

1 BEFORE THE ARIZONA CORPORATION COMMISSION
2 IN THE MATTER OF THE APPLICATION)CASE NO. 164
3 OF TUCSON ELECTRIC POWER COMPANY)
4 FOR A CERTIFICATE OF)DOCKET NO.
5 ENVIRONMENTAL COMPATIBILITY)L-00000C-11-0400-00164
6 AUTHORIZING THE CONSTRUCTION OF A)
7 138kV TRANSMISSION LINE AND)
8 ASSOCIATED FACILITIES FROM THE)
9 PROPOSED TORO SWITCHYARD,)
10 SECTION 29, TOWNSHIP 17 SOUTH,)SECTION 40-252
11 RANGE 14 EAST TO THE ROSEMONT)PROCEEDINGS
12 SUBSTATION, SECTION 30,)
13 TOWNSHIP 18 SOUTH, RANGE 16 EAST,)
14 EACH LOCATED WITHIN PIMA COUNTY,)
15 ARIZONA.)PROCEDURAL CONFERENCE
16

10 At: Tucson, Arizona

11 Date: April 19, 2012

12 Filed:

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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23 By: COLETTE E. ROSS
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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 222 of
4 said Commission, 400 West Congress Street, Tucson,
5 Arizona, commencing at 10:00 a.m. on the 19th of April,
6 2012.

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BEFORE: JANE L. RODDA, Administrative Law Judge

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10 APPEARANCES:

11 For the Applicant:

12 ROSHKA DeWULF & PATTEN, PLC
13 By Mr. Jason D. Gellman
14 One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

15

For the Tohono O'odham Nation:

16

OFFICE OF THE TOHONO O'ODHAM NATION ATTORNEY GENERAL
17 By Ms. Laura Berglan, Assistant Attorney General
18 P.O. Box 830
Sells, Arizona 85634

19

For Elizabeth Webb:

20

In Propria Persona
21 P.O. Box 952
22 Vail, Arizona 85641

23 For Marshall Magruder:

24 In Propria Persona
25 P.O. Box 1267
Tubac, Arizona 85646

1 APPEARANCES :

2

For Rosemont Copper Company:

3

FENNEMORE CRAIG

4

By Mr. Patrick J. Black

3003 North Central Avenue, Suite 2600

5

Phoenix, Arizona 85012

6

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

8

LAWRENCE V. ROBERTSON, JR., ESQ.

9

Of Counsel to Munger Chadwick

P.O. Box 1448

10

2247 E. Frontage Road

Tubac, Arizona 85646

11

and

12

MUNGER CHADWICK

13

By Mr. Robert J. Metli

2398 East Camelback Road, Suite 240

14

Phoenix, Arizona 85016

15

For the Arizona Corporation Commission Staff:

16

Mr. Charles Hains and Ms. Bridget Humphrey

17

Staff Attorneys, Legal Division

1200 West Washington Street

18

Phoenix, Arizona 85007

19

COLETTE E. ROSS

20

Certified Reporter

Certificate No. 506584

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1 ALJ RODDA: This is the time set for the
2 procedural conference in docket No.
3 L-00000C-11-0400-00164, which is the reopened, pursuant
4 to A.R.S. 40-252, TEP CEC for the 138kV transmission
5 line for the Rosemont mine.

6 Good morning, everyone. My name is Jane Rodda.
7 And I am the administrative law judge who has been
8 assigned to this matter.

9 And the first thing I am going to do for the
10 record is to take appearances.

11 And I will just note, because I only have four
12 connections for microphones, you have to pass them back
13 and forth. I do have the one portable down there. And
14 that works well if you remember to turn it on. And you
15 also have to remember to turn the green light on your
16 microphone. All right?

17 So I will start with Tucson Electric.

18 MR. GELLMAN: Good morning, Your Honor, Jason
19 Gellman on behalf of the applicant, Tucson Electric
20 Power Company.

21 ALJ RODDA: Okay. And on behalf of Rosemont
22 mine.

23 MR. BLACK: Good morning, Your Honor. Patrick
24 Black on behalf of Rosemont Copper Company.

25 ALJ RODDA: Okay. On behalf of the Scenic Santa

1 Ritas.

2 MR. ROBERTSON: Good morning, Your Honor,
3 Lawrence V. Robertson, Jr. and Robert J. Metli of the
4 law firm of Munger Chadwick, PLC on behalf of Save the
5 Scenic Santa Ritas, Sky Island Alliance, Center for
6 Biological Diverstiy, and the Tucson Audubon Society,
7 who I will refer to collectively as Scenic Santa Ritas.

8 ALJ RODDA: Thank you for abbreviating.

9 And we will go next to Mr. Magruder.

10 MR. MAGRUDER: Good morning, Judge. I am
11 Marshall Magruder representing himself.

12 ALJ RODDA: Great. And this must be Ms. Webb.

13 MS. WEBB: Yes. Good morning, Your Honor.
14 Elizabeth Webb on behalf of myself.

15 ALJ RODDA: Okay. Great. Welcome.

16 And we have the Tohono O'odham Nation.

17 MS. BERGLAN: Yes. Good morning. Laura Berglan
18 from the Office of the Attorney General of the Tohono
19 O'odham Nation.

20 ALJ RODDA: And on behalf of Commission Staff.

21 MR. HAINS: Thank you. Good morning, Your
22 Honor. Charles Hains and Bridget Humphrey on behalf of
23 Staff of the Utilities Division.

24 ALJ RODDA: Okay, great. Are there any other
25 parties who wish to make an appearance this morning?

1 MS. PERRERA: Yes. I am Paula Perrera.

2 ALJ RODDA: I am sorry. Just use the mike, sit
3 down and use the microphone.

4 MS. PERRERA: Just a second. Paula Perrera,
5 Pima County Attorney's Office, on behalf of Pima County.

6 ALJ RODDA: What is your last name again?

7 MS. PERRERA: Perrera, P-E-R-R-E-R-A.

8 ALJ RODDA: Okay. And is Pima County an
9 intervenor in this case or are you going to ask to be an
10 intervenor?

11 MS. PERRERA: We haven't decided yet. It
12 depends on partly what happens here today and what
13 orders are issued.

14 ALJ RODDA: Okay. Is there anyone else who
15 wishes to make an appearance who is an intervenor or
16 might request intervention at this point?

17 (No response.)

18 ALJ RODDA: All right. Let the record reflect
19 that there is no one else indicating they wish to make
20 an appearance.

21 All right. So in Decision No. 73074, the
22 Commission directed the Hearing Division to schedule a
23 procedural conference, that's why we are here today, and
24 to set a schedule for the 40-252 proceeding and to
25 establish procedures for public notice, to entertain

1 requests for intervention from interested parties and to
2 conduct a hearing and prepare a recommended opinion and
3 order.

4 And in that order the Commission requested
5 additional evidence concerning the Rosemont mine and its
6 environmental impacts and the environmental impacts of
7 the proposed transmission line.

8 Now, just so you all know, I have read the open
9 meeting transcript, some of the transcripts from the
10 line siting, but not very many. And I haven't started
11 on your briefs or your, some of your other filings. But
12 I haven't -- you are all vastly more familiar with the
13 record below than I am and vastly more familiar with the
14 procedures of the Line Siting Committee than I am. So I
15 will just ask your patience with me to figure out what
16 we should do to effect the Commission's direction.

17 All right. So first thing I was going to do is
18 talk about intervention. And I know we have Pima County
19 who hasn't decided but may want to be an intervenor. I
20 know we have Ms. Webb who --

21 I am sorry. I just don't know exactly your
22 status, an intervenor in the line siting and maybe not
23 an intervenor, but I am presuming -- or I will ask you.
24 Do you wish, for sure do you want to be an intervenor in
25 this proceeding?

1 MS. WEBB: Yes, Your Honor.

2 ALJ RODDA: Okay. And so is there any
3 objections to Ms. Webb's intervention?

4 MR. ROBERTSON: Your Honor, Scenic Santa Ritas
5 has no objection at all.

6 MR. MAGRUDER: Marshall Magruder has no
7 objection.

8 MS. BERGLAN: No objection from the Tohono
9 O'odham Nation.

10 MR. BLACK: No objection from Rosemont.

11 MR. GELLMAN: No objection.

12 ALJ RODDA: Okay. That's great. All right. So
13 Ms. Webb is an intervenor. If there was any doubt to
14 that fact, there is no longer any doubt to that fact.
15 And I am happy.

16 And I think I have already asked this. Is there
17 anyone else besides Pima County who wishes to make a
18 motion to intervene at this point?

19 (No response.)

20 ALJ RODDA: Okay. I am going to talk more about
21 intervention when we talk about notice, public notice.

22 All right. I take it from reading some of the
23 transcripts of the open meeting that there was some
24 evidence attempted to be presented in the Line Siting
25 Committee that maybe wasn't admitted or that was offered

1 as an offer of proof. And, so, but I am -- I really
2 wasn't sure of its status of all yet, because I haven't
3 gotten through the entire transcripts, of what we should
4 do from this point forward to get the evidence that the
5 Commission has directed us to do. Is it additional
6 prefiled testimony? Do we already have prefiled
7 testimony? And so that's sort of where I am coming
8 from.

9 And I am going to actually, because I think your
10 clients, Mr. Robertson, were affected, your evidence was
11 part of the evidence that is not admitted, so I am going
12 to start with you, because you are also very familiar
13 with the process --

14 MR. ROBERTSON: Thank you.

15 ALJ RODDA: -- for your recommendation.

16 MR. ROBERTSON: Let me start with some
17 background. And then I will proceed to what would be
18 Scenic Santa Ritas' recommendation.

19 The proceeding before the Siting Committee moved
20 in a very compressed period of time. The application
21 was filed on the 2nd of November, 2011, and the Siting
22 Committee proceedings were concluded in mid December of
23 2011, in roughly a 45-day time frame within the 180-day
24 period the Siting Committee actually has to do its work
25 under the statute. So against that background, here is

1 what happened as I best recall it.

2 Chairman Foreman of the Siting Committee
3 directed the parties to file prepared testimony and
4 summaries of their prepared testimony. And at the
5 prefiling conference, or I forget if it was a prefiling
6 conference or a procedural conference, shortly after the
7 application was filed, one of the questions that came up
8 was whether or not evidence pertaining to the
9 environmental impact at the Rosemont mine itself would
10 be allowed as part of the evidentiary record before the
11 Siting Committee.

12 And on the 8th of December, if memory serves me
13 correctly, Chairman Foreman conducted a prehearing
14 conference of the then known parties deciding Case
15 No. 164. And at that time, he ruled on the question of
16 whether or not evidence relating to the environmental
17 impact of the mine would be allowed. And prior to that,
18 those parties who were interested had had an opportunity
19 to file initial memorandums and reply memorandums on
20 that subject which Chairman Foreman had had before him.

21 He ruled at that time that evidence of the
22 environmental impact of the mine would not be allowed
23 into the record, but he did indicate to those parties
24 who were interested in submitting information of that
25 nature that they would be allowed to make an offer of

1 proof, which could be included in the record. It would
2 be transmitted up to the Commission.

3 So Scenic Santa Ritas undertook to put together
4 a notebook which contained the prepared testimony and
5 the testimony summaries of three witnesses that it had
6 identified it intended to use at the hearing. Other
7 parties who had evidence relating to the mine that they
8 desired to offer also were allowed to include that
9 information in that same notebook, which became an offer
10 of proof notebook.

11 And my understanding, that notebook, and the
12 information contained in it, was not considered by the
13 Siting Committee. They confirmed Judge Foreman's
14 December 8th ruling excluding information of that nature
15 on the first day of hearing. But my understanding is
16 that the offer of proof notebook, and I will refer to it
17 that way, was part of what was referred up to the
18 Commission when the Siting Committee's decision was
19 transmitted to the Commission. And as Your Honor might
20 be aware, thereafter there were requests for review
21 which were filed by several parties, including Scenic
22 Santa Ritas, and they were the subject of the open
23 meeting which was held, ultimately resulted in the
24 issuance of Decision 73074.

25 As Mr. Metli and I look at the Commission's

1 decision and the record, the Commission had before it at
2 the time of that open meeting on March, I believe on
3 March 16th the offers of proof of the various parties,
4 but the Commission elected to go the route of having an
5 actual evidentiary hearing at which we could present our
6 evidence, which might be in the form it was in the offer
7 of proof or it might be updated and expanded upon. And
8 from the perspective of Scenic Santa Ritas, we do intend
9 to update and expand upon our evidence. And that would
10 be what we would propose to offer in this proceeding.

11 So I believe with that summary background and
12 comment on my part I will conclude and let others speak.
13 And if you have any questions at this point, I would be
14 happy to try and respond.

15 ALJ RODDA: Okay. Since you are here, how long
16 would it take you to update and expand the evidence?

17 MR. ROBERTSON: I think from the standpoint of
18 Scenic Santa Ritas, we would need at least four to six
19 weeks.

20 What happened was at the time that we prepared
21 our testimony, the draft environmental impact statement
22 issued by the Coronado Forest National Service had just
23 been issued a few weeks before. So we were beginning to
24 digest that as well as other information that our
25 witnesses had access to. Since then, there have been

1 literally thousands of pages of comments filed in that
2 draft environmental impact statement. I believe the
3 Forest Service conducted somewhere on the order of seven
4 to eight public meetings. And the Forest Service is now
5 digesting all that information and recently indicated
6 later this spring they will issue a schedule as to when
7 they intend to come forward with their final impact,
8 final environmental impact statement.

9 We would like to have the opportunity to review
10 a number of those comments that were filed in relation
11 to the draft environmental impact statement to be sure
12 we are not overlooking anything, plus additional
13 information that may have come to the attention of the
14 witnesses we intend to use, which may be people in
15 addition to our initial three. That's why I say from
16 our perspective four to six weeks.

17 ALJ RODDA: Okay. I am sorry. If you said it,
18 I didn't catch it. Is there an expected date for the
19 final environmental impact statement?

20 MR. ROBERTSON: To my knowledge, as of this time
21 no date has been established. And, in fact, I think the
22 Forest Service has deliberately avoided establishing
23 such a date because they had to adjust several times the
24 estimated date on the original draft environmental
25 impact statement, pushing it back.

1 ALJ RODDA: And they don't have a statutory
2 deadline?

3 MR. ROBERTSON: Not to my knowledge, no.

4 ALJ RODDA: Okay. All right. I am just going
5 to go down the line.

6 Mr. Magruder, I don't need all the background
7 information because I think Mr. Robertson was pretty
8 thorough. But I think you had some environmental or
9 some evidence that you wanted to present at the line
10 siting below that's relevant to our reopened hearing, is
11 that right?

12 MR. MAGRUDER: Yes, Your Honor. At the
13 prehearing conference I was told I would not be able to
14 talk about several subjects. During my opening
15 statements I was interrupted several times by the
16 Chairman saying he will object if I talk about this
17 subject. And there were about a dozen things I planned
18 to talk about that I just -- when you get an objection,
19 it is obviously I can't go further.

20 ALJ RODDA: All right. So did you have prefiled
21 testimony that included those subjects that you weren't
22 allowed to testify to, or where are you in terms of
23 presenting the evidence that you wanted to present?

24 MR. MAGRUDER: In that case we had 40 days
25 between the 2nd of November and the 12th of December to

1 start the hearings. We had three national holidays,
2 15 weekend days or 12 weekend days, total of 25
3 workdays. We had a conference in Phoenix, which would
4 take away another day. We had to prepare, we had to do
5 discovery, prefiled summary testimony, prepare our
6 exhibits by the 5th of December, which was on the 33rd
7 day after the issuance of the CEC application that we
8 had to start reading on the 2nd. Actually I got mine on
9 the 4th of November. So we didn't have -- we had to
10 read a very thick document.

11 The issue that Mr. Robertson discussed
12 concerning the mine versus the line evidence required
13 memos to be submitted, two memos, which diverted our
14 attention during that short period of time. And
15 preparing for an offer of proof, which, as you know, I
16 am not an attorney so I had to figure out what all this
17 stuff means. And, frankly, my testimony was not,
18 written testimony, it was not adequate. It was not my
19 standard of submitting testimony, and I just didn't have
20 time to get there.

21 ALJ RODDA: Okay. Do you -- for whatever the
22 testimony it is, I haven't read your testimony below,
23 but the Scenic Santa Ritas estimated four to six weeks
24 to prepare some written testimony. Can you do it in
25 that same time period?

1 MR. MAGRUDER: Yes, Your Honor. Four to six
2 weeks should give us adequate time for discovery because
3 I think that was really cut short, and also to prepare
4 reasonable, good testimony.

5 ALJ RODDA: Okay. Anything further on that
6 subject that you wanted to say?

7 MR. MAGRUDER: Not now.

8 ALJ RODDA: Okay. Sorry you have to share.

9 MR. MAGRUDER: That's all right.

10 ALJ RODDA: That's my limited resources.

11 All right. Ms. Webb, again, I don't need a lot
12 of the history of what went before. I am just trying to get
13 a feel what it will take to get the evidence that you
14 wanted to present. And the Commission specifically
15 mentioned your evidence in the record.

16 MS. WEBB: Okay. Your Honor, four to six weeks
17 for written testimony would probably be adequate. There
18 is evidence in the docket of mine, but given
19 circumstances related to the Line Siting Committee
20 regarding my ability to continue at the hearing, it has
21 not been admitted as evidence. It is not part of the
22 official evidentiary record before the Committee.

23 Additionally, given the comments referenced by
24 Mr. Robertson, there is no information related to the
25 transmission line that has come to light from agencies

1 and from the public.

2 It is also my understanding that the Forest
3 Service is working on the public comments currently and
4 at some later date they will be having a tour. And also
5 it is my understanding that there is supposed to be a
6 Forest person today who can answer your questions for
7 the Forest also.

8 But given all of that, I feel comfortable saying
9 four to six weeks to prepare written testimony.

10 ALJ RODDA: And so you all had -- was it -- you
11 weren't testifying, were you, but you had witnesses?

12 MS. WEBB: Partially. I was going to testify on
13 behalf of myself. And then I also had an expert witness
14 in Pima County. So whether or not Pima County decides
15 to intervene might also impact what evidence that was
16 produced in the docket would now be part of the
17 evidentiary record.

18 ALJ RODDA: Okay. All right. You guys have
19 made this a very interesting proceeding for me.

20 Ms. Berglan, so you were an intervenor in the
21 line siting?

22 MS. BERGLAN: Yes, Your Honor.

23 ALJ RODDA: And you offered testimony.

24 MS. BERGLAN: Yes, Your Honor. We had one
25 witness. And some of his testimony was excluded based

1 on the Chairman's ruling to exclude the impacts of the
2 mine. So I would concur with Mr. Robertson's
3 recommendation, four to six weeks. The Nation can also
4 live with that.

5 ALJ RODDA: Okay. And do you anticipate it
6 would still be that same witness that -- is it the same
7 witness or are you going to have additional witnesses,
8 or do you know yet?

9 MS. BERGLAN: We may have one additional
10 witness. We would certainly have Mr. Steere, who was
11 our original witness, retestify with the expanded
12 knowledge of the impacts of the mine.

13 ALJ RODDA: Okay. I am going to skip Pima
14 County for right now because you are just confusing me,
15 ask Mr. Black.

16 I know you are in a different position than the
17 environmentalists.

18 MR. BLACK: Yes, quite.

19 ALJ RODDA: You have heard what I have been
20 asking about. So just let me know what your
21 recommendation is, what your view is. I know you have
22 got some motions outstanding for reconsideration of
23 the --

24 MR. BLACK: Thank you, Your Honor.

25 Just, first of all, I would like to thank

1 Mr. Robertson. I think he did a good job in providing a
2 background as to the procedural issues that led up to
3 the decision as well as the Commission's Order 73074.

4 Based on what happened during the March 15th
5 open meeting and based on what is actually written in
6 this order, we believe that the scope of the rehearing
7 as directed by the Commission should be fairly narrow.
8 And that narrow focus, as shown on page 2 of
9 Decision 73704, talks about evidence concerning the
10 Rosemont mine and its environmental impacts to provide a
11 helpful context for their full consideration of the
12 application. And then, beginning on line 11, other
13 evidence concerning the environmental impacts of the
14 proposed line was not admitted, and, therefore that,
15 additional evidence should be provided as well.

16 So I think that the focus of the order and the
17 focus of the Commission's concerns expressed during the
18 open meeting were procedural issues and those were
19 procedural issues that occurred at the Line Siting
20 Committee, again, just to reiterate, the issue
21 concerning the offer of proof and the evidence that was
22 provided in prefiled testimony concerning the
23 environmental impacts of the mine as well as evidence
24 that was presented by Ms. Webb, who lost her
25 intervention status, and the Commission felt that that

1 was a due process issue.

2 With that background in mind, I also want to
3 reiterate that Rosemont continues to object to the
4 introduction of the evidence concerning the
5 environmental impacts of the mine for the reasons that
6 are, as you will soon see, heavily briefed in this
7 particular proceeding -- in fact, that issue was briefed
8 three times, twice before the hearing and once after the
9 conclusion of the Line Siting Committee hearings -- and,
10 also, to not lose sight of the fact the Commission did
11 approve the CEC that was issued by the Line Siting
12 Committee and the preferred route with the conditions
13 proposed therein. I think that on the basis of that the
14 Commission felt that the record did not contain anything
15 at least at that point to suggest that the CEC should be
16 denied.

17 With respect to issues concerning the time
18 needed to, I guess, to update testimony, we understand
19 that Scenic Santa Ritas probably need some time to
20 update their testimony. With respect to Ms. Webb, we
21 understand that as well. If Pima County intervenes, we
22 understand probably the need for them to provide
23 testimony on that issue.

24 But we don't believe that issues that
25 Mr. Magruder wishes to raise again in this proceeding

1 should be addressed. For instance, Mr. Magruder has an
2 outstanding motion to compel Rosemont to basically file
3 as an applicant in this case. Mr. Magruder brought that
4 issue up before the Commission on March 15th. That was
5 discussed. If the Commission had an issue with that
6 particular ruling on behalf of the Line Siting
7 Committee, they did not express it either at the open
8 meeting or in the order. So we believe, again, that the
9 scope of this rehearing should be narrow to the two
10 issues that the Commission is provided. In that vein,
11 four to six weeks, we think, is long.

12 On page 2 of the order, again, it says the
13 Commission is to expeditiously conduct a proceeding
14 pursuant to A.R.S. 40-252. And, again, until we know
15 what the complete procedural schedule will be, if four
16 to six weeks fits within an overall expedited schedule,
17 then that's certainly something we can live with. But
18 if it pushes the procedural schedule out, then we would
19 suggest that that time be limited. Again, the parties
20 have had an opportunity to file prefiled testimony.
21 That testimony was included in the offer of proof. So
22 we don't believe that this should be an opportunity to
23 basically redo, start from scratch.

24 ALJ RODDA: So I am not sure if I exactly follow
25 you about you don't think they should be able to update.

1 MR. BLACK: No. I said they should be able to
2 update their prefiled testimony. They did, parties, the
3 parties that wanted to provide an offer of proof on the
4 environmental impacts of the mine had an opportunity and
5 did file prefiled testimony. Updating that, we
6 understand that, in all fairness, they should have an
7 opportunity to do that. But it shouldn't be an issue
8 where they start from scratch or a party that did not
9 file that evidence or prefiled testimony, other than a
10 new intervenor, again, should have an opportunity to now
11 expand his or her previous testimony to include those
12 issues.

13 ALJ RODDA: I see what you are saying. Okay.
14 So whenever the parties are directed to file updated
15 testimony, how long do you think you would require to
16 review that? Are you anticipating filing responsive
17 testimony?

18 MR. BLACK: We do not anticipate filing any
19 responsive testimony. We did not file any testimony in
20 the original proceeding.

21 ALJ RODDA: Okay.

22 MR. BLACK: So we can certainly review that
23 testimony in a week.

24 ALJ RODDA: Okay. Anything else, Mr. Black?

25 MR. BLACK: No. Thank you, Your Honor.

1 ALJ RODDA: Mr. Gellman.

2 MR. GELLMAN: Thank you.

3 I also agree with Mr. Robertson's summation and
4 agree largely with what Mr. Black just stated about the
5 reopened proceedings, the remanded procedures, or
6 whatever you want to call this.

7 We saw the order as doing essentially two
8 things, allowing the parties to introduce evidence
9 regarding the Rosemont mine and its environmental
10 impacts and to allow Ms. Webb to present testimony about
11 the environmental impacts of the transmission line. So
12 from -- well, one thing, we did not see this as opening
13 up every issue to be relitigated, kind of along the
14 lines what Mr. Black just said. So we would agree with
15 that.

16 From TEP's position, we had filed the
17 application. We filed prefiled testimony. We filed
18 PowerPoints. We filed all sorts of exhibits. But we
19 essentially rested and our case in chief is essentially
20 done. We don't have any evidence to present regarding
21 the mine itself or the environmental impacts of the
22 mine. That is essentially outside our wheelhouse. So
23 we don't anticipate filing any additional testimony on
24 that issue; at most, and we anticipated doing this at
25 the actual evidentiary hearing, responding to any of

1 Ms. Webb's testimony about the transmission line then.
2 So we did not anticipate needing any time to file
3 additional prefiled testimony in this case.

4 And again, we filed numerous exhibits pointing
5 out why we believe that the line is necessary and why
6 the preferred route, which was the route that was
7 approved in the Decision 73074, is environmentally
8 compatible. So, and that was really the scope of our
9 testimony. And that remains our position today.

10 And we also filed an application for rehearing
11 or request for rehearing. And we also maintain our
12 objection as to the environmental impacts of the mine as
13 being immaterial and outside the scope.

14 ALJ RODDA: Okay. So I could, I can envision a
15 scenario where someone presents evidence on the
16 environmental impact of the line and perhaps it requires
17 some response, some, you know, here is something we can
18 do to mitigate this impact. So that would come from TEP
19 probably. So how did you address that or would you
20 envision addressing that?

21 MR. GELLMAN: Again, I think how we envisioned
22 it, we would address it once we had a chance to review
23 whatever testimony was provided. Again, I think we see
24 this largely or mostly as allowing parties who had
25 presented evidence regarding the impacts of the mine

1 which was included in these offers of proof to update or
2 to provide whatever they are going to provide in four to
3 six weeks. We would hope for the four weeks rather than
4 the six weeks. And we don't intend to respond to that.
5 Again, that's -- our focus in this entire case was about
6 the transmission line, not about the mine.

7 ALJ RODDA: So you say you don't intend to
8 respond, but you would have a witness available? I mean
9 the bench or the Commission may wish to have a response.

10 MR. GELLMAN: Right. We understand that.
11 Mr. Beck and Ms. Weinstein and other witnesses that we
12 noticed in the siting proceedings could be needed to
13 address questions. And we, of course, would have them
14 available. We just, but we saw that more as in our
15 presenting a rebuttal case, for example, more than
16 presenting any additional evidence to our case in chief.
17 Again, I think we have essentially rested on the
18 evidence that we provided regarding the transmission
19 line.

20 ALJ RODDA: Okay. So are you of the same mind
21 as Mr. Black, that a fairly short period after whatever
22 period is selected for the intervenors to file updated
23 testimony, TEP only would require a short period of
24 time, a week to two weeks to look at it?

25 MR. GELLMAN: That's correct, Your Honor.

1 ALJ RODDA: And then you would be ready for
2 hearing?

3 MR. GELLMAN: That is correct.

4 ALJ RODDA: All right. Mr. Hains.

5 That one microphone is not plugged in. So it is
6 just confusing you all.

7 MR. HAINS: Your Honor, just to start out, well,
8 before I go into it, do you want me to respond to the
9 issues relating to the inclusions -- or exclusion of the
10 environmental impacts of the mine aspect first?

11 I understand that the motions, even though they
12 are directed at the Commission in trying to go toward
13 sculpting the scope of this proceeding, it is aimed at
14 evidence that Staff is not directly trying to put on.
15 Would you like to hear from those parties before go to
16 Staff or would you like Staff to respond first?

17 ALJ RODDA: No. I guess what I want to know
18 from Staff -- I wasn't -- until the Commission rules on
19 those motions, I am going by this, what the order is
20 today. And it talks about --

21 So I guess, one, I want to hear from Staff what
22 you see your role as in this proceeding; two, any
23 comments you have on the scope; and, three, any time
24 period considerations from Staff's point of view, like,
25 well, part of your role, will you have a witness or not,

1 you have a big rate case and you can't be here on
2 June 3rd, whatever.

3 MR. HAINS: Sure. I think I will probably take
4 it in the order the first and then the third, and then
5 answer the second last.

6 With regard to Staff's role and how Staff
7 envisions participating, Staff was -- I believe the
8 Chairman of the Committee solicited from Staff a letter
9 in the docket relating before the matter went to the
10 Line Siting Committee with regard to Staff's views of
11 the reliability impacts of the line, which would be
12 within Staff's area of expertise relating to
13 transmission siting.

14 And Staff opined that there were no significant
15 reliability considerations from Staff's concern that
16 would recommend against approving the line. Staff does
17 not anticipate that anything has changed with regard to
18 the reliability issues presented by the transmission
19 line. And so at this point Staff has not anticipated
20 putting on a witness. That is subject, of course, to
21 questions from the bench or from the Commissioners that
22 may be provided in a letter form to the docket. But as
23 of this moment, Staff does not anticipate putting on a
24 witness.

25 With regard to the amount of time to prepare,

1 since Staff doesn't anticipate putting on a witness, we
2 can go whenever you are ready to go. Staff has no
3 objection to the four to six weeks requested by the
4 parties. Any amount of time is okay with Staff.

5 ALJ RODDA: Do you think the four to six weeks
6 that has been suggested here comports with the intent of
7 the Commission in that decision?

8 MR. HAINS: I think so. I think four to six
9 weeks is enough time for one round from the parties who
10 are interested in the issues to supplement whatever,
11 give them their full opportunity to say their piece in
12 one round. And then if the company and the mine are
13 comfortable that they have enough time with a week after
14 that to review it and respond if necessary, then Staff
15 certainly isn't going to tell them no, you aren't
16 building enough time for yourselves if that's what they
17 think they need.

18 With regard to TEP, one thing that was mentioned
19 by counsel here with regard to how they envision the
20 matter moving forward here, in terms of a case they are
21 going to put on, the indication was that TEP is of the
22 mind they have presented their case in chief and they
23 are done with their direct case and that whatever they
24 would be speaking to at this point would be more in the
25 nature of a rebuttal.

1 I think Staff, you know, would have something of
2 a concern with regard to that, because the posture that
3 the matter has left the Commission was that it was a
4 qualified approval. And it was expressed as conditioned
5 on the fact that the Commission believed it did not have
6 all the information on the record necessary in order to
7 perform that final evaluation of balancing need versus
8 the environmental impacts.

9 So I don't think the matter has been totally
10 finished yet, that it is in a posture where the burden
11 has been shifted. The company has gotten everything it
12 is asking for and now it is incumbent on the intervenors
13 who have the issues with regard to the mine, that now
14 they have to present their direct case and that it is
15 for the company now to sit in a position of having
16 something that they can sit comfortably and rebut at
17 that point.

18 I do think it would be advantageous to let them
19 put on a, it can an abbreviated, but some sort of direct
20 case. In prior instances where matters have been
21 referred back to the Hearing Division from line sitings,
22 the applicant has put on a panel of their witnesses to
23 make it a more expedited process, but they still teed
24 off the subject so there was a common starting point for
25 all concerned. So I think that would be a good way to

1 proceed from this point.

2 Of course, Your Honor can notice all the
3 evidence in the transcripts and record that has been
4 developed so far. And there is no need necessarily for
5 the company to repeat every single thing they have done
6 before, but I think it would be helpful to have just a
7 brief run through from the company so we can all begin
8 from a common point.

9 And that's all that Staff has on that issue.

10 ALJ RODDA: I am sorry. So in other cases where
11 they have been remanded, to use that word, to the
12 Hearing Division from the Line Siting, they have started
13 with a company panel?

14 MR. HAINS: Right. And the instance I would
15 think of would be the Hualapai solar power application.
16 I believe that was Line Siting Case 151 if memory
17 serves. And my recollection is in that case the company
18 did put on a panel. All of their witnesses that they
19 had provided at the Committee level, they consolidated
20 them into a single panel and presented them as a whole.
21 And, you know, parties, as they asked questions, they
22 would ask the question and the witness who was most able
23 to answer the question would answer at that time. And
24 so, and it seemed to work efficiently at the time. So
25 that would be Staff's recommendation in this case.

1 ALJ RODDA: But what was, what was the issue in
2 that case that led to the remand?

3 MR. HAINS: It was a similar due process
4 deficient record type issue. Two individuals who had
5 requested intervention in that case were denied
6 intervention, or one of them was denied intervention but
7 was allowed to, through the Committee, have her exhibits
8 admitted. And it was not felt that that was sufficient
9 from the person, the individual. And on her behalf, I
10 think Mr. Hogan represented one of them and filed a
11 request for review as a putative pardon at that point.
12 And he indicated that due process had not been served,
13 they had been improperly denied an opportunity to
14 intervene when they had legitimate, direct interests in
15 the impacts of the matter.

16 ALJ RODDA: So they didn't have an opportunity
17 to cross-examine the company's witnesses.

18 MR. HAINS: That is correct.

19 ALJ RODDA: Okay. All right.

20 MR. GELLMAN: Your Honor, may I respond to that?

21 ALJ RODDA: If you -- do you have the
22 microphone?

23 MR. GELLMAN: I think I do.

24 ALJ RODDA: You have to get really close to it.
25 Patrick can figure it out.

1 MR. GELLMAN: He is smarter than I am.

2 I think the Hualapai, I agree with Mr. Hains'
3 recitation of the Hualapai matter, but I think that was
4 a different case in that we had intervenors that were,
5 or folks that were denied intervention at the Siting
6 Committee proceedings that were denied the opportunity
7 to cross-examine in that case. We don't have that
8 situation here.

9 All of the parties -- Pima County wasn't a party
10 in the siting proceeding, had an opportunity to
11 intervene, chose not to. But all the parties that had
12 intervened in the siting proceedings had opportunity to
13 cross the applicant's witnesses in that case, or in this
14 case. So that is a distinct difference between the
15 Hualapai matter and the, and this matter.

16 I just don't, given what the scope of the order
17 is in this case, we don't -- we are not, obviously we
18 are not Ms. Webb. She needs to present her evidence.
19 That was one reason why this was reopened. The other
20 one was about the environmental impacts of the mine. We
21 don't have anything to add to that. So we don't
22 necessarily think that we need to reintroduce Mr. Beck
23 and Ms. Weinstein to talk about things that are already
24 on the record.

25 ALJ RODDA: Okay. I see your point of view.

1 MR. HAINS: Thank you.

2 Just to finish that thought, just very briefly
3 respond to what counsel for TEP has stated, I don't
4 think that that's totally the case in this instance.
5 There was one party who was de-partied at one point and
6 there were witnesses yet to be presented that that party
7 did not have an opportunity to cross-examine if she was
8 of a mind to. And Ms. Webb can speak to that interest
9 on her own if she wants to respond to that issue. But I
10 do think that that does put it in a, more in a class of
11 being similar to the Hualapai instance. A party was not
12 given an opportunity to finish out whatever
13 cross-examination they intended to do. They had an
14 abridged participation.

15 ALJ RODDA: Rest assured, other parties, I will
16 come back to you on this issue. I just want to finish
17 up with Staff.

18 MR. HAINS: And that is all I had on the first
19 and third issue.

20 On the second issue, in terms of the scope, I
21 actually, you know, thinking about this ever since I saw
22 the request for rehearing, applied a lot of thought to
23 this and actually put together what I think might
24 actually be a lengthy rebuttal here. I don't know if
25 that's what you want, but if you will indulge me here, I

1 will give you Staff's response or thoughts with regard
2 to the issue if you like at this point.

3 ALJ RODDA: In response to their request for --
4 I don't think I want to get into that today. That opens
5 up for them to make their arguments and I don't think
6 that I should.

7 MR. HAINS: Well, then just very briefly I will
8 fold it in just a summation why we think the scope
9 should include the inclusion of those. And I take it
10 you intend to include it nonetheless because that was
11 the charge of the Commission in the order.

12 ALJ RODDA: Right. That's my intent going
13 forward, but if you had any gloss you wanted to put on
14 it...

15 But I read this as environmental impacts of the
16 mine. And I did read the open meeting transcript with
17 the Scenic Santa Ritas' connected issue, or whatever the
18 term of art is. So I mean I certainly know where they
19 are coming from there. But if you want to add anything
20 to be helpful, I would appreciate it.

21 MR. HAINS: Sure. And Staff comes from
22 a slightly different perspective. We are not actually
23 trying to get it in; we just want to give the parties
24 the opportunity to say their peace.

25 I would start off by saying the Commission, as

1 a regulatory agency, it is not like a Superior Court.
2 It is in the DNA of an agency to try and let in as much
3 information as possible and then sift through and get to
4 the relevant parts necessary to reach the conclusion you
5 are going to ultimately reach.

6 There are plenty of instances where information
7 is supposed to come in that won't actually have any sort
8 of direct impact, or should not have a direct impact on
9 the evaluation of the matter. I would point out that
10 there are open meetings laws that require things like
11 inclusion of public comment. They must be considered
12 for purposes of line sitings as well as regular
13 Commission matters. They are not evidence but they
14 still have to be considered and they still have to be
15 allowed to be brought in.

16 I am sorry if I am speaking a little quickly
17 here.

18 ALJ RODDA: You are. Was she glaring at you?

19 MR. HAINS: Started to.

20 In any event, it is in the nature of what the
21 agency does to allow the information in. And it is not
22 evidence. And the thing is, ultimately what is going on
23 here is that the Committee, or, excuse me, the company
24 and the mine believe that the evidence would not be
25 relevant. That's fine. They can argue that there

1 should be no weight accorded to that evidence. But it
2 should be allowed in. Let the parties say their peace.
3 They are affected and this is what they are here to talk
4 about, environmental issues.

5 I would point out that I think from Staff's
6 perspective we think that the record reflects there
7 would be a little unfairness going on here to exclude
8 information related to the environmental impacts of the
9 mine. From Staff's review of the transcript, there
10 appears to be some reliance on the part of the company
11 as part of their application on the environmental impact
12 of the mine as a mitigation to environmental impacts of
13 the transmission line.

14 And I take it you don't want me to give you a
15 recitation of that portion of the record, but --

16 ALJ RODDA: No. I don't need that. But, so,
17 but to address something that Mr. Black raised, I am
18 buying in the environmental impacts of the line, the
19 environmental impacts of the mine and the line. So
20 environmental impacts, is that what the Commission
21 directed us to do? So at least we are limiting the
22 scope to environmental impacts, or as those are broadly
23 defined? I mean it is not just environmental, but
24 cultural. I mean I guess that is part of the
25 environment that --

1 MR. HAINS: I think Staff could live with that.
2 Staff, like I said, Staff is not presenting a witness to
3 talk about the need or any of the other aspects.

4 But the environmental impacts of both sides, I
5 think that one of the things you will see from reading
6 the transcript of the Committee proceedings is that
7 there was a line of cross-examination by Ms. Webb of one
8 of the, of the environmental witness for the company to
9 the effect that they were using the environmental
10 impacts of the mine tailings and certain construction
11 components of the mine as obscurance for the
12 environmental impacts of the transmission line. The
13 company has used the environmental impacts of the mine
14 as a sword here to sculpt -- you know, to avoid having
15 to perform viewshed analyses for portions of the
16 transmission line.

17 And so if that, if all environmental impacts of
18 the mine are taken out, you would have a record here
19 where the Commission cannot perform its full
20 environmental review because there are portions where
21 there is no environmental review. There is no analysis
22 of the scenic impacts of the transmission line standing
23 on its own because, in reliance on the environmental
24 impacts the mine, there was none performed. So the
25 record at this point may be deficient in order to

1 perform a complete CEC at this point.

2 So that would be Staff's position on that point.

3 Thank you.

4 ALJ RODDA: Okay. All right. So let me go to
5 Ms. Webb, because you were the one that was most
6 affected at the line siting in terms of your status or
7 participation. Did you not have an opportunity to
8 cross-examine at the time that you were decommissioned,
9 or whatever the word is?

10 MS. WEBB: Your Honor, to clarify, I was able to
11 cross-examine the applicant's witnesses, but there were
12 several questions that I was told at the beginning were
13 not going to be allowed to be brought up.

14 And then additionally, when we moved into the
15 Tohono O'odham Nation's witness, Mr. Steere, my
16 cross-examination was cut short at the request of
17 Rosemont Copper.

18 And then lastly, I was not able to cross-examine
19 Mr. Magruder. And being that we are allowing -- well,
20 my understanding of the decision is that to allow the
21 environmental impacts of the proposed copper mine there
22 are questions related to what Mr. Hains was referring
23 to, such as an access road, that was not part of the
24 application that we were not allowed to speak of for the
25 transmission line because it was to be shared with

1 another part of the proposed mining operation.

2 And so I think it would be very relevant to have
3 a panel, at a very minimum, of the case to be presented
4 so that we could bring up those issues which, to me, in
5 my mind, are directly related to the transmission line.

6 ALJ RODDA: Okay. Mr. Magruder, on this issue.

7 MR. MAGRUDER: On this issue, I would like, if
8 you don't mind me requesting, that TEP have a panel so
9 we could cross-examine them. I don't care if they give
10 evidence or not because we have already heard that
11 before. You may want to hear it. We heard it before.
12 We don't need to hear it again. But there will be
13 questions we were not able to ask last time that we
14 should be able to ask.

15 And secondly --

16 ALJ RODDA: And those are primarily related to
17 the environmental impacts?

18 MR. MAGRUDER: Environmental impact of the
19 transmission line and various subjects. And I will just
20 mention one of the subjects, which was the impact of
21 ratepayers of TEP. I was not allowed to talk about the
22 additional cost for this transmission line and how it is
23 going to be divided up and paid for by TEP ratepayers.
24 And I just -- that's the type of stuff that has nothing
25 to do with the mine but it was the type of issue that I

1 talked about. And I was not allowed to talk about
2 rates.

3 ALJ RODDA: But do you think that issue is
4 within the scope of this reopened -- you would argue
5 that the impact on ratepayers is within the reopened
6 scope?

7 MR. MAGRUDER: It is within the impact of
8 40-360.07, which goes into what the Commission does when
9 they reopen that involves the environmental -- that
10 involves the economic impact. And also, if changes are
11 made during, by the Line Siting Committee that affect
12 the rates, that should also be mentioned or included in
13 the evidence. I am not going to go into 10 cents per
14 kilowatt hour, not that type of level. I couldn't even
15 talk about ratepayers.

16 But, more importantly, the second issue I wanted
17 to bring up is that we could not cross-examine Rosemont,
18 because they had no witnesses. And I don't think we
19 should cross-examine attorneys.

20 ALJ RODDA: Right. We can't do that. Okay.

21 MR. MAGRUDER: And if you don't mind me
22 requesting, I would like to have a witness from Rosemont
23 available so we could cross-examine somebody.

24 ALJ RODDA: So is that the impetus of your
25 motion? You have a motion outstanding that you filed

1 last week to have them compelled to --

2 MR. MAGRUDER: It is related to it. And that
3 motion is rather technical. It involves the difference
4 between the duties and authority of the Line Siting
5 Committee versus the capabilities during a review by the
6 Commission.

7 Article 40-360.06 contains the requirements for
8 the Line Siting Committee. Point 07 contains the
9 requirements for review. And they are broader when you
10 do the review by the Commission than the more limited
11 but fairly comprehensive evaluation done by the Line
12 Siting Committee. And the Chairman ruled that he did
13 not have the authority to make Rosemont Copper an
14 applicant because he had an application from TEP.

15 Frankly, I agree. He can't change the
16 application. Only the company can change the
17 application, which is why I wrote a motion to compel
18 Rosemont to be an applicant and the reason Rosemont
19 should be.

20 ALJ RODDA: Okay. I don't really want to get
21 into that motion because that's not --

22 MR. MAGRUDER: Okay.

23 ALJ RODDA: But I just asked. I know I started
24 this discussion.

25 MR. MAGRUDER: I don't know if that motion is to

1 be considered in this proceeding or where.

2 ALJ RODDA: Well, it is filed now again.

3 MR. MAGRUDER: That's fine.

4 ALJ RODDA: So we are going to deal with it one
5 way or another. I expect, parties, if you have anything
6 to say about that, to file your response to that motion.
7 And I am going to deal with it like I do any other
8 motion that's filed.

9 Mr. Robertson, did you have any other comments
10 on this issue of having a TEP panel or your opportunity
11 to cross-examine witnesses below?

12 MR. ROBERTSON: Let me address those two. And
13 let me just apprise Your Honor I would like briefly at
14 an appropriate point to be able to respond to some
15 things that Mr. Black and Mr. Gellman said with respect
16 to the scope of the evidence. But let me go to those
17 two points.

18 No, Scenic Santa Ritas, from our perspective,
19 had a full and complete opportunity to cross-examine
20 TEP's witnesses at the Siting Committee hearing. So we
21 have not had and we do not have a complaint in that
22 regard.

23 With respect to whether or not there should be a
24 TEP panel, as I look at the Commission's decision, this
25 proceeding is about two things, evidence relating to the

1 environmental impact of the Rosemont line -- mine and
2 evidence relating to the proposed transmission line that
3 was not received at the hearing, not admitted because
4 its proponent's intervention status had been revoked.
5 Mr. Gellman has indicated he has no desire to put on any
6 evidence in this case.

7 Against that background, I don't see what role a
8 panel would play in this particular hearing because
9 Mr. Gellman has also indicated that the company has no
10 interest in putting on evidence relating to the
11 environmental impact of the Rosemont mine.

12 So from the perspective of Scenic Santa Ritas,
13 that's how we look at it right now.

14 ALJ RODDA: Okay.

15 MR. ROBERTSON: Have I been responsive to the
16 two issues you wanted me to comment on?

17 ALJ RODDA: You have. And then you wanted to
18 say something else.

19 MR. ROBERTSON: Yes. With regard to the scope
20 of the evidence and also with regard to the time to be
21 allowed for preparing testimony on the subject of the
22 environmental impact of the Rosemont mine and the
23 environmental impact of the transmission line, I would
24 like to offer the following.

25 Earlier Mr. Black directed your attention to two

1 different portions of the Commission's Decision 73074.
2 One was at line 6 on page 2, and one was at line 11.
3 And they related respectively on the environmental
4 impact of the Rosemont mine and the environmental impact
5 of the proposed line. I would like to direct your
6 attention to three areas, and I will read them a little
7 more fully.

8 The first one is at page 2 of the Commission's
9 decision at lines 6 and 7 where we have the following
10 language: Evidence concerning the Rosemont mine and its
11 environmental impacts would provide a helpful context
12 for our full consideration of TEP's application.

13 The next area that I look at is on page 3,
14 starting at line 23 and continuing through line 27 where
15 the decision states: Additional evidence concerning the
16 Rosemont mine and its environmental impacts would
17 provide a helpful context for our full consideration of
18 TEP's application and would be helpful to us in
19 balancing the need for an adequate, economical, and
20 reliable supply of electric power against the effect
21 thereof on the environment and ecology of the state.

22 And the third area I would like to direct your
23 attention to is on page 4 of the decision at lines 1
24 through 3 where the Commission states: We believe that
25 additional evidence about the mine and its environmental

1 impacts should be admitted and we believe that we can
2 accord such evidence the proper weight and the balancing
3 required by A.R.S. 40-360.07.B.

4 Now, against that background, I would submit
5 that what the Commission is interested in with respect
6 to the environmental impact of the mine is a full and
7 complete picture on that topic. That can include
8 updating of the evidence previously filed by Scenic
9 Santa Ritas under the very tight schedule that had been
10 established by the Chairman of the Siting Committee and
11 it can include additional evidence on that limited
12 subject area of the environmental impact of the mine.
13 So I just wanted to make that point very clearly from
14 our perspective.

15 Secondly, with respect to the timeline under
16 which Your Honor is operating, you do not have a
17 statutory deadline such as the Siting Committee does.
18 Under A.R.S. 40-252, there is no proscribed timeline
19 within which the Commission has to act and render a
20 decision under that authority. The only guideline you
21 have in that regard is the language in Decision 73074
22 that you proceed expeditiously. And you are in the best
23 position, taking all the circumstances into account, to
24 determine what constitutes proceeding expeditiously.

25 Finally, with respect to the amount of time to

1 be allowed to those parties who will be offering
2 evidence to prepare, I think we are in the best position
3 to give you our best good faith estimate of that. And
4 from the perspective of Scenic Santa Ritas, we believe
5 we need four to six weeks and we would prefer to have
6 the full six.

7 Thank you.

8 ALJ RODDA: Ms. Berglan, did you, to the issue
9 of, this is an issue of what we are going to require of
10 TEP, the panel, did you get an opportunity to
11 cross-examine all the witnesses that you needed to
12 below?

13 MS. BERGLAN: Yes, Your Honor. And the Nation
14 did have an opportunity to cross-examine all the TEP
15 witnesses that we believe we needed to. So the Nation
16 wouldn't have a position as to whether or not a panel is
17 available during this proceeding.

18 ALJ RODDA: Okay.

19 MS. WEBB: Your Honor.

20 ALJ RODDA: Ms. Webb.

21 MS. WEBB: Something Mr. Robertson said sparked
22 something in my mind. And in the Decision 73074, on
23 page 3, line 3, number 4, it says the applicant is
24 hereby encouraged to ensure that the record to be
25 developed in the subsequent proceeding, subsequent

1 proceeding, is complete and sufficient to allow the
2 Commission to fully balance the factors set forth in
3 A.R.S. 40-360.07.B.

4 I do not feel it should be my responsibility to
5 present evidence related to viewshed issues that were
6 not taken into consideration with the previous
7 application. And so maybe a little further than have a
8 panel, I do believe there is additional evidence that,
9 in order to make a decision based on the full record,
10 that the company should consider.

11 Additionally, it is my understanding they are
12 having to work on an updated cultural resources report.
13 So the information that's currently in the CEC
14 application, along with excluding viewshed analyses and
15 certain cultural resources, is absent.

16 Additionally, the public was not aware of and it
17 wasn't part of the notice for a second switchyard that
18 appeared about five days, maybe two weeks before the
19 hearing. So the public had no opportunity to comment on
20 the second switchyard, which, my understanding, is part
21 of the Arizona Revised Statutes for a transmission line
22 project.

23 Since this second switchyard was not part of the
24 CEC application, the impacts associated with this
25 switchyard were not made available and not part of the

1 record and not disclosed, additionally, things such as
2 lay-down sites for poles and that sort of thing. And
3 the environmental impacts associated with the
4 transmission line access road were not part of the CEC
5 application.

6 And again, I understand that it is up to me to
7 come forward with my particular concerns regarding the
8 CEC application, but there are certain fundamental
9 things statutorily that are required, under my
10 understanding, such as the switchyard and impacts
11 related to. And I think that it would be reasonable to
12 ask some of these things and the CEC to be updated in
13 the interest of a full record and the public having an
14 opportunity to comment on them.

15 ALJ RODDA: Okay. As to that last issue,
16 Mr. Gellman, do you have a response?

17 MR. GELLMAN: I would respectfully disagree with
18 Ms. Webb's characterization regarding the second
19 switchyard and the access road. My recollection of the
20 record is that access road was discussed. We included
21 conditions to mitigate impact of access roads as part of
22 the CEC.

23 As to the, quote-quote, second switchyard issue,
24 Mr. Beck talked about that and prefiled direct
25 testimony. He clarified what termination facilities

1 were being put in or being planned to put in at the
2 eastern terminus of the line. We believe that that
3 issue was discussed and included and parties had a full
4 opportunity to vet that issue in the prior proceedings.

5 ALJ RODDA: Okay.

6 MR. GELLMAN: Bottom line, we will have
7 witnesses available should there be questions that come
8 up for Your Honor and for Commissioners that may attend.
9 But we didn't feel it is necessary to present another
10 case in chief that would be redundant to what we
11 presented before.

12 ALJ RODDA: Okay. And so you mentioned -- I
13 will get to you, Mr. Black. So you had three witnesses
14 below. Or Mr. Beck, I know his name. So whom do you
15 plan on having here who would be available?

16 MR. GELLMAN: Well, who we planned on having and
17 who we had at the siting proceedings is we had Mr. Beck
18 and Ms. Lauren Weinstein, from EPG who is the
19 environmental consultant for TEP in this case, testify.
20 We also indicated in our notice that was filed, I think,
21 December 5th that additional witnesses from EPG would be
22 available to answer specific Committee questions at that
23 time. If there were particular question about a
24 cultural resource or cultural site, we would have that
25 witness available to answer, swear that person in,

1 subject that person to cross-examination. That didn't
2 happen in the Committee proceedings. But that's who we
3 would plan to have ideally for these proceedings.

4 ALJ RODDA: Okay. All right. Mr. Black, you
5 wanted to make a comment?

6 MR. BLACK: Thank you, Your Honor, just a few
7 comments.

8 First, I do appreciate the comments that were
9 provided by Mr. Robertson concerning the order and the
10 focus of the rehearing. The Commission did not deny the
11 CEC. The Commission did not direct the applicant to
12 just refile its application and update that application
13 so that we could go through a whole other process, which
14 is unfortunately what I am hearing from some of the
15 intervenors here, which is to just basically reopen this
16 whole thing for the Commission hearing process and for
17 the applicant to basically put on its case in chief
18 again.

19 Again, I would like to reiterate that we believe
20 that the focus of this rehearing should be the
21 environmental impacts of the mine and the evidence that
22 is provided by the intervenors on that, as well as the
23 evidence that Ms. Webb was not able to present
24 concerning the environmental impacts of the line. We
25 shouldn't go into issues that were brought up, quite

1 frankly, in the request for rehearing of the CEC. Those
2 things were brought up by the intervenors who requested
3 that. The Commission entertained those questions at the
4 hearing, at the open meeting, and decided that some of
5 those issues had actually been addressed properly by the
6 Committee.

7 Mr. Magruder brought up issues concerning
8 natural gas lines. Mr. Magruder, in fact, during his
9 opening of the March 15th open meeting brought up his
10 motion to compel and his request to make Rosemont an
11 applicant in the case. If the Commission, we believe,
12 had issues concerning that, it would have directed the
13 Hearing Division to address those issues as well.

14 We think that the scope of this proceeding
15 should be fairly narrow. Again, if Mr. Robertson, and
16 he is in the best position to determine how much time
17 they need, if they need four to six weeks, that's fine
18 with Rosemont. We just don't want to see the proceeding
19 expanded to issues that we believe have already been
20 addressed by the Commission and the Committee as
21 evidenced in the order.

22 Thank you.

23 ALJ RODDA: Thank you.

24 Mr. Hains, did you have any additional thoughts
25 about scope? When Mr. Magruder did start talking about

1 effect on ratepayers, I just about had a heart attack.

2 I don't mean to denigrate you, Mr. Magruder.

3 MR. MAGRUDER: No, no.

4 MR. HAINS: Your Honor, while in a perfect world
5 we would keep this line siting matter confined to just
6 line siting type issues, my recollection, and people can
7 correct me if I am wrong, but my recollection from a
8 cursory read through of the transcript was, in spite of
9 the interest in keeping it focused on line siting
10 issues, there were questions from Committee members who
11 asked about ratepayer impacts of having the mine as a
12 customer and how that would affect the --

13 ALJ RODDA: I know that. But starting from the
14 open meeting and the direction of the Commission where
15 we are here today, does that impact, I mean, or is it
16 the impact of the environmental mitigation on ratepayers
17 or --

18 MR. HAINS: I would agree if you wanted to say
19 that from a literal standpoint the order that came out
20 of the Commission did say that the deficiency from an
21 evidentiary basis was the lack of the supplemental
22 information related to the environmental impacts of the
23 mine which precluded a full consideration of balancing
24 between the environmental impacts and the need for the
25 project. That said, Staff still, you know, has no

1 opposition to keeping this proceeding available for
2 parties to supplement and say their peace as they want
3 to say, have their day in court as it were. This is to
4 provide parties with the due process they asked for.

5 So Staff would not have an opposition. I
6 understand it would be more efficient if we could keep
7 it confined to the specific issues that were raised but
8 I didn't say that as a prohibition of other stuff coming
9 in.

10 ALJ RODDA: Okay. I also don't want to have to
11 do it again. I want one proceeding and not to get up to
12 the Commission and have it come back. So I will take
13 all your comments under consideration on that. I think
14 I understand where you are coming from.

15 All right. So, but I just want to clarify,
16 because I started with Mr. Robertson and because
17 Mr. Robertson said four to six weeks was good for his
18 clients, and then I sort of asked you all could you do
19 it in four to six weeks, I want your honest opinion, is
20 six weeks -- we will go at the far end, not you,
21 Mr. Robertson, but --

22 MS. WEBB: This far end.

23 ALJ RODDA: Ms. Webb, since you have the
24 microphone, can you really do it in that time?

25 MS. WEBB: No. And the biggest concern or

1 issues that I did raise during the line siting hearing,
2 specifically part of my expert witness' testimony,
3 prefiled testimony specifically was related to the lack
4 of information regarding access roads for the
5 transmission line. I just did a quick glance through
6 the CEC conditions. I didn't see anything on the access
7 roads. It may be in there. I just did a very quick
8 glance on that.

9 Additionally, again, it is my understanding that
10 the cultural resources report, which was never
11 provided --

12 ALJ RODDA: Can you just slow down just a little
13 bit --

14 MS. WEBB: Pardon me.

15 -- which wasn't provided, which is also required
16 under the Arizona Administrative Code, is being updated.
17 And without that information, which I did raise several
18 times as part of my cross-examination as none of my
19 evidence was officially part of the record, it wasn't in
20 that information but it is not part of the official
21 record.

22 And so I think realistically six weeks at the
23 minimum, eight weeks probably more realistically. And I
24 think it is also contingent on what the Forest does with
25 the information to revise their DEIS. So it could be

1 even longer if they are going back and revisiting
2 information that we used in the DEIS related to the
3 transmission line.

4 ALJ RODDA: Okay. Mr. Magruder.

5 MR. MAGRUDER: On the subject of the DEIS that
6 was mentioned by Ms. Webb, it was rated by the EPA as
7 EU-3. And what that means is that, EU means
8 environmentally unsatisfactory. And I will read you the
9 definition of that.

10 The review has identified adverse environmental
11 impacts that are of sufficient magnitude that the EPA
12 basis of proposed actions must not proceed as proposed.
13 The basis for the environmental unsatisfactory consists
14 of identification of environmentally objective impacts
15 as defined in one or more of the following conditions.
16 And I won't go into them but there are several. It was
17 also inadequate. And inadequate means that the DEIS
18 does not adequately assess the potential significant
19 environmental impacts of the proposal. And the last
20 sentence says and should be formally revised and made
21 available for public comment in a supplemental revised
22 EIS.

23 The basis for TEP's submitting its CEC
24 application was the issuance of a draft environmental
25 impact statement. That has been determined to be

1 environmentally unsatisfactory and inadequate. And so
2 waiting until the next step, the next document that
3 comes out of the Forest Service is very important for us
4 to understand the 25,000 comments that have been
5 submitted, how they are being incorporated in the new
6 basic document.

7 And I don't want to delay, but I really think
8 that should be the starting point. Shortly after we
9 could have evidence. But it was 2100 pages in the last
10 draft environmental impact statement we had to go
11 through. So it will take a few minutes to read it. It
12 presently is not synchronized with the CEC application.

13 For example, the Commission order refers to a
14 figure ES-3 in the draft environmental impact statement.
15 That figure starts this line at a substation called
16 Santa Rita South. The words Santa Rita South for a
17 substation do not exist in the proceedings that were
18 conducted before the Line Siting Committee. And it
19 wasn't until after I looked up that figure and started
20 preparing my review comments that I really discovered
21 how deficient some of the basic things and references to
22 the draft environmental impact statement in the order
23 make it so that everything is based on a draft document
24 that has to be redone or major revision. And we don't
25 know when that's going to happen because in a recent

1 filing I indicated from a news release from the Forest
2 Service that they hope to have a new schedule sometime
3 later this spring. I am not sure when that is. But
4 they are next door. If you want to go over to ask them,
5 they might be able to give us a hint.

6 But I am concerned about the schedule and the
7 information that we have to prepare. And that's why I
8 brought that long -- and this discussion on the EPA was
9 in my filing on 16 November last year. So it is not --
10 it has been introduced.

11 ALJ RODDA: Okay.

12 MR. BLACK: Your Honor, Your Honor, can I just
13 say the Commission didn't direct the Hearing Division to
14 do an analysis as to adequacy or inadequacy of the draft
15 EIS. That's subject to a federal process. That's
16 subject to several comments that are provided. The
17 Commission allowed the parties to provide their evidence
18 concerning the environmental impacts of the mine.

19 So, again, I have to caution that here we go
20 again. We are not only expanding the scope but now we
21 are waiting on a federal process and that federal
22 process can take awhile.

23 As you know, the Commission, in approving the
24 CEC, there is a condition in there that no construction
25 of the line will occur until that federal process and

1 the record of decision is issued. So let that process
2 basically play itself out. In the meantime, parties,
3 you can provide your evidence concerning the
4 environmental impacts of the mine.

5 So, again, we would object to tying any type of
6 procedural schedule to the federal process.

7 ALJ RODDA: Let me ask you, Mr. Hains. You are
8 the line siting expert of the Commission somehow, at the
9 Commission. Do you have any response to Mr. Magruder's
10 point? Can we go to a hearing and take care of this,
11 the Commission's directives, sometime this summer and
12 not have to wait for this revised EIS?

13 MR. HAINS: Your Honor, I don't think the intent
14 was to slave our process to a process that has no
15 definite time frame on it, which is the EIS process
16 going on for the mine here. I don't think that was the
17 intent or purpose of the Commission's decision here. I
18 think we can proceed without that process filling -- the
19 federal process reaching its conclusion.

20 I think the point was to give the parties an
21 opportunity to provide such evidence as there is now
22 that they have available to them now about the
23 environmental impacts of the mine. That should be
24 adequate for their purposes. I would hope that it would
25 be adequate for their purposes. But I don't think the

1 point was to turn our process into an adjunct to this
2 EIS process that's going on and make, and turn it into
3 one that has to necessarily follow whatever comes out of
4 the EIS process.

5 ALJ RODDA: So answer me this, if you can. It
6 is sort of a chicken and egg issue as, I mean as my
7 novice starting point, because the line is part of the
8 project, right? It is considered in this EIS process
9 and there are other permits too, I know. So until the
10 line is sited, how can they do that EIS process if they
11 don't know where the line is going to be?

12 MR. HAINS: Well, I don't style myself as a NEPA
13 expert. My understanding is that they can consider,
14 they would evaluate what the plan is and then evaluate
15 what would be the logical impacts from the effectuation
16 of that plan, the construction of the line, all the
17 necessary preconditions for the construction of the mine
18 that are reasonably foreseeable, and then go from there
19 as to what would be the environmental impacts of those
20 for purposes of going through their NEPA process.

21 ALJ RODDA: So if there have been different
22 routes in probably different projects, there is more
23 routes that are viable than others, they consider all
24 different routes and then --

25 MR. HAINS: Yes. They may well even consider

1 routes that weren't presented as part of the line siting
2 process and they may ultimately approve routes that were
3 not approved as part of the line siting process.

4 ALJ RODDA: So as part of that federal process,
5 if they approved something that was not consistent with
6 what the Commission did in this, does in this case,
7 then, what, we reopen this case or file a new
8 application?

9 MR. HAINS: That's a great question. And we
10 have had two circumstances where that has happened
11 before.

12 Your Honor would remember the Case 111 where
13 that happened where the Commission approved a siting of
14 a transmission line for, I believe it was, originally
15 Citizens at that point, and then TEP ultimately took
16 over. But it was TEP's transmission line to connect
17 Nogales to, I believe it was, a substation at some point
18 but in the Tucson vicinity, but that where the
19 Commission had sited one line, and then I don't know if
20 it was Forest Service or BLM said no, not there. And it
21 has kind of been in limbo ever since.

22 There is a more current line. I believe it is
23 the 138 case, APS' TS-5 to TS-9. Again, the Commission
24 approved a route. I will confess it is probably not the
25 straightest route. It is very crooked. There is a lot

1 of clear gerrymandering that went along in that
2 transmission line and a lot of it you can see where it
3 hops over freeways specifically to keep it on federal
4 land for portions. I can see Mr. Robertson chuckling
5 over there. He remembers that case, I am sure. But,
6 and that's gotten snarled a little bit in the BLM
7 process. And they are in that process, like I said,
8 evaluating routes that were not even presented to the
9 Commission or the Committee as part of that process.
10 And it is entirely possible they could approve something
11 totally different.

12 MR. BLACK: And, Your Honor, just on the
13 follow-up on your point, there is evidence in the record
14 that shows that Coronado National Forest is looking to
15 see what routing will be approved by the Commission. In
16 fact, there is discussion in the DEIS concerning that
17 particular process and the fact that the Coronado
18 National Forest and the Commission are working in
19 conjunction, I believe, so that you don't have that same
20 result where you have differing approvals.

21 ALJ RODDA: Okay.

22 MR. ROBERTSON: Your Honor, if I might just
23 close the circle in the interest of updated information,
24 Mr. Hains referred to siting Case 138. It is my
25 understanding as of several weeks ago BLM is now

1 actually looking at modifying their resource management
2 plan to accommodate the route that was approved by the
3 Commission.

4 ALJ RODDA: Yea, we win.

5 Ms. Berglan, did I ask you about the time frame,
6 the six to eight weeks? I know I talked to Ms. Webb and
7 Mr. Magruder about it.

8 MS. BERGLAN: No, Your Honor, you did not.

9 ALJ RODDA: I am sorry.

10 MS. BERGLAN: That's okay.

11 ALJ RODDA: Was I crowding the four to six weeks
12 down your throat?

13 MS. BERGLAN: No. That should be sufficient for
14 the Nation.

15 ALJ RODDA: All right. Let's talk about
16 something else. We haven't even gotten to my list of
17 things to talk about. Just off the record for a minute.

18 (Brief pause.)

19 ALJ RODDA: Back on the record.

20 All right. So I will deal with the scope issue.
21 I will deal with the timing issue. Trust me, you know,
22 I balance all your comments and try to do what works
23 with the schedule. Just knowing your schedule, is
24 there, for the latter half of June and July, are there
25 any times that do not work, Mr. Robertson?

1 MR. ROBERTSON: Your Honor, I will be out of
2 state the last two weeks of July.

3 ALJ RODDA: So like the 16th on?

4 MR. ROBERTSON: Yes. I will be out of state the
5 week of July 16th and the week of July 23rd. I actually
6 return the evening of July 30th.

7 ALJ RODDA: Okay. Since I have you all here,
8 how about August?

9 MR. ROBERTSON: Let me take just a moment to
10 double-check.

11 August is good.

12 ALJ RODDA: Okay. And so the rest of June is
13 good for you, too?

14 MR. ROBERTSON: When you say the rest of June --

15 ALJ RODDA: Well, I talked about the last part
16 of June.

17 MR. ROBERTSON: The last -- no, I just wanted to
18 check. I know I actually have one or two hearings
19 scheduled before Judge Martin in the first half of June.
20 But the last half looks good.

21 ALJ RODDA: Okay. Well, I know what those are,
22 especially if they are here in Tucson.

23 All right. So, Mr. Magruder, what is your
24 schedule like this summer?

25 MR. MAGRUDER: The 27th and 28th of August, I am

1 an election official and there is an election on
2 Tuesday, the 28th.

3 ALJ RODDA: So not available August --

4 MR. MAGRUDER: 27th and 28th, because on the
5 27th I have to pick up the ballots and I have to have a
6 preelection meeting.

7 ALJ RODDA: But you are around the rest of the
8 summer?

9 MR. MAGRUDER: The rest of the summer.

10 ALJ RODDA: Okay. You are easy.

11 Ms. Webb, what is your schedule like?

12 MS. WEBB: My mother and father-in-law are doing
13 their 55th anniversary sometime in June. Unfortunately
14 I do not have a date for that. I am thinking it is like
15 the second to third week in June.

16 I know there is a special election at the
17 beginning of June as well and then the election at the
18 end of August. But typically I would say I am pretty
19 well free except for that uncertainty with the middle of
20 June.

21 ALJ RODDA: Okay. So middle of June not good.

22 Ms. Berglan, what is your schedule like this
23 summer?

24 MS. BERGLAN: Thank you, Your Honor. Right now
25 the only week that wouldn't work would be June 11th it

1 looks like. I don't know if that's too early for you
2 anyway.

3 ALJ RODDA: Well, it is good to know what I
4 can't do.

5 Mr. Black, what are you up to this summer? I
6 don't need to know your summer vacation plans. When are
7 you --

8 MR. BLACK: The only time I will be out will be
9 July 29th through August 5th.

10 ALJ RODDA: Mr. Gellman.

11 MR. GELLMAN: I can tell you my schedule is
12 July is pretty much a mess at this point except the week
13 of, I think it is, July 16th. And I know my co-counsel,
14 Mr. Derstine, who would like to attend these
15 proceedings, is out June 20th through July 9th.

16 ALJ RODDA: That's right. I was sort of
17 expecting him here today. Okay. So say those dates
18 again. He is not available June?

19 MR. GELLMAN: He is not available June 20th
20 through July 9th. I know he will be out of the country.

21 ALJ RODDA: And all of July looks problematic
22 for you except maybe the 16th?

23 MR. GELLMAN: The early part of July would be,
24 that first week would be fine, except for the holiday I
25 know is a -- it is okay for me, I know it is not okay

1 for many. And the week of July 16th is good for me.

2 ALJ RODDA: How about Staff?

3 MR. HAINS: Your Honor, Staff is pretty much
4 open throughout all those times. If there is a conflict
5 presented, we have more than one attorney assigned to
6 this so we can switch out as need be. However you want
7 to schedule the matter, we are prepared to go whenever.

8 ALJ RODDA: Okay. Pima County, I am not sure
9 exactly what decision factors you are going to make. Do
10 you think you are going -- I mean, do I ask you your
11 schedule, too? Are you the attorney involved?

12 MS. PERRERA: I am the attorney involved. I am
13 open personally; although, I do believe that we have --
14 the 25th of August is a problem if we were to intervene
15 and we wanted to present a witness, August 25th.

16 ALJ RODDA: August 25th. Okay.

17 All right. Let's talk about public notice.

18 Mr. Gellman, you look anxious to talk about
19 public notice.

20 MR. GELLMAN: Maybe this one can go quickly. I
21 have looked at the notice that was sent out in the
22 Hualapai matter. We think that could be adequate or an
23 adequate basis to put together a notice here. I can
24 volunteer to put something together, circulate to the
25 parties and potential party, Ms. Perrera, and see if we

1 can't find consensus there and move that along.

2 ALJ RODDA: I think it will be helpful to have
3 the parties consider the notice and present a proposed
4 form of notice for my consideration. That's much more
5 efficient than me doing it and doing it wrong and having
6 people have to come back here. So I would appreciate
7 you, Mr. Gellman, if you would sort of start that ball
8 rolling.

9 MR. GELLMAN: Sure, Your Honor.

10 MR. ROBERTSON: Your Honor.

11 ALJ RODDA: Yes, Mr. Robertson.

12 MR. ROBERTSON: Might I inquire through you of
13 Mr. Gellman, I have never seen the form of Hualapai form
14 of notice. Does it make very clear that the subject
15 matter of that notice is quite separate from the
16 previous Siting Committee proceeding? I am thinking
17 about the public confusion and people saying, well, this
18 is already over and done with.

19 MR. GELLMAN: Off the top of me head I am not
20 sure as to whether the notice itself explicitly talked
21 about the scope of the proceeding. We could certainly
22 propose to include something that talks about the scope
23 here. But off the top of my head I am just not sure.

24 MR. ROBERTSON: Well, and I think Mr. Gellman's
25 suggestion and Your Honor's concerns that the parties

1 have an opportunity to comment on the form and content
2 will be very helpful. Thank you.

3 ALJ RODDA: That would be very helpful, yeah,
4 especially if we get the comments of all the parties on
5 that form of notice. If we have to come back to discuss
6 it, we can always do a procedural conference.

7 All right. Wow. I think with that we did sort
8 of cover what we needed to cover. Well, intervention,
9 that the notice should provide -- my reading of the
10 Commission decision was -- well, let me -- let's talk
11 about intervention.

12 I think the decision talks about intervention.
13 Is it -- Mr. Hains, maybe I will start with you, do you
14 have any thoughts? Did they open it up for -- I know
15 Pima County was sort of mentioned at that open meeting.
16 I know they were mentioned at the line siting, the
17 change in status. By intervention was the Commission
18 directing the hearing to focus on Ms. Webb or Pima
19 County, or did they intend to open it, intervention, to
20 other parties unknown?

21 MR. HAINS: Well, Your Honor, I can't suggest
22 that I know the minds of the Commissioners. My
23 understanding of what the notion was is that a lot of
24 the consequence was to at least open up intervention at
25 some level to permit for Ms. Webb's intervention and,

1 you know, to clear up the situation of the county's
2 participation. They had had a limited appearance before
3 and there was the question of what was their
4 participation at the Committee level and if they wanted
5 to resurrect that or take it a step above and become a
6 full participating party.

7 I don't think there would be, I don't think that
8 the Commission would be, or my reading of the order
9 doesn't suggest in my mind that the Commission's intent
10 was to preclude the part of intervention. I think it
11 might be helpful to have intervention. But I don't
12 think Staff would be opposed to setting a deadline for
13 intervention. You might keep it fairly focused to the
14 people who are really, really interested in this and
15 keep us moving on a set track.

16 MR. ROBERTSON: Your Honor, may I comment?

17 ALJ RODDA: Yes. I was going to ask everyone's
18 comment. So might as well start with you.

19 MR. ROBERTSON: Let me preface my comment by
20 saying we concur with Mr. Hains, there should be a
21 deadline for intervention. But if I might direct your
22 attention to page 2 of Decision 73074, look at numbered
23 paragraph 2 which begins on line 23 and continues
24 through line 26. And it reads: The Commission shall
25 expeditiously conduct the proceeding pursuant to

1 A.R.S. 40-252 in order to reopen the matter and to
2 entertain requests for intervention, including requests
3 from prospective intervenors and requests from any other
4 party who may desire to intervene.

5 Now, to me, prospective intervenors would be
6 Ms. Webb and Pima County. Any other party I think is
7 much more inclusive. So I think the opportunity to
8 intervene should be a part of your order.

9 ALJ RODDA: Right. And thank you,
10 Mr. Robertson. I knew I had read that language and
11 actually have it highlighted. So I appreciate your
12 pointing it out.

13 I think the notice should provide for
14 intervention when you are doing that, general
15 intervention.

16 All right. Anything else procedurally that the
17 parties want to discuss today? And as I said before,
18 Mr. Magruder has this motion outstanding. I am treating
19 that like any other motion. If you have anything in
20 response, I don't want to address it here today, but if
21 you will file a response and if it is to direct me to
22 some other filing that you have already made, that's
23 fine, too, as long as I can find it easy.

24 MR. BLACK: Your Honor, just on the intervention
25 issue, we will have a deadline for notice of

1 intervention. Will you be ruling on those or will a
2 party have an opportunity to oppose an intervention?

3 ALJ RODDA: Just like any intervention, right.

4 MR. BLACK: Okay. Thank you.

5 MR. ROBERTSON: Your Honor.

6 ALJ RODDA: Any intervention at a Commission
7 proceeding. I don't know how it is done at line siting
8 but I am not doing Line Siting Committee procedures; I
9 am doing Commission procedures.

10 Yes.

11 MR. ROBERTSON: I had one other procedural
12 matter I wanted to discuss. And that is the subject of
13 discovery, which typically is included in a procedural
14 order.

15 Now, given the limited scope of this proceeding,
16 namely the environmental impact of the mine and the
17 environmental impact of the line, and I am speaking only
18 for Scenic Santa Ritas, I don't know that we would have
19 occasion with respect to the environmental impact of the
20 mine to desire to serve discovery on either Rosemont or
21 TEP, but I would like to have that opportunity. And so
22 I think that should be addressed in the procedural
23 order.

24 ALJ RODDA: Okay. Okay. Anyone else have any
25 other procedural issues about this matter before I take

1 it under advisement?

2 MR. MAGRUDER: Your Honor, this is a siting case
3 number from the case number. And as a result we have to
4 submit 25 copies of everything.

5 ALJ RODDA: Oh, whatever -- the original and 13.
6 We are back to Commission.

7 MR. MAGRUDER: I have -- okay. I just don't
8 want to get rejected like they have done to me before.
9 I just -- the Docket Control will reject it.

10 ALJ RODDA: Because it is a line siting number?

11 MR. MAGRUDER: Number. And I don't know how you
12 get a new docket number.

13 ALJ RODDA: I don't think I can. That's beyond
14 my ability.

15 MR. MAGRUDER: That's beyond mine, too.

16 ALJ RODDA: I will talk -- if there is anything
17 special you need to know about the copies to file, I
18 will put it in the procedural order. But my assumption
19 is we don't need 25 copies because we don't have all
20 those Committee members. Right? We just have whoever
21 we provide copies to.

22 MR. MAGRUDER: And the next question is: Will
23 we do a brief after the hearing or will you decide that
24 at that time?

25 ALJ RODDA: There probably will be briefing

1 after the hearing. But we can talk about that.

2 MR. MAGRUDER: Another subject is that the Line
3 Siting Committee normally does a tour. And the tour is
4 extremely beneficial for everyone. And I really would
5 like to have a tour. In particular the area of concern
6 is Lopez Pass, which is on top of the mountain. And it
7 is not simple to get to. And I think that that would
8 put things in perspective not only from the intervenors'
9 viewpoint but anyone else if a tour could be scheduled.

10 MR. ROBERTSON: Your Honor, if I might add a
11 comment to that. There was not a tour conducted in the
12 siting Case 164 because of the weather. It was raining
13 heavily during that period. And the Siting Committee
14 decided not to take the tour, one of the reasons being
15 an expressed concern for safety of the members because
16 of the road conditions. So I would like Your Honor to
17 give thought to the possibility of a tour.

18 ALJ RODDA: Okay. That presents a lot of issues
19 within the context of a hearing. So I don't know if
20 anyone else has any initial thoughts or if you are just
21 like, "oh." My thought is just like, "oh."

22 MR. GELLMAN: Your Honor, we just note for the
23 record on the first day of the siting proceedings,
24 Mr. Beck went through a Google flyover presentation that
25 was admitted as an exhibit. A copy of the CD is in the

1 record. And the Committee had an opportunity to review
2 that before they made the decision regarding taking the
3 tour the following day. I am not suggesting that that
4 was the only thing they considered or that that was
5 dispositive, but that was certainly relevant in their
6 deliberations regarding taking the tour. So I think
7 that should be noted for the record.

8 And I just wanted to be quickly heard on
9 discovery since Mr. Robertson brought it up. I would
10 also like it noted for the record that the parties had
11 an opportunity to conduct discovery on TEP regarding its
12 application and its evidence in this case. And we don't
13 believe that this is an opportunity to now, for lack of
14 a better term, rediscover about all the issues that were
15 raised in the siting case in chief. Again, since the
16 scope of this proceeding is relatively limited, the
17 discovery should be appropriately limited to those
18 issues.

19 ALJ RODDA: Well, I think discovery should be
20 limited to the scope of the hearing, scope of the
21 hearing plus not to be repetitive of things you already
22 requested. Let's not start over.

23 So did I cut you off?

24 MR. GELLMAN: That was along the lines of where
25 I was going.

1 ALJ RODDA: Okay. All right. Anything else?

2 Ms. Webb, you look like you are poised.

3 MS. WEBB: Yes, I am poised.

4 To revisit the tour and the reference to the
5 Google flyover, Mr. Beck testified that satellite image
6 reused to create that flyover varies from location to
7 location and in the more rural areas the coverage is not
8 as recent and not as extensive as it is in urban areas
9 and less detailed in this because it is a remote area.

10 There was not a plan to visit Lopez Pass in the
11 original tour route. And that is the area that would be
12 the most significantly impacted by the proposed
13 transmission line.

14 ALJ RODDA: Well, who is it that you expect to
15 be on this tour? Me?

16 MS. WEBB: I would hope, yes, you, the parties.
17 I mean this has just been my experience with the Line
18 Siting Committee. It is noticed that usually they rent
19 some sort of vehicle. There is no talking about the
20 subject matter related to the case amongst the Committee
21 members in the van. The transcriptionist usually rides
22 in the van and then gets out with a little chair and
23 does the transcription. It has been Colette actually
24 who has done it in a previous tour.

25 And I just think it is really important because

1 the areas that would be most significantly impacted by
2 this proposed transmission line cannot be adequately
3 viewed unless you are at that location, given the
4 topography. And I can assure you, as someone who is a
5 user of public lands and lives close to the area, that
6 Google flyover I wouldn't recognize if I didn't know
7 what it was.

8 ALJ RODDA: Okay.

9 MR. BLACK: Your Honor, Patrick Black on behalf
10 of Rosemont. I just wanted to -- on the issue of the
11 tour, you had mentioned earlier that we are under the
12 Commission's hearing proceedings and under the
13 Commission's rules, that we are not now under the Line
14 Siting Committee rules. So it seems to me that if we
15 are going to be consistent, I am not aware of hearing
16 officers taking tours of matters that are before them in
17 the context of a regular Commission hearing.

18 Again, I think one of the reasons why you have a
19 tour for the Line Siting Committee members is because it
20 is the Line Siting Committee members who are making the
21 decision as to a preferred route versus an alternative
22 route. And I just think it would be highly irregular
23 for you to take a tour.

24 That's all. Thank you.

25 ALJ RODDA: I have never been asked. Mr. Hains,

1 is that your recollection? Have you ever done one on
2 one of these remanded?

3 MR. HAINS: Your Honor, my recollection is we
4 have never done a tour on a remanded matter by the
5 hearing officer from the Hearing Division. That said,
6 in those circumstances, we had a full route tour of some
7 sort of electronic type that could be presented, like
8 the Google map type that was described or a fly through
9 that would give visual demonstrations. Those were,
10 again, as, I don't want to resurrect those issues again,
11 but those were presented as the direct presentation so
12 the hearing officer would have some direct reference for
13 her own evaluation of that issue.

14 ALJ RODDA: Okay. And just, Ms. Webb or
15 Mr. Magruder or even Mr. Robertson -- the tour request
16 comes from this side of the room; not to leave you out,
17 Ms. Berglan, you are right in the middle, that's the
18 problem -- pictures don't do it justice?

19 MR. MAGRUDER: Your Honor, here is one of the
20 issues.

21 ALJ RODDA: Not just a Google flyover but one of
22 you going up there --

23 MR. MAGRUDER: The CEC is in error. It says it
24 is Santa Rita Road when in fact it is on Helvetia Road.

25 Where the water pipeline goes, which is within

1 the 100-foot right-of-way that the transmission line
2 goes, is not defined. And seeing the scenery, seeing
3 where it is, it should be defined. That's one of the
4 major issues I have, is that the 500-foot corridor is
5 not defined correctly. It is not legally defined in the
6 CEC. And you reference a wrong figure. It talks about
7 the South Santa Rita substation, and things like that.
8 And I think that the CEC should be made correct.

9 And one way to do that -- and the most sensitive
10 environmental portion is the parts up the mountain. And
11 we ought to see what the mountain looks like. And I
12 frankly don't know how to answer it. I don't know where
13 they want to put their line on the mountain. Because
14 the water line, it is supposed to parallel the water
15 line which is supposed to be, according to one of the
16 references, two feet underground. It is solid rock.
17 And I don't know where they are going to put a water
18 line underneath granite.

19 And with respect to the transmission line, there
20 is induced electricity that goes from the radiation from
21 the line to the transmission line, the water line. And
22 I don't know how we are going to handle that issue,
23 which is one of the issues that the Staff had an
24 amendment to that was never fully discussed.

25 MR. BLACK: Again, Your Honor, here we go again;

1 we are expanding the issues.

2 In response to Mr. Magruder's testimony, I will
3 say that the reason why a 500-foot corridor is provided
4 by Line Siting Committee members is so that the eventual
5 right-of-way has flexibility in its missing cultural
6 sites. Again, these were all issues that were addressed
7 by the Line Siting Committee and the Commission. And we
8 should not be relitigating those issues.

9 ALJ RODDA: Okay. Ms. Berglan, did you have
10 anything you wanted to add about the recent discussion?

11 MS. BERGLAN: The Nation doesn't have a position
12 whether or not the tour occurs.

13 ALJ RODDA: Okay. All right. Besides tours,
14 besides location of the line --

15 Ms. Webb.

16 MS. WEBB: I don't have a dog in this fight, but
17 it does appear that there would be a logistical issue.
18 I think it would need to be clarified in the procedural
19 order if there is a deadline for intervention, that the
20 date for our prefiled testimony would then begin at the
21 end of that. And it is just something that occurred to
22 me, and maybe everybody just knows that instinctively
23 but it sort of just occurred to me.

24 ALJ RODDA: Right, although people who intervene
25 earlier get a better chance at more time. So part of

1 that issue is when you decide to intervene --

2 MS. WEBB: Okay.

3 ALJ RODDA: -- how much time you have. But, so
4 to that, the sooner we can get a proposed form of order
5 the sooner we can get it noticed and we can -- but you
6 have given me a lot of dates that don't work for
7 hearings.

8 MR. BLACK: So, Your Honor, just to clarify what
9 you said, so if somebody intervenes, they can't then in
10 their intervention say I need another eight weeks in
11 order to prepare my testimony because I didn't intervene
12 until the last time that I could?

13 ALJ RODDA: That's -- yeah. So the proposed
14 form of order will have blanks for the deadline for
15 intervention and the hearing date because you won't know
16 that until I determine that --

17 MR. BLACK: Okay.

18 ALJ RODDA: -- them. So I put in dates where I
19 think people can prepare testimony.

20 Now, you all have been involved from the
21 beginning. You are going to start today preparing your
22 testimony, right? Whatever the deadline is you are
23 starting now. You are not waiting until you get a
24 procedural order that tells you how long you have to
25 file it. That's my advice to you. People who

1 intervene, you know, two weeks from now or three weeks
2 from now will have however much time there is until
3 testimony is due. We will give them a reasonable -- I
4 mean, but they will not have as much time as the people
5 in this room because they are not in this room, they
6 don't know it, unless they are listening, they can start
7 now.

8 All right. Anything else? Yes.

9 MS. WEBB: Your Honor, I just want to clarify
10 this because I am new to this particular part of the
11 process.

12 Earlier I believe I heard you say if we have
13 anything in response to Mr. Magruder's memo we should
14 file it. Does that mean that we, you are recommending
15 that we file something in response to that or only if we
16 have a strong position on it one way or another?

17 ALJ RODDA: If you don't have any position, I
18 don't need to hear from you. If you have a position, I
19 do want to hear from you.

20 MS. WEBB: Okay. Thank you.

21 ALJ RODDA: All right. People all agree? Good.

22 So I am taking all your comments under
23 consideration. You are going to get me a form of
24 notice. I will issue a procedural order. I might do
25 that before I get the form of notice so it gives you

1 some time frames. It sort of depends how fast I can be
2 and how fast you all can be. But I want to get you to
3 start. You are starting now. You are going forward.

4 You know at least what the scope is. You know
5 what the scope is. The scope is environmental impacts
6 of the line and the mine.

7 MR. BLACK: And, Your Honor, we will be
8 responding to Mr. Magruder's motion to compel. And I
9 wanted just to clarify. I believe Pima County or
10 Ms. Perrera is on the distribution list. And we would
11 be happy to give her a copy of that motion to compel
12 even though they haven't made a decision yet.

13 ALJ RODDA: Let's keep them on the list. They
14 are here today; they are interested.

15 MR. BLACK: All right. Thank you.

16 ALJ RODDA: All right. Thank you all. You are
17 all dismissed.

18 (The proceeding concluded at 11:45 a.m.)

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

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

13

14 WITNESS my hand this 26th day of April, 2012.

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COLETTE E. ROSS
Certified Reporter
Certificate No. 50658

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