have been involved with. So it
21 clearly had its own set of impacts.

22 However, I believe in fairness. It was clearly
23 not fair when TEP and Rosemont Copper were allowed to
24 present evidence to the Committee through their
25 objections, the CEC application, and direct examinations

1 of their witnesses regarding the environmental impacts,
2 yes, the environmental impacts of the proposed copper
3 mine when these particular impacts served to lessen the
4 environmental damage of the proposed transmission line.

5 Here is just one example. Quite obviously, the
6 proposed water line does not exist. So, therefore, an
7 access road for the proposed water line does not exist
8 either. Page 12 of the DEIS has this to say about the
9 access road: All of the transmission line alternatives
10 include aboveground 138 kilovolt transmission lines and
11 an associated 14-foot unpaved maintenance road.

12 That is a direct quote from the executive
13 summary of the DEIS. So despite the Chairman's ruling
14 to allow evidence from the DEIS regarding the
15 distribution line, some parties were not allowed to
16 present evidence regarding the environmental impact from
17 the access road even though Rosemont Copper and TEP were
18 able to use that nonexistent "existing access road" as a
19 mitigation measure for this project.

20 Arizona Revised Statute 40-360.07, this statute
21 gives the Commission the obligation to conduct the
22 balancing in the broad public interest and leaves
23 considerable leeway to consider need. I ask that the
24 Commission either restore the faith in this process by
25 restarting the CEC process or by denying this CEC based

1 on its lack of merit and lack of completeness. With
2 that said, I support Commissioner Kennedy's amendments;
3 although, of course, I would prefer that it was denied
4 based on its lack of merit. However, I support
5 Commissioner Kennedy's amendments. Arizona's
6 environment and ecology deserve the protections that
7 were put in place under Arizona Revised Statute
8 40-360.0.

9 Thank you. If you have any questions, I am
10 available.

11 CHMN. PIERCE: Okay. We are going to go ahead
12 and take the lunch break now, come back at 1:00, begin
13 with Commissioner Newman's questions and other
14 Commissioners that are on the board as well.

15 So we are in recess.

16 (A recess ensued from 11:48 a.m. to 1:10 p.m.)

17 CHMN. PIERCE: Welcome back, everyone. We are
18 ready to begin the afternoon session. We are going to
19 go right to the board.

20 What I would like to do, there are three of us
21 on the board, a little round robin 10 or 15 minutes at a
22 time. That tends to work for us. And we will get
23 everybody's questions in. A lot of times they get
24 answered by somebody else and it is valuable for us all
25 to participate.

1 So, Commissioner Newman, you are up.

2 COM. NEWMAN: Thank you, Mr. Chairman. I do
3 think it is appropriate to have round robins for this.
4 There is a plethora of questions.

5 CHMN. PIERCE: Plethora.

6 COM. NEWMAN: I guess we will start out with the
7 company, with TEP.

8 I was briefed on this before it was ever entered
9 on the docket. And so going on some of my knowledge,
10 you know, sort of when I first heard that there was
11 going to be a line siting case involving the mine, I was
12 briefed by TEP officials who basically told me at that
13 time that the company would be paying for everything,
14 ratepayers wouldn't be hurt, this is a thing that the
15 company wanted to do.

16 We have also heard testimony, at least I don't
17 know if it appeared in the case but certainly somebody
18 said today, that, I think one of the intervenors said,
19 and I tend to think it would be true, that this
20 customer, the Rosemont customer, would be the largest
21 customer in the utility territory, in your CC&N
22 territory. So why don't you just go there as if you
23 were briefing us for the first time.

24 When did, when did they come to you with this
25 proposal of building the transmission line?

1 MR. DERSTINE: Mr. Chairman, Commissioner
2 Newman.

3 COM. NEWMAN: And I said they; I meant Rosemont.

4 MR. DERSTINE: Rosemont, I understood. Let me
5 confer a quick second with Mr. Beck so I make sure I
6 give you the right date.

7 It is my understanding that in early 2000
8 Rosemont approached -- I missed it, 2008 -- approached
9 Tucson Electric Power about plans for development of the
10 Rosemont Mine and the request for service.

11 COM. NEWMAN: Okay. So that would have been
12 shortly after I assumed office three years ago. Even
13 that long ago?

14 MR. DERSTINE: 2008.

15 COM. NEWMAN: 2008, that's interesting.

16 And at that time, I guess that is sort of a
17 commencement of negotiation, or at least discussions you
18 would say, that you have been having with Rosemont as a
19 party, well, not as a party, but as a business partner,
20 if you would, or simply a ratepayer.

21 But this is not one simple ratepayer. This is a
22 ratepayer that may end up being your biggest customer.
23 So I imagine there must have been some negotiations
24 about this and maybe some opinions of the company that
25 this was good because we like to sell more energy or

1 something. Or just tell me, you know, what happened
2 between 2008 and 2012, which is a long period of time.

3 You didn't build the transmission line back in
4 2008, did you?

5 MR. DERSTINE: We haven't built it now.

6 COM. NEWMAN: Right.

7 MR. DERSTINE: And it won't be built until the
8 mine is approved under the NEPA process.

9 But Tucson Electric Power was approached by
10 Rosemont, a request for service. There were
11 discussions. There was initial, as I understand it, a
12 memorandum of understanding that indicated how the two
13 would move forward. There was going to be required
14 certain studies in order to determine the impact of
15 Rosemont's load on the Tucson Electric Power system,
16 what was going to be the best way to serve the mine,
17 many of the sorts of things that we have covered in the
18 case itself and are part of the record.

19 So, you know, as a customer requesting service,
20 Tucson Power undertook to evaluate how to do that. And
21 by 2009, as I mentioned in my opening, they formed a
22 stakeholder group with the intent that this public
23 process would move forward. They would develop routes
24 for constructing a transmission line to serve the
25 proposed mine and its plan of operations. And that

1 culminated with the filing of our CEC application in
2 November of last year.

3 Part of the waiting game a bit has been that it
4 was important to Tucson Electric Power that, because of
5 the NEPA process and the role that that plays in terms
6 of the mine as well as because the transmission
7 facilities are being considered as part of the NEPA
8 process, it was important to Tucson Electric Power and
9 Rosemont that we at least have a draft EIS issued by the
10 Forest Service before we move forward with this case.
11 And so the draft EIS, to my recollection, was issued in
12 October of last year, and that gave us the information,
13 kind of the final step to allow us to finalize the
14 application and file it.

15 COM. NEWMAN: Okay. This is just one
16 Commissioner's reaction. And that's what I was
17 referring to. Must have been a month, maybe two months
18 before you filed is when I had a meeting down in Tucson.
19 I can't put an exact date on it but that's the first
20 time I have been able to at least discuss it with
21 anyone. I knew of it. I knew of it from newspaper
22 reports and also -- which were following the stakeholder
23 meetings and different federal oversight components in
24 the process, and just have been following it as a
25 citizen. But now it comes under our jurisdiction to

1 make some decisions. I have to understand a little
2 more. That's the reason I want to go back historically
3 a little bit.

4 My impression when we received it back then,
5 even though your testimony kind of, your testimony
6 mollifies me a bit that it was a fairly long process,
7 but I still felt, maybe I still feel today that, I
8 guess, a cart before the horse is going on, and although
9 there is no doubt that a mine would need power to
10 operate.

11 So I didn't mention it at that meeting but I
12 will mention it on the record that I was rather
13 surprised that TEP was coming to us now when all reports
14 and even in the record was mentioned several times by
15 several of the participants today that there is another
16 environmental impact report saying the Forest Service
17 perhaps didn't do due diligence. I am not making any
18 resolution, I am not making a judgment based on that,
19 but I know that there is some problems in the EIA
20 process and there is some federal coordination that
21 needs to be done. And perhaps the mine would never be
22 built based on that federal review.

23 So I am concerned about the scenic problems of
24 the line. I am concerned that we are a little bit
25 putting the cart before the horse. But corporately you

1 are saying you are doing your due diligence as best you
2 can; is that what you are saying?

3 MR. DERSTINE: Well, what I am saying is that
4 the -- yes, corporately the Tucson Electric Power has
5 done its due diligence from a service standpoint in
6 terms of making sure that the ability to serve Rosemont
7 to meet its load does not impact Tucson's other
8 customers, that it has sufficient generation to meet
9 this load, that there is no impacts on Tucson's system.
10 And from an environmental standpoint, there has been a
11 long and ongoing consultation and cooperation with the
12 EIS process, which is evaluating and does address the
13 transmission facilities. And then our own state siting
14 process, in which the various environmental impacts,
15 cultural impacts, the impacts on the Santa Rita
16 Experimental Range, which is the largest landowner
17 that's administered by the experimental range and the
18 University of Arizona, all that is done in consultation
19 with the Forest Service.

20 And certainly your concern is, you are not alone
21 in the concern, about the impact of these transmission
22 facilities. But, again, I think the critical feature,
23 and it is a condition contained in the CEC, is that
24 those facilities will not be constructed, they won't be
25 seen in the landscape unless or until that mine is

1 approved. And at that time, you will not only have
2 138kV transmission lines but an open pit copper mine.

3 And so the, you know, certainly the
4 environmental process and the analysis that was
5 presented to the Siting Committee is extensive. There
6 was a Class 3 survey done of not only the preferred
7 route but all the alternative routes. That's a full
8 walking pedestrian survey, the biological analysis,
9 analysis of visual impacts. All that was very extensive
10 and done in consultation with the Forest Service and
11 being evaluated by the Forest Service in that ongoing
12 EIS process.

13 So the --

14 COM. NEWMAN: How much money, how much money was
15 expended in TEP preparing since 2008 for this case of a
16 mine that doesn't exist today and might not exist for
17 five years or ten years?

18 MR. DERSTINE: To my knowledge, all of the costs
19 have been reimbursed and paid by Rosemont. This is
20 essentially a line extension to serve one customer. And
21 under the agreement between Tucson Electric Power and
22 Rosemont, Rosemont is paying those costs. They will pay
23 these siting costs. They have paid for the
24 environmental analysis and research, the environmental
25 consultants. And if and when this line is ever

1 constructed, Rosemont will pay the cost of building
2 those transmission facilities.

3 COM. NEWMAN: I am going to have to be exact in
4 my question. How much money has been reimbursed from
5 Rosemont to TEP up until today? If you don't know, we
6 can, you can make a note and make sure you get the
7 information to us.

8 MR. DERSTINE: I don't know, but --

9 COM. NEWMAN: I can see why you wouldn't know.

10 MR. DERSTINE: -- the folks in the room will see
11 if we can put together at least a good faith estimate of
12 what the costs have been today.

13 COM. NEWMAN: The costs of the line, I asked you
14 this months ago, but approximately the costs of the line
15 in today's dollars are what?

16 MR. DERSTINE: Let me confer with Mr. Beck one
17 second, make sure I give you the right number.

18 I believe, my recollection from the testimony of
19 the case, it is \$13 million for the preferred route, but
20 he is going to confirm that from our filing.

21 10 and a half million for the preferred route.

22 COM. NEWMAN: Okay. Not a dime under.

23 What is your reading of what happened at the
24 line siting commission per the judge's, Chairman's
25 recommendations and what is your view of the line siting

1 order? You support it, I understand implicitly, and you
2 argued that. But when do you, when do you think this
3 mine is going to be developed if you have been working
4 on it? It is an economic development venture. How far
5 would you guess it would take to go through full federal
6 oversight?

7 MR. DERSTINE: I have absolutely no idea. I
8 assume Rosemont and its counsel may be able to better
9 speak to that. I mean I think what you heard in the
10 comments from the Scenic Santa Ritas and the other
11 parties to the siting case is that there are a number of
12 steps and stages.

13 Tucson is not, Tucson Electric Power is not
14 responsible for seeking approval of the mine or its mine
15 plan of operations. Our role is to file this case and
16 hopefully obtain approval from this Commission of a CEC
17 that approves the construction of the transmission
18 facilities that will be needed to serve the mine if and
19 when the mine gets to the end of that ongoing federal
20 process. But I think it is anyone's guess how long that
21 will take, especially given the possibility of
22 litigation and appeals, et cetera.

23 COM. NEWMAN: I think it was Mr. Magruder that
24 might have mentioned something about we are dealing with
25 a private company here, not only a private company, a

1 company I believe that is incorporated outside the
2 United States.

3 Or they have now, they are incorporated in the
4 states, or they are owned by Canadian interests? What
5 is the story with that? Are these local people or
6 investors from Canada? What is this company?

7 MR. DERSTINE: Mr. Chairman, Commissioner
8 Newman, you will need to inquire into Rosemont as to its
9 ownership.

10 COM. NEWMAN: I will at the proper time.

11 CHMN. PIERCE: We are at 15 minutes, if you want
12 to rotate through.

13 COM. NEWMAN: We are at 15 minutes, really?

14 CHMN. PIERCE: Yeah. You started at 1:13 and
15 you are right on top of 15. We will come back around.

16 COM. NEWMAN: We will come back around.

17 CHMN. PIERCE: All righty. Thank you. And I am
18 up. Thank you, Commissioner Newman.

19 And we will have a couple things. I want to
20 just go to TEP for a moment. TEP is obligated to serve
21 within its CC&N; isn't that true in every case?

22 MR. DERSTINE: Yes, that's true, Mr. Chairman.

23 CHMN. PIERCE: Okay. And some groups that
24 oppose the mine also oppose the CEC, correct?

25 MR. DERSTINE: Yes, Mr. Chairman.

1 CHMN. PIERCE: Okay. Now, I want to just go to
2 the -- this is an important part because I have heard
3 some folks talk about when this can be implemented.
4 Isn't it true that this can't be built, this line can't
5 be built until the final EIS is approved, isn't that
6 correct?

7 MR. DERSTINE: In the language of the CEC that
8 was issued by the Siting Committee, the transmission
9 facilities cannot be constructed until there is a record
10 of decision issued by the Forest Service, which I
11 understand to be the final culminating decision by the
12 Forest Service of the EIS NEPA process.

13 CHMN. PIERCE: And this is the line siting
14 commission's recommendation on page 8 in its item
15 No. 23?

16 MR. DERSTINE: Correct.

17 CHMN. PIERCE: So that's in there. And I am
18 suspecting, and I can ask the mine, but since the mine
19 is paying for the transmission line, that you are not,
20 that TEP will not engage in any kind of construction
21 until that's, until they know that the mine is going to
22 pay for it. And the mine is not going to want to pay
23 for it until they have approval to operate their mine.

24 MR. DERSTINE: Certainly Tucson Electric Power
25 is bound by that CEC condition. There will be no

1 construction unless or until that condition is met. And
2 there will be no expenditure of funds on transmission
3 facilities until that condition is met.

4 CHMN. PIERCE: Sure. It was brought up by
5 Mr. Robertson or someone, either Mr. Robertson or
6 Mr. Magruder, about who was going to actually build the
7 transmission line.

8 Isn't the responsibility of Tucson Electric
9 Power to build that transmission line even though
10 someone else is paying for it, and wouldn't you contract
11 through the traditional sources that you use, which
12 involve and could involve union labor and likely many
13 times -- in this case -- as it does?

14 MR. DERSTINE: Mr. Chairman, in terms of the
15 labor, Tucson Electric Power would put this out for
16 competitive bid. All but one of Tucson Electric Power's
17 qualified contractors have a presence here in Arizona.
18 And even as to the outside contractor, Tucson Electric
19 Power encourages and works hard with its contractors to
20 use not only local labor but IBEW labor in construction
21 of its projects.

22 As to the responsibility for construction, in
23 most cases Tucson Electric Power would take
24 responsibility for the construction of facilities. I
25 will tell you, as was mentioned during the siting case,

1 there have been discussions between Rosemont and Tucson
2 Electric Power about the possibility of a transfer of
3 the CEC at some stage to allow Rosemont to take
4 responsibility for the construction of the facilities.
5 But that has -- there is no agreement that has been
6 reached, and in large measure because, depending on the
7 route that ultimately will be selected and approved,
8 that may or may not have been a possibility. So there
9 has been no final decision on who would take
10 responsibility for construction. As it stands today,
11 Tucson Electric Power would be responsible for
12 construction of all the facilities.

13 CHMN. PIERCE: Okay. Why -- thank you. Why is
14 it necessary to have a rather wide path approved in the
15 CEC for the transmission line? I mean we have had some
16 experiences where we have had to go back and open up and
17 do 252 on these cases because we narrowed the line, the
18 corridor. And so explain why that's important to have a
19 wide enough corridor.

20 MR. DERSTINE: Mr. Chairman, in this case, the
21 siting, Tucson Electric Power requested and the Siting
22 Committee approved a 500-foot corridor that would be
23 used for planning purposes and that ultimately then
24 would be 100-foot right-of-way for the actual
25 construction of the transmission facilities. So the

1 500-foot corridor gives the company the flexibility to
2 mitigate and avoid, whether it is cultural resources,
3 endangered species, various habitat. So the planning
4 corridor, the 500-foot corridor width allows us to move
5 around, avoid and/or mitigate environmental impacts to
6 the greatest degree possible, and then resulting in a
7 100-foot corridor for the actual transmission
8 facilities.

9 CHMN. PIERCE: Okay. We heard a lot of
10 testimony, well, comments today about things that apply
11 really for transmission line that's 115kV or over.
12 Under that the utility could have condemned the property
13 and just moved forward without a lot of what you are
14 doing, other than the fact that the mine needs to have
15 the different things for the EIS. All those things
16 would have occurred, but a lot of the other things we
17 heard today, talking about roads and other things that
18 would have occurred, would not have been, well, we would
19 not have had a line siting commission hearing on this;
20 it would have just been done by the utility, isn't that
21 correct?

22 MR. DERSTINE: Mr. Chairman, you are correct in
23 that the siting statute would apply only to transmission
24 facilities rated at 115kV or above.

25 CHMN. PIERCE: So by being slightly above that

1 you have had to jump through a lot of hoops. And I
2 think that's important. I think it really did give the
3 community, the public a chance to comment, engaged our
4 line siting commission. And so I think that that was
5 valuable.

6 But there was discussion about the company, or
7 the company oversizing this. Does TEP believe it is
8 oversized? Or based on what their load is going to be,
9 do you think it is right?

10 MR. DERSTINE: Mr. Chairman, my understanding is
11 that this, the mine's load, could be served by a 69kV
12 transmission line. But a 69kV is not part of Tucson
13 Electric Power's system. And so the 138kV transmission
14 line is the first level of transmission that operates
15 under Tucson Electric Power's system that would be
16 suitable to meet the load.

17 CHMN. PIERCE: So out of necessity it needed to
18 be that size?

19 MR. DERSTINE: Correct.

20 CHMN. PIERCE: Okay. Who decides, you have been
21 through a lot of these, who decides what is relevant in
22 a line siting case? And that's what I am asking. Is it
23 the line Siting Committee that typically decides who is
24 relevant -- not who -- what is relevant to be studied?

25 MR. DERSTINE: Mr. Chairman, in terms of how the

1 siting hearing is conducted before the Siting Committee,
2 the Chairman of the Committee acting as the presiding
3 officer would make decisions as to relevance or
4 materiality of evidence and will rule on objections to
5 the admission or introduction of evidence. And that's
6 what was done in this case.

7 CHMN. PIERCE: What about who gets to intervene,
8 who decides that?

9 MR. DERSTINE: The rules provide that there are
10 essentially two levels of intervention. There is an
11 intervention of right, so that counties, municipalities
12 may intervene as of right. Also environmental groups
13 such as Mr. Robertson's organization have a right to
14 intervene. Other parties are allowed to intervene at
15 the discretion of the Siting Committee. And so on the
16 first day of hearings the Siting Committee as a body
17 took up the motions to intervene by Ms. Webb and
18 Mr. Magruder, and as well as the tribe. And their
19 intervention was granted as to each of those parties.

20 CHMN. PIERCE: Let me ask you about the scenic
21 areas brought up by Ms. Webb. Are there visitor centers
22 out there? Because she said there was over like 100,000
23 visitors. Are there visitors, people? Approximate how
24 many people are out there. Is there someone -- like the
25 Grand Canyon, they have a visitor's center and so they

1 track that. Are there visitor centers up there?

2 MR. DERSTINE: Mr. Chairman, I think the visitor
3 number that I heard Ms. Webb mention was as to Madera
4 Canyon, which is miles south of this location. So the
5 visitor numbers that I heard her mention in her opening
6 comments did not relate to this project or to this area.

7 I think it is part of the record that this area
8 of the Santa Rita Mountains is used for recreation.
9 There are visitors, hikers, four-wheel drive enthusiasts
10 who do visit this area and, you know, will be to some
11 degree impacted by not only the transmission facilities
12 but ultimately the mine if it is approved.

13 CHMN. PIERCE: I have a question about how you,
14 TEP actually looks at this from the standpoint of a line
15 extension. We approve, whether it is a renewable
16 project or anything else, we often, we are connecting to
17 a large transmission line. And this one, there was some
18 discussion about, you know, it is not just your average
19 line extension. But doesn't TEP treat this as really a
20 line extension to a customer within the CC&N?

21 MR. DERSTINE: Mr. Chairman, I think but for the
22 fact that there is a proposed large open pit copper mine
23 at the end of this line, it is very much a simple line
24 extension. Because of the customer's load and power
25 requirements, it requires -- the line extension is at a

1 higher nominal value. It is transmission as opposed to
2 a distribution line. But this is very much a line
3 extension, a line that's dedicated to serve Rosemont and
4 for no other purpose.

5 CHMN. PIERCE: Okay. I am going to move on to
6 Mr. Robertson. I have about four minutes. Let's see if
7 I can get through this.

8 You talked about but for and the need of
9 transmission lines. And clearly if new customers did
10 not create new demand, there would never be a need for
11 new transmission lines, isn't that correct?

12 I am sorry to move so fast. If customers did
13 not create new demand there would never be a need for
14 new transmission. Because what you said, Mr. Robertson,
15 is that but for the mine, there -- the causation for the
16 need for transmission lines, and you kind of tied that
17 together. But that's kind of the reality in all these
18 cases; if there wasn't something new going in, probably
19 wouldn't need transmission lines to it.

20 MR. ROBERTSON: Well, Mr. Chairman, I would
21 break your question into two different fact situations.
22 If you are talking about general growth on a utility's
23 system, comprising multiple sources of demand, it may be
24 satisfied, may be capable of being satisfied within the
25 existing capacity of utility. If not, then it seeks new

1 facilities. And if they fall under the siting statute
2 criteria, it seeks a certificate of environmental
3 compatibility.

4 Here we have a brand new load in a remote area
5 which, as the company indicated in its opening statement
6 and throughout the Siting Committee hearing, the line
7 would not be built but for that particular load. And
8 that's what makes this case such a unique situation,
9 including the fact we can identify all of the
10 environmental ramifications resulting from serving that
11 mining load that relate to the mine itself or the
12 customer consuming the electricity.

13 CHMN. PIERCE: I can guarantee if we are
14 building that transmission line out to Intel we would be
15 climbing all over ourselves to do that.

16 As I understand it, you are arguing that because
17 a single customer is creating the entire need of the
18 line, the Committee and the Commission have the
19 discretion under the line siting statutes to evaluate
20 the environmental impacts of the customer, when --
21 excuse me -- whereas we are evaluating whether to
22 approve a CEC for the transmission line, so when we are
23 going to do that, we should look at the customer.

24 I wonder how this principle extends, though,
25 Mr. Robertson. What if there is two customers instead

1 of only one that created the need for a line? Would the
2 Commission consider the environmental impacts of those
3 two customers?

4 MR. ROBERTSON: I think it depends on whether or
5 not you can identify the environmental impact with
6 probative evidence.

7 I gave a great deal of thought to this line of
8 argument when we were developing it and presenting it in
9 the case. We believe the Commission has the discretion
10 to consider the connected action concept at any time.
11 The crucial matter is whether or not you have the
12 probative evidence with which to look at the
13 environmental impact associated with satisfaction of the
14 need. This is a unique case where you have the ability
15 and the access to that information.

16 CHMN. PIERCE: But I think about the future when
17 we look at this and say, well, we had one, what if there
18 are two, what if there are three big users out there,
19 what if there are ten. Where does it stop really? And
20 I am sure that's what you think when you thought, well,
21 how can we narrow this to make this fit for a future
22 argument I may have to give.

23 MR. ROBERTSON: Well, and I think it depends on
24 the existence and the quality of the probative evidence
25 you have as it relates to the particular needs that are

1 being satisfied, whether they be one, two, three, or
2 ten, to pick up to your hypotheticals.

3 CHMN. PIERCE: Okay. I am out of time. We are
4 going to go to Commissioner Burns.

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

6 Actually quite a number of questions have been
7 asked and answered already. One was certainly about the
8 timing. That has been asked and answered. The capacity
9 of the line, why 138kV, that has been asked and
10 answered.

11 The impact to other ratepayers was a concern
12 that I had for Mr. Magruder's testimony. And you have,
13 you have said that Rosemont is paying for the cost of
14 the transmission line. What -- are there any other
15 negative impacts to other ratepayers that you can think
16 of coming down the line?

17 I think Mr. Magruder specifically referred to
18 kilowatt hours even, how much you pay per kilowatt hour,
19 talked about some subsidization. Do you see any
20 potential negative impact on other ratepayers, or any
21 potential positive impact?

22 MR. DERSTINE: Mr. Chairman, Commissioner Burns,
23 I think the argument was made by one of the parties or
24 it may have been by Pima County in its limited
25 appearance that mines don't pay their full boat under

1 their tariffed rates and that therefore there is some
2 shift of cost or expenses to other ratepayers. And I
3 guess I would say a couple things about that.

4 The rates that mines pay are tariffed rates
5 approved by this Commission. Further, I think there is
6 certainly strong argument and certainly I think the
7 mines would make the argument that they pay more than
8 their fair share and cover system costs more so than the
9 fact that other rate classes subsidize the mine. I
10 think the mines are certainly of the view that it is the
11 other way around.

12 Given that Rosemont is going to pay all the
13 costs associated with construction of these facilities,
14 I don't see any impacts to ratepayers from this project.

15 COM. BURNS: Thank you.

16 I just have one other question that hasn't been
17 raised yet. I don't know if it is okay to bring it up
18 now, but Staff had a recommendation for an amendment, I
19 don't know if you have seen it, with regard to cathodic
20 protection and grounding measurements anytime the
21 proposed facilities come within 100 feet of existing
22 natural gas or hazardous liquid pipeline.

23 Have you seen the amendment?

24 MR. DERSTINE: Mr. Chairman, Commissioner Burns,
25 I have seen the amendment. I am not aware that there

1 are any natural gas pipelines within the vicinity of
2 this project. But certainly Tucson Electric Power has
3 no objection to having that condition inserted into the
4 CEC.

5 COM. BURNS: Is it all right, Mr. Chairman, if I
6 ask if there are any other parties who have an objection
7 to amend?

8 CHMN. PIERCE: Sure.

9 COM. BURNS: Do any of the parties have an
10 objection to amendment?

11 MR. BLACK: No objection on behalf of Rosemont.

12 MS. BERGLAN: No objection on behalf of the
13 Nation.

14 MR. MAGRUDER: Commissioner Burns, as I
15 mentioned in my opening statement, I did have some
16 objections.

17 In Case 111, we had a natural gas line and a
18 transmission line using the same card. The radiation,
19 electromagnetic and electric, from the transmission line
20 affected the cathodic protection system that is
21 installed inside the gas line. A small copper wire is
22 in a gas line that carries about four/tenths of a volt
23 direct current. That is to offset the impact of the
24 earth's magnetism causing oxidation of the iron and
25 therefore weakening the pipeline. The pipeline in that

1 case was 50 years old and at 908 pounds per square inch.
2 And it went right in housing areas. So to me it was a
3 concern.

4 We spent a long time, several days and hours of
5 interviewing the Chairman of the Corporation Commission
6 line -- office of pipeline safety. And it was brought
7 out that the Canadian Technical Report, Gas Association
8 Report 105 had a formula for calculating the safe
9 distance from a gas line to a transmission line if the
10 gas line was on fire to prevent melting the transmission
11 line. And the formula on page 6 in that report was
12 misapplied and miscalculated by the Commission. And,
13 therefore, the condition in Case 111 had greater than
14 100 feet because they didn't want to lose face. And I
15 don't understand, but I understand that. But that is
16 not the only concern.

17 My concern is induced electricity in a
18 ferromagnetic object that goes under the line. And it
19 will travel through that iron line, whether it be a
20 fence, water line, gas line, or pipeline. And every
21 year several homes explode in this country because
22 electricity has been induced through a transmission
23 line. There is not a simple solution to this problem.

24 COM. BURNS: Okay. Can I just have a one-word
25 answer? Does the Staff amendment make your concerns

1 worse or better?

2 MR. MAGRUDER: I will be neutral.

3 COM. BURNS: Thank you.

4 Okay. That was, that's my questions for now,
5 Mr. Chairman.

6 MR. MAGRUDER: I am sorry.

7 CHMN. PIERCE: Thank you.

8 Commissioner Kennedy.

9 COM. KENNEDY: Thank you, Mr. Chairman. I think
10 a couple questions I think you and Commissioner Burns
11 have already touched on. And that was who was going to
12 actually pay for the line being built.

13 But I want to have some confirmation. Maybe,
14 Mr. Black, you can just say yes or no. The company is
15 truly going to pay for this?

16 MR. BLACK: Chairman, Commissioner Kennedy, the
17 company has been paying all of TEP's costs since 2008
18 and will be paying for all of the costs of this line as
19 well as the, as well as the switchyard.

20 COM. KENNEDY: Okay. Thank you, Mr. Black.

21 Mr. Chairman, Ms. Webb, I have a question for
22 you. On page 6 of 11 of your brief, at the top of that
23 page it says the record clearly indicates that Ms. Webb
24 did not try to, and there are quotes, backdoor evidence,
25 a predicated factor to the motion by Member Walker to

1 remove Ms. Webb. Can you elaborate on that just a
2 little bit for me.

3 MS. WEBB: If I can, just to go to the back here
4 where my request for review was, because I noticed that
5 I footnoted that, if that's okay.

6 COM. KENNEDY: Okay, if you tell me where you
7 are going so I can follow.

8 MS. WEBB: Okay. They should be attached to the
9 brief and request for review.

10 I can give you the short version without the
11 technical, if that's okay.

12 COM. KENNEDY: Okay. That's fine.

13 MS. WEBB: It is my recollection from the line
14 siting hearing that the sequence of events that occurred
15 resulted around my witness, Julia Fonseca. And that
16 took about an hour. And then after that, I mean in part
17 because I was completely rattled, my testimony had been
18 cut short, not my testimony, my cross-examination had
19 been cut short earlier, although, believe it or not, I
20 had them in the front of my notebook but the back -- my
21 notebooks were not complete. And I was under the
22 impression you had to turn the whole notebook in at
23 once, not you could the individual thing. So I actually
24 did have them right beside me; it was just my notebooks
25 were completely incomplete.

1 And I think, when that happened, I think the
2 appearance might have been, and Member Walker could say,
3 the appearance might have been that I was completely
4 disorganized and I was trying to present evidence that I
5 had not previously indicated was going to occur. But
6 that was not the case.

7 It was on record with the Docket. I had said it
8 earlier at the beginning of my -- in introductions at
9 the beginning. It was indicated on my witness list that
10 had been given to the Committee members. And so I don't
11 know, maybe just because sometimes I am a little
12 disorganized -- I am just doing this by myself -- maybe
13 it just appeared that I was trying to be deliberate in
14 what was happening. I don't know. But the record does
15 indicate that I had very clearly disclosed my witness'
16 role and it had been determined by the Chairman
17 previously. And that's all on the record.

18 COM. KENNEDY: Okay. Thank you for clarifying
19 that.

20 Mr. Chairman, I don't have any other questions
21 right now but would hope that -- I don't know how long
22 your round robin is going to go.

23 CHMN. PIERCE: Well, we will keep -- we can come
24 back to you. Commissioner Newman will be back here in
25 just a moment.

1 Wow, I thought I added me but I will add me now
2 obviously. Why don't we go to Commissioner Kennedy --
3 or, Commissioner Newman, you are up. Thank you.

4 COM. KENNEDY: I am prettier.

5 CHMN. PIERCE: I know that. Do you want to keep
6 going?

7 You are right. There is no question. But
8 that's immaterial to this debate.

9 Commissioner Newman.

10 COM. NEWMAN: I had to retrieve my reading
11 glasses, Mr. Chairman. Thank you.

12 There are other questions I could ask TEP but we
13 are going to move on. This could last a long time. I
14 really do have other questions for you. But I wanted to
15 start off a little bit with the Santa Rita position.

16 We now understand, and I wanted to give a little
17 bit of historical overview, because we don't really get
18 that a lot in these hearings, we just go to what the
19 Commission said, but would you say it is accurate what
20 TEP said to me before about the history as you know it,
21 Mr. Robertson?

22 MR. ROBERTSON: As I know it, yes.

23 COM. NEWMAN: Now, I wanted to refer back to,
24 you might not have used this analogy, but you said
25 several times a phrase that I understood as analytic

1 construct on which to view the case. For example, some
2 people would make a -- if you were a reporter, a
3 reporter, you would say, you know, this is the picture I
4 am taking, the screen from which my information comes
5 in.

6 I think it is critical to vote on this case and
7 understanding that we need to protect the public
8 interest to understand that construct. So I am going to
9 take some time here to give you some time to help us
10 understand basically that, the analytical construct of
11 public interest of what is public interest in regards to
12 this case.

13 MR. ROBERTSON: To be sure I can be responsive
14 to your question, Commissioner Newman, are you asking me
15 to expand on my use of the phrase in the broad public
16 interest or to expand on our argument that relates to
17 the connected action concept?

18 COM. NEWMAN: Both.

19 MR. ROBERTSON: Okay.

20 COM. NEWMAN: And because it does go to both
21 issues.

22 MR. ROBERTSON: Okay. Let me take them in the
23 order in which I just addressed them in my question to
24 you.

25 One of the legislative policy objectives in the

1 legislation underlying the Siting Committee statutes,
2 and it appears in the historical and statutory notes
3 following A.R.S. 40-360, reads as follows: The
4 legislature hereby finds and declares that there is at
5 present and will continue to be a growing need for
6 electric service which will require construction of
7 major new facilities.

8 And then there is a sentence in between. And
9 then it continues: The legislature further finds that
10 it is essential in the public interest to minimize any
11 adverse effect upon the environment and upon the quality
12 of life of the people of the state which such new
13 facilities might cause. And that's the end of that
14 sentence.

15 I think a critical word there is "cause" in
16 relation to the legislative recognition of the ongoing
17 need for electric facilities. And our use of the
18 connected action concept relates to those unique
19 situations that I referred to when I responded to
20 Chairman Pierce's question of me a few moments ago, that
21 when you have a situation where you can actually, with
22 probative evidence, identify specific environmental
23 impacts resulting from the satisfaction of a particular
24 electrical need through the facilities in question, the
25 Commission as well as the Siting Committee have it

1 within their respective discretion to consider those
2 environmental impacts associated with satisfaction of
3 the need, namely providing electricity to the user,
4 which in this case is the mine.

5 Now, the connected action concept itself has
6 arisen within the context of federal agencies and their
7 performance of their duties under the National
8 Environmental Policy Act. And after a few years of
9 experience under NEPA, it was determined that there
10 should be some form of directive to be sure agencies,
11 where they were working with one another, needed to take
12 all things into account that should be considered in
13 considering the environmental impact of a proposed
14 action. An example is if you have a permit to log a
15 particular area and you have a permit application for a
16 logging road to get to the area to be logged and to
17 remove the logging, it was determined ultimately by a
18 court those were connected actions and the two agencies
19 should have analyzed them as such.

20 COM. NEWMAN: And connected action then is not
21 something that you conjured in your own, in your own
22 mind; this is a term of art used to describe the federal
23 NEPA process.

24 MR. ROBERTSON: Well, it is a concept used
25 within the federal NEPA process. And, in fact, the

1 council on environmental quality has promulgated
2 regulations relating to that.

3 Now, let's move to the statutory scheme. And
4 this is where Mr. Derstine said earlier today he thought
5 Chairman Foreman got it right when he excluded our
6 proposed evidence. We believe he got it wrong. And I
7 will explain why in just a moment.

8 COM. NEWMAN: And that's really why, that's the
9 whole -- I want you to talk about that. That was going
10 to be my next question.

11 MR. ROBERTSON: Okay. Here is our point. The
12 connected action concept within the context of the
13 environmental quality regulations is a requirement that
14 has been prescribed that federal agencies have to follow
15 when they are working with one another. Here you have a
16 connected action factual situation. And it is our
17 belief, under the broad public interest language that I
18 read from, the underlying legislative policy objectives,
19 the Commission and the Siting Committee are not required
20 under the Arizona statute to consider or use the
21 connected action concept, but they have the discretion
22 to do so in appropriate circumstances if doing so
23 satisfies the "in the broad public interest" decision
24 making criteria. And those words are used specifically
25 in A.R.S. 40-360.07.B when it is addressing the

1 Commission's review function in connection with request
2 for review.

3 There are two things the Commission does there.
4 It considers the criteria set forth in A.R.S. 40-360.06
5 and it considers the broad public interest as it weighs
6 the need to be satisfied with the environmental impact
7 and consequences.

8 Our view here is those environmental impact and
9 consequences, when identifiable with probative evidence,
10 include impacts resulting from satisfaction of that need
11 and not just the construction of the facilities to
12 satisfy the need.

13 And when I say we believe that the Chairman of
14 the Siting Committee, with all due respect to him,
15 got it wrong in his ruling excluding our proposed
16 evidence, in a summary that his assistant sent out later
17 that same day summarizing his ruling, it contains the
18 following statement:

19 The argument by counsel for the environmental
20 groups is based upon a creative attempt to apply federal
21 authority to Arizona law. It is an interesting theory
22 but the Chairman rejects the legal premise that the
23 Committee or the Commission's legal authority in this
24 case is in any way defined by federal law.

25 It is that "defined by federal law" point that I

1 take respectful disagreement with the Chairman of the
2 Siting Committee. We are not saying that the Commission
3 is required under Arizona law to use the connected
4 action concept but we believe you have the discretion to
5 do so.

6 I hope that's responsive to your question.

7 COM. NEWMAN: Yes, it is. And it is sort of, it
8 is sort of the horn of dilemma of all the judges up here
9 to consider that argument, and it is an important one.

10 I mentioned before cart before the horse, and I
11 guess I will throw it down to TEP, but I will give that
12 to you. It is a very short-term phrase, as we all know,
13 cart before a horse. But in essence that's what the
14 argument is, isn't it?

15 MR. ROBERTSON: Yes. Thank you, Mr. Chairman,
16 Commissioner Newman. We agree with you completely in
17 this particular case, that this situation is really
18 premature. And that's why we proposed our substitute
19 language for Condition No. 23 as it currently appears in
20 the Siting Committee decision.

21 As it stands right now, if the Forest Service
22 issues a record of decision, even if the 404 permit
23 required under the Clean Water Act has not been issued
24 by the Army Corps of Engineers, even if the clean air
25 permit required under the Clean Air Act has not been

1 issued, construction of the line could commence if the
2 Forest Service decided to go ahead and issue its record
3 of decision.

4 Our proposed substitute language for
5 Condition 23 would address that circumstance. And in my
6 opening statement, I referred to precipitous action by
7 Rosemont or TEP that would be precluded by our language.
8 Let me give you a hypothetical.

9 In the Siting Committee hearing transcript, my
10 recollection is it indicates very clearly discussions
11 had been going on between TEP and Rosemont about
12 Rosemont possibly acquiring the right to construct the
13 line, assuming a CEC was granted, before the
14 environmental permits had all been issued. And one of
15 the reasons Rosemont wanted to acquire the line instead
16 of TEP building it, even though Rosemont would be
17 reimbursing TEP, is if TEP builds it, if recollection
18 serves me correctly, there is going to be an income
19 gross-up tax requirement that would apply to the amount
20 of money Rosemont would have to pay to TEP, which would
21 make the line more expensive than if Rosemont built it
22 itself.

23 So let's assume Rosemont became the successor to
24 the CEC and the line hasn't been built and Rosemont has
25 a need to raise more money to complete the financing of

1 the project and they decide building that line for
2 something on the order of \$9 million would show tangible
3 progress being made to assist their effort to arrange
4 the remainder of the financing. That's the very sort of
5 precipitous action that we are seeking to prevent with
6 our proposed language for Condition 23. And under my
7 hypothetical Rosemont would not have had all the permits
8 at the time.

9 There was an article in last week's Arizona
10 Daily Star that Rosemont had just extended a line of
11 credit or a debt that was due for \$43 million for
12 another two years and they indicated they hoped that
13 would give them time to complete the remainder of their
14 financing. They raised one half of the billion dollars
15 required for the project. They have a half a billion to
16 go.

17 Let's go back to my hypothetical. Let's assume
18 in that next two years they are not getting their
19 remainder of the money but beginning construction of the
20 line might send a signal that things are looking good,
21 and yet the mine might not be approved and you have got
22 a line that has been built with the environmental impact
23 that's occurred. That's what we are trying to address
24 with our question.

25 So, yes, we think right now the situation is one

1 of cart before the horse with so many approvals for the
2 mine, which is the need to be served, yet to be
3 obtained.

4 COM. NEWMAN: And that also, it might be the
5 same thing, but in legal procedural analysis perhaps,
6 you know, it is not ripe at this time for the Commission
7 to make a determination on this line until we know the
8 full facts of the environmental impact statements, which
9 under your argument of the statute, statutory law, it
10 appears to provide for that. I haven't talked to and I
11 don't talk to the Chairman of the Line Siting Committee
12 but I have great respect for him as well, but it seems
13 as if he, he kicked that out in sort of an evidentiary
14 order that you read in response to my last question,
15 correct?

16 MR. ROBERTSON: Mr. Chairman, Commissioner
17 Newman, I believe it would be accurate to characterize
18 the situation that Chairman Foreman and I have a
19 different viewpoint from the standpoint of statutory
20 interpretation and construction.

21 COM. NEWMAN: And so, of course, I read a lot of
22 things in the file. I was about to go and read things
23 from Pima County into the record because Pima County is
24 not here officially, it seems like, today, but I want to
25 do some of that, too, before this hearing is over

1 because I think it is important what their position is,
2 as well as everybody else who is here.

3 In my legal analysis, and this is what I thought
4 when TEP called me in approximately October of last
5 year -- you know, I was a little bit startled because I
6 knew all these reports were being prepared. There was a
7 huge number of people in the county who supported the
8 project and didn't support the project. But I think
9 most people, elected officials, including myself, I
10 reside in Pima County as you know, we are awaiting for
11 the results of these tests.

12 Here I am sitting as an elected highest state
13 official over lines, and I still feel almost as a
14 citizen would feel, that I am being pushed too quickly
15 to okay this line. And in my mind, it is, the issue is
16 just not ripe yet. And if I -- I don't want to put too
17 much speculation on it, but you suggested it by your
18 statements, about investments and whether they are going
19 to be able to meet their investment goals. It seems to
20 me that -- and that they are trying to get a very quick
21 okay on this because they can say to their investors,
22 boy, we already have this transmission line done.

23 So then it goes to another question of public
24 interest that we don't talk about around a lot, a lot
25 around here. It is not only environmental public

1 interest but that the public interest in the Commission
2 not signing off on projects that might not really get
3 their correct investment dollars which would never make
4 the money go forward and a lot of money would either
5 have been lost by the investors or lost in the project
6 that didn't happen because the price of copper changed
7 quickly or something like that.

8 So is there another part of the public interest
9 for the Commissioners to be -- to only spend resources
10 when they are wisely needed, not just because they may
11 adversely impact the environment? Isn't there a
12 prudence inspection that the Commissioners should be
13 doing?

14 MR. ROBERTSON: Chairman Pierce, Commissioner
15 Newman, that's a very broad question, but let me try and
16 be as responsive as I can.

17 COM. NEWMAN: I do give broad questions, but it
18 is important.

19 MR. ROBERTSON: As I indicated, I will endeavor
20 to be as responsive as I can.

21 You are presented with an application filed by a
22 given applicant in a siting case, whenever that occurs.
23 And there is a statutory process that unfolds. And at
24 the Siting Committee level the Siting Committee either
25 will decide to grant the application as requested, grant

1 it with modifications, or deny it. And then it comes to
2 you.

3 There is a question at both levels, at the
4 Siting Committee and at the Commission, as to whether or
5 not the application is complete, whether or not it
6 contains all of the information you believe should be in
7 the record in order to make an informed decision. And
8 at your level of decision, that is in the broad public
9 interest, I think that's where you address the question
10 do we really have all the information we need, is this
11 really timely presented. It may be premature in your
12 judgment. And then you need to decide what to do under
13 those circumstances, if you come to that conclusion.

14 COM. NEWMAN: Thank you.

15 Mr. Chairman, it is around 15 minutes.

16 CHMN. PIERCE: Yeah, it is. Thank you.

17 Commissioner Stump.

18 COM. STUMP: Thanks, Mr. Chairman. I have one
19 question for this round robin.

20 And regarding CEC Condition No. 6, Mr. Derstine,
21 how would you respond to Mr. Robertson's contention that
22 five years is sufficient as opposed to ten?

23 MR. DERSTINE: Mr. Chairman, Commissioner Stump,
24 the applicant requested and the Siting Committee
25 approved a 10-year time frame because of, I think, many

1 of the reasons you have heard today from Mr. Robertson
2 and Mr. Magruder and Ms. Webb as to how long it will
3 take and could take for the EIS process to be completed.
4 And so it was the judgment that because the EIS federal
5 process can be so drawn out at different levels of
6 reviews, et cetera, that a 10-year time frame was
7 appropriate in this case. And I think indeed it is.

8 COM. STUMP: Mr. Chairman, Mr. Robertson,
9 considering that the EIS can be obviously drawn out,
10 could you reiterate why you feel five is more
11 appropriate as opposed to ten?

12 MR. ROBERTSON: Mr. Chairman, Commissioner
13 Stump, yes, I would be happy to do so.

14 First of all, we have in the record, I forget if
15 it was from Mr. Beck's testimony as a witness from TEP
16 or possibly an opening statement remark by counsel for
17 Rosemont, the statement that Rosemont anticipated it
18 would be ready to ask TEP to begin construction of the
19 power in 2013. As I indicated in my opening statement,
20 that's an indication of Rosemont's confidence that it
21 will be ready to go by then despite all of the currently
22 outstanding federal approvals.

23 Against that background, we believe for the
24 reasons I indicated in my opening statement that a
25 five-year period is appropriate. It takes only eight

1 months to construct the line. Rosemont said with
2 confidence we think we will be ready to go by 2013 with
3 all the necessary approvals. If TEP had to come in and
4 request an extension of the five-year term, that's
5 usually a paperwork exercise, I have been through
6 several, including a Staff report either recommending
7 approval of the request or not. And there is no
8 indication that either of them would be damaged by a
9 five-year extension. And, also, things could change
10 significantly in the area over the course of the 10-year
11 period, and, if the approval hasn't been forthcoming at
12 the end of five years, maybe it should be reexamined.

13 COM. STUMP: Mr. Robertson, I never thought I
14 would say that Commissioner Newman and I had ESP but
15 just as I was asking this question, an amendment was
16 drawn to that effect. So thanks.

17 CHMN. PIERCE: I was on the board when I pressed
18 and Commissioner Kennedy came on and took me off. So I
19 am going to go now.

20 Mr. Robertson, we will finish off with -- we
21 will start off where I left off. Assuming that the
22 Commission has discretion to consider, and the
23 Committee, the impacts of environmental impacts on the
24 mine, it seems reasonable not to do so in light of the
25 significant independent environmental reviews already

1 underway concerning the proposed Rosemont Mine, Pima
2 County, DEQ, EPA, all of those. Doesn't it seem
3 reasonable not to duplicate the type of environmental
4 investigation that's going on?

5 MR. ROBERTSON: Mr. Chairman, if I understand
6 your question correctly, let me explain what our offer
7 of proof consisted of, and then I will proceed from that
8 in responding to your question.

9 There were four components to the offer of proof
10 we submitted. One of those was that portion of the
11 Forest Service DEIS that addressed environmental impacts
12 of the mine. The other was the prepared testimony of
13 three different witnesses, Mr. Trevor Hare of the Sky
14 Island Alliance, Ms. Julia Fonseca of Pima County in her
15 capacity as our expert witness, and Mr. Tom Myers who
16 was a consulting hydrologist from Reno.

17 The answer to your question is that where you
18 have probative evidence and competent evidence that
19 believes the Forest Service DEIS is either incomplete or
20 incorrect, that is appropriate for you to consider. And
21 that is what the testimony of our three witnesses went
22 to in part, or things the DEIS had not considered. Even
23 given its deficiencies, which have since been pointed
24 out with EPA's letter of February, the DEIS points out
25 there are some horrific long-term, lasting impacts

1 associated with the mine. So that's why we included the
2 DEIS plus the testimony of our witnesses.

3 CHMN. PIERCE: Okay. Well, it just seems
4 reasonable for the Committee to decline considering the
5 factors that I mentioned, the investigations going on,
6 and the fact that they are looking at this -- that's
7 being done -- we are looking at this line extension and
8 looking at the line extension only because, because the
9 mine is under a microscope and they will have to still
10 get approvals.

11 Let me --

12 MR. ROBERTSON: May I respond to that very
13 briefly?

14 CHMN. PIERCE: Sure.

15 MR. ROBERTSON: Our Condition 23 substitute
16 language is not designed to second guess what other
17 agencies are doing. It is designed to be sure
18 construction of the line cannot begin until those other
19 agencies have completed their work.

20 CHMN. PIERCE: Okay. Mr. Robertson, as I
21 understand it, basically we covered three issues. One
22 was the mine. You request for review based on three
23 grounds. One was -- this environmental impact was one.
24 The other one was the Committee's Condition No. 23,
25 there was inadequate and should have additional

1 construction of line on unappealable court decision
2 affirming the final EIS, instead of simply issuance of
3 the EIS. That's the second one, right?

4 MR. ROBERTSON: No, sir. It is not just the
5 EIS. It is all necessary federal, state and local
6 approvals. The Forest Service DEIS goes only to the
7 mining plan of operation and it is only one of several
8 agencies.

9 CHMN. PIERCE: But it is, your Condition 23
10 overall is what I am talking about.

11 MR. ROBERTSON: Yes. Our Condition 23 would
12 address the legal infirmities in the current 23.

13 CHMN. PIERCE: And the third issue was the
14 10-year time frame to do it.

15 MR. ROBERTSON: That's correct.

16 CHMN. PIERCE: Okay. I want to ask a question
17 about what you have not argued a little bit, but I am
18 going to set this up. I am going to be kind of like you
19 for a minute and wax a little bit and then ask you the
20 question.

21 COM. NEWMAN: Do a Newman.

22 CHMN. PIERCE: Yeah.

23 Setting aside the issue whether the Committee
24 should have considered the environmental impacts, let's
25 set that aside for a moment, of the mine, your client

1 has not taken the position that the record considered by
2 the Line Siting Committee was otherwise deficient to
3 approve the siting of the line?

4 In other words, assuming the Committee acted
5 appropriately in refusing to consider the environmental
6 impacts of the mine, your clients do not argue,
7 presumably because they do not believe, that there are
8 other deficiencies in the record developed and
9 considered by the Line Siting Committee. So other than
10 your clients' issue with the environmental impact of the
11 mine, it appears, it appears that there aren't other
12 issues. And you haven't argued those issues. So do you
13 consider the record full other than the environmental
14 impact of the mine?

15 MR. ROBERTSON: No. And may I explain why?

16 CHMN. PIERCE: Yes, I wish you would.

17 MR. ROBERTSON: Okay. This was a very rushed
18 proceeding. The application was filed on November 2nd,
19 2011. We were in hearings by the week of December 12th.
20 There was a decision rendered December 16th, in other
21 words, six weeks after the application was filed. In
22 between we had two briefs that were filed on the
23 connected action issue before the hearings even began.

24 Given the availability of time that we had and
25 the information available, my clients elected to focus

1 our efforts on the connected action concept and the
2 associated argument and the evidence we put together.
3 We deferred to other parties to address environmental
4 impacts associated with the line. Ms. Webb would be
5 one. Ms. Berglan would be another. Mr. Magruder would
6 be a third.

7 When it came to putting our brief together, we
8 didn't feel we were in a position to competently comment
9 on the insufficiency of the record in detail as it
10 related to the environmental impacts of the line. We
11 alluded to it slightly where we had an opportunity to
12 cross-examine Mr. Beck on access roads and the impact
13 that would have once you started building the line and
14 other impacts associated with that. And that was the
15 background in part for the Condition 23 language. But
16 we did not undertake to do a broad critique of what are
17 other insufficiencies relating to the environmental
18 impact of the line itself. We deferred to other
19 parties.

20 CHMN. PIERCE: Okay. I have a question then.
21 So what you just said is that you then coordinated with
22 the other parties on your arguments and who would cover
23 what, cover different issues within the arguments?

24 MR. ROBERTSON: Did you say we did or did not
25 coordinate?

1 CHMN. PIERCE: You say you did coordinate.

2 MR. ROBERTSON: No. I was aware of what the
3 other parties were going to argue. And so I knew they
4 were going to be making arguments on that. I focused on
5 what was in the record that related to the position that
6 we had taken.

7 CHMN. PIERCE: You say they knew they were going
8 to argue other issues. Did you assume that, or you
9 just -- you had no communications so you assumed that?

10 MR. ROBERTSON: No, no. Well, I knew one from
11 during the hearing, and I knew even in advance the
12 approaches they were planning to take with their
13 evidence. And there were discussions afterwards about
14 approaches that might be taken in briefing. But was it
15 an ongoing coordination? No. We were working in a
16 tight time frame.

17 CHMN. PIERCE: It is just amazing, though, that
18 your client wouldn't pick up all the arguments that they
19 had. That's -- which would reinforce if someone else
20 was bringing it, too. That's just, that is just odd to
21 me, Mr. Robertson. But I will let that go. I want --

22 MR. ROBERTSON: Well, Mr. Chairman, I hate to
23 leave an "odd" hanging in the record. We were dealing
24 under time constraints with limited resources. And
25 Mr. Metli and I did the best we could with the time

1 available to us. If it didn't measure up to your
2 standard, I am sorry in that regard, but I hope I have
3 explained why we took the approach we did.

4 CHMN. PIERCE: Well, actually usually,
5 Mr. Robertson, what we do is, what we read is, if a
6 party or an intervenor has an issue, we see all their
7 issues within that that pertain to them. And that's
8 pretty typical. And I can see that, you know, getting
9 in here and trying to grab onto to other people's
10 issues, too. I understand that. That's trying to build
11 it.

12 But I think it really doesn't set aside that we
13 really know where your client is at and what their real
14 argument is. And I believe your clients' real argument
15 is over this environmental issue, in my view, and we can
16 disagree on that, and it boils down to that. And that
17 is a discretionary issue by the Line Siting Committee.

18 And I want to -- well, if any time, and I do
19 have a few minutes left -- I want to move over to
20 Mr. Walker, because I want to quote you from the record
21 here.

22 It is pretty small print. And this really has
23 to do with, in the discussion that you had with Mr. Beck
24 about -- because I am actually, Mr. Beck and Mr. Walker,
25 I am going to read this.

1 And this is from the record, starting with Paul
2 Walker asked Mr. Beck: Mr. Beck, are you familiar with
3 TEP's 2011 summer preparedness plan that was presented
4 by TEP at the Arizona Corporation Commission last May I
5 think?

6 Mr. Beck: Generally I am aware of it, yes.

7 Member Walker: Okay. So without getting into
8 the exact practice numbers -- precise numbers, because
9 you may not recall them off the top of your head, isn't
10 it true that TEP has about 2,650 megawatts of generation
11 and market based resources to serve the TEP area? Is
12 that number right?

13 Mr. Beck answers: I believe that includes, that
14 includes future purchases that are intended to meet the
15 peaks.

16 Member Walker: Market based resources?

17 Mr. Beck: Right.

18 Member Walker: Meaning purchases you plan to
19 make?

20 Mr. Beck: Generally that sounds reasonable.

21 Mr. Walker: And the load proposed by Rosemont
22 Mine is 120 megawatts, correct?

23 Mr. Beck: That is correct.

24 Member Walker: So when the Pima County -- and
25 this is what I have highlighted -- when the Pima County

1 Attorney writes that the mine would account for upwards
2 of 10 percent of TEP's total load, the math doesn't
3 work, does it?

4 Mr. Beck: No. My calculation this morning was
5 a percent -- was 5 percent or less.

6 Mr. Walker: Correct. Mine, too.

7 Question: That same letter from the County
8 Attorney alleges that 50 percent of common system costs
9 are shifted onto other TEP customers by mines. Are you
10 familiar with that allegation?

11 Mr. Beck answers: I did see that allegation,
12 yes.

13 Member Walker, his question is: And in
14 assigning fixed costs in a utility, does the cost per
15 kilowatt hour reflect the constancy of the demand?

16 Mr. Beck answers: Yes, there is a demand
17 component within the pricing.

18 Mr. Walker says: So if a mine has a constant
19 need, say 8,760 hours a year, their cost per kilowatt
20 hour would be lower and still contribute to the fixed
21 costs, wouldn't it?

22 Mr. Beck says: Correct.

23 Mr. Walker: As a retail residential customer --
24 and a retail residential customer has a much lower
25 factor, don't they?

1 Mr. Beck: Definitely.

2 Member Walker: And when TEP compiles rate
3 design testimony, does it look at the cost of service
4 for different classes?

5 Mr. Beck said: Yes, it does.

6 Member Walker: And does it find that there is a
7 subsidy between large mine users and the residential
8 classes?

9 Mr. Beck: Historically there has been some of
10 that. And that has been reduced over the years.

11 Member Walker: And which direction did that
12 subsidy tend to go?

13 Mr. Beck says: Generally the commercial were
14 subsidizing residential.

15 That's what I want to make clear here, the
16 commercial subsidizes the residential.

17 Member Walker: The same letter says
18 transmission lines are expensive, presumably implying
19 that the line somehow has a cost that the ratepayers
20 would need to remunerate to the utility. Isn't it the
21 case, isn't it the case that the Rosemont project, the
22 Rosemont Copper Mine proposed to pay the entire
23 transmission line cost?

24 And it gets into that a little bit. But I
25 wanted to bring out, though, typically when you add a

1 nice big customer, a commercial or industrial customer
2 to the load, that takes the pressure off of residential
3 classes. And a lot of other smaller commercial classes
4 it takes the pressure off, because TEP has quite a bit
5 of load. That's what you found out.

6 Now, that was accurate between you, what I read,
7 between Mr. Beck and you, Mr. Walker, wasn't it, what I
8 just read, as far as you recall?

9 MR. WALKER: Yes, sir, that was accurate.

10 CHMN. PIERCE: Okay. Let's talk about this. As
11 I understand it, and I need to ask TEP, your own load,
12 what you owned, what you own in coal is --

13 I am sorry? Okay. One last question. I'm
14 timed out.

15 You own 84 percent coal-fired generation, isn't
16 that correct, something like that?

17 MR. DERSTINE: I think that's approximately
18 correct.

19 CHMN. PIERCE: But what you actually use because
20 of the time of year and all that, what you actually use
21 because of peaking and that sort of thing, you actually
22 use less coal than that, isn't that correct, in your
23 actual, what you actually use with your customers?

24 MR. DERSTINE: Mr. Chairman, my understanding is
25 that is also correct.

1 CHMN. PIERCE: Because I heard this 90 percent
2 number. I knew that wasn't correct. I knew what you
3 owned was 84 percent but what you actually use is less
4 than 84 percent because you purchase, you do go out and
5 purchase on the markets that's not necessarily coal and
6 some natural gas-fired generation as well and some
7 renewables.

8 MR. DERSTINE: Mr. Chairman, that's correct.

9 CHMN. PIERCE: All right. Thank you.

10 Let's move on to Commissioner Burns.

11 COM. BURNS: Yes. I wasn't sure. I don't
12 believe any of us have asked either the company or
13 Rosemont about this issue of at what point you can
14 construct the transmission line. We have had some
15 discussion on that but we haven't asked you about the
16 proposal made by Mr. Robertson on behalf of his clients
17 and what you would think about that, whether it would
18 cause problems, what the differences are.

19 And I see that Commissioner Newman has an
20 amendment also in reference to that. I don't know if
21 you want to talk about that at this point, Mr. Chairman,
22 since it just surfaced, but basically I would like to
23 know whether it is okay, what problems it would cause,
24 what difference it would make, so on.

25 MR. DERSTINE: Mr. Chairman, Commissioner Burns,

1 I have not -- I do recall that Mr. Robertson's condition
2 was in his brief, but I didn't take a lot of time to
3 analyze it. What I do recall is, from the Siting
4 Committee, they are the same general condition.

5 And the problem that Tucson Electric Power has
6 with it, and I will let Rosemont speak for itself, and I
7 think the members of the Siting Committee had with that
8 condition was that it included language essentially that
9 all administrative or judicial appeals will be fully
10 exhausted.

11 Well, you know, the appellate process and filing
12 a notice of appeal and taking it up to the Ninth Circuit
13 and beyond, whatever level of appeals are available,
14 either administrative or judicial, that essentially does
15 what I think many of these intervenors would like to do.
16 And that is to simply find a backdoor way to stop
17 construction of the mine.

18 And so what we thought was, you know, courts
19 also have the power to enjoin, and so that if, you know,
20 Mr. Robertson's other client, Farmers Investment, who he
21 appeared on behalf of at the original prefiling
22 conference before he switched over to environmental
23 groups, previously filed litigation asking for an
24 injunction against the issuance of a draft EIS, I mean
25 the parties here have capable counsel, they will likely

1 litigate this well beyond whatever sort of initial
2 reviews and records of decision are issued.

3 And I think it was the view of the Siting
4 Committee, and certainly Member Walker can speak to it
5 if he would like to, but that language essentially left
6 an open-ended stay on the commencement of construction
7 by including language that essentially said everything
8 had to be fully exhausted at every avenue of appeal and
9 at every stage. And that created too much uncertainty.
10 If there is some language that can be crafted that is a
11 compromise to that, I think we would be open to it. But
12 saying I get to do everything I can to stop the
13 construction of this mine as long as it takes and you
14 can't build until I say okay, uncle, that's not an
15 appropriate condition.

16 COM. BURNS: So the judicial review is probably
17 the biggest part of that?

18 MR. DERSTINE: I think that's correct.

19 COM. BURNS: Mr. Walker, you concur?

20 MR. WALKER: Mr. Chairman, Commissioner Burns,
21 that's right. It was discussed in the Committee
22 meeting. And that was the point that the Committee
23 members fixated on, this notion that, subject to
24 judicial review, you would then incent opponents of the
25 mine to just file seriatim appeals and, as long as that

1 was in process, regardless of whether it was an appeal
2 likely to be successful or not, you would be stopping
3 the mine.

4 So what we looked at was you have to get
5 approvals of all the appropriate agencies; when you have
6 those done, then if you want to take the commercial risk
7 and start building it, of course you could lose in an
8 appeal process later. It says the NEPA process or
9 something. But that's more concrete and specific than
10 just an open-ended; any judicial review means you can't
11 do anything.

12 COM. BURNS: I understand.

13 Mr. Black, does the mine want to add anything?

14 MR. BLACK: Mr. James will address that
15 question.

16 COM. BURNS: Okay, thank you.

17 MR. JAMES: Mr. Chairman, Commissioner Burns, I
18 don't have too much to add. What Member Walker said is
19 correct. I think in addition -- well, let me back up a
20 step.

21 There are really two pieces here. The first
22 piece is, as indicated, is this creates an incentive to
23 file appeals, to file lawsuits and simply just
24 continually churn things just to ensure that this
25 doesn't become effective. The other aspect of it

1 though, which was also discussed is the fact that really
2 the key approval here is the Forest Service's approval
3 of the plan of operations under the Forest Service's
4 surface use regulations. That's why the Forest Service
5 is the lead agency for the environmental impact
6 statement. They are responsible for that. And since
7 that is the linchpin, it made sense to tie the
8 effectiveness of the CEC to that action.

9 As proposed here, it simply says all federal,
10 state and local permits or approvals necessary for the
11 construction, operation, reclamation and closure of the
12 mine. Well, we may need permits five years from now,
13 ten years from now for other things. How would this
14 work? What permits are we talking about? It is
15 extremely vague. And you can see how, again, a clever
16 attorney would come in and argue they are going to need
17 another permit in five years or your permit is going to
18 expire. Clean water permits normally have a term of
19 five years. So, again, you are in this never ending
20 cycle.

21 So I think the Committee felt comfortable that
22 tying it to the completion of the Forest Service's
23 approval process gave it a certain date, a certain
24 trigger.

25 COM. BURNS: Okay. And I understand all that.

1 But the comment was made, you know, at some point yes,
2 it is approved, someone could still go to court and
3 object and appeal. And the -- let's say you begin
4 building, you have got it built and at some point in
5 fact the mine does end up losing on appeal and not being
6 able to have the mine there. But now you have got a
7 half constructed transmission lines.

8 I don't know if that's something that could
9 potentially happen, but if that happened, and the
10 transmission lines were partially or completely up and
11 all of a sudden Rosemont didn't get the permits, it
12 couldn't move forward, what would happen to those lines?

13 MR. JAMES: Well, Mr. Chairman, Commissioner
14 Burns, difficult question because it is going to depend
15 obviously on the precise scenario, who owns the lines,
16 are they owned by Rosemont. More likely they are owned
17 by Tucson Electric, Tucson Electric Power.

18 But I think the likelihood of that happening is
19 probably fairly low. That's not to say that Rosemont is
20 guaranteeing that if there is litigation it is going to
21 win, but simply to say -- well, again, let me give you
22 an example.

23 NEPA, there is a lot of talk here about NEPA and
24 about the environmental impact statement. But NEPA is a
25 procedural process. You go through a procedure. You

1 ultimately end up with an environmental impact
2 statement. Let's -- if a court were to say that the
3 environmental impact statement is inadequate, what
4 happens then is you don't lose the right to mine, you
5 just have to go back and supplement the environmental
6 impact statement to address the problem.

7 So what I am getting at, again, Rosemont has --
8 well, where the mine is going to be located, the pit,
9 the core of the project is private land. There is
10 Forest Service land around it. Rosemont has unpatented
11 mining claims on the Forest Service land so those are
12 property rights that they hold.

13 Now, again, we hope to be in operation, breaking
14 ground, as has been said here, in early 2013. We can't
15 guarantee that. But we need power. If we don't have
16 power, and again that's, that's why we have the
17 intervenors here trying to make it as difficult as
18 possible for us to get power to our project, if we don't
19 have however power and we don't have water, we can't
20 operate.

21 COM. BURNS: And I understand all that. And I
22 understand you are saying maybe this is, you know,
23 looking for some little needle somewhere, once you get
24 to the part where you are approved, what could
25 potentially happen. And I understand there are a number

1 of levels of things that could happen. But if the tiny
2 percentage chance you are approved and then subsequently
3 end up losing and not being able to operate the mine,
4 can there be any certainty that the lines would come
5 down?

6 MR. BLACK: Chairman, Commissioner Burns, I
7 believe that there is testimony in the record that
8 states that in the event that were to happen, TEP would
9 take the lines down and remove the facilities.

10 COM. NEWMAN: At whose cost? Sorry.

11 COM. BURNS: TEP, would you confirm that?

12 MR. DERSTINE: Mr. Chairman, Commissioner Burns,
13 that was the testimony from Mr. Beck and that is my
14 understanding, that, if for some reason construction
15 were commenced on the transmission line and then halted
16 either based on a court order or some developments, that
17 Tucson Electric Power would remove the transmission
18 facilities and reclaim the area.

19 COM. BURNS: And I heard something in the air
20 saying at whose cost.

21 MR. DERSTINE: Whose cost. I think our view is
22 that would be another cost carried and paid for by
23 Rosemont.

24 COM. BURNS: I see. Mr. Robertson wanted to
25 comment.

1 MR. ROBERTSON: Mr. Chairman, thank you,
2 Commissioner Burns. Four words or phrases come to mind,
3 stewardship, line to nowhere, Clean Air Act, and Clean
4 Water Act.

5 More specifically, the stewardship argument I
6 made earlier today was not made during the day the
7 Siting Committee held its deliberations. Unfortunately,
8 due to a previous conflict, I was not able to be there
9 that day and Mr. Metli covered for us. But it is an
10 argument we made in our brief, and it is extremely
11 applicable to the Commission.

12 You are the ones who are in a position to be
13 sure there are no adverse impacts resulting from
14 construction, whether in partial or complete, of the
15 line. Because if it turns out the line has to be
16 removed because the mine isn't able to get the
17 Section 404 permit under the Clean Water Act or the
18 Clean Air Act permit and so they can't operate the mine,
19 there will be environmental damage in this arid
20 environment where the line is going to be constructed.
21 And during my cross-examination of Mr. Beck in the
22 hearing I got into the fact there would be an access
23 road and there would be side short roads going into each
24 tower structure location. And there are undoubtedly
25 going to be other environmental impacts associated with

1 construction.

2 So even with removal, even with reseeding, in
3 this arid environment there will be impacts. And what
4 you will have if a mine is never activated is a line
5 that, if it is built, is analogous to the infamous
6 bridge to nowhere. This will be a line to nowhere.
7 That's what our Condition 23 language is designed to
8 address and prevent.

9 Thank you.

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

11 CHMN. PIERCE: Okay. Commissioner Newman.

12 COM. NEWMAN: For Mr. Black, was there anything
13 in the Line Siting Committee or did anybody ever ask
14 questions, given that the scenic view was one of the
15 stewardship responsibilities for the Committee to look
16 after as well as this Commission, for the line to be
17 buried underground? And if, if not, why not, since your
18 company is so well heeled with half a billion dollars
19 sitting in the bank?

20 MR. BLACK: Well, let me understand the question
21 as --

22 COM. NEWMAN: I want to know, if you have a half
23 a billion dollars sitting in the bank for investment in
24 your mine, why you can't invest money to mitigate the
25 scenic view and put some of this line, if not all the

1 line, underground so that people in Green Valley and
2 Sahuarita and rural areas of Santa Cruz County, not to
3 mention 199,000 visitors to Madera Canyon, which by the
4 way does have a visitor center and is one of the most
5 visited places in the State of Arizona, why can't your
6 well heeled company wherever you are from, Canada,
7 United States, wherever your monies come from, why can't
8 you spend money on putting the line, this viewscape
9 underground, this potential view block underground?

10 And then a follow-up question is: I guess I
11 hear indirectly you have half a billions dollars in the
12 bank -- that is hearsay -- but I would like to know
13 whether the company considered that and considered
14 whether the Commission would even ask him that question,
15 or is it, is it just too much for this company to handle
16 that request?

17 MR. BLACK: Chairman, Commissioner Newman, first
18 of all, let me address the first question you asked, was
19 whether this was addressed at the Line Siting Committee
20 and whether that question was asked.

21 I believe that there was some discussion
22 concerning undergrounding a portion of the line and a
23 portion of some of the distribution line that is going
24 to be underground along the Santa Rita express, along
25 Santa Rita Road.

1 I think it is a technical issue and it is a cost
2 issue. I mean I am not aware of any 138kV lines that
3 are underground in the State of Arizona.

4 COM. NEWMAN: Whether that's true or not,
5 probably true now, just like fracking has become a
6 something that we are all talking about with regard to
7 natural gas, there are a lot of people now proposing
8 that with modern technologies, sort of the cabling
9 technologies that have existed, that we should as a
10 state, and this is being proposed in articles that I
11 have read, that we should be going underground,
12 especially when you are in very sensitive environmental
13 areas, and also, by the way, very sensitive, very
14 intensive wildlife corridors, that these lines affect,
15 as you know, wildlife activity.

16 So I ask a tough question. But the basic answer
17 is that it came up, nobody really seriously considered
18 it.

19 MR. BLACK: I think it was not seriously
20 considered because of the technical aspect as well as
21 the fact it would be cost probative.

22 COM. NEWMAN: Okay. How much money -- I have
23 heard some reports, this is hearsay again and it is not
24 in the record, but based on reports I have read in the
25 newspaper, some representatives of your company are

1 saying that this is the, will be the largest copper mine
2 in the United States. It has been reported.

3 MR. BLACK: That has been reported.

4 COM. NEWMAN: It has been reported. Is that
5 true or false?

6 MR. BLACK: That is false.

7 COM. NEWMAN: Well, why would it get reported?
8 Didn't come from your company?

9 MR. BLACK: Well, you know, Chairman,
10 Commissioners, I know I have been misquoted before in
11 the paper. So I would think that, I would think that
12 there may be a mistake in that sense. But I don't know
13 who wrote it or who reported it.

14 COM. NEWMAN: Okay. I would like to see a
15 cost/benefit analysis of saying it is too expensive,
16 because the only way for me to know how expensive,
17 whether it is, whether it passes a societal cost/benefit
18 test is to figure out how much you guys are planning to
19 make on your venture, how deep your copper veins are.
20 And so I am trying to judge the public interest on just
21 this one point. I can't do it because I don't really
22 know the value of your company.

23 MR. BLACK: Chairman, Commissioner Newman --

24 COM. NEWMAN: What is the value of your company?

25 MR. BLACK: If the Commission orders us to do a

1 cost/benefit analysis, then that's something we will
2 consider, yes.

3 COM. NEWMAN: I will, I will recommend, I will
4 recommend, and perhaps we will have orange paper if I am
5 allowed, to ask for that cost/benefit analysis.

6 I want to get to the Native American issue. And
7 sorry that I didn't get to you before. Many things
8 stick out. The one thing that stuck out was I guess you
9 have recently, through the inventory that was done
10 recently, realized that there is some site, I don't know
11 what it is, that's very close to the site of the
12 transmission line. Or did I hear you right?

13 MS. BERGLAN: Mr. Chairman, Commissioner Newman,
14 I believe you were referring to Huerfano Butte, correct?

15 COM. NEWMAN: Yes.

16 MS. BERGLAN: Yes.

17 COM. NEWMAN: Yes. And what was your experience
18 at the Line Siting Committee when you were presenting
19 that information? Were they accommodating to that? Or
20 I am sure they were respectful, hopefully they were
21 respectful. But what is your beef at this time? And
22 would you like to see any amendments on behalf of the
23 tribe other than I understand that this -- I understand
24 why the tribe is objecting. I understand that
25 Baboquivari is a mountaintop across the way from Madera.

1 Those mountaintops are very holy to your people. I live
2 down there. I understand that. I have been to the top
3 of both mountains.

4 But with regard to this inventory that was done,
5 like has been argued before, we can do what is in the
6 public interest. We could do more than the Line Siting
7 Committee did. We could provide more protection
8 technically today, or tomorrow if it goes into tomorrow.
9 I don't know how the timing will go. And since I am not
10 allowed to do this in a hallway with you, I am asking
11 you sort of up front, an up-front question. How can we
12 help you?

13 MS. BERGLAN: Mr. Chairman, Commissioner Newman,
14 thank you.

15 Well, the Nation's first preference obviously is
16 that the CEC be denied. Second preference as the
17 alternative, if the Commission is inclined to accept the
18 Committee's approval of the CEC, we would like all of
19 the Nation's significant cultural sites to be avoided,
20 and that we would like our Condition 26, which is set
21 out in our brief, to be added. And that states that
22 applicant shall engage the services of a Tohono O'odham
23 cultural monitor during any construction activities on
24 or within 100 feet of known prehistoric cultural
25 resource sites that are eligible for the National

1 Register for Historic Places as identified in Table E-3
2 of the application with the addition of Huerfano Butte.

3 COM. NEWMAN: Can Staff or anyone tell me why
4 that very reasonable amendment didn't get on the Line
5 Siting Committee recommendations? Is anybody present in
6 the room that can answer that question other than the
7 proponent?

8 Was it just a failure of negligent oversight,
9 not intentional? I hope it was not intentional.

10 MR. WALKER: Mr. Chairman, Commissioner Newman,
11 it was not negligent oversight. That very condition was
12 debated among the Committee members. And my
13 recollection is that there was not a majority that
14 agreed with the idea of ordering TEP that they have to
15 go higher, some specific individual from the Tohono
16 O'odham. And so my recollection is we put a condition
17 in there that said TEP has to allow Tohono O'odham's
18 cultural affairs office access during all construction
19 activities.

20 Is that a fair recollection?

21 COM. NEWMAN: And the difference between and --
22 well, that is fine for right now. I will go back to the
23 proponent.

24 I guess that explains it a little more, but not
25 really. I guess the nervous, they get nervous. It

1 looks like my utility companies and some of the members
2 of the Line Siting Committee get nervous when I guess
3 interacting with sovereign nations. I guess they don't
4 respect the fact that you might have an historian or
5 elder there who knows more about this land than they do
6 and they don't kind of trust your advice.

7 But if I saw that No. 26 right now on the paper,
8 I would, that's what I would want in this case. So I am
9 asking Staff to prepare a 26, recommendation 26 for a
10 vote of this body. I am not really sure how that's to
11 come out. But it is the least this Commissioner can do
12 at this point. And that is important. We -- it is not
13 only the state historical board that looks after tribal
14 antiquities. The tribes themselves are in a very good
15 position to know what is going on because, unlike the
16 state historical board, which is less than 100 years
17 old, just as Arizona is, Tohono O'odham people have been
18 here 8-, 10,000 years. So I think they know the history
19 a little bit better than anybody.

20 You heard my statements about putting things
21 underground. And that's, this is something that is
22 beginning to be discussed all over the country, believe
23 it or not, especially with trying to bring renewables
24 through very beautiful corridors of our nation. Right
25 now there are articles being written on sort of changing

1 our value about having big lines above ground versus
2 below the ground.

3 And I know it is hard for you to make this call
4 because you are representing a Nation, if you would, but
5 would you prefer to see the lines underground? Is
6 that -- the viewshed itself is part of your spiritual
7 objection, isn't it?

8 MS. BERGLAN: Mr. Chairman, Commissioner Newman,
9 thank you. Yes, that is part of the objection. It
10 would be pretty much impossible, I think, for me to sit
11 here today and say that underground would be preferable.
12 And the main concern there, Commissioner Newman, is
13 there could be unknown cultural resources that could be
14 encountered along the way. So that effect on cultural
15 resources could actually be greater. Obviously the
16 landscape concerns would be lessened. But without that
17 information, I can't make that decision sitting here
18 today.

19 COM. NEWMAN: Right.

20 Okay. Gary, I still have a few minutes?
21 Please.

22 CHMN. PIERCE: Yeah, you have about three more
23 minutes, three and a half more minutes. Go ahead.

24 COM. NEWMAN: Well, I have around a ten-minute
25 matter that I don't want to do in three minutes. So I

1 will let you. Is that okay?

2 CHMN. PIERCE: That's fine.

3 COM. NEWMAN: I don't want to -- I want to have
4 the whole discussion.

5 CHMN. PIERCE: Well, and there is going to be.

6 COM. NEWMAN: It will take around ten minutes
7 about, with Ms. Webb.

8 CHMN. PIERCE: And we are going to have a switch
9 out of court reporters at 3:00. Is that correct?

10 THE REPORTER: No.

11 CHMN. PIERCE: You are okay?

12 We will do a break in a little bit.

13 Commissioner Kennedy.

14 COM. KENNEDY: Thank you, Mr. Chairman.

15 I am going to read from the statute here, Laws,
16 1971, Chapter 67. I am going to paraphrase, if you will
17 allow me to. This was the creation of the Line Siting
18 Committee.

19 The legislature therefore declares that it is
20 the purpose of this article to provide a single forum
21 for expeditious resolution of all matters concerning the
22 location of electric generating plants and transmission
23 lines in a single proceeding to which access, access
24 will be open to interested and affected individuals,
25 groups, counties, and municipal governments and other

1 public bodies to enable them to participate in these
2 decisions.

3 After, Mr. Chairman, after reading the
4 transcripts of the Line Siting Committee hearing, I want
5 to be explicitly plain today that the reason you see my
6 amendment is I am deeply concerned about the due process
7 that has taken place with this application. I believe
8 the procedural issues here, there is not a complete, a
9 complete or full record for us today to make a decision.

10 For critics of my amendments, believe me when I
11 say this is not a ploy to delay this project. I am not
12 trying to delay your project. Had the Line Siting
13 Committee not been in such a rush and limit the days for
14 the hearing or exclude some evidence, I probably would
15 not have offered the amendments that you are going to
16 see here today.

17 Unfortunately the company, TEP, as the
18 applicant, you are caught in the middle due to the Line
19 Siting Committee's actions. It probably would not
20 have -- would have served you and this application had
21 you objected to the revocation of intervenors and other
22 procedural defects I found while reading the
23 transcripts.

24 Mr. Chairman, I do have a question for you.

25 CHMN. PIERCE: Sure.

1 COM. KENNEDY: I notice Mr. Walker is sitting at
2 the table today. Is he the Commission's, I should say
3 your designee for the Line Siting Committee?

4 CHMN. PIERCE: No. He is not the Chairman, no.

5 COM. KENNEDY: No, your designee.

6 CHMN. PIERCE: My designee? My designee is
7 Mr. Eberhart.

8 COM. KENNEDY: Okay. So Mr. Eberhart is not
9 here. I was just trying to figure out. I noticed you
10 inviting him to the table today, and normally it is the
11 designee. So I just want a clarification.

12 CHMN. PIERCE: Actually our history was it was
13 the Chairman. And then the Chairman declined a couple
14 years ago and Mr. Eberhart would be here just to -- I
15 don't know if he was the designee of the Chair at the
16 time, but he has not been here in awhile either. And so
17 Mr. Walker was, I asked if anybody was here and
18 Mr. Walker was here, so I invited him up. That's the
19 reason he is here.

20 COM. KENNEDY: Well, I know in cases that we
21 have had, the designee, the Chair's designee, and that
22 has been your designee, has been the one who has come
23 and sat at the table. I was just wondering if the
24 designee, since it is not Mr. Walker, was he invited to
25 come today to participate.

1 CHMN. PIERCE: I don't know. I have not ever
2 invited, other than the Chairman, anyone to participate.
3 And I -- but the Chairman is not here.

4 COM. NEWMAN: Mr. Chairman, point of procedure.

5 CHMN. PIERCE: Well, hold on.

6 COM. NEWMAN: I just wanted to explain.
7 Mr. Eberhart has changed -- he was -- he had an
8 independent business, engineering business, as we all
9 know, former member of the legislature. But I recently
10 ran into him. He is now employed by ADOT, the
11 Department of Transportation. And it could very well be
12 that he is not as flexible with his hours to come in
13 here. I just didn't want to butt in. But it would be
14 very helpful to have David here.

15 CHMN. PIERCE: Commissioner Kennedy.

16 COM. KENNEDY: Thank you, Mr. Chairman.

17 Just to continue, this is not the first time the
18 Line Siting Committee has sent us an incomplete record.
19 Perhaps if they were the ones to be subjected to
20 potential legal challenges, we would not find ourselves
21 in this position yet again today.

22 I heard very loudly and clearly earlier the
23 comments of the gentleman from the union. And I agree.
24 I want to see Arizonans go to work, but maybe not at the
25 expense of not having a full record and not allowing

1 individuals to participate and the Committee actually
2 throwing intervenors off of the Committee.

3 And due process is just, it is really an issue
4 here today. And I think that those who are
5 participating today would probably prefer due process.
6 I don't think that anyone here today would say that due
7 process is not an issue. But I think with this case, if
8 we don't take up -- and I heard you kind of clearly,
9 Mr. Chairman, earlier kind of beating up my amendments.
10 And I like my amendments. But I think the Kennedy
11 amendments need to be taken up and I think they need to
12 be addressed today. And I don't know how much longer
13 you are going to go with the round robin.

14 CHMN. PIERCE: Not long. We will probably
15 finish up with Commissioner Newman, I think, and get
16 into these amendments, because I think that's what we
17 need to. My time is going to be short. But we are
18 going to take a break right after you are done for the
19 court reporter.

20 COM. KENNEDY: Okay. Then I will wait.

21 CHMN. PIERCE: For the amendments?

22 COM. KENNEDY: For the amendments.

23 CHMN. PIERCE: Okay. Let's go ahead and recess
24 for ten minutes. And please be back here and we will
25 get into the last bit of questioning we have. Thank

1 you.

2 (A recess ensued from 2:59 p.m. to 3:13 p.m.)

3 CHMN. PIERCE: Okay. We are back in session.

4 And I am up on the board.

5 Mr. Robertson, we are going to return to the
6 questions about the time frame. I want to respond to
7 your statement that your clients didn't have time to
8 address all the deficiencies they perceived in this
9 process because the process was rushed.

10 I am concerned that your characterization of the
11 Committee and the process in this case is not -- well,
12 let me just ask you, because there is statutes around
13 how quick you have to respond.

14 The CEC was issued on December 19th. And the
15 statute gives your clients 15 days to request review of
16 the CEC. Isn't that correct?

17 MR. ROBERTSON: That's correct.

18 CHMN. PIERCE: And is it your view that the time
19 frame afforded by the statute is insufficient for your
20 clients to identify and brief all the deficiencies they
21 perceived in the record?

22 MR. ROBERTSON: No. Let me be more specific
23 with my comments, Chairman Pierce.

24 The statute provides that initial hearing on an
25 application for a CEC needs to be held within 60 days,

1 if memory serves me correctly, from when public notice
2 of the application has been published. In this case the
3 application was filed on November 2nd, 2011. And the
4 hearings were actually held on, starting on, I believe
5 it was, December 12th, 2011. So it satisfied that
6 60-day requirement.

7 Now, this was, I believe, my 12th Siting
8 Committee case over the last 10 years. I have
9 participated now as counsel for an applicant and counsel
10 for the intervenors in those cases. This is one of the
11 few cases I can recall, if not the first given the
12 complexity of this case, where the entire hearing was
13 conducted within that 60-day period.

14 Typically what has happened, it has been my
15 experience, is you have the applicant put on its case
16 within the 60 days. You have the cross-examination of
17 the applicant's witnesses. You then had a break to
18 another hearing date and other parties had that
19 opportunity to digest the applicant's filing plus the
20 cross-examination of the applicant's witnesses and
21 prepare their cases for the next round or round of
22 hearings.

23 Here that did not occur. We not only had
24 everything occur within that six-week period, we also
25 had all parties prepare testimony which was due to be

1 filed, I believe, around the 5th of December, or just
2 slightly over 30 days after the application was filed.
3 Plus we had the memorandums the Chairman had requested
4 on the connected action argument or the extent to which
5 the environmental impact of the Rosemont mine could be
6 considered. So you had an enormous amount of activity
7 compressed within a very narrow time frame.

8 My clients elected to concentrate on the
9 connected action argument as the major part of their
10 case. And thereafter, when at the prehearing conference
11 on December 8th we were not allowed to pursue that, we
12 prepared the order of proof, et cetera.

13 Now --

14 CHMN. PIERCE: I need to stop you. Because
15 let's assume that there was a longer period. But once
16 the decision is made and there is a request for review,
17 there is statutes and those time frames start. And
18 those are adhered to, I mean, aren't they? Aren't those
19 just generally adhered to? Because there are time
20 frames for each of those.

21 I think 15 days -- well, for instance, the time
22 frame for this, you had, January 3rd you had a request
23 for review. The Commission issued a procedural order on
24 January 26th, gave parties until noon February 15th,
25 2012 to file a brief because we knew we were coming to

1 this hearing, a time frame on this hearing from the time
2 the decision was made by the line Siting Committee.

3 So all those things, as soon as that decision is
4 made by the Line Siting Committee, you knew your time
5 frame for things, didn't you?

6 MR. ROBERTSON: For filing the request for
7 review?

8 CHMN. PIERCE: Yes.

9 MR. ROBERTSON: Yes, and we filed within that
10 time frame.

11 CHMN. PIERCE: And you did. What I am saying is
12 that is normal, those time frames are normal.

13 MR. ROBERTSON: I wasn't suggesting the post
14 Siting Committee decision time frame was rushed. I am
15 suggesting the period between the initial filing of the
16 application and the conclusion of the evidentiary
17 hearing was rushed.

18 CHMN. PIERCE: Well, what I am saying, though,
19 is that time after that, the time we are talking about
20 here, this year, was the time that you had to identify
21 the relative deficiencies in the case.

22 MR. ROBERTSON: Assuming, Chairman Pierce, that
23 Mr. Metli and I and my clients had nothing else to do
24 with our time once the Siting Committee decision was
25 rendered, then yes, perhaps we could have devoted a

1 great deal of time to identifying the other
2 deficiencies. I knew that Mr. Magruder and Ms. Berglan
3 and Ms. Webb, in what was then her new capacity, were
4 going to be addressing those issues. We had stayed in
5 touch with one another after the Siting Committee
6 decision.

7 CHMN. PIERCE: But we are talking about the Line
8 Siting Committee hurrying. But this process we are
9 talking about starting in January was this Commission's
10 process.

11 MR. ROBERTSON: I am not suggesting that was
12 rushed. I think you have conformed with the statute.
13 And if I wasn't clear on that point earlier, I would
14 like to be very clear now. My feeling is the time
15 period between when the application was filed, the
16 hearings were completed in their entirety, I believe,
17 given a case of this complexity, was rushed.

18 CHMN. PIERCE: But you said earlier in your
19 filing why you identified just the environmental issue
20 with the mine. You have talked about the rush and the
21 time frame. But that's the time frame that's -- the
22 Commission had nothing to do with the Line Siting
23 Committee. So I am going to go to the Line Siting
24 Committee.

25 Mr. Walker, did you feel like you rushed

1 everybody through this? Did your Committee do that?
2 You have been involved for the last year or so in other
3 line siting cases. So what is your experience?

4 MR. WALKER: Well, Mr. Chairman, Commissioners,
5 no, I don't feel like we rushed the process.

6 In every case we try to set out, the Chairman
7 tries to set out a clear procedural schedule with the
8 responsibilities and time lines that all the parties
9 agree to undertake. And the Committee tries to
10 recognize that these things, in the words of the
11 Chairman, Chairman Foreman, these things take a lot of
12 time and a lot of money. And so we try to streamline
13 all of the process from the beginning through the
14 hearings themselves to make sure everyone has time to
15 present their evidence, to make the record clear, to get
16 their points across, and to allow the Committee and the
17 other parties to respond and react to what they are
18 putting into the record.

19 If you would like, I would be happy to discuss
20 what occurred with Ms. Webb in that regard as well.

21 CHMN. PIERCE: Sure. Would you, please.

22 MR. WALKER: In the interest of being accurate,
23 I went back through the transcript, so forgive me for
24 reading this.

25 First I would like to say that I believe that

1 the binder of exhibits that she was going to offer as
2 evidence. When pressed, she said she could make copies
3 of two of the pages available for the parties and the
4 Committee. That's at transcript page 668.

5 Every party has the right to know what the other
6 parties are saying and why they are saying it. She
7 chose to have a binder of exhibits and not to have
8 copies available for the other parties or for the
9 Committee. Her offer to copy two of the pages of the
10 binder was completely insufficient to what is required
11 of a party. It is fine, though, for public comment.

12 In closing, I would like to state I don't
13 believe Ms. Webb intentionally sought to create
14 confusion, withhold information, or mislead any other
15 party with regard to Pima County's intentions or her
16 own. But in the end, her actions and inactions and the
17 actions of Pima County in conjunction and in response to
18 her requests were inappropriate. Had the Committee
19 allowed any party to behave in such a way, we would have
20 jeopardized the process itself.

21 In the end, what we decided was the fairest
22 thing to do, because other parties wouldn't have that
23 evidence to react to and respond to and to
24 cross-examine, we put it all in as public comment in the
25 record and encouraged her, and she has taken the

1 opportunity, to continue to file her views for the
2 Commission's consideration. And I encourage the
3 Commission to give them all the weight you feel they
4 deserve because they are legitimate, deeply held
5 beliefs.

6 CHMN. PIERCE: Thank you.

7 For TEP, did you feel like the process was
8 rushed? And you have been in a number of other cases
9 like this. And by rushed I mean I don't -- I mean
10 beyond that we are able to accomplish. Everything you
11 were able to accomplish, but did you feel hurried in
12 that process?

13 MR. DERSTINE: Mr. Chairman, the short answer is
14 all of the siting cases are handled on an accelerated
15 basis. As Mr. Robertson notes, after the notice is
16 issued there is 30 to 60 days to commence the hearing.
17 And I think, as Mr. Robertson well knows having
18 represented applicants and intervenors, it is an
19 accelerated process where you have to prepare your case,
20 get your witnesses ready, submit your witness
21 disclosures. If there is briefing, that has to occur.
22 All that is done within a relatively short span of time
23 compared to other litigation. But I don't think in this
24 case that there was anything out of the ordinary in
25 that.

1 And I guess my only other comment in terms of at
2 least as it goes to what case Mr. Robertson and
3 Mr. Metli decided to put on or not put on, our
4 disclosures were due on December 5th. And their witness
5 disclosure focused solely on the environmental impacts
6 of the mine. That was their case and that was the case
7 that they were limited to at the Siting Committee and
8 that's the issue they raised on their request for
9 review.

10 So I can't speak to, you know, why they chose to
11 do what they did, but clearly their decision was made
12 early on that they would focus solely on the
13 environmental impacts of the mine. And that's what they
14 did.

15 CHMN. PIERCE: Thank you. Thank you.

16 Mr. Black, finish with you and go to
17 Commissioner Newman. Do you feel you were hurried?

18 MR. BLACK: Thank you. No, we do not.

19 Just to give you some background as well, I
20 think that some of the cases that Mr. Robertson had been
21 alluding to, generally when you have a line siting case,
22 you have two days of hearing, then you have a break,
23 then you have another two days of hearing. That's part
24 and parcel because it is very difficult to get 11 people
25 who have other jobs together at the same time.

1 In this particular case, we had four days of
2 hearing scheduled and blocked off in the second week of
3 December. Had that been pushed off, we were running
4 into the beginning of the Christmas season, we were at
5 the new year, it was difficult to get the people
6 together. So the time that was scheduled and was
7 discussed at the prehearing conference, I believe all
8 the parties were on notice as to what that schedule was.

9 Again, I, I don't feel that there was any rush
10 with respect to this particular process.

11 CHMN. PIERCE: Okay. Thank you.

12 Commissioner Newman.

13 COM. NEWMAN: Mr. Chairman, the remaining one
14 person wanted to respond to your question. And I
15 will --

16 For the purposes of continuing this line of
17 questioning, Mr. Magruder, do you have a response?

18 MR. MAGRUDER: Commissioner, Chairman,
19 Commissioner Newman, Commissioner Pierce, I would like
20 to respond to that last round, because it was the most
21 rushed line siting case I have ever been involved in.
22 We got e-mails saying they wanted our evidence submitted
23 on the 5th of December. We got the e-mail the morning
24 of the 5th of December. That's almost impossible to
25 make 25 copies and deliver them in this building on the

1 same day we get the e-mail.

2 We are -- we have no other support. I am just
3 talking about the two of us. I have no other support.
4 There are two holidays. There is Thanksgiving. There
5 is a second holiday. I can't remember the other but the
6 two holidays in the middle of this. We had two
7 conferences in Phoenix. The chances to do discovery
8 were nil. They still -- I still got my data requests,
9 set three, out. I didn't get an answer back. I did not
10 make a single deadline in this case. I was late on all
11 my deliveries. I do not like being late. I could not
12 make the dates. It was too rushed.

13 The two days for a hearing followed. Everybody
14 expected us to come back in January. It was -- the
15 atmosphere in the hearing room was intimidating. The
16 witnesses didn't want to talk. I couldn't get through
17 my opening remarks, saying that, well, Mr. Magruder, I
18 am not going to allow you to talk about that several,
19 about four or five times just in my opening comments.

20 It makes it very hard to prepare a case. And we
21 need some time to put a good case together. This case
22 did not give us that time. And that hurt. I don't want
23 to say just -- these people have -- look at the staffs
24 over here. We don't have staffs like that. And we are
25 the people of this state and we deserve a fair chance to

1 give a case. And I don't think this one was fair.

2 I am sorry. But I want to continue and I do the
3 best I can. I am sorry.

4 COM. NEWMAN: Mr. Magruder, I thank you for your
5 remarks, because they are responsive. And it is
6 appropriate that you give your opinion as well since you
7 are one of the leading intervenors in the state and you
8 actually probably have worked on quite a few scores.
9 Five, five line siting cases?

10 MR. MAGRUDER: Three as intervenors.

11 COM. NEWMAN: Okay. I was going to, in the same
12 line, I took off some of my 15-minute question before
13 because I really do want to deal with this, what we will
14 call, due process issue. Okay?

15 I want to read from a letter that was received
16 on February 27th. And there is a file copy of it in our
17 files. It is signed by Mr. Huckelberry, the, as many
18 people know, the county ad -- the venerable county
19 administrator of Pima County for many, many years. I
20 will read from the second paragraph of the letter and
21 want this included in the record.

22 Pima County continues to be concerned about the
23 impacts of the transmission line and associated
24 facilities on biological resources, including plants and
25 wildlife, and on riparian areas, specifically the

1 potential for erosion and redirection for storm water
2 flows due to excavation, grading and vegetation removal.
3 The Chairman should also be made aware that Arizona
4 State Land Department typically requests comments from
5 Pima County on right-of-way requests such as this but
6 failed to do so in this case.

7 I take him for his word that there is a problem
8 there. That's my comments. But next paragraph:

9 As Chairman of the Arizona Corporation
10 Commission -- Mr. Chairman, this is a letter addressed
11 to you -- you should also be made aware that my staff
12 who participated and attended Line Siting Committee
13 hearings on this case were extremely disappointed at the
14 conduct of the Committee members and the Chairman
15 regarding the level of -- and I underlined this --
16 disrespect shown to intervenors and witnesses who were,
17 who were less experienced with this process than the
18 applicant. I hope in the future the conduct of the
19 Committee greatly improves.

20 Also attached to this letter is a memo from a
21 Nichole Fyffe from Loy Neff of the Cultural Resources
22 and Historic Preservation Office of the county that I am
23 not sure whether it got into the record or not. I see
24 it as a file copy but I have a feeling that, because of
25 what happened at the hearing below, it may have not

1 gotten in.

2 So my first question for Ms. Webb: I take it
3 that you lost your status as intervenor, is that right?
4 Do you think you lost -- did the judge say that you lost
5 your status as intervenor one day because --

6 MS. WEBB: The Chairman did say I lost my status
7 as an intervenor.

8 COM. NEWMAN: Okay. And justifications for
9 doing that were what?

10 MS. WEBB: My understanding that the Chairman
11 articulated, that they were based on violating the
12 procedural order by not having all the papers in front
13 of all of the Committee members. But they had received
14 them via the docket, which was allowed in the procedural
15 order.

16 COM. NEWMAN: Okay. Now, were you rushed in
17 this process?

18 MS. WEBB: Absolutely.

19 COM. NEWMAN: Why don't you describe your
20 predicament.

21 MS. WEBB: My experience is that we had the
22 prefiling conference and two of us articulated that we
23 had not had time to go over the public comments. And we
24 had asked at the last stakeholder meeting if those could
25 be available to us before it went to the Commission.

1 And I don't believe, I would have to go back and check,
2 that I ever received a data response back from TEP in a
3 timely manner. So I -- I am not sure if that was
4 deliberate or if it was just because of time, because I
5 haven't had that severe of a problem.

6 I was receiving data requests in the middle of
7 the hearing. Almost all of the them were late. And so
8 when I received 1500 public comments, I couldn't
9 possibly put them together so I just had to toss that
10 out. I couldn't even make that part of my case.

11 And then we had the prehearing conference and we
12 were told that this, the expectation was going to be
13 this was going to end on Thursday. It wasn't even going
14 to end on Friday, when it had been noticed.

15 And the thing is, if the thing with the county
16 hadn't even happened, I had already articulated in my
17 prefiling conference that I was going to need at least a
18 half day, and then the Committee decision wasn't
19 finished until close to 5:00 p.m. on Thursday, so if I
20 had been allowed to do my half day as I had requested at
21 the prefiling conference, we couldn't have gotten done
22 anyhow. So I don't know if that was --

23 COM. NEWMAN: No, no. I just have to kind of
24 cut you off a little bit because I have limited time
25 myself.

1 So, for the record, because I am a little bit
2 confused, this attachment that comes with
3 Mr. Huckelberry's letter from their internal office of
4 Preservation, was that made available to the Line Siting
5 Committee?

6 MS. WEBB: My understanding is that Pima County
7 filed a limited appearance that had comments by
8 Mr. Neff. As far as that goes, I don't believe so.

9 COM. NEWMAN: Okay. I don't know whether it is
10 or not.

11 But, Mr. Chairman, just point of procedure, if I
12 can, does anybody know whether or not the file copy,
13 February 27th, it is actually filed February 17th,
14 memorandum, Office of Sustainability and Conservation,
15 whether that was ever included in the record or, because
16 of the -- I will call it a mixup, I will call it a
17 foul-up, I could call it abrogation of due process
18 rights, I can call it a number of things -- but because
19 of what happened with Ms. Webb, did this information
20 ever get into the file?

21 MR. DERSTINE: Mr. Chairman, Commissioner
22 Newman, I don't think the memo that you are referring to
23 that was attached to Mr. Huckelberry's letter that was
24 filed in the docket in February was part of the record,
25 because the date on that memo is February 17th, long

1 after the case was concluded.

2 COM. NEWMAN: Okay. Now, Pima County is not
3 here so I am at a little bit of a, in a speculative mode
4 right now. I know that the majority of the Pima County,
5 the Board of Supervisors don't support this line.
6 That's neither here nor there. That is actually a
7 matter of sort of public record. I take sort of
8 judicial notice of that and I think everyone in this
9 room should take judicial notice of it. But they
10 weren't -- there is more work, according to Pima County,
11 to do. And they weren't allowed to put their evidence
12 in, even their limited evidence through Ms. Webb, which
13 I thought they were relying on doing that.

14 I mean, why do we have to rule on this today?
15 Why can't we take some more time to at least eliminate
16 this potential of violation of an intervenor's due
17 process? I take this to heart.

18 There is a situation with the Colorado
19 commission within the last six months in which the
20 commission started giving less credence to intervenors.
21 You know, yeah, the process can go a lot quicker and we
22 can be a lot more efficient if we didn't have
23 intervenors. Intervenors bring a lot to the process.

24 So I am objecting like Mr. Huckelberry to, when
25 I reviewed the record, I thought Ms. Webb got short

1 shrifted. I think the evidence that was not allowed in
2 was important from Pima County. And that's what I mean.
3 As a Commissioner here, I am just trying to really, I
4 think, correct the record.

5 Now, if the Chairman of the Line Siting
6 Committee is listening across the street in the Attorney
7 General's offices upset with me, he shouldn't be,
8 because it is a bit of Monday morning quarterbacking in
9 a sense. But I am trying to create a clear record. You
10 should be concerned about that. Don't you think we
11 should bend over backwards and make sure everybody got
12 due process in the hearing?

13 MR. DERSTINE: Mr. Chairman, Commissioner
14 Newman, let me address a couple things that you raise.

15 I, too, was troubled by Pima County's
16 involvement in this case. Candidly, I think Ms. Webb
17 was done a disservice by Pima County in the manner in
18 which they handled it.

19 Pima County as a government entity had a right
20 to intervene. They had one of their county attorneys on
21 the phone at the prefiling conference. If Pima County
22 was genuinely concerned about cultural, environmental
23 and biological impacts, they could have and should have
24 intervened as Pima County, called their witnesses,
25 Mr. Neff and others, whoever else they wanted to

1 testify, and presented their case. And, instead, what
2 they did was relied on Ms. Webb and Scenic Santa Ritas
3 to sponsor testimony from Ms. Fonseca.

4 If Pima County was generally interested and
5 concerned about a clear record in this case, they should
6 have intervened. And they didn't do that. And I don't
7 know why they didn't do that. But I will also say that
8 we had two elected public officials who were members of
9 the Siting Committee from Pima County, F. Ann Rodriguez,
10 who is the County Recorder; Patricia Noland, who is the
11 Clerk of the Superior Court. They, too, as members of
12 the Siting Committee, were troubled by what appeared to
13 be attempts by Pima County, maybe not Mrs. Webb -- I
14 agree with Member Walker's comments. But when you have
15 Pima County having individual intervenors sponsor county
16 employees' witnesses and at the same time filing a
17 limited appearance which prohibits them from presenting
18 live testimony or cross-examining witnesses, and then
19 that witness shows up and says that she is testifying in
20 an official capacity, which is prohibited by the siting
21 statute once the county has submitted its limited
22 appearance, I had real concerns about what was going on.
23 And I will say again for the record that I think the
24 elected officials from Pima County had real concerns
25 about what in fact was going on.

1 CHMN. PIERCE: I am sorry. That sat on the line
2 Siting Committee?

3 MR. DERSTINE: That's correct.

4 COM. NEWMAN: Yeah, I separate -- I have
5 absolute respect for former Senator Noland and our
6 recorder who is actually one of my appointees to the
7 commission. I think when you are talking about line
8 officers of the county, with all due respect, that's not
9 the representation I made before. I was talking about
10 the Board of Supervisors, who are very much a different
11 entity, as you know, than Ms. Noland or the recorder,
12 who are very fine people. That's not it.

13 I am just sitting up here as a judge reading
14 that record. And there is all this crazy -- not crazy.
15 Crazy is not --

16 MR. DERSTINE: It did appear crazy.

17 COM. NEWMAN: Maybe, yeah, off the record it was
18 looking -- it was nonroutine, put it that way. That's a
19 more subtler way of putting it. Everything going on was
20 not the routine. And I am very troubled by that. And
21 if I had a chance to have a lunch with the Chairman of
22 the Line Siting Committee, I would tell him the same
23 thing. I am troubled by that. I think we have a duty
24 not only to look at the public interest, we will look at
25 those issues later, but we also have a sort of duty to

1 make sure there is a fair record.

2 So I, too, tend to agree based on just my own
3 look at the record that somehow Ms. Webb was put in a
4 position of presenting Pima County testimony. When she
5 was thrown out, I thought there was information that
6 should have been in the record, necessary information.
7 And to be honest with you, I don't understand why Pima
8 County wasn't a necessary party or could have been a
9 necessary party. We don't, we don't run the Committee,
10 our Commission or the Line Siting Committee based on the
11 federal Rules of Civil Procedure; although, maybe we
12 should. But in that case, Pima County for sure would
13 have been a necessary party.

14 So I see unfortunately -- not unfortunately. I
15 want to vote on this, but I want to vote on only after
16 there is a full record, only after what I think were
17 errors on the record based on this sort of crazy thing
18 that happened with Ms. Webb, who is, is a, you know, has
19 served as a proper intervenor in other cases before.
20 She conducted herself incredibly well this morning
21 during her public statement, as well as any law graduate
22 in this state.

23 So is there, I mean I am trying to get a
24 concession from you here, is there any hurt to go back
25 and try to correct that record? This record is going to

1 be appealed no matter what. And do you really want a
2 due process piece hanging out there?

3 MR. DERSTINE: Mr. Chairman, Commissioner
4 Newman, I would say that I think Tucson Electric Power
5 and all the other parties to the case were troubled by
6 what occurred on that day in the hearing. And certainly
7 much of that involved Pima County and what appeared to
8 be actions by Pima County behind the scenes. And I am
9 not saying that Ms. Webb was necessarily at fault for
10 that.

11 The decision to rescind her status as an
12 intervenor I don't think left the record incomplete.
13 Once she was removed as an intervenor, Pima County's
14 limited appearance was reinstated and, in fact, much of
15 the direct testimony from the Pima County employee,
16 Ms. Fonseca, is almost verbatim contained in the Pima
17 County's limited appearance. The limited appearance is
18 of record and is part of the record in this case.
19 Furthermore, as Member Walker indicated, the remainder
20 of Ms. Webb's exhibits were included in the record as
21 public comment. And so I would say that I believe that
22 the record is complete.

23 And I just want to double back on the one issue
24 that I think is what is troubling for Member Kennedy and
25 probably all the members of the Commission in terms of

1 this public access issue and the difficulty that
2 individuals such as Ms. Webb or Mr. Magruder may have in
3 this process. It is an accelerated process. Again, I
4 don't believe this case was any more accelerated than
5 others that I have been a party involved in. I
6 certainly haven't been involved in as many as
7 Mr. Robertson, but I have been involved in several. And
8 they are accelerated and that's what the rules provide.

9 But at the outset of this case, and I know at
10 the outset of every line siting case where there are
11 individuals who express an interest in becoming a party
12 or an intervenor, the Chairman is careful to alert them
13 to the fact that there are real burdens and difficulties
14 in being a party, a real party in a line siting case, a
15 party litigant, a pro per litigant, and that there are
16 alternatives to have your views known, to make a record
17 and have a record, and have that record considered by
18 the Siting Committee. And, in fact, Ms. Webb in another
19 case that was filed by Tucson Electric Power took up
20 that opportunity. In that case she was a witness of the
21 Committee. She presented documentary evidence that was
22 offered into the record by the Committee.

23 So there are a variety of ways in which
24 individuals don't have to be made, become a party and
25 carry the burdens of being a party. They can still

1 affect the process, make a record at the Siting
2 Committee level, and have that record known to the
3 members of this Commission when the case comes up. And
4 for whatever reason, Ms. Webb declined to do that in
5 this case.

6 COM. NEWMAN: One last question.

7 CHMN. PIERCE: Sure.

8 COM. NEWMAN: Was there ever, did anybody ever
9 lose their patience that you noticed when, during the,
10 not rushed hearings, but the two days of hearings?

11 It was raining. You didn't get a chance to go
12 out and take a look, the thing that Ms. Webb said. I
13 can certainly see that Mr. Huckelberry and the people
14 who were there acting as his witnesses saw something
15 that they thought was disrespectful. They used the word
16 disrespectful.

17 I want an explanation as to anything that you
18 saw as to how that disrespect went down. You have
19 called it crazy. But I haven't heard any apologies to
20 Ms. Webb.

21 And I also -- you haven't taken up my suggestion
22 that we need to complete a record. You think a record
23 needs to be complete. That's the statement. That's the
24 real answer to my question.

25 But I want to know whether people literally had

1 heard enough, wanted to go home, they had made up their
2 mind. Sometimes this happens in a normal course of
3 duties, even as elected officials. Is there any element
4 of this in this case?

5 MR. DERSTINE: Mr. Chairman, Commissioner
6 Newman, my comment was that what was happening with Pima
7 County witness Julie Fonseca and then her -- after
8 having been represented to be testifying on her own
9 behalf and then appearing as an official witness of Pima
10 County and then avowing that she had the authority to
11 withdraw the county's limited appearance which was
12 signed by a county attorney, I agree with your
13 characterization that that appeared crazy and it
14 certainly was out of the ordinary. And it raised
15 concerns not only from the applicant's perspective but
16 members of the Siting Committee, including elected
17 officials from Pima County who immediately got on their
18 phones and tried to contact the County Attorney's Office
19 to see whether procedurally Ms. Fonseca had authority to
20 do that.

21 COM. NEWMAN: So there was some judgments being
22 made, emotional judgments based on the craziness with
23 very experienced lawyers who know where to make the
24 call, know how to expedite the process, know how to get
25 the Chairman to move things along because there was a,

1 quote/unquote, something different happening here?

2 MR. DERSTINE: Mr. Chairman, Commissioner
3 Newman, I believe Rosemont raised the procedural
4 irregularity that Pima County could not present
5 testimony as a witness in the case because it had filed
6 a limited appearance. And that issue was taken up by
7 the Committee. But as to your other characterization, I
8 would say no, that that was not occurring.

9 And as to over the four days of hearings, I
10 would disagree with the characterization that members of
11 the Siting Committee were disrespectful or did not treat
12 public commenters or intervenors with due respect and
13 patience. I think there was a great deal of patience
14 exercised on behalf of the Siting Committee and all the
15 parties.

16 COM. NEWMAN: You have done very well.

17 Mr. Chairman, the same question of Mr. Robertson
18 will be my last question.

19 Mr. Robertson, your opinion on the above matter?

20 CHMN. PIERCE: Mr. Robertson, do you need the
21 question repeated? It had to do with the respect shown
22 and the patience shown by the Line Siting Committee.

23 MR. ROBERTSON: Thank you, Mr. Chairman. I had
24 the question in mind.

25 Actually, when Mr. Metli and I saw the public

1 comment being filed after the hearing claiming about the
2 way the hearing were conducted, we talked about this
3 very question. And we each realized, because we are
4 attorneys and we are accustomed to appearing before
5 judges and before commissions and committees, we are
6 accustomed to being held to a very demanding standard as
7 to how we handle situations and how we respond.

8 We didn't feel and I don't feel I can put myself
9 in the minds of the people who came to public comment
10 that day as to how they took the way the public comment
11 session was handled. Chairman Foreman made it very
12 clear what he felt was appropriate for public comment
13 that day and what he wasn't. And how the members of the
14 public reacted is expressed in their letters. But I
15 wouldn't presume to put myself in their position because
16 I come from an entirely different background.

17 With respect to the Ms. Webb situation, I would
18 like to make two comments. And first of all, to clarify
19 one thing for this record here, Ms. Fonseca was also a
20 witness for Scenic Santa Ritas. But it had been
21 determined at the prehearing conference on December 8th
22 that, as our witness, she was appearing as our expert
23 and she would be allowed to testify as a part of our
24 case if our evidence was to be admitted and not
25 testifying on behalf of Pima County. That became an

1 issue with respect to Ms. Webb. And it was a different
2 situation. And I just want to clarify that.

3 With respect to Ms. Webb herself, and I agree
4 with what Mr. Derstine said a moment ago, I think, I
5 know I was troubled by what occurred the day she was
6 removed as a party. I had never seen that type of
7 occurrence before and I had never seen that kind of
8 motion come up during a hearing. And I was stunned, to
9 be quite honest. And in retrospect, I regretted I
10 didn't speak up and make the suggestion that perhaps
11 they could take Mr. Magruder first, let her collect her
12 thoughts and her materials, and then let her proceed.
13 But that's admittedly 20/20 hindsight. It was a very
14 unfortunate occurrence.

15 CHMN. PIERCE: Okay. Well, thank you, everyone.
16 That has been enlightening. I think we have plenty of
17 information and plenty of amendments.

18 Why don't you move the item, Commissioner Stump,
19 Sample Order No. 1, and then we will go into the
20 amendments.

21 COM. STUMP: Mr. Chairman, I move Sample Order 1
22 for Item 5.

23 CHMN. PIERCE: Sample Order 1 has been moved.
24 We have -- we are going to do Kennedy No. 1.

25 COM. KENNEDY: Well, mine is not -- you have to

1 move the order.

2 COM. STUMP: I thought I did.

3 COM. KENNEDY: You moved the sample order.

4 COM. STUMP: I also moved Item No. 5.

5 CHMN. PIERCE: What you moved is Sample Order

6 No --

7 (Brief pause.)

8 CHMN. PIERCE: Okay. Let's move Sample Order
9 No. 2. And if it doesn't get adopted, then we will move
10 to No. 1. We will do Staff after.

11 COM. STUMP: Chairman, I move Sample Order
12 No. 2.

13 CHMN. PIERCE: Sample Order No. 2 has been
14 moved. We will move right to Kennedy Proposed Amendment
15 No. 1.

16 Commissioner Kennedy.

17 COM. KENNEDY: Well, Mr. Chairman, I was hoping
18 to do No. 3 first and then get to No. 2. But if you do
19 No. 2, then I can't get to No. 3.

20 CHMN. PIERCE: We are going back to the original
21 amendment, Sample Order No. 1 -- Sample Order No. 3
22 to -- Amendment No. 1 to Sample Order No. 3.

23 COM. STUMP: Mr. Chairman, I move Sample Order
24 3.

25 CHMN. PIERCE: 3 has been moved. And now we

1 will go to Kennedy Proposed Amendment No. 1.

2 COM. KENNEDY: Thank you, Mr. Chairman.

3 Mr. Chairman, my Amendment No. 1 to Sample Order
4 No. 3 denies the CEC. It replaces Findings of Facts 3,
5 4, and 5; 3, 4, and 5. It states the evidence in the
6 record is not sufficient to weigh the public interest.
7 The amendment also adds additional finding of facts such
8 as the Commission believes additional evidence about the
9 mine and its environmental impact should be admitted in
10 order to give proper weight and balancing the public
11 interest.

12 It also discusses the revocation of Elizabeth
13 Webb's intervenor status.

14 My amendment also states the preference is to
15 remand this to the Line Siting Committee to address the
16 evidentiary issues. The statutes do not allow for such
17 remand. So based on the existing record, the Commission
18 believes it is in the public interest to deny without
19 prejudice. And the denial is without prejudice;
20 applicant is free to refile, and I encourage them to
21 ensure a full and complete record.

22 CHMN. PIERCE: Okay.

23 COM. KENNEDY: I move the Kennedy amendment.

24 CHMN. PIERCE: You move the amendment. Okay. I
25 think we all know what this one does.

1 Madam Secretary, we are going to do roll call
2 votes on the Kennedy amendments. I think Paul's might
3 be easier. I don't know.

4 COM. NEWMAN: Actually, Mr. Chairman, I would
5 like to debate this instead of just --

6 CHMN. PIERCE: Why don't you go ahead. We
7 are --

8 COM. NEWMAN: I know Ms. Kennedy described it.
9 Before we go right into the vote, it has more than a
10 couple of parts that I think are important to consider.

11 We have heard some, well, conflicting testimony
12 as to whether it is rushed or not -- we have a very
13 experienced attorney -- whether this proceeding was
14 rushed or not. The proceeding in my opinion was, went
15 quicker than any line siting case that I have been
16 involved in the three years on the Commission. I know
17 that. And, but I wasn't there for the days of the
18 hearing.

19 And, but I am concerned about Ms. Webb's
20 situation and potential due process violation that
21 occurred. If it is not a due process violation, it is
22 a, it is just not the way that people should be treating
23 each other in line siting at the Corporation Commission.
24 We tend, I know that we tend on the Commission to just
25 go overboard to make a record even a bigger record that

1 needs to be made to make sure that we have a record.

2 This mine is not going to happen for years,
3 years. And so I really do think that the Kennedy
4 amendment is a good amendment because it helps to clean
5 up this record that was variously described as crazy,
6 out of the, out of the ordinary. And though there may
7 have been intervenors kicked out in other cases in the
8 long history of line siting cases, none has -- I have
9 not been aware of an intervenor being kicked out. So I
10 am just trying to speak to that part of it.

11 The other part of it that's very, very
12 important, and the judge might disagree with me, the
13 judge of the line siting commission, but based on the
14 judge's order that nothing was relevant about what was
15 going on with all the different levels of the line
16 development, that was a critical order on his part. It
17 left out -- from that point on, it changed the entire
18 hearing. The hearing would have lasted for weeks if,
19 or, you know, much longer, if testimony were allowed
20 about all these other hoops that the mine has to jump
21 through that we have talked at some length here.

22 I didn't read into the record before, but I had
23 it with me a second ago, but I will try to remember it,
24 but it is a very, very important point that a recent
25 document came out from the air folks to the forest folks

1 that the forest environmental study was not, is just not
2 enough, that that was -- if I had time I would read that
3 all into the record right now. I don't have time. I
4 will just make reference to that. That's in our file.
5 So that's another thing that I think is important,
6 important to bring up.

7 So I really, again, I really feel strongly about
8 trying to give folks due process. I feel strongly about
9 trying to understand in the public interest the Gestalt,
10 if you will, of the environmental factors relating to
11 the mine before I make a \$13 million decision on a
12 transmission line.

13 There are hundreds of millions of dollars that
14 will need to be spent through this EIS process and the
15 potential litigation. And there is a possibility it may
16 never happen. So I ask the judge to reconsider. I ask
17 everyone to consider this issue. It is one of the most
18 important issues, the most important environmental
19 business issue in southern Arizona that exists. A lot
20 of people are looking for us to get this right. Please
21 collect the necessary evidence so the Commissioners like
22 myself don't have to say I am not sure because I don't
23 know what all the rest of the environmental reports will
24 say. Just wait. Do it that way. Just wait.

25 The only rush here is a rush to have the company

1 have the perception that we are going to break ground in
2 2013 or the perception, whether it is real or not,
3 newspaper articles exist that say that this is the
4 biggest mother load that exists in the State of Arizona.
5 I don't know whether any of that is true. So how can I
6 make a societal cost/benefit cost on this unless I have
7 all the rest of that information? I can't.

8 And I would like everybody on the line siting
9 authority -- but in retrospect, when I read that file, I
10 read, I read a file of people who were doing their due
11 diligence. They knew that they had to push this forward
12 because it meant a lot to Tucson's economy. But the
13 environmental side was short shrifted at the line siting
14 process. And I am asking to -- I am supporting this
15 amendment because I think we need to remand, to go back
16 to that old record, especially given the fact that there
17 have been several reports since the Line Siting
18 Committee that show that the EIS process is not on
19 track, that this 2013 figure, even if it was stated
20 today, is, my opinion, impossible. And we are not
21 really, we are not doing justice to this unless we have
22 another hearing.

23 CHMN. PIERCE: Thank you.

24 Madam Secretary, please all the roll.

25 SECRETARY BERNAL: Commissioner Burns.

1 COM. BURNS: No.

2 SECRETARY BERNAL: Commissioner Newman.

3 COM. NEWMAN: Madam Chairman -- Mr. Chairman, I
4 was going to say, Commissioner Kennedy, I like your
5 amendment and I vote aye for the reasons that I said
6 before.

7 SECRETARY BERNAL: Commissioner Kennedy.

8 COM. KENNEDY: Aye.

9 SECRETARY BERNAL: Commissioner Stump.

10 COM. STUMP: No.

11 SECRETARY BERNAL: Chairman Pierce.

12 CHMN. PIERCE: Yes, I would just like to explain
13 my vote for a moment.

14 We just did a case just before this 163, which
15 was quicker than this case, if you might remember. It
16 was, I think, a 60-day case, as you might recall. And
17 it was for transmission for a solar project.

18 And intervenors do get removed for cause. I
19 think in any courtroom there is, I think there is
20 deference to that and there is reasons for that. And I
21 think that when it comes to due process, due process is
22 there for a reason, to make sure that you get a full
23 record. I think we did. But it is not designed to be a
24 delay tactic. And I am worried that that's a strategy
25 here that I really don't want to be particularly

1 involved with.

2 So with that I vote -- and I don't mean by the
3 Commission. I am talking about those who would -- who,
4 and maybe aren't even in room, I am talking about some
5 of the folks from Pima County as well that apparently
6 have been involved in some way or another who wrote me a
7 letter. And I greatly suspect and am suspect of some of
8 the claims made. Because I know when you are, when you
9 are advocating a position, sometimes when things don't
10 go right you perceive things a different way.

11 And so I certainly don't want to be at odds with
12 our friend at Pima County, but I certainly understand
13 why I got the letter, because things didn't go their
14 way. And that's to be, that's to be expected sometimes.

15 With that, I vote no.

16 By your votes of two ayes, three noes, you fail
17 to approve Kennedy Proposed Amendment No. 1 to Sample
18 Order No. 3.

19 We are now -- would you move the Sample Order
20 No. 2.

21 COM. STUMP: Mr. Chairman, I move Sample Order
22 No. 2.

23 CHMN. PIERCE: Well, Sample Order No. 2 is a
24 different one entirely. It is the 252, right?

25 Commissioner Kennedy, go ahead and explain your

1 No. 2.

2 COM. KENNEDY: Thank you, Mr. Chairman.

3 The Kennedy Proposed Amendment No. 1 to Sample
4 Order No. 2 conditionally approves the CEC. Evidence of
5 the mine's environmental impacts will be helpful for
6 full consideration and adds additional conditions.

7 It requires the ACC to do a 40-252 to consider
8 requests for intervention and it asks the Hearing
9 Division to set up a procedural schedule for hearing.
10 The Hearing Division will conduct and then issue a
11 ruling.

12 And also, on page 3 of the amendment, it
13 discusses the revocation of Elizabeth Webb's intervenor
14 status.

15 And I move the Kennedy Proposed Amendment 1 to
16 Sample Order No. 2.

17 COM. BURNS: Mr. Chairman, I have a point of
18 procedure.

19 CHMN. PIERCE: Right. Go ahead, Commissioner
20 Burns.

21 COM. BURNS: I just want to make sure we are
22 right on procedure.

23 Sample Order No. 3 was moved. Then the
24 amendment was moved and failed. Do we not need to vote
25 on the sample order since it was moved?

1 CHMN. PIERCE: We will just withdraw it. Can we
2 do that?

3 MS. ALWARD: I think so. I think we all know
4 what is going on. I am not, I am not an expert on the
5 procedural nuances. It seems to me we are no longer in
6 3, we are now on 2.

7 CHMN. PIERCE: Okay. We withdraw No. 3 and then
8 we continue on with 2.

9 COM. STUMP: Yeah. Mr. Chairman, I move we
10 withdraw Sample Order 3.

11 CHMN. PIERCE: Okay. Withdraw the motion. We
12 are good with parliament procedure here and now we are
13 back onto Commissioner Kennedy Sample Order 1 -- her
14 Amendment No. 1 to Sample Order 2. Thank you. And that
15 is to approve it now and do a 252 immediately.

16 Now, mind you, we can do a 252 at any point. We
17 don't have to do it right now. So, but that's, but we
18 have done this before as a Commission. I believe we
19 passed and immediately have done a 252 on another case.
20 I don't recall offhand, but, so it is not new ground.

21 MS. ALWARD: It was the Hualapai case in Line
22 Siting Case 151. So this proposal would grant the CEC
23 and stay the order in order to have the 252 proceeding.

24 CHMN. PIERCE: Right, right. And like I said,
25 and you can do it, you know, we can do the 252 anytime

1 there will be an appeal.

2 Commissioner Newman.

3 COM. NEWMAN: Well, in many ways this could be a
4 cleaner resolution. Maybe somebody is agreeing with me,
5 as I look up.

6 You guys, you like -- you only want one
7 decision, which is an acceptance of the whole kit and
8 caboodle. But this is the compromise amendment. This
9 would allow approval of the CEC but the Commission would
10 be able to take up at a future date on the 252 the broad
11 public interest.

12 Now, it was noted before that Arizona Revised
13 Statute 40-360.07.B's mandate is to balance in the broad
14 public interest the need for an adequate, economical and
15 reliable of supply of electrical power with the desire
16 to minimize the effect thereof of the environment and
17 ecology of this state.

18 Regardless of the judge's ruling in the line
19 siting case, the power of the Commission is to look at
20 minimizing the effect on the environment and the
21 ecology. This goes to the construct, the intellectual
22 construct that Mr. Robertson brought up before. I think
23 that our duty to review -- we had another motion saying
24 send it back down to you guys, you do it. There is a
25 lot to say, since we are directly elected officials and

1 those other folks are appointees, that we need to look
2 at the broad public interest under 360.07.B. And that
3 would be why this amendment is actually a way to rid
4 ourselves of the due process concerns.

5 Somebody should be concerned about that. You
6 think it is a small thing. I don't. It will also give
7 us a way that we would have much more information on the
8 environmental context of the mine, much more information
9 on the viability and the cost, societal cost/benefit of
10 the mine. Because, as I said before, I can't do the
11 societal cost/benefit test on the mine because not all
12 these reports are done. We are putting the cart before
13 the horse.

14 This is actually the most prudent direction, and
15 I commend Commissioner Kennedy for bringing it to us.
16 And it really is, if you think about it, after this
17 entire day's discussion. And I will be voting aye.

18 I am done.

19 CHMN. PIERCE: Thank you.

20 Madam Secretary, please call the roll.

21 SECRETARY BERNAL: Commissioner Burns.

22 COM. BURNS: No.

23 SECRETARY BERNAL: Commissioner Newman.

24 COM. NEWMAN: You know, I, well, I guess it is
25 just going to be straight up voting down, but I was, I

1 was hoping that somebody would be concerned about having
2 a full hearing.

3 To be honest with you, unless this amendment
4 passes, I think it is very difficult to vote yes or no
5 on the entire project. You would almost have to
6 abstain, because without having a record of the
7 environmental effects of this mine, we can't really
8 gauge the broad public interest.

9 And so I vote yes. And I am hoping, since we
10 have so much time to deliberate on this, years to
11 deliberate on this, that we can have a fuller record on
12 environmental compliance for this mine and stay on top
13 of this, as opposed to just reacting to corporate,
14 corporations trying to say, well, we have to build this
15 line because we have to serve even though the service
16 might not even be for ten years. We don't have to make
17 that quick a decision. I support the Kennedy amendment.

18 SECRETARY BERNAL: Commissioner Kennedy.

19 COM. KENNEDY: Aye.

20 SECRETARY BERNAL: Commissioner Stump.

21 COM. STUMP: Mr. Chairman, of course I am
22 concerned whether all interested parties were granted
23 access. And I speak particularly of Mr. Robertson. So
24 I do think it is the more prudent course to the action
25 to open the case to allow additional evidence to have a

1 fuller record. So I vote aye.

2 SECRETARY BERNAL: Chairman Pierce.

3 CHMN. PIERCE: Yes, and as I said before, we are
4 going to be able to do a 252 if we deem that necessary.

5 Determining whether due process is given is
6 often subject to differing views depending on one's
7 perspective. And I have stated that before. And that
8 is happening.

9 With that, I vote no.

10 By your vote of three ayes -- two ayes, three
11 noes, you have rejected --

12 COM. NEWMAN: No, no. No, that's not the way
13 the vote went.

14 CHMN. PIERCE: By your vote, two ayes, three
15 noes, is that right?

16 COM. BURNS: No, three ayes.

17 COM. NEWMAN: No. It is passed. Bob voted with
18 the Democrats.

19 CHMN. PIERCE: Oh, I'm sorry.

20 COM. STUMP: You got off the --

21 CHMN. PIERCE: I'm sorry. By your vote of three
22 ayes, two noes, you have approved Kennedy No. 1 to the
23 Order No. 2.

24 And what I am going to do, we got three
25 Commissioner Newman amendments, what I would like to do

1 is take your No. 2 first.

2 COM. NEWMAN: I don't care, Gary, whichever one.

3 CHMN. PIERCE: Which is from ten years to five
4 years?

5 COM. NEWMAN: Sure.

6 CHMN. PIERCE: I would like to -- and that's --
7 do you want to just move your amendment? And let's talk
8 into the mike, if you don't mind.

9 COM. NEWMAN: Mr. Chairman, I move Newman
10 Proposed Amendment No. 2 dated 3/15/2012. It deletes
11 ten and inserts five.

12 Mr. Robertson, if Mr. Robertson would like to
13 speak to it, he can. It really does come straight from
14 his arguments. And I defer to Mr. Robertson.

15 MR. ROBERTSON: Mr. Chairman, Commissioner
16 Newman, Scenic Santa Ritas supports Newman Proposed
17 Amendment No. 2 for the reasons indicated previously
18 during our oral remarks.

19 CHMN. PIERCE: I have a question there for
20 everyone. Since we are going to immediately open a 252,
21 wouldn't these be items to go ahead and plug into
22 that -- Commissioner Newman, we are stayed -- and maybe
23 just take those up and then? Because we are going to
24 see it again. We are going to see it again. We can
25 address it.

1 COM. NEWMAN: One reason I want to do this, at
2 least take on the O'odham amendment, which just because
3 it is all clear today, it can go up or down, I see your
4 point, Mr. Chairman, but I do want to, I want to reach
5 out to the tribe. One of the amendments is that which I
6 think is a no-brainer. And this could be quickly.

7 CHMN. PIERCE: And I am not sure it will pass.
8 It would be better to let them work it out and then you
9 have another bite at the apple down the road if you
10 think about that. Let them work it out in the 252.

11 COM. NEWMAN: Mr. Chairman, you have been very
12 persuasive. Mr. Stump has been very helpful. And I
13 will withdraw these motions given that I can bring them
14 up again in the 252.

15 CHMN. PIERCE: Sure. All right.

16 COM. NEWMAN: I would have liked to have helped
17 the Tohono O'odham Nation with the issue, but to be
18 continued.

19 CHMN. PIERCE: Certainly.

20 MS. ALWARD: And Staff will bring up its motion
21 during the 252 as well as the cathotic protection. So
22 we can deal with it all there.

23 CHMN. PIERCE: Okay. Would you move it as, item
24 No. 2 as -- actually you need to move it with Kennedy's
25 amendment.

1 COM. STUMP: Yeah. Mr. Chairman, I move Sample
2 Order 2 as amended.

3 Madam Secretary, please call the -- is there any
4 discussion, further discussion? I think we are -- okay.
5 Madam Secretary, please call the roll.

6 SECRETARY BERNAL: Commissioner Burns.

7 COM. BURNS: Aye.

8 SECRETARY BERNAL: Commissioner Newman.

9 COM. NEWMAN: I want to thank Commissioner
10 Kennedy for those amendments she brought.

11 I want to thank everyone for their participation
12 in the hearing. It was a very good hearing and it was a
13 very good hearing because I was worried about it before
14 it started. The sensitive due process issues I was
15 concerned about, lost sleep about. And I am gratified
16 that we will be able to make this record a little
17 better. And I am looking forward to understanding a
18 little bit more about the federal levels of review.

19 And for the record, I just take a different view
20 of it than the Chairman of the line siting commission.
21 I actually think when you are siting a mine, very big
22 operation, whether it is one of the biggest in the state
23 or the biggest in North America or God knows what the
24 mother load is, this is a huge economic decision for
25 Arizona.

1 The other thing that we haven't talked about
2 very much but I will talk about right now is that the
3 Santa Rita Mountains are an incredibly beautiful
4 mountain range full of animals and incredible biological
5 diversity in terms of how those animals and birds move
6 through there and we, we haven't talked about at all
7 today. We have only talked about other issues.

8 And so my definition of a greater public
9 interest involves also the way -- what is the value of
10 that incredible Santa Rita Experimental Range when
11 tourists drive through there and come, and basically
12 come to the verge of tears it is so beautiful, what is
13 going to happen when there is a big mine there. I don't
14 know. I want to hear more from my constituents about
15 that. I think that's part of this issue. It is just
16 not a \$13 million transmission line, whether it be above
17 ground or below ground.

18 So anyway, you know, I am glad that the hearing
19 came out the way it was. People were really honest and
20 good. And I am actually gratified that at least we will
21 continue to talk about this.

22 CHMN. PIERCE: Did you vote?

23 COM. NEWMAN: I vote aye. I'm sorry.

24 SECRETARY BERNAL: Commissioner Kennedy.

25 COM. KENNEDY: Aye.

1 SECRETARY BERNAL: Commissioner Stump.

2 COM. STUMP: Mr. Chairman, my concern was one of
3 process and correcting procedural defects. And with
4 that I vote aye.

5 SECRETARY BERNAL: Chairman Pierce.

6 CHMN. PIERCE: Well, I think it is pretty clear
7 that I --

8 COM. NEWMAN: Miscounted.

9 CHMN. PIERCE: -- that I like the -- well, you
10 know what? We are in a public hearing and we don't
11 discuss this. And I want to make sure the Commissioners
12 understand this. We are still, by opening the 40-252
13 today, we are at bay as far as any discussions we would
14 have with the public, with the parties, and so, and
15 obviously the Line Siting Committee.

16 But I appreciate the work of the Line Siting
17 Committee. And we have pushed them to be more
18 expeditious and people know that. We want --
19 particularly when we are doing them for renewable
20 energy, we are pushing the Line Siting Committee to get
21 through their work and get that order to us. And they
22 have done a great job at that. And I have great respect
23 for the pressure we have put on them to do that.

24 Now, I understand that sometimes you have
25 intervenors that maybe don't know the process. But the

1 intervenors here do know the process and things can
2 speed up. And I would suggest in the future as we are
3 moving this way that in fact an experienced intervenor
4 realize that some things are going to move faster than
5 others potentially and, when the Chairman sets out the
6 procedure, that, gosh, you are just going to have to
7 gear up and get with it. But I appreciate how difficult
8 that is, too. I mean I do.

9 I am glad I am not you, Ms. Webb or
10 Mr. Magruder. I appreciate the work you do. But I am
11 glad I am not having to try and keep up the way you have
12 had to.

13 But we are going to be in a 252. Hopefully we
14 can expedite that without harming due process.

15 And I did have one, a slip dropped in this
16 afternoon, Carolyn Campbell, who is opposed, who didn't
17 check whether she wanted to speak or not. But I am
18 reading that into the record. But I will give it to the
19 court reporter. Thank you for coming, Carolyn.

20 With that, I vote aye.

21 By a vote of five ayes, zero nays, you have
22 approved Agenda Item 6 (sic) as amended.

23 And we are in recess until tomorrow where we
24 will take up another TEP matter.

25 (The proceeding concluded at 4:22 p.m.)

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 24th day of March, 2012.

COLETTE E. ROSS
Certified Reporter
Certificate No. 50658