

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

11

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At: Tucson, Arizona

13

Date: December 13, 2011

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22

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23

By: COLETTE E. ROSS

24

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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 Power Plant and Transmission Line Siting
4 Committee, at the Holiday Inn Tucson Airport North, 4550
5 South Palo Verde Road, Tucson, Arizona, convening at
6 9:01 a.m. on the 13th of December, 2011.

7
8 BEFORE: JOHN FOREMAN, Chairman

9 DAVID L. EBERHART, Arizona Corporation
Commission
10 BRET PARKE, Department of Environmental
Quality
11 JACK HAENICHEN, Governor's Office of Energy
Policy
12 MICHAEL J. LACEY, Arizona Department of Water
Resources
13 JEFF McGUIRE, Agriculture, Appointed Member
F. ANN RODRIGUEZ, Counties, Appointed Member
14 DAVID RICHINS, Cities/Towns, Appointed Member
PAUL WALKER, Public Member
15 PATRICIA NOLAND, Public Member
MICHAEL PALMER, Public Member

16
17 APPEARANCES:

18 For the Applicant:

19 ROSHKA DeWULF & PATTEN, PLC
By Messrs. Jason D. Gellman and John Matthew
Derstine
20 One Arizona Center
400 East Van Buren Street, Suite 800
21 Phoenix, Arizona 85004

22 and

23 TUCSON ELECTRIC POWER
By Mr. Marc Jerden, Senior Counsel
24 One South Church Avenue, Suite 200
Tucson, Arizona 85701

25

1 APPEARANCES:

2 For the Tohono O'odham Nation:

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

7 For Elizabeth Webb:

8 In Propria Persona
9 P.O. Box 952
10 Vail, Arizona 85641

11 For Marshall Magruder:

12 In Propria Persona
13 P.O. Box 1267
14 Tubac, Arizona 85646

15 For Rosemont Copper Company:

16 FENNEMORE CRAIG
17 By Messrs. Norman D. James and Patrick J. Black
18 3003 North Central Avenue, Suite 2600
19 Phoenix, Arizona 85012

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

23 LAWRENCE V. ROBERTSON, JR., ESQ.
24 Of Counsel to Munger Chadwick
25 P.O. Box 1448
26 2247 E. Frontage Road
27 Tubac, Arizona 85646

28 and

29 MUNGER CHADWICK
30 By Mr. Robert J. Metli
31 2398 East Camelback Road, Suite 240
32 Phoenix, Arizona 85016

33

34 COLETTE E. ROSS
35 Certified Reporter
36 Certificate No. 50658

1 CHMN. FOREMAN: Let's see if we can take our
2 seats and get started. I am sure we are all
3 disappointed this morning that we are not in a
4 12-passenger van jolting down a gravel road and through
5 a few flowing washes.

6 Just so the record is complete on this, the
7 100 percent prediction of rain yesterday turned out to
8 be accurate, 100 percent accurate. So we are going to
9 dive back into testimony this morning.

10 I first wanted to check and see if there were
11 any housekeeping matters that we needed to address. We
12 do have available off and on, I believe, during the rest
13 of our hearing, I think it is Mr. Jim Copeland, who is
14 the ranger out of Nogales who is involved with the
15 federal process. And my understanding is that he is not
16 listed as a witness by anyone, but if a question comes
17 up concerning the federal process, if someone needs or
18 wants to ask, he has graciously offered to do his best
19 to answer whatever questions we might have.

20 Are there any procedural matters we need to
21 address?

22 Mr. Derstine.

23 MR. DERSTINE: Good morning, Mr. Chairman,
24 members of the Committee. Overnight I became aware that
25 there were two letters that came into the docket at the

1 Corporation Commission, one from State Game & Fish and
2 one from the Sierra Club, directed to this project and
3 commenting on the application that is before you.

4 I am happy -- we have copies of the Game & Fish
5 letter; we will make copies of the Sierra Club letter.
6 If you would like me to sponsor those as exhibits,
7 again, we just thought it would make sense to make them
8 part of the record.

9 CHMN. FOREMAN: Of course I would like that, so
10 just mark them as exhibits next in order, distribute
11 them to the members of the Committee and the other
12 parties at the appropriate time.

13 Mr. Robertson, do you wish to be heard on that?

14 MR. ROBERTSON: Yes, I would, Mr. Chairman.
15 From a foundation standpoint, according to Mr. Derstine,
16 these were letters which have been filed with Docket
17 Control for purposes of this docket. So obviously they
18 would be information that would be available to the
19 members of the Committee as well as the Commission.

20 However, these are documents that the parties
21 will not have an opportunity to cross-examine the
22 authors of either of those documents, so I do have a
23 concern about them being received into evidence as
24 exhibits.

25 CHMN. FOREMAN: Okay. And does that concern

1 raise to the level of an objection?

2 MR. ROBERTSON: I knew you were going to ask
3 that question, and my response is yes, sir.

4 CHMN. FOREMAN: Okay. Does anybody else wish to
5 be heard on the objection?

6 (No response.)

7 CHMN. FOREMAN: And the basis for the objection
8 is?

9 MR. ROBERTSON: Lack of foundation and, more
10 specifically, lack of an opportunity to cross-examine
11 the authors of the letters as to representations made
12 within the letters, both as to matters of fact and
13 possibly as to matters of law.

14 CHMN. FOREMAN: All right. As to foundation, do
15 you have some basis for believing they are not what they
16 purport to be?

17 MR. ROBERTSON: Never having seen these letters,
18 I have no idea at this juncture, sir. My knowledge of
19 their existence arose just a moment ago with
20 Mr. Derstine's comment.

21 CHMN. FOREMAN: Okay. Very good. Does anyone
22 else wish to be heard on these letters?

23 MS. WEBB: Mr. Chairman.

24 CHMN. FOREMAN: Ms. Webb.

25 MS. WEBB: Am I on?

1 CHMN. FOREMAN: I don't know whether you are on,
2 but your mike is not.

3 MS. WEBB: I didn't think my mike was on either.

4 CHMN. FOREMAN: Okay, very good.

5 MS. WEBB: I am trying here. Okay.

6 CHMN. FOREMAN: It is early.

7 MS. WEBB: What Larry said about the lack of
8 foundation I would also like --

9 CHMN. FOREMAN: You mean Mr. Robertson?

10 MS. WEBB: Mr. Robertson, sorry. What
11 Mr. Robertson said about lack of foundation I would also
12 like to agree with.

13 My understanding, I received an e-mail late last
14 night -- because my wireless does not appear to work in
15 this corner -- from Ms. Ippilito from Mr. Gellman's firm
16 saying they had actually docketed that letter, and I
17 believe they received it via e-mail from Game & Fish on
18 Friday, if I understand correctly. It was late.

19 And actually, I believe it was in response to
20 one of my data requests that I submitted on December 4th
21 asking for agency letters. And so I am -- I don't
22 believe I can question that witness either, were they
23 asked to respond specifically to the alternatives, were
24 they asked can they make choices. I agree that I can't
25 question that witness to understand the context in which

1 they were asked to submit a letter.

2 CHMN. FOREMAN: Okay. Anybody else wish to be
3 heard?

4 Mr. James.

5 MR. JAMES: Mr. Chairman, Committee members, it
6 strikes me that it is a bit premature to be arguing
7 about this issue when we haven't even seen the letters.
8 So my suggestion -- and we have not seen them. So my
9 suggestion would be that we wait until the letters are
10 actually distributed, and then, if necessary, to revisit
11 this issue.

12 CHMN. FOREMAN: Well, my experience with lawyers
13 and people who would like to be lawyers is that they are
14 willing to raise issues and argue them at almost any
15 stage. And it is better that we have issues identified
16 earlier than later.

17 Please take the letters, have them marked as
18 exhibits. You may offer them later, but not now. We
19 have some time to go before we will be finished with
20 this hearing.

21 So during the interim, I will expect that folks
22 will be able to have the opportunity to call the people
23 who are authors of the letters. And if you can set
24 aside some time, whether it can be a group discussion
25 with them about whether they are, in fact, the persons

1 who authored the letter, we can establish the
2 foundational thing, and if there are other questions
3 relating to the content of the letters, then that
4 interview can take place at that time. And after that,
5 then we will have a better record upon which I can make
6 an intelligent decision about whether the letters should
7 be admitted.

8 MR. DERSTINE: Understood. I would simply note
9 while we are on the topic the Game & Fish Department
10 letter is dated December 10th, received in our office on
11 December 10th addressed to Mr. Beck. The Sierra Club
12 letter went to Docket Control at the Arizona Corporation
13 Commission and it is dated December 12th. And the Game
14 & Fish expresses its preference and it is concerning
15 conditions of the CEC application, and the Sierra Club
16 opposes the application. So we are simply noting that
17 they were filed.

18 CHMN. FOREMAN: Well, we will deal with the
19 question of admissibility, prejudice, foundation, those
20 other good things later. Right now the parties will
21 have the opportunity to investigate them and at an
22 appropriate time make a more informed argument
23 concerning whether or not they should be admitted.

24 Any other preliminary matters that we need to
25 address this morning?

1 (No response.)

2 CHMN. FOREMAN: All right. My recollection is
3 that we were, Counsel, that you were questioning
4 Ms. Weinstein, and we had just finished with a table
5 that discussed the plusses and minuses of the various
6 alternatives. And we were ready to turn to process.

7 MR. DERSTINE: You are right, Mr. Chairman. I
8 wanted to back up on one item. During the course of
9 yesterday's testimony, I think it was Member Eberhart
10 had a question for Ms. Weinstein concerning the pole
11 finish. Ms. Weinstein testified from her memory
12 concerning that, that there was mixed reactions to the
13 different pole finishes. I asked her at the conclusion
14 of the hearing to go back and review the record and
15 public comment, and so I think she has some clarifying
16 testimony to provide on that.

17 CHMN. FOREMAN: All right. So you would like to
18 start there?

19 MR. DERSTINE: I would like to start there.

20 CHMN. FOREMAN: All right. Well, Ms. Weinstein,
21 you may clarify.

22 MS. WEINSTEIN: Okay. I went back and looked at
23 the comment database that we had prepared and did a
24 couple of searches for different terms that people could
25 use for galvanized, dull gray, and structures, that type

1 of a finish. And what I found, we had seven comments,
2 including one from Ms. Webb, that said they would prefer
3 to see the dull galvanized. Several of them said
4 particularly with sky backgrounds, is how it was
5 described, and there was one or two that said depending
6 on location. And that was the extent I could find of
7 comments with regards to finish.

8 I also looked for dark brown or Corten or that
9 sort of finish as well, and I didn't see, except for
10 where the one individual mentioned both types, I didn't
11 see comments specifically written down about that when
12 we were at the public meetings, but we did hear a lot of
13 mixed reaction to the different finishes.

14 We also did have a comment or, excuse me, note
15 that in the draft EIS that the Forest Service does
16 consider the dark brown nonreflective color to be
17 mitigation for the power line.

18 CHMN. FOREMAN: Okay. Very good.

19 All right. Anything else to pursue before we
20 resume?

21 MR. DERSTINE: No. We are ready to proceed.

22

23 DIRECT EXAMINATION CONTINUED

24 BY MR. DERSTINE:

25 Q. My thought was to, we kind of -- we were at a

1 little bit of a horse race at the end yesterday, and so
2 I wanted to just ask Ms. Weinstein to again, using this
3 last summary slide, quickly highlight what she thinks
4 are the key, the key information in the environmental
5 characteristics of the preferred and the alternative
6 routes.

7 A. BY MS. WEINSTEIN: The chart on the left is
8 summarizing this information. And I went through it
9 quickly, but I will just touch on a couple things on it
10 again, in case I went too fast yesterday.

11 But for land use, we have our primary land use
12 and land user out there is the Santa Rita Experimental
13 Range, and that's affected by all routes.

14 For biological resources, ground disturbance is
15 a key consideration. And we have the least amount of
16 ground disturbance with the preferred route because of
17 the collocation with the pipeline and the shared access.
18 We have the most, probably, with Alternative Route 4
19 because of the length, the need for improved access, and
20 a portion of new access that we have to have in that,
21 for that route.

22 For cultural resources, as I mentioned, we have
23 two, two sites that potentially could be affected for
24 each of the routes, so very close in that respect.

25 And for visual resources, we have residences

1 that could be affected on any of the routes. We have
2 scenic routes associated with all of the routes to some
3 degree. And we have recreation users probably to a
4 greater degree with Alternative Route 4.

5 So I just wanted to go back and touch on that.

6 CHMN. FOREMAN: Member Walker.

7 MEMBER WALKER: Ms. Weinstein, I kept thinking
8 last night about the route choices and reviewed the
9 testimony again. And what I saw is the Santa Rita
10 Experimental Range seemed particularly focused on
11 link 120, is that correct?

12 MS. WEINSTEIN: Yes.

13 MEMBER WALKER: How great is their concern with
14 Route 4 relative to link 120?

15 MS. WEINSTEIN: I believe what Mr. Husman spoke
16 of yesterday was that it wasn't so much link 120 for
17 Alternative Route 4, but rather the disturbance
18 associated --

19 MEMBER WALKER: Yeah, link 120 is not part of
20 it.

21 MS. WEINSTEIN: Exactly. And I think we
22 clarified yesterday that they felt that the disturbance
23 associated with upgrading that line to include the 138
24 line all the way through the range was a concern for
25 them.

1 MEMBER WALKER: Would be even worse than
2 link 120.

3 MS. WEINSTEIN: I don't think I can say on that.

4 MEMBER WALKER: Okay. Thank you.

5 BY MR. DERSTINE:

6 Q. Anything more you want to add from this summary
7 chart and your discussion of the preferred route and the
8 alternatives?

9 A. BY MS. WEINSTEIN: No.

10 Q. Okay. Why don't we move on. EPG played an
11 important role in the public process. I know Mr. Beck
12 covered the public process to a large degree so I don't
13 want you to spend too much time on it, but in terms of
14 EPG's role, and again highlighting the public process
15 that was used to obtain public feedback and develop
16 these routes, can you cover that briefly again for the
17 Commission?

18 A. BY MS. WEINSTEIN: Sure. As Mr. Beck covered,
19 we did hold meetings with the agencies and
20 jurisdictions. We had the stakeholder group, which had
21 a broad range of interests involved; the newsletters
22 that we mailed out to a large number of addresses. We
23 also had four comment forms that were sent out with four
24 of the five newsletters, or three of the, excuse me,
25 three of the five newsletters, and then a fourth one was

1 provided online and at our last open house; the four
2 rounds of public house meetings that we had; and we had
3 a telephone information line, which allowed people to
4 call and leave a message with their comments, or, if
5 they had questions, they could let us know that and we
6 could return their calls; the internet website that
7 Mr. Beck mentioned and the online comment forms and
8 interactive map. And just to summarize, we had
9 approximately 1500 comment submittals over the course of
10 the project.

11 This is just a photo of one of the many notices
12 that was posted by TEP in the project area. And this is
13 a representative example of one of the newsletters and
14 comment forms.

15 On the left is a screen shot of the website and
16 how it looked for the majority of the project where all
17 the information that was provided at the open houses,
18 the newsletters, online comment form was located here.
19 And on the right is the interactive Google map that
20 Mr. Beck referred to, and you could click on either all
21 routes or a particular route to show on that map and
22 then zoom in.

23 Just to summarize the agency comments and
24 requests that we received, State Land and the Santa Rita
25 Experimental Range expressed their preference for the

1 preferred route. They had concerns about open access
2 impacts to repeat photography, research areas, livestock
3 facilities.

4 Coronado National forest provided some comments.
5 They indicated they concurred with the collocation with
6 the pipeline. And they preferred to minimize crossing
7 of the forest with the utility lines.

8 Town of Sahuarita indicated a preference for
9 Alternative Route 4. They liked the idea of using the
10 existing 46kV corridor.

11 Pima County expressed concerns overall regarding
12 the environmental impact, and they actually did have a
13 request that a meeting be held in the Vail, Corona de
14 Tucson area, which we did do.

15 Public comments, we had quite a bit of comments
16 concerning the type of the line and the siting of the
17 line and approval of the line. There were concerns
18 about building it before the mine was approved, and we
19 did try to clarify that was not going to be the case.
20 Location of the line was a concern, a concern for
21 aesthetics, impacts to natural and cultural resources,
22 property values, health effects. And we had a
23 substantial number of comments pertaining to the mine
24 itself.

25 Q. Ms. Weinstein, we are at the end of your direct

1 testimony. I wonder if you could just briefly go back
2 and highlight the reasons, the environmental factors
3 that were taken into account in selecting the preferred
4 route as the preferred route for the project.

5 A. BY MS. WEINSTEIN: Okay. The preferred route is
6 the preference of the Arizona State Land Department and
7 Santa Rita Experimental Range. It collocates with the
8 water pipeline, with the distribution line for the water
9 pipeline and Santa Rita Road, resulting in the least
10 amount of ground disturbance. It is one of the shortest
11 routes.

12 MR. DERSTINE: That concludes my direct
13 testimony from our witness panel. And I would tender
14 them for cross-examination at this time.

15 CHMN. FOREMAN: All right. We will start with
16 the Tohono O'odham Nation. Ms. Berglan.

17 MS. BERGLAN: Thank you, Mr. Chairman.

18

19 CROSS-EXAMINATION

20 BY MS. BERGLAN:

21 Q. Ms. Weinstein, would you agree with me that some
22 of the cultural resource sites within the project area
23 are likely to be either O'odham or ancestral to O'odham?

24 A. BY MS. WEINSTEIN: I would need to check on
25 that. Can I have a moment?

1 Q. Sure.

2 A. BY MS. WEINSTEIN: Okay. Yes.

3 Q. Thank you.

4 In response to a question that was posed by
5 Member Richins yesterday, I believe, you had indicated
6 that with respect to the preferred route you -- and
7 correct me if I got your words wrong -- anticipate being
8 able to mitigate and avoid five of the seven cultural
9 resource sites. First of all, is that correct?

10 A. BY MS. WEINSTEIN: Yes.

11 Q. And could you first describe what you mean by
12 avoid.

13 A. BY MS. WEINSTEIN: By either spanning or pole
14 placement, we would try to avoid impacting sites.

15 Q. Okay. And then can you describe what you mean
16 by mitigate.

17 A. BY MS. WEINSTEIN: Reduce or avoid impacts.

18 Q. And what sort of techniques would be used for
19 mitigation?

20 A. BY MS. WEINSTEIN: If are you saying if we are
21 not able to avoid the site?

22 Q. Right. You had indicated in your testimony that
23 there is only going to be two affected sites because you
24 are going to be able to avoid or mitigate five of the
25 seven sites. So I am just trying to get a sense of what

1 you mean by that.

2 A. BY MS. WEINSTEIN: Right. We are, we are going
3 to avoid five sites, and need to potentially mitigate
4 two sites.

5 Q. Okay. So avoidance for five, mitigation for
6 two. And those two sites that would be mitigated are
7 what you have listed in your presentation as affected
8 sites. Have I got that right?

9 A. BY MS. WEINSTEIN: Yes, potentially affected
10 sites.

11 Q. Potentially affected sites. Okay.

12 And would mitigation, could that include
13 excavation of the site?

14 A. BY MS. WEINSTEIN: Potentially as a last resort,
15 and it would depend on what was identified in the
16 historic property treatment plan.

17 MS. BERGLAN: I don't have anything further.
18 Thank you.

19 MEMBER EBERHART: Mr. Chairman.

20 CHMN. FOREMAN: I am sorry. Member Eberhart.

21 MEMBER EBERHART: Thank you. Ms. Berglan jogged
22 my brain a little bit this morning here. Coffee hasn't
23 done it yet.

24 Ms. Weinstein, I had a follow-up question kind
25 of that doesn't relate to the transmission line, per se.

1 But if the transmission line is parallel to the water
2 line, that would seem to lead to the idea that the water
3 line is going to impact those same seven sites. And so
4 you mentioned, is there a plan that's regarded by the
5 applicant to address potential disturbance for both the
6 power line and the water line?

7 MS. WEINSTEIN: We understand that Coronado
8 National Forest will be conducting Section 106
9 consultation with SHPO. And what we would anticipate
10 come out of that would be the preparation of a historic
11 properties treatment plan with other involved parties to
12 determine what would be the appropriate treatment of
13 cultural sites in the project area. And that would, I
14 understand, would involve the proposed mine operations
15 as well as the associated facilities, transmission,
16 pipeline.

17 MEMBER EBERHART: And so you would work hand in
18 hand with the O'odham Nation to be able to prepare this
19 report?

20 MS. WEINSTEIN: We would certainly be available
21 to do that, right.

22 MEMBER EBERHART: And typically in our CECs we
23 require a condition, if you will, that during
24 construction if new sites are found that were not known
25 about before, there is a plan that has to be followed.

1 Could you talk about that briefly?

2 MS. WEINSTEIN: Yes. And I believe that in the
3 CEC, proposed CEC, there is a condition for that. Let
4 me see.

5 It is No. 4 on page 4. It states: If
6 archeological site, paleontological site, historical
7 site, or an object that is at least 50 years old is
8 discovered on state, county, or municipal land during
9 construction or operation of the project, the applicant
10 or its representative in charge shall promptly report
11 the discovery to the director of the Arizona State
12 Museum and, in consultation with the director, shall
13 immediately take all reasonable steps to secure and
14 maintain the preservation of the discovery, pursuant to
15 A.R.S. 41-844.

16 MEMBER EBERHART: While we are on the topic, the
17 idea just came to me that would it make sense to also
18 include as a consulting party the O'odham Nation, if
19 things are discovered during construction, in addition
20 to the state director.

21 MS. WEINSTEIN: Yes, I think that would make
22 sense.

23 MEMBER EBERHART: Okay. The five sites that you
24 are able to avoid, is that because they are very small
25 in length? I know the spans, we talked about 700 feet

1 or something like that typically between the poles. Is
2 that because there may be 100 feet square or something
3 that you are able to locate the poles away from that?

4 MS. WEINSTEIN: That is the case in some of
5 those. I would probably need to double-check and see
6 what those five sites exactly are. But I believe it is
7 either spanning or being able to move the pole over to
8 avoid the site in that respect.

9 MEMBER EBERHART: And these sites are very well
10 documented through SHPO or through the Nation and their
11 locations have been accurately provided to you?

12 MS. WEINSTEIN: If I could just have a moment,
13 let me check on that.

14 All the sites were documented in, documented in
15 a cultural report submitted to the Coronado National
16 Forest and reviewed also by the Tohono O'odham Nation,
17 and have been finalized as a -- at this point we
18 integrated comments from both agencies, or the Nation
19 and the Coronado National Forest.

20 MEMBER EBERHART: And was that report just a
21 literature review, or was that an actual report walking
22 on the ground looking for evidence of --

23 MS. WEINSTEIN: Right, there were two reports,
24 and they were cultural survey reports, walking on the
25 ground.

1 MEMBER EBERHART: Thank you. Thank you.

2 CHMN. FOREMAN: Let me ask if members of the
3 Committee would like to have the language of the
4 proposed CEC available for perusal.

5 MR. DERSTINE: Mr. Chairman, the form of CEC
6 that Ms. Weinstein was reading from is marked as TEP-8
7 and should be in the applicant's exhibit binder.

8 CHMN. FOREMAN: Good. Thank you.

9 MR. DERSTINE: And Mr. Chairman, with your
10 permission I would pass the baton off to Mr. Gellman for
11 purposes of representing our witnesses on
12 cross-examination.

13 CHMN. FOREMAN: What did he do to deserve that?
14 All right. Member Noland.

15 MEMBER NOLAND: Thank you, Mr. Chairman.

16 I just have one question, Ms. Weinstein. And if
17 you don't know this, maybe Member Palmer does, having
18 been a former member of a board of supervisors. Santa
19 Rita is a county road, is that correct?

20 MS. WEINSTEIN: Yes.

21 MEMBER NOLAND: Doesn't the county have to
22 comply also with archeological and other environmental
23 issues the same as anyone else that is building in an
24 area?

25 MS. WEINSTEIN: I believe so.

1 MEMBER NOLAND: Have you received any
2 information from the county, or was there any
3 information in the county attorney's filing for Pima
4 County that indicated that they had stumbled across any
5 archeological sites in their grading or maintenance of
6 Santa Rita Road?

7 MS. WEINSTEIN: Not that I am aware of.

8 MEMBER NOLAND: Okay. Thank you.

9 CHMN. FOREMAN: All right. Let's see. I think
10 we were going to go to Save the -- I am sorry, Scenic
11 Santa Ritas. I keep wanting to say the Scenic Santa
12 Ritas, but it is just the Scenic Santa Ritas.

13 Mr. Robertson.

14 MR. ROBERTSON: Thank you, Mr. Chairman. I am
15 going to begin my cross-examination of the panel this
16 morning by beginning with Mr. Beck.

17 And Mr. Beck, earlier this morning I had an
18 opportunity to speak with Mr. Gellman and ask him to be
19 sure that you had available to you a copy of the
20 company's proposed form of CEC, which Mr. Derstine
21 indicated just a moment ago is TEP Exhibit 8. I also
22 asked Mr. Gellman to be sure that you had a copy of
23 Committee Exhibit 3, which is a copy of Mr. James
24 E. Pepper's December 5th letter of limited appearance to
25 the Commission's Docket Control.

1 What I neglected to ask Mr. Gellman to be sure
2 you had was a copy of Mr. Olea's December 5th letter to
3 Docket Control, which is TEP-12. So I will give you a
4 moment to be sure you have those, and when you have got
5 them I will be ready to begin my questioning.

6 MR. BECK: I do have them all, Mr. Robertson.

7

8

CROSS-EXAMINATION

9 BY MR. ROBERTSON:

10 Q. Okay. Let me start by confirming my
11 understanding that the purpose of the proposed line is
12 to serve the Rosemont mine. Is that correct?

13 A. BY MR. BECK: That is correct.

14 Q. And am I also correct in my understanding that
15 the company would not construct the proposed 138kV line
16 but for the mine. Is that correct?

17 A. BY MR. BECK: That is correct also.

18 Q. Let me have you turn to page 8 of your prepared
19 testimony, Mr. Beck, and let me know when you have that
20 page in front of you.

21 A. BY MR. BECK: I have it now.

22 Q. I would like to direct your attention to a
23 portion of your answer that begins on line 18 of page 8.
24 And specifically I am looking at a sentence which
25 appears at lines 21 and 22 which reads as follows,

1 quote: The impact of constructing the gas line would be
2 much greater than construction of a transmission line.
3 Close quote.

4 When you use the word impact, what sort of
5 impact do you have in mind?

6 A. BY MR. BECK: Well, to put a gas line up to the
7 Rosemont site would require excavating a trench for the
8 pipeline. And the swath that would be left behind by
9 that excavation would never fully be able to be
10 revegetated to its natural state, what it looked like
11 before, so you would always see that visible scar.

12 Q. Did the company do any specific studies with
13 respect to what would be involved in constructing a
14 natural gas pipeline to serve the Rosemont mine site?

15 A. BY MR. BECK: No, we did not.

16 Q. Okay. Do you have any specific knowledge of
17 what the width of the ditch would be or the trench in
18 which such a natural gas pipeline would be placed?

19 A. BY MR. BECK: It would be at least 15 foot wide,
20 but beyond that I don't have any detail on that.

21 Q. Okay. And this would be covered over, is that
22 correct?

23 A. BY MR. BECK: That is correct.

24 Q. So the impact that you were referring to, if I
25 understand it correctly, would be of a revegetation

1 nature?

2 A. BY MR. BECK: That's right. But in the types of
3 soils and in this desert area, once you excavate you can
4 never get the soil back to look like it did before. So
5 there would always be a scar. But yes, we would have to
6 revegetate after.

7 Q. And that impact that you refer to as it relates
8 to southwestern soils and grass cover, you also have a
9 similar impact with any road grading, don't you?

10 A. BY MR. BECK: Yes, you do.

11 Q. Let me take you now to a sentence that appears
12 on page 8 of your prepared testimony at lines 23 and 24,
13 which reads as follows, quote: Also the use of on-site
14 generation would leave the Rosemont project subject to
15 outage for any number of issues, including loss of fuel
16 or breakdown of the generator itself.

17 I wonder if we could have pulled up on either
18 the left or the right screen the slide from the 2009
19 plan of service study which showed the Rosemont location
20 in relation to TEP's local 138kV service. This is one
21 of the slides attached to Mr. Beck's testimony.

22 A. BY MR. BECK: Would that be it, Mr. Robertson?

23 Q. That's it, yes. Thank you.

24 Now, you have indicated in your testimony, both
25 in your prepared and in yesterday's oral testimony, that

1 the proposed line to serve the Rosemont mine is a radial
2 line, is that correct?

3 A. BY MR. BECK: That is correct.

4 Q. And Mr. Beck, you have testified before this
5 Committee on a number of previous occasions with respect
6 to transmission line reliability, have you not?

7 A. BY MR. BECK: Yes, I have.

8 Q. Do you recall in some of those previous
9 occasions that you might have addressed what the risks
10 are to transmission lines in this part of the country
11 when you are talking, for example, about the spacing to
12 be desired between transmission lines where they are
13 going to be in parallel corridors?

14 A. BY MR. BECK: I expect I probably did, yes.

15 Q. What would be some of the risks that could cause
16 a transmission line to be damaged and knocked to the
17 ground?

18 A. BY MR. BECK: In this area storms is one big
19 issue for us. Our summer monsoons when we have very
20 high winds coming through, our poles are subject to
21 damage. But we have gone to steel pole construction
22 exclusively for our 138kV system, which limits that
23 exposure considerably.

24 Another risk that we have is vehicles running
25 through and knocking down a pole, but again, our steel

1 poles are -- we have not had issues on our steel poles
2 to a large degree with vehicles being able to knock the
3 line down.

4 Q. Is it your testimony that the use of steel poles
5 has completely eliminated the risk of loss of one or
6 more poles to strong winds?

7 A. BY MR. BECK: No, it doesn't completely
8 eliminate it.

9 Q. Is it your testimony that the use of steel poles
10 has completely eliminated the loss of risk of one or
11 more poles to a vehicular collision with a pole?

12 A. BY MR. BECK: No, it does not eliminate it
13 totally.

14 Q. Does the use of steel poles eliminate the risk
15 of aircraft hitting one of those poles and knocking it
16 down?

17 A. BY MR. BECK: No, it does not.

18 Q. Okay. Now, Mr. Olea, in his December 5th, 2011
19 letter to Chairman Foreman, which is TEP Exhibit 12,
20 makes the following statement in a paragraph at the
21 bottom of the first page, quote:

22 As proposed, the line provides radial service to
23 the Rosemont copper mine. Because they are the only
24 customer, loss of the line would not affect the
25 reliability of the system or affect any other TEP

1 customer. Close quote.

2 Now, Mr. Olea's comment was directed towards the
3 impact of the loss of that line on the reliability of
4 TEP's overall system, was it not?

5 A. BY MR. BECK: That is correct.

6 Q. Would you agree that loss of that line would
7 completely eliminate electrical service to the Rosemont
8 mine for the period of the outage of the line?

9 A. BY MR. BECK: It would eliminate the service
10 that TEP would be providing. My assumption would be
11 they would have some on-site backup generation for
12 critical items.

13 Q. Okay. But as to TEP's provision of service to
14 the mine in connection with its ongoing operations,
15 there would be a loss of that service with the loss of
16 the line, correct?

17 A. BY MR. BECK: That is correct.

18 Q. Being a radial line you have no backup
19 capability to serve the mine, is that correct?

20 A. BY MR. BECK: That is correct.

21 Q. Okay. Let's go to page 10 of your prepared
22 testimony. And I would like you to take a moment to
23 look at the answer which begins on line 3 and continues
24 through
25 line 13.

1 A. BY MR. BECK: I have read it.

2 Q. All right. You make the following statement
3 beginning on page 5, quote, TEP has submitted the
4 application --

5 CHMN. FOREMAN: I am sorry, Mr. Robertson. Did
6 you mean to say line 5?

7 MR. ROBERTSON: Thank you, Mr. Chairman. I did.
8 I appreciate that correction.

9 BY MR. ROBERTSON:

10 Q. You make the following statement on page 10
11 beginning on line 5, quote:

12 TEP has submitted the application based on
13 Rosemont indicating when it would need power to
14 construct and operate its mining project. Because
15 construction power options were removed, the
16 transmission line and facilities from the proposed Toro
17 substation to the Rosemont mining operation site are now
18 needed for both construction and operations. Close
19 quote.

20 Let me ask you, against the background of that
21 statement, what is TEP's understanding as to the year in
22 which Rosemont intends to commence its mining
23 operations?

24 A. BY MR. BECK: The current indication that
25 Rosemont has given to TEP is that they plan to start

1 construction and would need their initial power in the
2 first quarter of 2013.

3 Q. Of 2013. What is your understanding of how long
4 it would take to construct the transmission line to
5 provide construction power to Rosemont?

6 A. BY MR. BECK: Construction time is approximately
7 eight months.

8 Q. And do you anticipate, assuming that you were to
9 receive a certificate of environmental compatibility
10 from the Committee and from the Commission sometime in
11 the first half of 2012, you would be able to complete
12 that construction either during the year 2012 or the
13 very first part of 2013?

14 A. BY MR. BECK: That is our intent. And it is a
15 tight schedule, but we think it can be done.

16 Q. Let me have you turn to TEP Exhibit 8, which is
17 the proposed form of CEC. And let me know when you have
18 got that in front of you. And specifically I would like
19 you to look at page 4.

20 A. BY MR. BECK: I am at page 4.

21 Q. All right. Condition No. 7 as set forth in
22 TEP's proposed CEC reads as follows, quote:

23 This authorization to construct this project
24 shall expire unless a transmission line is capable of
25 operation within 10 years from the date the certificate

1 is approved by the Arizona Corporation Commission,
2 Commission in parentheses. However, prior to expiration
3 the applicant may request that the Commission extend
4 this time limitation. Close quote.

5 First of all, what do the words capable of
6 operation mean?

7 A. BY MR. BECK: That the line is energized and
8 ready for service.

9 Q. So that it would be in a condition it could
10 provide construction power to Rosemont?

11 A. BY MR. BECK: Correct.

12 Q. Against the timeline background you have given
13 us of Rosemont indicating they anticipate needing
14 construction power in 2013, and the company being able
15 to construct the line by the first half of 2013,
16 assuming they receive a certificate of environmental
17 compatibility, why is the company asking for a 10-year
18 period on the certificate of environmental
19 compatibility?

20 A. BY MR. BECK: Well, there is a couple of reasons
21 for that. One is, in general, the five-year windows
22 that we have been receiving on CECs, we have experienced
23 a lot of times where we have had to go back and request
24 additional time on those CECs. And it is an
25 administrative process that just doesn't provide much

1 value to anybody. So that's one reason we are looking
2 to request a 10-year CEC. Not just for this project,
3 but generally in all of our projects going forward
4 that's what we will be requesting.

5 Specific to this project, because this is
6 such -- the end use and the customer on this project has
7 such a controversial project, TEP does not expect that
8 the timeline that Rosemont is proposing is necessarily
9 accurate, that there probably will be appeals and delays
10 in them being able to start their project. And since we
11 have committed not to build the line until their project
12 is approved, we are requesting a 10-year window to have
13 the opportunity to come back to request an extension of
14 a CEC.

15 Q. Let's break down your response into several
16 parts for the purpose of additional questions. Where
17 you have had to go back and request an extension of a
18 previously granted CEC, has that request ever been
19 denied?

20 A. BY MR. BECK: For TEP we have not had any
21 denied, no.

22 Q. Okay. And I am talking about TEP. Where you
23 have had to go back and request an extension of a CEC,
24 did it require the evidentiary hearing, or was that done
25 basically on the basis of filings made with the

1 Commission and responses by the Commission Staff?

2 A. BY MR. BECK: To date under the CECs where we
3 have gone back for extensions the conditions have not
4 been as extensive as they are currently in cases. In
5 one of our most recent cases there is some very specific
6 requirements if we go back and ask for an extension that
7 appear to require an evidentiary hearing, at least an
8 open meeting of the Commission.

9 Q. Have the conditions as yet been activated as
10 such to require a condition?

11 A. BY MR. BECK: No, because we have not had to
12 request an extension on the particular case I am
13 thinking of.

14 Q. Okay. And have you included any of those
15 conditions in your proposed CEC that would require an
16 evidentiary hearing in connection with a request for an
17 extension of the time limitation?

18 A. BY MR. BECK: We have not proposed it in our
19 proposed conditions, no.

20 Q. Okay. Now, you indicated it was not in the best
21 interest of anyone to have to go through this
22 administration process of obtaining an extension. Were
23 you presuming to speak on behalf of landowners who might
24 be impacted by any CEC that might be granted in this
25 proceeding, or were you speaking on behalf of the

1 company?

2 A. BY MR. BECK: Primarily on behalf of the
3 company. There is a lot of time and effort involved in
4 requesting these extensions. I know the position of the
5 ACC Staff has been that the reason that time limits were
6 put on these CECs is no longer necessarily a priority
7 for the Commission. It was the Commission Staff. And
8 the process of opening these up to request extension
9 just takes a lot of effort.

10 Now, granted, landowners may be interested in
11 having a rehearing of a siting that's already been
12 approved. But to the extent that siting has already
13 been approved, they are aware of the project coming
14 forth.

15 Q. Would you agree it is conceivable that the
16 conditions which might suggest a preferable route today
17 might be different 10 years from now?

18 MR. GELLMAN: Mr. Chairman, objection; I think
19 that calls for speculation.

20 CHMN. FOREMAN: It does, but a significant part
21 of projection involves speculation. And so Mr. Beck
22 speculated about some other things and we let him
23 speculate about that. And I am sure the Committee will
24 give his testimony on that point the weight that it
25 deserves.

1 MR. BECK: Mr. Robertson, I agree that in
2 10 years things could change. That's why we have
3 proposed a 10-year time limit for the CEC as opposed to
4 a five-year.

5 BY MR. ROBERTSON:

6 Q. Would you agree in that regard, assuming things
7 have changed, that it is conceivable that what appear to
8 be an appropriate route today at the end of 2011 or
9 early 2012 might not be appropriate as of 2021 or 2022?

10 A. BY MR. BECK: I guess I have difficulty in
11 answering that question from the standpoint that one of
12 the reasons that the company is out planning for
13 projects and requesting CECs and looking at the longer
14 term is to try and put on the record for landowners,
15 future landowners, what projects are coming along.

16 And hopefully the CEC process helps to inform
17 future plans in the developing areas, so that hopefully
18 10 years from now a project that was proposed is well
19 understood and incorporated into the plans for the
20 region. So it becomes even more valid that the route
21 that was selected is the right route 10 years from now.

22 Q. Now, your CEC, if I recall correctly, provides
23 that parties to this proceeding would be provided with
24 notice in the event that the company should seek an
25 extension of whatever period of time is granted for the

1 CEC. Is my recollection in that regard correct?

2 A. BY MR. BECK: Let me take a look and see.

3 Q. Take a look on page 5 of your proposed CEC,
4 Condition No. 8.

5 A. BY MR. BECK: You are correct, Mr. Robertson.
6 And I will correct my previous statement. We did
7 include in this CEC some proposed language relative to
8 notice. And this goes to one of the issues that I
9 personally have, that these, the conditions in the CEC
10 continue to expand and we keep adding conditions to the
11 point that it becomes hard to even track what the
12 conditions are within any particular case. But granted,
13 yes, we did say that we would notify property owners
14 should we request an extension.

15 Q. You refer to the difficulty of tracking CEC
16 conditions. Would I be correct in assuming you would
17 prefer that option as opposed to the option of no CEC?

18 A. BY MR. BECK: Absolutely, Mr. Robertson.

19 Q. Let me have you turn to page 15 of your prepared
20 testimony, if you would. Let me have you look
21 specifically at the answer that begins on line 2 and
22 continues through line 8. And let me know when you have
23 had an opportunity to look at that.

24 A. BY MR. BECK: Yes, I have looked at it.

25 Q. Mr. Beck, did TEP's route analysis in any manner

1 take into account the possibility of serving from this
2 line other mining claims located in the Santa Rita
3 Mountains?

4 A. BY MR. BECK: No, it did not.

5 Q. Did TEP's routing analysis for this particular
6 line take into account the possibility of future
7 expansion of Rosemont's operations within the Santa Rita
8 Mountains?

9 A. BY MR. BECK: It only considered the load of up
10 to 120 megawatts, which is what they brought to us as
11 their proposed ultimate buildout.

12 Q. Now, when you say proposed ultimate buildout,
13 are you referring to the proposed ultimate buildout
14 which is the subject of the proposed mining plan of
15 operations which is currently under review by the
16 Coronado Forest Service?

17 A. BY MR. BECK: That is correct. It is basically
18 the area that's identified on the Exhibit A-1 map that's
19 on the screen, that hashed or dashed area.

20 Q. All right. Let's move to some other areas. And
21 let me ask you, before I go to Committee Exhibit 3, with
22 reference to your testimony yesterday regarding the
23 collocation of the water line and the proposed
24 transmission line, would the water line and the
25 transmission line be in the same right-of-way?

1 A. BY MR. BECK: As I think I showed you on the
2 sketch, the diagram showing the position of the water
3 line relative to the power line, the transmission line
4 right-of-way would overlap a right-of-way for the water
5 line, but they would be separate rights-of-way.

6 Q. Would they always be adjacent to one another?

7 A. BY MR. BECK: If the preferred route is
8 selected, the majority of the line route would be
9 adjacent to each other.

10 Q. Okay.

11 A. BY MR. BECK: There would be a separation as we
12 got to the Rosemont end because the water line doesn't
13 go to the substation.

14 Q. Yes, I understood that. That's when you get to
15 the area of the mining project itself, is that correct?

16 A. BY MR. BECK: That is correct.

17 Q. But between the Toro switchyard and the Rosemont
18 mining property or the point of termination of TEP's
19 facilities, would they be adjacent to one another?

20 A. BY MR. BECK: They would be subject to the
21 design of the line. As we go up over the top of the
22 Santa Ritas, just from a physical standpoint, there may
23 be some separation, but they would be generally adjacent
24 to each other.

25 Q. Now, you have requested a 500-foot corridor,

1 correct?

2 A. BY MR. BECK: That is correct.

3 Q. You referred a moment ago to the possibility of
4 the separation of the line and the water line as you
5 approach the -- would that be the Lopez Pass area in the
6 Santa Ritas?

7 A. BY MR. BECK: Yes, it would.

8 Q. How wide a separation within that 500-foot
9 corridor between the water line and the line could you
10 visualize?

11 A. BY MR. BECK: I don't expect there to be much
12 separation, but until we are able to do the detailed
13 design engineering, it is hard to say.

14 Q. Could you give an estimate of how much is much,
15 to use your term?

16 A. BY MR. BECK: Well, to the extent we have a 500
17 foot wide corridor, and we meander within that 500-foot
18 corridor, probably at the most it would be 450 feet.

19 Q. Okay. Would you have surface disturbance then
20 for both the water line and the transmission line under
21 that possibility?

22 A. BY MR. BECK: There would be surface disturbance
23 for each pole location, because we will have to have a
24 pad at the location of each pole as we stand those poles
25 up. And there would be at least a spur road to get to

1 the poles, assuming they are not along existing access.

2 Q. So would that be a spur road between the poles
3 or would that be a spur road coming off of an access
4 road to each pole?

5 A. BY MR. BECK: That would be a spur off of access
6 roads to each pole, not along the route.

7 Q. Okay. So you would have surface disturbance in
8 those instances, is that correct, where you had spur
9 roads as well as the access road?

10 A. BY MR. BECK: Yes.

11 Q. Let's go to TEP -- strike that. Let's go to
12 Committee Exhibit 3, which is James E. Pepper's
13 December 5, 2011 letter of limited appearance which was
14 filed with the Arizona Corporation Commission. Do you
15 have a copy of that in front of you?

16 A. BY MR. BECK: Yes, I do have a copy.

17 Q. On page 1 of his letter, with a paragraph that
18 begins towards the bottom of that page, Mr. Pepper is
19 questioning why the company chose to move forward as
20 quickly as it did with the filing of the application,
21 given that the NEPA process as it relates to the mine is
22 yet to be completed.

23 Could you explain why TEP filed its CEC
24 application prior to the Coronado Forest Service's
25 issuance of the final environmental impact statement?

1 A. BY MR. BECK: Well, as I believe I at least
2 touched on yesterday, in our discussions with the Forest
3 Service, they have actually indicated a preference that
4 the line route would be selected and identified by the
5 state process, as required, to help inform them when
6 they actually draft the final EIS.

7 So it is kind of a chicken and egg issue. We
8 could have waited until the final EIS was out and forced
9 the Forest Service to make some decision which then
10 could be in conflict with the decision that the
11 Committee and Commission might make.

12 In this case the Forest Service requested -- or
13 not specifically requested, but they, in our
14 discussions, have said it would be helpful for them if
15 we went forward with our ACC process, got a decision
16 from the Commission that would identify the route that
17 the Commission would approve, and they would deal with
18 that in their final EIS. So that's one reason we didn't
19 wait for the final EIS.

20 And regarding Mr. Pepper's comments that we
21 rushed forward, as I indicated yesterday, we waited
22 since May of this year to make this filing just so the
23 draft would actually be out on the street.

24 Q. Mr. Beck, just so you understand, when I am
25 using Mr. Pepper's letter in connection with my

1 cross-examination, I am not necessarily endorsing his
2 comments or objecting to his comments. But as Chairman
3 Foreman noted yesterday, letters and notices of limited
4 appearance are a part of the record in this proceeding.
5 Since they are in the record, I do want to get your
6 responses to the some of the points he addressed. And I
7 will be doing same thing with Ms. Weinstein.

8 So let me go back to your response a moment ago.
9 Has the Forest Service committed to TEP that in its
10 final environmental impact statement the Forest Service
11 will select and approve the preferred route if adopted
12 by the Siting Committee and the Commission?

13 A. BY MR. BECK: I don't know that -- they have not
14 told us that they would absolutely approve of the route
15 that the Commission selected but that the route that
16 would be approved by the Commission would inform their
17 process and allow them to make a better decision. So
18 hopefully they would come to the same conclusion as the
19 Commission might in this case.

20 Q. Do you have a particular understanding as to
21 what the Forest Service means when they advise you it
22 would inform their process?

23 A. BY MR. BECK: To me that's just -- it is another
24 piece of information that they can use in their process
25 to help them in making a decision.

1 Q. Do you have any knowledge of the degree of
2 influence that that information would have upon the
3 Forest Service's decision making process?

4 A. BY MR. BECK: I don't have any internal
5 knowledge, but I believe they would use it. One of the
6 things that I think the Forest Service is cognizant of
7 is they do not want get into the position where they are
8 opposing a state directive on where a line could be
9 built. And so to the extent at this point in the draft
10 EIS they haven't said any of the routes are ruled out,
11 if the state were to say this was the route the state
12 selects, the Forest Service would probably then point to
13 that selection and say that route works.

14 Q. Now, the Forest Service is currently in the
15 process of receiving public comment on its draft
16 environmental impact statement, correct?

17 A. BY MR. BECK: Yes.

18 Q. And that draft environmental impact statement
19 includes comments upon an analysis of TEP's proposed
20 line to serve the mine, correct?

21 A. BY MR. BECK: That's my understanding, yes.

22 Q. Is it conceivable that the Forest Service's
23 perspective with regard to TEP's line could be informed
24 and influenced as well by public comment it may receive
25 in response to the draft environmental impact statement?

1 A. BY MR. BECK: Yes, it can.

2 Q. What is the nature of the relationship between
3 the final environmental impact statement and the record
4 of decision, if you know?

5 A. BY MR. BECK: Well, the final -- the record of
6 decision will be based on the information in the final
7 EIS.

8 Q. Is the final environmental impact statement also
9 subject to public comment before the record of decision
10 is issued?

11 A. BY MR. BECK: Yes, it is.

12 Q. So it is conceivable that the record of decision
13 could reflect a final result that differs from the final
14 environmental impact statement, is that correct?

15 A. BY MR. BECK: Yes, I believe that's true.

16 Q. Mr. Beck, I have some additional questions with
17 regard to the company's proposed certificate of
18 environmental compatibility. Let me have you turn first
19 of all to page 3. And this is TEP Exhibit 8.

20 And I would like you to look at Condition No. 1,
21 which reads as follows, quote: Any transfer or
22 assignment of this certificate shall require the
23 assignee or successor to assume all responsibilities of
24 the applicant listed in this certificate and its
25 conditions and writing as required by A.R.S. Section

1 4-360.08.A and R14-3-215.F of the Arizona Administrative
2 Code, close quote.

3 Does TEP have any anticipation at this point in
4 time that it will be assigning such certificate of
5 environmental compatibility as it might receive as a
6 result of this case to anyone other than TEP or TEP's
7 parent company?

8 A. BY MR. BECK: There is the possibility that we
9 would look to transfer the CEC to the Rosemont copper
10 mining company depending on what -- which route is
11 selected and the ultimate interests of Rosemont in
12 owning the line.

13 The one possibility in particular with the
14 preferred route is the delivery point for the mine could
15 be identified as the Toro switchyard. TEP would meter
16 power at that point and we could turn it over to
17 Rosemont at the Toro switchyard and they could own the
18 transmission line, basically a long extension cord up to
19 their project. That is the only entity that we would
20 anticipate potentially transferring the CEC to.

21 Q. Now, you mentioned that possibility with respect
22 to the preferred route. With regard to the other four
23 alternatives that are out there, does that same
24 possibility exist with respect to any of those
25 alternatives? And if so, which one or ones?

1 A. Alternative 1 -- well, the preferred route,
2 Alternative 1, portions of Alternative 2 and 3, the
3 line, portions of the line could be owned by Rosemont.
4 With Alternative 4, TEP would probably be required to
5 own the whole line because we would have our 46kV
6 associated with the project.

7 Q. What factors will determine whether or not
8 Rosemont might acquire all of the line up to the Toro
9 switchyard or portions of it at some point in the
10 future?

11 A. BY MR. BECK: The issue that would drive
12 Rosemont to want to own the line is -- it is a tax
13 related issue. TEP, as a corporate taxpayer, pays
14 basically a 40 percent tax rate for any contributions we
15 receive, basically, for construction. So because this
16 project is being fully funded by Rosemont, if we, for
17 example, spend \$10 million to build the line up to the
18 Rosemont site, we would bill Rosemont \$10 million, but
19 in addition to, we would bill them the tax liability
20 that TEP would incur because of that.

21 TEP would have to pay 40 percent to the federal
22 government in taxes. The net result is that we gross up
23 the cost of the project by 60 percent. So the cost to
24 Rosemont is 1.6 times whatever the cost of the true
25 project is.

1 So we have had some discussions with Rosemont.
2 They are very concerned, of course, about paying that
3 tax adder on top of paying for the whole project. And
4 that would be the driver for having Rosemont own the
5 line.

6 Q. Is there currently a written agreement between
7 TEP and Rosemont on this subject?

8 A. BY MR. BECK: The only written agreement between
9 the parties regards the siting of the line, getting
10 through the siting process and obtaining a CEC.

11 Q. Is the decision making authority, if you will,
12 as to whether or not Rosemont would acquire all or a
13 portion of the line up to Rosemont alone, or is it a
14 mutual decision?

15 A. BY MR. BECK: It is a mutual decision.

16 Q. Okay. From TEP's perspective, what would be the
17 factors that would influence its willingness to assign
18 all or a portion of the line to Rosemont?

19 A. BY MR. BECK: Well, the main point for TEP is
20 that, I guess, an advantage to TEP to assigning the line
21 to Rosemont, we could meter at the Toro switchyard and
22 they would be responsible for the line, the maintenance,
23 losses related to the line, all of that on up to their
24 project. So we would only deal with them at the Toro
25 switchyard. If we own it, then we are responsible for

1 the maintenance. We cover basically the losses, because
2 we would be metering at their end of the line.

3 Q. Now, Mr. Beck, looking at Condition No. 1 in the
4 company's CEC --

5 CHMN. FOREMAN: Excuse me, Mr. Robertson.

6 MR. ROBERTSON: I am sorry. Thank you,
7 Mr. Chairman.

8 Looking at the language in Condition --

9 CHMN. FOREMAN: Mr. Robertson, Member Walker had
10 a question.

11 MR. ROBERTSON: Oh, I am sorry. I didn't see
12 you. Yes, sir.

13 MEMBER WALKER: Just before we get off the tax
14 consequences, I have a question. This might be -- I
15 know you are an engineer, but you have an MBA so there
16 is some hope that you follow this question. That's said
17 as an MBA, not in any denigrating way.

18 I have been thinking about the Fort Huachuca
19 aspect. And it occurred to me that if the preferred
20 route was granted, there would only be three links that
21 would need to be built in some future CEC application to
22 connect back into the 46kV line. I think it is 190,
23 210, and some other number.

24 So I was thinking in terms of whether we could
25 authorize TEP to build the poles with an additional

1 circuit on it so that if in the future there was a
2 desire by Fort Huachuca to improve its line, they would
3 be able to use those additional circuits on the Rosemont
4 line. Of course, that raises the whole So Cal
5 Edison/Devers II with the ACC and fiasco of a decision
6 that fined So Cal Edison for that kind of future
7 planning.

8 So my question is on the tax consequences. If
9 we went with the preferred route, but then instructed
10 TEP to build it with an additional circuit so that we
11 would be planning for the future vis-à-vis Fort
12 Huachuca, would that have an economic impact that would
13 lead to tax consequences?

14 MR. BECK: It would depend on the condition and
15 what we were actually ordered to do. To the extent we
16 build the poles capable for a second circuit, which we
17 actually planned to do anyway, they will be double
18 circuit capable structures, the stringing of the wire
19 could be done at a future date. And that's when issues
20 related to payment for that circuit would be dealt with.

21 If TEP is building it for its customers, in this
22 case, or in that case it would be for the fort, it would
23 be part of TEP's system, and we don't pay an additional
24 tax. We don't have somebody paying for that line that
25 would actually incur the tax issue.

1 MEMBER WALKER: Okay.

2 MR. BECK: It is kind of a perverse issue in the
3 tax rules. We get a third party to pay for the impact
4 so there is no impact to the customers, but not only do
5 they pay for the project, but the 60 percent adder.

6 MEMBER WALKER: Right. It has no CIAC
7 exemption. I understand. Okay. Thank you, Mr. Beck.

8 Sorry, Mr. Robertson.

9 CHMN. FOREMAN: Mr. Robertson, you may proceed.

10 MR. ROBERTSON: Thank you, Mr. Chairman,
11 Committee Member Walker.

12 BY MR. ROBERTSON:

13 Q. Mr. Beck, going back to page 3 of the company's
14 proposed CEC, in Condition No. 1, the lead-in language
15 reads as follows: Any transfer or assignment of this
16 certificate shall require the assignee or successor to
17 assume all responsibilities of the applicant listed in
18 this certificate and its conditions in writing as
19 required by -- and then it cites the statute and the
20 rules of practice and procedure of the Siting Committee.

21 Do you know whether such a transfer or
22 assignment would require a hearing?

23 A. BY MR. BECK: Historically that has not been the
24 case.

25 Q. Do you know whether or not Rosemont has any

1 experience operating an electric transmission line?

2 A. BY MR. BECK: I am not aware that they do.

3 Q. Okay. Let me have you turn now to page 9 of the
4 company's proposed CEC. And I will give you a moment to
5 read Condition No. 25.

6 A. BY MR. BECK: I have read it.

7 Q. Okay. And that language reads as follows,
8 quote: Applicant will not commence construction on the
9 project until a record of decision is issued by the
10 United States Forest Service, dash, Coronado National
11 Forest regarding the Rosemont Copper Company mining plan
12 of operations which approves the proposed action, or any
13 alternative action, parentheses, other than the no
14 action alternative, close parentheses, described in the
15 environmental impact statement for the Rosemont mining
16 plan of operations, close quote.

17 Let me ask you, first of all, what would TEP do
18 if the record of decision adopted the no action
19 alternative?

20 A. BY MR. BECK: Well, as we have committed all
21 along, if the no action alternative were selected, there
22 is no project. Therefore there would be no line.

23 Q. Okay. Now, this condition focuses on the
24 Coronado National Forest and the record of decision,
25 does it not?

1 A. BY MR. BECK: Yes, it does.

2 Q. Is it your understanding that there are other
3 federal agency approvals that are necessary to be
4 attained before the Rosemont mine could go forward?

5 A. BY MR. BECK: There likely is, yes.

6 Q. For example, a Section 404 permit from the Army
7 Corps of Engineers?

8 A. BY MR. BECK: Correct.

9 Q. Okay. Against that background, how does this
10 Condition 25 interface with the necessity of the
11 Rosemont mine being able to obtain other required
12 federal approvals?

13 A. BY MR. BECK: Well, our intent was to condition
14 this on the record of decision from the Forest Service,
15 as that being the major permit that is required.

16 Q. Would it be correct to assume that in the event
17 Rosemont did not receive other necessary approvals for
18 it to be able to begin construction of the mine that TEP
19 would not build the line?

20 A. BY MR. BECK: You know, that would be, at least
21 the way we have proposed the condition, that would be a
22 decision of Rosemont as to whether they wanted to put at
23 risk money for a transmission line that might not
24 ultimately be able to be used.

25 Q. Okay.

1 MEMBER EBERHART: Mr. Chair.

2 CHMN. FOREMAN: Member Eberhart.

3 MEMBER EBERHART: Thank you, Mr. Chairman. I
4 had a question kind of piggyback on Mr. Robertson's line
5 of questioning.

6 Mr. Beck, other than the federal government, I
7 think there was mention yesterday that there is a
8 possibility of further lawsuits if this thing moves
9 forward with federal approval. What would be TEP's
10 position as far as building the line if there were -- if
11 this got -- if there were lawsuits filed?

12 MR. BECK: At this point the way we have
13 conditioned it, if there is a record of decision issued
14 by the Forest Service, then that would allow
15 construction to start, assuming Rosemont wanted to take
16 the risk of doing that.

17 MEMBER EBERHART: So in order to protect the
18 ratepayers, am I hearing that TEP would not be willing
19 to risk their own funds on something that potentially
20 could be ruled by the courts as far as not being able to
21 proceed?

22 MR. BECK: I would go a little further than
23 that, Mr. Eberhart. Even beyond taking the risk, TEP's
24 position is we are not paying for any of this line. It
25 will be paid for by Rosemont. So regardless of even if

1 we got past the risk point, Rosemont will be paying for
2 the line.

3 But yeah, we will not put money out at TEP to
4 build this project, period. It will all be based on an
5 agreement with Rosemont for 100 percent reimbursement,
6 and technically the 160 percent if we own it.

7 MEMBER EBERHART: Okay. And to piggyback on
8 another line of questioning Mr. Robertson was going
9 through, and actually it had to do with the two other
10 legs or three links from the site, was there a specific
11 cost estimate or was it ever looked at, if the preferred
12 route is selected, to then potentially extend back to
13 the 46kV Fort Huachuca line to kind of connect the loop
14 and perhaps then the existing line that goes through the
15 experimental station could just be left to weather for
16 another 100 years on its own?

17 MR. BECK: There were many estimates done early
18 on in the project. We previously touched on the fact
19 that there was some construction options being
20 discussed. And the construction option -- I will refer
21 you up to the route map that's on the screen. One of
22 the construction options was to basically build the link
23 that you see, links 160, 190, and 210, and actually
24 stretch that back to the Greaterville substation, which
25 is just down to the right, and serve the construction

1 power needs off of that 46 for the period until we could
2 actually build the 138kV line.

3 That would have been an ideal situation from the
4 point you are making, because you would have that line
5 in place for Greaterville, and then regardless of any
6 alternative chosen, it could be fed on through at 138 to
7 provide backup, better backup to the fort.

8 When the construction requirement was dropped,
9 those options were dropped. But it is something we
10 considered. It would be a benefit to the fort. But
11 there is no party to basically pay for that at this
12 point. The fort hasn't come forward to say yeah, we
13 want to participate in this project.

14 MEMBER EBERHART: Were there any estimates made
15 or, to your knowledge, do you recall the ballpark cost
16 to extend to that other substation?

17 MR. BECK: You know, I don't recall offhand.
18 But we do have some numbers. I can get back to you with
19 some numbers.

20 MEMBER EBERHART: Thank you.

21 CHMN. FOREMAN: Member Palmer.

22 MEMBER PALMER: Thank you, Mr. Chairman.

23 Mr. Beck, is it your testimony that electrical
24 energy is needed on the site to facilitate construction
25 for the Rosemont mine operation?

1 MR. BECK: Yes. They will need construction
2 power to start up their process. There is a load
3 distribution that expands over time to the
4 120 megawatts. It starts out at a real low load for
5 construction purposes.

6 MEMBER PALMER: And as proposed, despite the
7 fact that Rosemont is paying for the construction of the
8 line, the line is owned by TEP under the current
9 proposal?

10 MR. BECK: As it sits right now it is owned by
11 TEP. But we do have the option to then transfer it to
12 Rosemont.

13 MEMBER PALMER: This question relates to market
14 conditions for copper and silver. If Rosemont secured
15 their necessary permitting from the various government
16 agencies, and the line was built to facilitate the
17 transmission of power to the site for building the
18 operation, and the price of copper plummeted from three
19 plus dollars down to a dollar -- for many years it was
20 at .70 a pound, and it is not feasible to operate a mine
21 at that level -- what would happen if market conditions
22 changed and the mine didn't operate, yet they have this
23 radial line to the site, which is subject to the
24 mitigating factors of a CEC? Would it be possible that
25 TEP would want to retrieve those poles and disassemble

1 the line if the line never became operational or ceased
2 to be operational as a result of market conditions?

3 MR. BECK: Well, we would have an agreement in
4 place between TEP and Rosemont covering various what if
5 factors. And one would be a decision by them to abandon
6 the mine and what we would do with the facilities. And
7 we would want, yeah, the ability to go in and retrieve
8 those poles and reuse them elsewhere.

9 MEMBER PALMER: So that that would be part of an
10 agreement between TEP and Rosemont mine?

11 MR. BECK: Yes.

12 MEMBER PALMER: Thank you.

13 CHMN. FOREMAN: Member Noland.

14 MEMBER NOLAND: Yes. Mr. Beck, a little bit ago
15 Mr. Robertson asked about the extension of time from the
16 CEC period that we finally decide on. And you were
17 mentioning the cost of applying for the extension and so
18 on. Now, this question is going to be a little bit like
19 asking a woman her age or a rancher how many cattle he
20 has. Do you know the costs to TEP of your last
21 extension of time on a CEC?

22 MR. BECK: I don't know specifically the cost.
23 And it was not real high because it was an older CEC
24 that didn't have the conditions we are putting in today.

25 Some of the things that will cause us to spend a

1 lot more money are the notification requirements,
2 developing the list of parties to contact, trying to
3 maintain that information throughout the life of the CEC
4 and then the legal costs to actually go to public
5 hearing, if that's where we end up.

6 MEMBER NOLAND: And you answered it like I would
7 answer if somebody asked my age. So if there is a cost
8 and it becomes more of a cost based on the number of
9 conditions, which we seem to have more and more as we go
10 on and on, is that cost passed on to the ratepayers?

11 MR. BECK: It would be the hope of TEP that we
12 could pass it on to ratepayers in the future, but it is
13 the subject of future rate cases at the Commission and
14 whether it is allowed or disallowed.

15 MEMBER NOLAND: Thank you.

16 CHMN. FOREMAN: Member Parke.

17 MEMBER PARKE: Yes, thank you, Mr. Chairman.
18 This question goes to the transfer issue and follows the
19 line of questioning of Member Walker and Member Palmer.

20 How would the transfer affect the ability for
21 Fort Huachuca to get backup from that 46kV line if given
22 the double circuit construction on the links approaching
23 the Rosemont substation to links 210, 190, 160
24 stretching back to Greaterville? I mean we are talking
25 about how would the transfer affect that progress or

1 that future planning.

2 MR. BECK: One of the positions that TEP will
3 take in negotiating our agreement with Rosemont, which
4 doesn't exist yet, will be that TEP will have the right
5 to gain back ownership of the line through some process
6 to the extent we need to for service to future
7 customers.

8 So, for example, if in the future all parties
9 agreed that it would make sense for the fort line to --
10 the 46 that goes to the fort to come up with links 160,
11 190, and 210 into the Rosemont termination facilities,
12 we would have ability through our agreement with
13 Rosemont to gain back ownership at least of the
14 percentage of the line that we would need to then be
15 able to use that to serve other customers.

16 MEMBER PARKE: Thank you, Mr. Chairman.

17 CHMN. FOREMAN: All right. Member Eberhart.

18 MEMBER EBERHART: Thank you, Mr. Chairman.

19 One last question on the possibility of
20 transferring ownership of the line once the CEC is
21 granted. I have heard you mention that there is
22 positives for both TEP and for Rosemont and, it sounds
23 like, significant advantages, that basically TEP would
24 turn -- you know, agree to sell it to Rosemont. Is
25 there any reason you can think of that it wouldn't make

1 sense to transfer ownership?

2 MR. BECK: From TEP's perspective the issue
3 would be if we had reason to believe that there were
4 other customers, such as the fort, that we would want to
5 serve via that line. At this point we have no plans for
6 that. But that's why, if we did do a transfer within
7 that transfer agreement, we would have the ability to
8 regain control of the line in the future through some
9 payment mechanism back to Rosemont.

10 MEMBER EBERHART: But the advantage to Rosemont
11 of 40 percent or 60 percent, whatever the number is,
12 that's a huge price differential.

13 MR. BECK: Yes, it is.

14 MEMBER EBERHART: Would you not agree?

15 MR. BECK: I absolutely agree.

16 MEMBER EBERHART: And the opportunity for TEP to
17 not have to absorb the losses through the line and bill
18 the customer for the juice going out from the switchyard
19 at Toro and not have to maintain the line for
20 perpetuity, those are huge advantages for TEP, would you
21 agree?

22 MR. BECK: They are advantages, yes, definitely.

23 MEMBER EBERHART: So in my mind, it sounds like
24 almost a done deal, that that's going to happen. Am
25 I -- is my logic, thought --

1 MR. BECK: If the approved route is the
2 preferred or Alternative 1, I agree with you. Other
3 routes, there may be some issues relative to collocating
4 the 46 and how we split up ownership.

5 CHMN. FOREMAN: Thank you.

6 Member Haenichen.

7 MEMBER HAENICHEN: Mr. Beck, with the conductor
8 sizes being anticipated by the utility for this line,
9 should it be approved, what is the actual total capacity
10 of it? I know the commitment to Rosemont is 120
11 megawatts. What is the total capacity of the line?

12 MR. BECK: Subject to upstream limitations, the
13 wire itself would easily be good for four or five
14 hundred megawatts.

15 MEMBER HAENICHEN: Thank you very much.

16 CHMN. FOREMAN: All right. Let's give Colette's
17 fingers a chance to rejuvenate. We will take a
18 15-minute recess. We will resume again at 10:43.

19 (A recess ensued from 10:28 a.m. to 10:45 a.m.)

20 CHMN. FOREMAN: All right. Let's see if we can
21 take our seats and get started.

22 Mr. Robertson, you frightened our witnesses off.

23 MR. ROBERTSON: I had no part in that.

24 CHMN. FOREMAN: All right. At least

25 Ms. Weinstein has returned.

1 Mr. Robertson, you may proceed.

2 MR. ROBERTSON: What I was hoping to do,
3 Mr. Chairman, was finish up with Mr. Beck and then
4 continue with my cross-examination of Ms. Weinstein. I
5 do have a few more questions for him.

6 CHMN. FOREMAN: Did you make the mistake of
7 telling him that you wanted to cross-examine him?

8 MR. ROBERTSON: No, I hope I had enough
9 foresight not to do that. I didn't speak with him,
10 actually.

11 CHMN. FOREMAN: I saw him grab a suitcase and
12 head for the door. That's all I can say. Oh, here he
13 is.

14 MR. BECK: Excuse me.

15 CHMN. FOREMAN: All right. He was wrestled back
16 into the room by his counsel.

17 MR. BECK: That's right.

18 CHMN. FOREMAN: All right. Now you may proceed,
19 Mr. Robertson.

20 MR. ROBERTSON: Thank you, Mr. Chairman.
21 Mr. Chairman, if I might, I would like to follow up or
22 piggyback, to use the term that was used earlier, with
23 the line of questioning of Mr. Eberhart and Mr. Palmer.

24 BY MR. ROBERTSON:

25 Q. Mr. Beck, let's assume that Rosemont gives the

1 company instructions to begin construction of the line
2 and that construction is under way, the site clearing
3 has been done for various transmission structures, some
4 of the clearing has been done for the right-of-way where
5 the current right-of-way doesn't exist and for any
6 access roads, and then for whatever reason -- it could
7 be the collapse of the copper market that Mr. Palmer
8 hypothecated, it might be for other reasons -- Rosemont
9 advises the company that it wants it to stop
10 construction of the line and, at that point, Rosemont
11 indicates it has no plans to proceed with the Rosemont
12 Copper project development, or they have not received
13 the requisite final federal approvals.

14 Who would have the responsibility for cleaning
15 up the construction activities that had been undertaken
16 up to that point?

17 A. BY MR. BECK: It would depend on who the
18 own -- the party that has the CEC is. For example,
19 assuming TEP were to continue to own, build and own the
20 line, TEP would have that responsibility. If we had in
21 fact transferred it to Rosemont, it would become their
22 responsibility, both under the CEC as well as under any
23 underlying rights-of-way that are granted for the
24 project.

25 Q. Other than Condition No. 1 in the form of CEC

1 that has been proposed by the company, are you aware of
2 any other conditions within the proposed form of CEC
3 that address the hypothetical situation I have just
4 postulated to you?

5 A. BY MR. BECK: I believe No. 1 is the one that
6 requires -- there actually is a condition that
7 would -- I am not sure whether it is a condition, but
8 there is something typically in a CEC that says any
9 assignee will carry out the conditions of the CEC.

10 Q. Take a look at Condition No. 1. I believe that
11 provides for that.

12 A. BY MR. BECK: Yes, I believe that is what I am
13 thinking of, yes.

14 Q. Okay. Are you aware of any other conditions
15 within this CEC that would require TEP, or the assignee
16 of the CEC if TEP is assigned it, to do the cleanup of
17 construction activities begun but not ultimately
18 completed?

19 A. BY MR. BECK: Offhand I do not recall any
20 condition. But there would be those conditions and
21 requirements in our right-of-way documents.

22 Q. Okay. You have several times during your
23 testimony this morning referred to an agreement yet to
24 be executed between Rosemont and TEP, correct?

25 A. BY MR. BECK: That is correct.

1 Q. Do you know whether or not TEP intends to submit
2 that agreement to the Corporation Commission for
3 approval?

4 A. BY MR. BECK: I don't believe at this time we
5 would intend to submit it. I don't believe it is
6 required.

7 Q. Are the 138kV facilities which are the subject
8 of the company's CEC application jurisdictional
9 facilities in the sense that they would be regulated by
10 the Arizona Corporation Commission as long as TEP owned
11 those facilities?

12 A. BY MR. BECK: Yes, they would be regulated by
13 the ACC.

14 Q. Let me move now to a line of questioning
15 suggested by some questions that Mr. Haenichen posed to
16 you. I had earlier asked you whether the routing
17 decisions were in any way influenced by the possibility
18 of the line providing service to additional claims in
19 the Santa Rita Mountains area. And your response, if I
20 recall correctly, was no, the routing was not influenced
21 by that sort of consideration, is that correct?

22 A. BY MR. BECK: That is correct. We have not been
23 approached by any other potential customers.

24 Q. Let's go back to the line of responses you
25 provided to Mr. Haenichen where the capacity of the line

1 would be on the order of -- was it 500 megawatts?

2 A. BY MR. BECK: The wire itself would be good for
3 probably up to 500 megawatts.

4 Q. All right. Let's assume that any of the
5 preferred -- any of the routes are selected other than
6 the Alternative 4 route. Would that capacity be such
7 they could provide service to additional mining activity
8 in the Santa Ritas if other claims are developed?

9 A. BY MR. BECK: That would be the subject of a
10 future transmission study. We would have to determine
11 what impacts that might have, but potentially additional
12 customers could be served via that line.

13 Q. What if Rosemont owned the line at that point,
14 would that require additional study by the company or
15 not?

16 A. BY MR. BECK: Well, again, we will have
17 carve-outs within any agreement we have with Rosemont
18 that will allow us to regain ownership of either all or
19 a portion of the line for future use. And if we had a
20 request from a customer, a new customer outside of other
21 than Rosemont in the general vicinity, we would study
22 the request, we would look at how we could reasonably
23 serve it, and if it made sense to serve it off of this
24 line, then we would. If we didn't own it, we would
25 utilize our ability to regain ownership for that portion

1 in order to serve another customer, and we would do the
2 studies to make sure that worked.

3 Q. Okay. Mr. Beck, somewhere in some TV show I
4 once heard the line I think we are done. I think you
5 and I are done. I will now move to Ms. Weinstein.
6 Thank you very much.

7 A. BY MR. BECK: Sure.

8 Q. Good morning, Ms. Weinstein. How are you?

9 CHMN. FOREMAN: Was that a cooking show?

10 MR. ROBERTSON: Since I don't watch cooking
11 shows, probably not, but I will --

12 CHMN. FOREMAN: I am trying to be helpful,
13 Mr. Robertson.

14 MR. ROBERTSON: I will accept that as a good
15 proxy, Mr. Chairman.

16 CHMN. FOREMAN: I am sorry. Member Rodriguez.

17 MEMBER RODRIGUEZ: Thank you. I have a question
18 for Mr. Beck.

19 You know, we have heard about doing the
20 possibility of transferring the line over to Rosemont.
21 And we also have heard that you have no knowledge of
22 them having any experience. We are facing an assumption
23 they would hire professionals to take care of this.
24 Again that's an assumption. I am not sure if they
25 thought about that one.

1 Then we have also heard testimony of probably
2 TEP repurchasing some of it if they either went to
3 default or the market crashed. As far as the ratepayers
4 go, do you anticipate in your contract that you would
5 only be buying it as what they currently paid for it to
6 build it, or would they do it at market rate at the
7 time?

8 Let's say it is 10 years down. We understand
9 they are paying for it up front. But if they paid for
10 it, let's say, I have no idea what the cost is, let's
11 say \$10 million, and they abandon the project, as far as
12 the ratepayers are, can TEP say they will only reimburse
13 them for \$10 million, not \$20 million? I know it is a
14 hypothetical question, but...

15 MR. BECK: Member Rodriguez, I think from TEP's
16 perspective we would intend to write the agreement such
17 that if they abandon the project for whatever reason,
18 and if TEP were the owner and operator, it would just
19 become TEP's property at no cost.

20 If under the hypothetical in the future we
21 wanted to serve other customers and they were the owner
22 of the project, we would have provisions in our
23 agreement that says we would buy it at some kind of
24 depreciated book value at the time. It would not be
25 based on market.

1 And all of these transactions are subject to,
2 because it is 138kV which also falls under Federal
3 Energy Regulatory Commission rules, the purchase price
4 and those agreements are subject to FERC review. And so
5 there are limits on what could be charged for that line.

6 MEMBER RODRIGUEZ: So let's say they built it,
7 spent \$10 million, but with a reduced rate because of
8 depreciation. As far as the ratepayers would go, they
9 wouldn't be paying the 10 million. Let's say they would
10 hypothetically be paying only \$8 million if they were to
11 do that, if TEP was to come in.

12 I am trying to look at making sure that -- let's
13 say they go into bankruptcy. These are other
14 hypothetical things. You know, that is an asset to
15 them. So they would be looking to get the most dollar
16 for their buck.

17 MR. BECK: Right. We would have provisions to
18 hold our customers, our existing customers harmless. So
19 for the purposes of buying the line back to serve
20 another customer, we would be looking to that other
21 customer to then pay any costs that were incurred. We
22 wouldn't be looking to add that to our customer base.

23 MEMBER RODRIGUEZ: Okay. That's what I wanted
24 to know. And the other question I will reserve for
25 Rosemont.

1 CHMN. FOREMAN: Member Eberhart.

2 MEMBER EBERHART: Thank you, Mr. Chairman.

3 Another question I have, you answered
4 Mr. Haenichen's question that the line capacity is four
5 or five hundred megawatts, but yet the copper company
6 has requested or advised you they only need 120
7 megawatts, is that correct?

8 MR. BECK: That is correct.

9 MEMBER EBERHART: So following that line kind of
10 backwards, is there a different sized line other than
11 138 kilovolts that could have supplied the needed power
12 to the Rosemont that would meet the requirement?

13 MR. BECK: TEP's standard voltage is 46kV and
14 then we jump to 138kV. Could either a 69 or a 115 line
15 possibly serve that load? We didn't study that because
16 that's one of our standards.

17 It is possible the 115kV line would adequately
18 serve that load. But it would require a change in --
19 well, additional facilities on our system. We would
20 have to extend the line all the way back to either Vail
21 or South, and actually put new transformation in there,
22 345 to 115kV transformers, for example. That is not
23 part of the TEP standard and would be very costly to do
24 that.

25 So granted the 138 has a little bit higher

1 increment of capacity than is needed for -- well, it has
2 considerably more capacity than is needed just for
3 Rosemont, from a cost perspective it was the most
4 economical way to serve that load versus trying to
5 change to a different voltage of transmission line. And
6 one advantage to going to a 69 line, we wouldn't be here
7 today.

8 MEMBER EBERHART: That was my next question.

9 MR. BECK: But maybe we are not trying to avoid
10 that issue, obviously.

11 MEMBER EBERHART: Mr. Beck, so would a 69kV line
12 have provided the adequate power to the copper company
13 and you would have been able to avoid being a good
14 citizen and coming before us today?

15 MR. BECK: I think a 69 would have been
16 marginal. 115 probably would have been adequate.

17 MEMBER EBERHART: Thank you.

18 CHMN. FOREMAN: You may proceed, Mr. Robertson.

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

20 BY MR. ROBERTSON:

21 Q. Good morning, Ms. Weinstein.

22 A. BY MS. WEINSTEIN: Good morning.

23 Q. How are you?

24 A. BY MS. WEINSTEIN: I am good. Thank you.

25 Q. The first area that I would like to ask you some

1 questions about relates to a slide that was shown during
2 your presentation yesterday of your direct testimony.
3 And it was the slide where you showed your original
4 three family grouping of possible transmission routes.
5 I am not sure how to call that up, so perhaps you could
6 indicate to Clark which one that would be.

7 A. BY MS. WEINSTEIN: I think this is the one you
8 are referring to.

9 Q. Yes.

10 A. BY MS. WEINSTEIN: Okay.

11 Q. Now, if I recall correctly, the red line
12 indicated the northern route family category, is that
13 correct?

14 A. BY MS. WEINSTEIN: Correct.

15 Q. Did that route category completely avoid any of
16 the land that is the subject of the Santa Rita
17 Experimental Range?

18 A. BY MS. WEINSTEIN: No. That route was on and
19 within the northern boundary of the Santa Rita
20 Experimental Range, and then basically along the
21 boundary on the east side.

22 Q. Okay. Whereas the other two families of routes
23 actually transect significant portions of the Santa Rita
24 Experimental Range, correct?

25 A. BY MS. WEINSTEIN: Correct.

1 Q. In the early stakeholder group meetings when the
2 northern family route was still a subject of
3 consideration, Mr. Husman, who spoke yesterday on behalf
4 of the Santa Rita Experimental Range, was in attendance,
5 was he not?

6 A. BY MS. WEINSTEIN: Yes.

7 Q. Did he at that time, in terms of expressing
8 preferences, express a preference for the northern
9 family route from the standpoint of what the impact
10 would be on the Santa Rita Experimental Range?

11 A. BY MS. WEINSTEIN: My recollection of the
12 sequence of events was that we had presented all of
13 these routes. And I mentioned yesterday that we had
14 11 routes and so many per each family. And he did
15 provide comments back to us expressing concern for the
16 northern route and a preference for the preferred route
17 at that time.

18 Q. What was the nature of his concerns with regard
19 to the northern route? You indicated it appears to
20 follow the northern boundary of the Santa Rita
21 Experimental Range.

22 A. BY MS. WEINSTEIN: Right, actually documented in
23 a letter that's in the application in Exhibit J. And
24 primarily I recall concern for trespassing onto the
25 range, creating new access along the boundary.

1 Q. I notice that you are looking in your notebook.
2 I will give you a moment to see if you can confirm that
3 because I know you were working from memory.

4 A. BY MS. WEINSTEIN: Sure.

5 CHMN. FOREMAN: When you find it, can you give
6 us a page?

7 MS. WEINSTEIN: I will. Looking at page J-381.

8 BY MR. ROBERTSON:

9 Q. You are referring to a June 30, 2009 letter from
10 Colin Kaltenbach, vice dean and director of the
11 University of Arizona, to Ruben Ojeda, is that correct?

12 A. BY MS. WEINSTEIN: Yes.

13 Q. Could you refer to that particular portion of
14 this letter that you believe indicates a preference for
15 the preferred route as opposed to anything in the
16 northern family.

17 A. BY MS. WEINSTEIN: Just looking, reading quickly
18 here, if you go to the fourth paragraph, first few
19 sentences there clarifies that they prefer the Santa
20 Rita Road alignment because it is an existing long
21 established roadway corridor running through the range.
22 Further down it says, on the other hand, we think that
23 the maintenance access roads that would be constructed
24 along the northeastern alignment may attract trespassers
25 who could disrupt the operations of the range.

1 Q. Okay. And then I believe you testified
2 yesterday that as between the preferred route and the
3 other alternatives which have been presented with the
4 company's application, it was your understanding the
5 Santa Rita Experimental Range had a preference for the
6 preferred route, and Mr. Husman confirmed that in his
7 public comment, is that correct?

8 A. BY MS. WEINSTEIN: Yes.

9 Q. Okay. Let's go to page 3 of your prepared
10 testimony. And I would like you to look at the answer
11 that begins on line 6 and continues through line 14, but
12 specifically that portion of the answer that begins on
13 line 6 and continues through the first two words on
14 line 10. And let me know when you have had a chance to
15 look at that.

16 CHMN. FOREMAN: I am sorry, Mr. Robertson, the
17 page number again?

18 MR. ROBERTSON: That is page 3, Mr. Chairman.
19 And I asked her to look particularly at the portions of
20 the answer beginning on line 6, that appears at line 6
21 through the first two words on line 10.

22 CHMN. FOREMAN: Thank you.

23 MS. WEINSTEIN: Okay.

24 BY MR. ROBERTSON:

25 Q. In that portion of your answer you refer to both

1 a regional study area and a project study area. Let me
2 ask you, what is the purpose of delineating a regional
3 study area in connection with the environmental process?

4 A. BY MS. WEINSTEIN: The purpose of the regional
5 study area was to try to identify all reasonable and
6 feasible alternatives between our origination and
7 termination point. Therefore, we wanted to go broad and
8 try to minimize missing any opportunities between those
9 two points.

10 Q. And how does the concept of a regional study
11 area relate to the environmental process for which you
12 were responsible?

13 A. BY MS. WEINSTEIN: Could you rephrase that for
14 me, please?

15 Q. How does the concept of a regional study area
16 interface with the work that the Environmental Planning
17 Group did in connection with this application?

18 A. BY MS. WEINSTEIN: It is a first step in our
19 identification of alternatives. We start with a
20 regional study area to identify opportunities and
21 constraints for identifying alternative links and
22 eventually routes.

23 Q. Okay. And what is the role of the project study
24 area?

25 A. BY MS. WEINSTEIN: Project study area is we

1 provide more detailed project information from a map
2 standpoint in the CEC application. And a two-mile
3 buffer is sufficient, in our opinion, for looking at
4 potential environmental impacts of a 138kV line, and has
5 been consistent with what has been done in previous
6 applications and CEC applications that have been
7 approved by the Committee.

8 Q. And when you refer to a two-mile buffer, did the
9 study area that EPG took into account when you performed
10 your various studies that are incorporated as supporting
11 exhibits to the company's application, did your studies
12 take that area into account, the project study area and
13 the regional study area?

14 A. BY MS. WEINSTEIN: Yes.

15 Q. Okay. Now, the regional study area is
16 depicted, for example, on Exhibit A-1, Exhibit A-2, and
17 Exhibit A-3, correct?

18 A. BY MS. WEINSTEIN: It is primarily focused on
19 the project study area in those.

20 Q. Okay. And the project study area is depicted on
21 those, correct?

22 A. BY MS. WEINSTEIN: Correct.

23 Q. So that if one wanted to find out the geographic
24 area encompassed by those concepts, one would look to
25 those maps, correct?

1 A. BY MS. WEINSTEIN: For the project study area,
2 correct.

3 Q. Okay. Let me have you turn to page 18 of your
4 prepared testimony. And I would like you to look at the
5 answer that begins on line 3 and continues through line
6 11. And let me know when you have had a chance to
7 review that.

8 A. BY MS. WEINSTEIN: Okay.

9 Q. In this answer you are talking about potential
10 impacts to historic properties which were identified
11 through your study, correct?

12 A. BY MS. WEINSTEIN: Cultural sites, correct.

13 Q. Yes. I have a recollection from one of the
14 supporting exhibits to the application -- and I forget
15 which exhibit number -- that referred to cultural areas
16 and historic properties that EPG had concluded that the
17 Helvetia cemetery was not an historic property. And yet
18 yesterday, if my recollection in that regard is correct,
19 you seemed to indicate during your oral testimony that
20 maybe EPG had revised its assessment of how it would
21 classify the Helvetia cemetery.

22 Did I recall the exhibit to the application
23 correctly and your testimony correctly, or if I am in
24 error, would you please correct me?

25 And let me fast forward and go to where I am

1 going. Pima County, in their statement of limited
2 appearance, I believe it is Committee Exhibit 1 if I
3 recall correctly, took issue with the determination by
4 the applicant and its environmental consultant that the
5 Helvetia cemetery was not an historic property. And I
6 wondered whether you had changed your conclusion in that
7 regard or not. Because I got the impression from your
8 testimony yesterday that it might now be under
9 consideration, that might be an historic property.

10 A. BY MS. WEINSTEIN: Just if I could just have a
11 moment.

12 Q. Certainly. And if I have got this confused,
13 please straighten this out.

14 A. BY MS. WEINSTEIN: What I would clarify is that
15 we did consult with the Arizona State Museum, and they
16 recommended that it not be considered a historic
17 property, that they did identify that the cemetery is
18 still in use. And that information came directly from
19 them, and that was the direction they gave us.

20 Q. Okay. So that was the basis for your
21 conclusion?

22 A. BY MS. WEINSTEIN: Yes.

23 Q. Not any actual investigation you did yourself,
24 is that correct?

25 A. BY MS. WEINSTEIN: The investigation to the

1 extent of coordination with the ASM, Arizona State
2 Museum.

3 Q. Okay. Thank you.

4 Let's turn to page 22 of your prepared
5 testimony. And at this point in the question and answer
6 beginning on line 16 and continuing through line 18, you
7 appear to indicate that you are about to shift to a
8 discussion of visual resources assessed for the project
9 which included landscape, scenery, and sensitive
10 viewers, is that correct?

11 A. BY MS. WEINSTEIN: I am sorry, what page did you
12 say?

13 Q. 22.

14 A. BY MS. WEINSTEIN: Sorry.

15 Q. And I am looking at the question and answer at
16 line 16 through 18.

17 A. BY MS. WEINSTEIN: I am sorry, could you repeat
18 your question now that I have found out where you are
19 talking about?

20 Q. Certainly. At this point in your prepared
21 testimony, it appears that you are about to begin a
22 discussion of visual resources assessed for the project,
23 including landscape, scenery, and sensitive viewers,
24 correct?

25 A. BY MS. WEINSTEIN: Yes.

1 Q. Now, let me have you turn to page 25 of your
2 prepared testimony. And I would like you to look at the
3 two sentences which begin on line 2 and end on line 8.
4 And I will read those into the record.

5 Quote: Views of the project from State Route 83
6 would likely range from partially to completely screened
7 by Rosemont operations and viewed at a distance of two
8 miles and beyond; therefore, minimal impacts are
9 anticipated. Dispersed recreation viewers associated
10 with CNF would have views of the preferred route on
11 forest land, parenthesis, link 140; however, impacts
12 would be minimal because the project would be viewed in
13 context with Rosemont mine operations. Again, in this
14 area, impacts may be reduced on the collocation with the
15 pipeline and consolidation with the distribution line.

16 Let me ask you, first of all, with regard to
17 this portion of your answer, could you provide a more
18 precise description of how this screening would occur
19 that you refer to?

20 A. BY MS. WEINSTEIN: As the line comes over Lopez
21 Pass, it comes down, down below the ridge and primarily
22 on the immediate, more immediate east side of the Santa
23 Rita Mountains. The Rosemont mine operation facilities
24 would be between that location and Santa Rita, or,
25 excuse me, State Route 83. So the screening we are

1 talking about are potential tailings, Rosemont, other
2 Rosemont operations facilities, those sorts of things.

3 Q. So would I be correct in understanding that in
4 doing this part of your visual impact analysis from the
5 standpoint of possible future sensitive viewers, you
6 took into account the results of Rosemont's mining
7 activities?

8 A. BY MS. WEINSTEIN: Just, yes, to the degree of
9 general understanding that there would be tailings,
10 piles out there, et cetera.

11 Q. Did you have any simulations of what those
12 tailings and piles would be that would enable you to
13 determine the amount of screening? Because you use the
14 word partially to completely screened.

15 A. BY MS. WEINSTEIN: We saw some preliminary
16 drawings and layouts of it.

17 Q. And did those tailings and piles completely
18 screen the line simulation in some areas?

19 A. BY MS. WEINSTEIN: A line simulation? Which
20 simulation are you referring to?

21 Q. Well, I don't know. What was the basis for you
22 concluding that the views would be partially to
23 completely screened by Rosemont operations?

24 A. BY MS. WEINSTEIN: Probably more reading the
25 description of what would be, what would be out there

1 for tailings and facilities out there.

2 Q. So just to be clear in my understand, in
3 arriving at that particular conclusion which appears on
4 line 3 of page 25 of your prepared testimony, you were
5 taking into account the end results of Rosemont
6 activities, correct?

7 A. BY MS. WEINSTEIN: Yes.

8 Q. Now, let me have you look at line 6 on page 25,
9 and actually lines 5 and 6. And we had the language,
10 however, impacts would be minimal because the project
11 would be viewed in context with Rosemont mine
12 operations. What do you mean by the words viewed in
13 context?

14 A. BY MS. WEINSTEIN: You would not be looking at
15 only the line. You would be seeing other activity,
16 other disturbance out there.

17 Q. Okay. So, again, in arriving at the conclusion
18 that appears on lines 5 and 6 of page 25, you took into
19 account Rosemont's activities as part of your analysis,
20 correct?

21 A. BY MS. WEINSTEIN: Yes, we did.

22 Q. Let me have you turn to page 27 of your prepared
23 testimony. And here again in the answer that is carried
24 over onto the top of page 27, you are talking about
25 recreation viewer perspectives and impacts, and you make

1 the following statement, quote: For dispersed
2 recreation viewers associated with the CNF, similar to
3 the preferred route in Alternative Routes 1, 2, and 3,
4 portions of Alternative Route 4 would be viewed in the
5 context of the Rosemont mine operations, close quote.

6 Again, where you use the language would be
7 viewed in the context of the Rosemont mine operations,
8 your conclusion is taking into account Rosemont's
9 activities, is that correct?

10 A. BY MS. WEINSTEIN: Yes.

11 Q. And finally, over on page 28 of your prepared
12 testimony with the sentence that appears at lines 5 on
13 to line 6, you have the following language, quote:
14 Views of the project from State Route 83 would likely be
15 partially to completely screened by Rosemont operations,
16 close quote.

17 Again, here your analysis and conclusion take
18 into account Rosemont's activities and the results of
19 those activities, correct?

20 A. BY MS. WEINSTEIN: Correct.

21 Q. Ms. Weinstein, do you have a copy of Committee
22 Exhibit 3 in front of you? And that is the
23 December 5th, 2011 letter from Mr. James E. Pepper to
24 the Commission's Docket Control and to Chairman Foreman.

25 A. BY MS. WEINSTEIN: Yes, I do.

1 Q. Let me have you turn to page 2 of Mr. Pepper's
2 letter. And under his section, as it is numbered, A,
3 and then subsection 1, which is about the middle of
4 page 2, towards the end of that paragraph and his
5 further bullet point on that page, he represents that he
6 is quoting from page B-14 of the environmental report
7 that was attached to the company's application. And he
8 has the following words, concluding that any given
9 alternative is, and then he has a quote within his
10 language, quote, likely to have minimal impacts to land
11 use because it will result in minimal additional
12 restrictions on lands crossed and is not incompatible
13 with existing jurisdiction plans for the areas crossed,
14 close single quote, close double quote, as I am reading
15 it into the record.

16 Let me ask you if you could -- let me ask you,
17 first of all, as a prefatory question, to the best of
18 your knowledge, has he quoted you correctly from
19 page B-14?

20 A. BY MS. WEINSTEIN: I will check.

21 I am actually not finding it yet.

22 Q. I am sorry. I didn't hear you.

23 A. BY MS. WEINSTEIN: Yeah, I am actually not
24 finding the text I am looking for.

25 Q. Well, if you can't find it, let me ask you

1 whether the language that appears in quotes would be an
2 accurate representation of your own opinion?

3 A. BY MS. WEINSTEIN: Yes, I believe that's
4 accurate.

5 Q. Against that background, what would be the
6 evidence that you were relying upon to support your
7 conclusion that the impacts would be minimal?

8 A. BY MS. WEINSTEIN: I say minimal impacts because
9 we are not physically restricting; you are minimally
10 physically restricting activities out there.

11 Q. Okay. So minimal in the sense of a limited
12 restrictiveness as it relates to other activities?

13 A. BY MS. WEINSTEIN: Yes.

14 Q. Let me have you turn to page 3 of Mr. Pepper's
15 letter. And I would like you to take a moment to --

16 CHMN. FOREMAN: Excuse me. Mr. Robertson,
17 before we wander on, in order to make the record
18 complete, I believe the quotation that you referred to
19 in Committee Exhibit No. 3 is found not on page B-14 but
20 on page B-15, and is in a paragraph that's entitled
21 preferred route. And I just wanted to make sure that
22 that was in the record.

23 MR. ROBERTSON: And I thank you for that,
24 Mr. Chairman.

25 CHMN. FOREMAN: Okay.

1 BY MR. ROBERTSON:

2 Q. Ms. Weinstein, let me have you turn to page 3 of
3 Mr. Pepper's letter, and look at his numbered section 4
4 and the bullet point that appears under that section 4.
5 It is entitled Exhibit F, recreational purposes and
6 aspects. And I would like you to take a moment to read
7 that paragraph in its entirety, and then I want to ask
8 you a question or two.

9 A. BY MS. WEINSTEIN: Okay.

10 Q. Okay. As I indicated earlier, where Mr. Pepper
11 has occasion to characterize something expressing his
12 own opinion, I am neither supporting that nor objecting
13 to it. I am just using this document as a reference
14 point for some questions.

15 But in about the middle of that paragraph, he
16 makes the following statement: Quote, this conclusion
17 is based on a legally flawed statement in the DEIS on
18 the proposed Rosemont mine, namely, that the forest plan
19 for the Coronado National Forest will be amended to
20 accommodate the proposed mine.

21 Let me ask you, in connection with any of the
22 work you did and the conclusions reached, did you assume
23 that the forest plan for the Coronado National Forest in
24 fact would be amended to accommodate the Rosemont mine?

25 A. BY MS. WEINSTEIN: Yes, that is our assumption.

1 Q. You did make that assumption. Okay.

2 When will you and the world, so to speak, know
3 whether or not in fact the Coronado National Forest
4 forest plan will be amended to accommodate the Rosemont
5 mine? What activity would have to occur, what event,
6 and what is the current anticipation as to when that
7 outcome will be known?

8 A. BY MS. WEINSTEIN: What we understand is that
9 after the draft EIS for the Rosemont facility is
10 finalized, then there is a pending forest plan amendment
11 land use plan amendment going on at the same time, that
12 it will be sometime in a similar time frame that that
13 plan would be amended.

14 Q. Would the record of decision include an
15 amendment of the current forest plan, or would the
16 amendment of the current forest plan be the subject of
17 an entirely separate action by Coronado National Forest?

18 A. BY MS. WEINSTEIN: I am not certain of that.

19 Q. Okay. Ms. Weinstein, I believe this is my last
20 question. At page 4 of the prepared testimony of Peter
21 Steere, who is a witness for the Tohono O'odham Nation,
22 he makes the following statement. And if you would like
23 me to give you a moment to turn to that page, if you
24 have it handy, I would be happy to do so.

25 A. BY MS. WEINSTEIN: I have it. I have the page.

1 Q. Okay. He makes the following statement:
2 Quote, it is important to avoid ethnocentrism
3 when evaluating traditional cultural property.
4 Euro-American society tends to emphasize objective
5 observation of the physical world. It may not be
6 possible to use such observations for evaluating a
7 traditional cultural property. There may be nothing
8 observable to an outsider about a traditional cultural
9 place regarded as sacred by a Native American group.
10 Close quote.

11 In performing the work that you performed in
12 connection with this assignment, to what extent did you
13 endeavor to avoid ethnocentrism, as you understand that
14 concept?

15 A. BY MS. WEINSTEIN: Excuse me one moment.

16 MEMBER WALKER: Mr. Chairman, I have a question.

17 CHMN. FOREMAN: Member Walker.

18 MEMBER WALKER: It is actually for you,
19 Mr. Chairman. In looking at a case, I have always felt
20 we should obviously look at the statutes and what they
21 set forward as the test. And if say a party wanted to
22 look into the metaphysical nature of existence and ask
23 the applicant how that metaphysical or spiritual realm
24 affects a project, how do we, how do we fit that into
25 the statutory criteria?

1 CHMN. FOREMAN: That's a metaphysical question.

2 MEMBER WALKER: Well, the question is -- right.

3 CHMN. FOREMAN: I understand.

4 MEMBER WALKER: The community views the whole
5 world in an entirely different way. And that's great.
6 As a Catholic, I get it; we all have different
7 perspectives. But I don't know that we look at papal
8 instruction in determining what the Line Siting
9 Committee should do.

10 So I don't know how we look at the metaphysical
11 nature of the Native American view of the world and fit
12 that into this. I mean if a party wanted to make that
13 point, shouldn't they have a witness making that point
14 rather than the lawyer asking a question?

15 CHMN. FOREMAN: Well, lawyers, especially
16 skillful ones, oftentimes try to speak through their
17 witnesses. And the question in this case is whether a
18 discussion of the impact that's described in the
19 statement or proffered testimony in question would be
20 one that would be relevant to this proceeding, or
21 material I guess is what the statute says.

22 The statutory criteria in 40-360.06 are rather
23 broad. They talk about the total environment of the
24 area. And the members of the Tohono O'odham Nation in
25 addition to being citizens of their own nation, are

1 citizens of the State of Arizona.

2 So the statutory criteria in this area are quite
3 broad. Counsel, I think, is within the realms of
4 materiality in bringing it out. But each individual
5 member of the Committee makes a determination of the
6 weight of that type of testimony in making their own,
7 discharging their own responsibility to weigh the
8 factors that the statute requires them to weigh in
9 making their decision.

10 So I am not, I am not sure that I can respond
11 directly to your question; although, I understand your
12 concern. But it is the lack of specificity that is both
13 a strength and a weakness of the statute. It gives the
14 members of the Committee a great deal of latitude in
15 evaluating things like this. And considerations like
16 this are considerations that some people feel are
17 important in making these types of decisions.

18 MEMBER WALKER: So I suppose that gives then the
19 public a wide degree of latitude in expressing what they
20 think.

21 CHMN. FOREMAN: Yes.

22 MEMBER WALKER: Okay. I get it. Thank you,
23 Mr. Chairman.

24 CHMN. FOREMAN: Mr. Robertson.

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

1 BY MR. ROBERTSON:

2 Q. Ms. Weinstein, do you have my last question in
3 mind or would you like me to repeat it?

4 A. BY MS. WEINSTEIN: I will take a stab at an
5 answer and you let me know if...

6 Q. Okay.

7 A. BY MS. WEINSTEIN: We did not identify any
8 traditional cultural places in our study process. We
9 have coordinated with the Coronado National Forest and
10 understand that they are eval -- or through the SHPO
11 process, as Ms. Berglan touched on, or as in the
12 testimony of Mr. Steere, that they are considering
13 traditional cultural property right now as potential for
14 eligibility. We anticipate a historic property
15 treatment plan would be prepared and potentially address
16 that as appropriate.

17 MR. ROBERTSON: Okay. Ms. Weinstein, I think we
18 are there. Thank you.

19 MS. WEINSTEIN: Thank you.

20 CHMN. FOREMAN: Very good. Ms. Webb, do you
21 have questions that you would like to ask?

22 MS. WEBB: Mr. Chairman, can I have a -- I
23 really have to pee right now. I know it is now on the
24 record, but can I have a two-minute break please?

25 CHMN. FOREMAN: Well, perhaps we could break

1 early for lunch and reconvene at 1:00 p.m.

2 MS. WEBB: And also I would like to consult --
3 some of mine are going to cross-reference tables in the
4 EIS. And I am not sure if the witness has a hard copy.
5 It might be easier. I do have a blank copy I could
6 share with her. So I would like a couple minutes to
7 talk with them.

8 CHMN. FOREMAN: All right. Why don't we take
9 then the lunch recess now. We will convene at 1:00 p.m.
10 rather than 1:30 and begin at that time.

11 MS. WEBB: Thank you, Mr. Chairman.

12 CHMN. FOREMAN: After Ms. Webb, Mr. Magruder, I
13 would expect you would be up next. And then we will go
14 to Mr. Black and Mr. James. And then we will go back
15 for redirect. All right?

16 We are in recess.

17 (A recess ensued from 11:34 a.m. to 1:09 p.m.)

18 CHMN. FOREMAN: Let's proceed. If I remember
19 correctly, Ms. Webb, you were about ready to begin your
20 cross-examination.

21 MS. WEBB: Yes, Mr. Chairman. May I have a
22 moment to get to the correct page in the book?

23 CHMN. FOREMAN: Yes.

24 MS. WEBB: Okay. Mr. Chairman, I am ready to
25 start whenever you are ready.

1 CHMN. FOREMAN: You may proceed.

2 MS. WEBB: Mr. Chairman, as I asked earlier, I
3 did go ahead and bring you hard copies from the
4 environmental impact statement that was part of the CEC
5 application. I did make some copies of a couple of the
6 pages for the Committee members. If that's okay, I will
7 bring them up; if not, we will just save them, whichever
8 is better for you.

9 CHMN. FOREMAN: I think that would be fine if
10 you brought them over and passed them out now.

11 MS. WEBB: Okay. Thank you, Mr. Chairman.

12 (Brief pause.)

13 MS. WEBB: Mr. Chairman, I apologize. I didn't
14 have the second set for Ms. Rodriguez.

15 CHMN. FOREMAN: All right. Well, let's go ahead
16 and start.

17

18 CROSS-EXAMINATION

19 BY MS. WEBB:

20 Q. All right. I am going to start with Mr. Beck,
21 please. Mr. Beck, did you receive a copy of what I was
22 just passing out?

23 CHMN. FOREMAN: For the record why don't you
24 identify what it is you were just passing out.

25 MS. WEBB: Okay. Thank you, Mr. Chairman.

1 BY MS. WEBB:

2 Q. This is page 10 and page 38 and page 39 from the
3 draft environmental impact statement which is a part of
4 TEP's application, CEC application, which I believe is
5 Exhibit 1.

6 A. BY MR. BECK: Yes, I would have a copy of this.

7 Q. All right. Mr. Beck, do you see a star to the
8 lower left-hand side, second paragraph?

9 A. BY MR. BECK: Yes, I do.

10 Q. Okay. Do you agree with the statement that
11 siting authority on private lands and state lands lies
12 with the Arizona Corporation Commission?

13 A. BY MR. BECK: Yes.

14 Q. Okay. Let's go to the next page.

15 For the record I would like to say that we have
16 gone to page 38. And it is titled power.

17 The last sentence, do you agree as mentioned in
18 chapter 1 of the decision whether to permit one of these
19 alternatives resides with the Arizona Corporation
20 Commission?

21 A. BY MR. BECK: Yes, it does state that.

22 Q. Okay. And which, of the preferred route and the
23 four alternatives, which of those resides with the
24 Arizona Corporation Commission?

25 A. BY MR. BECK: All five of them.

1 Q. Okay. Thank you. All right.

2 Mr. Beck, do you agree that TEP's rules and
3 regulations allow for you to deny service to customers?

4 MR. GELLMAN: Objection; calls for a legal
5 conclusion.

6 MS. WEBB: I am sorry.

7 CHMN. FOREMAN: Overruled.

8 You may answer.

9 MR. BECK: The only instance I know of where the
10 company could deny service is if we do not have the
11 capability to provide that service.

12 BY MS. WEBB:

13 Q. Okay. Yesterday you testified or you entered
14 Exhibit 4, which had the sign posting locations, and
15 there were -- there was a map that had the noted sign
16 locations and then had accompanying photographs. Were
17 those all of the photographs?

18 A. BY MR. BECK: I believe we included all of the
19 photographs in the exhibit.

20 Q. Okay. And were all of those photographs sent to
21 all of the parties?

22 A. BY MR. BECK: As far as I know they were, yes.

23 Q. Were all of those signs posted on the same date?

24 A. BY MR. BECK: No, they were not.

25 Q. Okay. Can you tell me what dates those were

1 posted?

2 A. BY MR. BECK: Well, as shown on the photographs,
3 we had some of them posted or put up on the 11th of
4 November and some on the 13th of November, and it
5 appears that we also had -- that the last date that I
6 see is the 13th.

7 Q. And there were none posted later than the 13th?

8 A. BY MR. BECK: Not that I am aware of.

9 Q. All right. I think I am done with you. Thank
10 you.

11 MR. BECK: Thank you.

12 CHMN. FOREMAN: Does that conclude your
13 cross-examination?

14 MS. WEBB: Of Mr. Beck.

15 CHMN. FOREMAN: Okay.

16 BY MS. WEBB:

17 Q. Okay, Ms. Weinstein.

18 A. BY MS. WEINSTEIN: Yes.

19 Q. Thank you.

20 Can you go to page E-17 of TEP's Exhibit 1 in
21 the CEC, please. If I understand it correct, am I
22 understanding correctly that there are two components of
23 how the information with the assessment was done, were
24 disseminated, one was disseminated to the Coronado
25 National Forest, and one, it was to be disseminated to

1 the, let's see here, the State Historic Preservation
2 Office, is that correct?

3 A. BY MS. WEINSTEIN: Could you clarify which
4 information you are referring to?

5 Q. I am referring to the detailed description of
6 cultural resources in the project study area that were
7 recorded during pedestrian studies of proposed project
8 alternatives documented in separate reports and
9 submitted for review to the Coronado National Forest.

10 A. BY MS. WEINSTEIN: Yes, there were two cultural
11 survey reports submitted to the Coronado National
12 Forest.

13 Q. Okay. Would you agree that the assessment was
14 also prepared to support the ACC's compliance with the
15 State Historic Preservation Act?

16 A. BY MS. WEINSTEIN: Yes.

17 Q. And does that require state agencies to consider
18 the impacts of their programs on historic properties
19 listed in or eligible for the Arizona Historic Register
20 of Historic Places?

21 A. BY MS. WEINSTEIN: Yes.

22 Q. And to provide the State Historic Preservation
23 Office an opportunity to review and comment on the ACC's
24 actions that affect properties listed on or eligible for
25 listing on the Arizona register?

1 A. BY MS. WEINSTEIN: Yes.

2 Q. Okay. Was that same information that was sent
3 to the Coronado National Forest also sent to the State
4 Historic Preservation Office?

5 A. BY MS. WEINSTEIN: The Coronado National Forest
6 is handling SHPO consultation.

7 Q. Okay. Do you agree with Mr. Beck's earlier
8 testimony that the Arizona Corporation Commission is
9 responsible for the transmission line siting process on
10 private and state lands?

11 A. BY MS. WEINSTEIN: Yes.

12 Q. Okay. Thank you. And I am not done, I am just
13 turning the page. Okay.

14 On page E-18, do you agree to be eligible for
15 the National Register of Historic Places and the Arizona
16 register, properties must be at least 50 years old
17 unless they have special significance?

18 A. BY MS. WEINSTEIN: You are asking if I agree
19 with that?

20 Q. Do you agree with that full paragraph down to
21 and meet at least four criterion, A, B, C, and D?

22 A. BY MS. WEINSTEIN: I am not sure it is my place
23 to agree with it, but it is something that we understand
24 is required.

25 Q. Okay. Under inventory methods, do you, or

1 who -- did you or did a representative of EPG conduct
2 the Class III pedestrian surveys for the preferred and
3 alternative routes in 2009? And did you or somebody
4 associated with your firm oversee or have seen the
5 reports for Swanson and SWCA?

6 A. BY MS. WEINSTEIN: Yes.

7 Q. Okay. And can you just give me a little bit of
8 an understanding of what survey methods are required by
9 the Arizona State Museum and the State Historic
10 Preservation Office? What does the 100 percent coverage
11 with a spacing of 15 meters mean?

12 A. BY MS. WEINSTEIN: In the survey corridor, we
13 surveyed 100 percent with people 15 meters, the spacing
14 of 15 meters apart between individuals as they walked
15 the corridor.

16 Q. Okay. And when you say corridor, are you
17 referring to the two-mile buffer on either side of all
18 the alternatives and preferred route?

19 A. BY MS. WEINSTEIN: No. It was a 500-foot
20 corridor for the majority of the alternatives, and a
21 thousand foot wide corridor on link 160.

22 Q. Okay. And link 160 would be the one that
23 crosses from Box Canyon north?

24 A. BY MS. WEINSTEIN: Yeah, that's to the south
25 here coming up from the 46kV line, then crossing.

1 Q. And for the sake of the record, that's near the
2 OHV off-roading area, is that --

3 A. BY MS. WEINSTEIN: Yes, yes.

4 Q. Okay. Can you just kind of tell me a little bit
5 more, using the Arizona State Museum and State Historic
6 Preservation Office guidelines, what defines the
7 difference between historic property and an isolated
8 historic item?

9 A. BY MS. WEINSTEIN: Historic properties are
10 sites, versus an isolated historic item. It is the
11 density of features that create more of a site versus an
12 item, features or artifacts.

13 Q. Okay. So if I found a pot that had been smashed
14 into 300 pieces, that wouldn't be considered a site,
15 that would just be considered one item?

16 A. BY MS. WEINSTEIN: Probably.

17 Q. Okay. But there are situations where that could
18 be made, considered a site versus an item?

19 A. BY MS. WEINSTEIN: I think it would probably
20 depend on the circumstances surrounding that site or
21 that location.

22 Q. Okay. Do you know what those circumstances
23 might be?

24 A. BY MS. WEINSTEIN: It would be the context of
25 the site, the significance of the event that led to the

1 dropping of the pot, the breakage of the pot.

2 Q. Okay. So activities associated with the site
3 can lead towards some of the determination of
4 eligibility?

5 A. BY MS. WEINSTEIN: Could you repeat that
6 question, please.

7 Q. Activities that may have occurred within a site
8 or historic property can lead towards the determination
9 of eligibility of a site?

10 A. BY MS. WEINSTEIN: Yes.

11 Q. And can you tell me what some of those
12 activities might be?

13 A. BY MS. WEINSTEIN: I refer you, Ms. Webb, to
14 page E-18 where we list the criterion that helps to
15 determine sites and eligibility. At the top of the
16 page there are some bullets under that first paragraph.

17 Q. And Ms. Weinstein, just for clarification, you
18 are talking about criterion A, B, C and D?

19 A. BY MS. WEINSTEIN: Correct.

20 Q. And just to help me out here a little bit, can
21 you relate those a little bit to southern Arizona and
22 this particular corridor? I mean what activities in
23 this particular corridor would you think might relate to
24 this particular criterion?

25 A. BY MS. WEINSTEIN: Just one moment.

1 Q. Okay, thank you.

2 MR. GELLMAN: Mr. Chairman.

3 CHMN. FOREMAN: Yes, sir.

4 MR. GELLMAN: I don't mean to interrupt
5 Ms. Webb's cross. Mr. Steve Swanson, who is EPG's
6 cultural resource expert, is here. He is available to
7 testify. We did notice him, in case more specific
8 questions come up, he would be available if needed.

9 CHMN. FOREMAN: Okay. We will see if somebody
10 calls him.

11 MS. WEBB: Mr. Chairman, does that mean I have
12 to call him or do I just keep asking Ms. Weinstein those
13 questions?

14 CHMN. FOREMAN: No. It just means he is
15 available.

16 BY MS. WEBB:

17 Q. Okay. Ms. Weinstein, can you answer the
18 question or --

19 A. I am sorry, could you repeat it again? I am
20 sorry.

21 Q. Okay. Of the criterion listed, A, B, C, and D,
22 what activities in the area where the Class III
23 pedestrian surveys were conducted might lead you to
24 believe that there could be sites or isolated items that
25 would be eligible for listing?

1 CHMN. FOREMAN: Are you asking in general or are
2 you asking -- is this question in some way related to
3 something that is associated with the application we
4 have before us?

5 MS. WEBB: Mr. Chairman, with all respect, my
6 understanding of her previous answers, the activities
7 and, from reading this, let's see, significant
8 historical events, characteristics, that sort of thing
9 can lead to the determination of eligibility for the
10 national register. And I would like to know what sort
11 of activities that are indicative of southern Arizona
12 that could be used to determine eligibility.

13 And I absolutely believe under the Arizona
14 Revised Statutes, existing historic sites, that this is
15 very relevant. So if she could answer, or if she can't
16 if the other witness could, I think it is very
17 appropriate.

18 CHMN. FOREMAN: I appreciate your belief and I
19 appreciate your feelings. What I am trying to figure
20 out is what materiality this has to the application.
21 And can you explain to me why this is important for us
22 to consider in this case?

23 MS. WEBB: Well, I think first we have to
24 determine what sort of activities might have occurred in
25 the area so that they would know to look for them; and

1 then, after that happens and they do the survey, how
2 they might be impacted by this line; and if they would
3 be impacted by this line, can they be mitigated; and if
4 they can't be mitigated, and that's not a decision or
5 choice that I would think to make, but, or were they not
6 even recognized or considered.

7 CHMN. FOREMAN: All right. And it seems to me
8 that that's a reasonable line of inquiry. So let me ask
9 you to do as what you just said you wanted to do, focus
10 your attention on a particular artifact --

11 MS. WEBB: I can rephrase the question if that
12 would help.

13 CHMN. FOREMAN: It would help if you listen
14 carefully to what I am about to say. I would appreciate
15 it if you would focus your questions on a particular
16 potential historical place or artifact that's associated
17 with this application.

18 MS. WEBB: Okay. I will, Mr. Chairman. Thank
19 you for the guidance.

20 BY MS. WEBB:

21 Q. Ms. Weinstein, would you agree that historic
22 mining occurred along any of the route, the preferred
23 route, or the alternatives?

24 A. BY MS. WEINSTEIN: Yes.

25 Q. Okay. Would you agree that historic ranching

1 occurred along any of the alternatives or the preferred
2 route?

3 A. BY MS. WEINSTEIN: Yes.

4 Q. Okay. Would you agree that there was a
5 multi-component of ranching and mining along the
6 preferred route or any of the alternatives?

7 A. BY MS. WEINSTEIN: Could you clarify that
8 question for me.

9 Q. Was there any ranching, leaseholders that
10 occurred concurrently with mining along any of the
11 preferred, the preferred route or any of the
12 alternatives?

13 A. BY MS. WEINSTEIN: I am not sure.

14 Q. Okay. Can I ask that question of the expert
15 witness after I am done with you?

16 Or, Mr. Chairman, I don't know that I can ask
17 that question.

18 CHMN. FOREMAN: Do you want to call him as a
19 witness?

20 MS. WEBB: Not right now.

21 CHMN. FOREMAN: Okay.

22 BY MS. WEBB:

23 Q. Ms. Weinstein, do you believe there was any
24 other type of historic activity along the preferred
25 route or the alternatives that consisted of habitation

1 within a government facility, or were there any
2 government facilities within the corridors for the
3 preferred route or the alternatives? And by facility it
4 could be any kind of structures.

5 A. BY MS. WEINSTEIN: I understand there are
6 habitation structures along Route 4 that are owned by
7 the government.

8 Q. Okay. Are there any other government
9 facilities, meaning research facilities, infrastructure
10 components along any of the preferred route or
11 alternatives?

12 MR. GELLMAN: Mr. Chairman, I am going to object
13 as to the question is vague. I don't understand what
14 Ms. Webb means by other government facilities.

15 MS. WEBB: Okay.

16 BY MS. WEBB:

17 Q. Ms. Weinstein, would you agree that the Santa
18 Rita Experimental Range is a historic government
19 facility?

20 A. BY MS. WEINSTEIN: I agree that that is a
21 historic area. Government, I am not sure it is entirely
22 government all the way back. Is it?

23 Okay. So at one time it was under the
24 jurisdiction of the Forest Service. So it --

25 Q. Okay. Do you know when the land ownership was

1 acquired by the State Land Department?

2 A. BY MS. WEINSTEIN: In the late -- yeah, I
3 believe it was the late '80s, late 1980s.

4 Q. Do you know who the beneficiary is for the Santa
5 Rita Experimental Range, Arizona State Land Department?

6 MR. GELLMAN: Objection as to this is immaterial
7 to the line siting.

8 CHMN. FOREMAN: What is the materiality,
9 Ms. Webb?

10 MS. WEBB: If I may have a moment to think in my
11 brain here.

12 The Committee is considering the managing agent.
13 I think it is also appropriate if we are going to
14 consider all aspects of the Santa Rita Experimental
15 Range from the land ownership to the manager that we
16 should also consider the beneficiary because the
17 beneficiary will be the recipient of the right-of-way
18 fee.

19 CHMN. FOREMAN: Well, are you asking because you
20 think it is a beneficiary other than the beneficiary to
21 which all other Arizona State Land revenue goes?

22 MS. WEBB: Mr. Chairman, it is my understanding
23 that the beneficiaries of the Arizona State Land
24 Department, although most of it goes to the common
25 schools, there are different pieces that are broken

1 down. And this one, my understanding, is not common
2 schools.

3 CHMN. FOREMAN: All right. So what you are
4 asking is whether there is a special beneficiary to this
5 particular land?

6 MS. WEBB: Correct.

7 CHMN. FOREMAN: All right. And help me again to
8 understand why that's material to the application.

9 MS. WEBB: Earlier I observed the Committee or
10 heard the Committee talking about different ways that
11 this project could be beneficial from a financial
12 standpoint to ratepayers and to the fort and other
13 things. And I think it is worthwhile to consider who
14 would be the beneficiary of the right-of-way application
15 as well.

16 CHMN. FOREMAN: I am going to sustain the
17 objection. I can see a benefit to arguing that it would
18 benefit beneficiaries, but as to getting who the
19 particular beneficiaries are, I think it would be
20 inappropriate for us to say, well, we will credit it if
21 it is one beneficiary but we won't credit it if it is
22 another beneficiary.

23 MS. WEBB: Okay.

24 CHMN. FOREMAN: So as who the particular
25 beneficiary is, I don't think it is material to our

1 proceeding.

2 MS. WEBB: Okay, Mr. Chairman. Thank you. But
3 I can ask would the right-of-way benefit some
4 beneficiary, or is that just understood?

5 CHMN. FOREMAN: I thought that that question had
6 already been answered, but if you want to ask that
7 question...

8 BY MS. WEBB:

9 Q. Ms. Weinstein, would there be a state land
10 beneficiary for the right-of-way application fee for the
11 rent or the lease?

12 A. BY MS. WEINSTEIN: That's my understanding.

13 Q. Okay. Are there any water control, historic
14 water control features along the preferred route or any
15 of the alternatives?

16 A. BY MS. WEINSTEIN: Yes.

17 Q. Okay. Are there any other historic roads along
18 the preferred route or any of the alternatives, aside
19 from the one indicated in the application?

20 A. BY MS. WEINSTEIN: Are you referring to routes
21 that the route -- excuse me -- the roads that the routes
22 follow, or that they cross, or can you explain a little
23 more?

24 Q. Yes, Ms. Weinstein. I would say that routes
25 that, well, in the case of, I can't see very well, but I

1 think it is 20, 25, 60, 100, 105, 155, and right now I
2 am just referring to paralleling generally 140, and then
3 over Lopez, and then Lopez Pass and then down to the
4 planned substation, which all contain -- that's 140 --
5 contained within that, speaking of that, the preferred
6 route paralleling, are any components of that along a
7 historic road?

8 MEMBER WALKER: Mr. Chairman, can I ask you a
9 question?

10 CHMN. FOREMAN: Sure, Member Walker.

11 MEMBER WALKER: Ask to the Chairman first. Can
12 we ask -- and I am asking you first -- can we ask
13 Ms. Webb if she can refer to pages E-18 and E-19 where
14 there are 13 historic property sites, and maybe, so I
15 can follow the questioning, if she could identify which
16 of these sites she is talking about? Can I ask a party
17 to refer to something?

18 CHMN. FOREMAN: You can ask, you can ask that
19 she do.

20 MEMBER WALKER: Okay. Ms. Webb, I would ask
21 that you look at pages E-18 and 19 -- I am trying to
22 follow your cross --

23 MS. WEBB: Okay.

24 MEMBER WALKER: -- if there are sites of those
25 13 listed that you could point out. I mean I can't

1 speak for the rest of the Committee, but for myself it
2 would be easier to follow if you can highlight, like
3 this is in particular what I am talking about.

4 CHMN. FOREMAN: In fact, to assist Member Walker
5 and to assist the Chair, in your cross-examination you
6 have referred in your last question to an historic road,
7 if you are referring to one of the particular sites
8 listed and there is an historic road that's listed in
9 the sites, could you tell us whether that's the road you
10 are talking about, or whether you are talking about some
11 other road and wanting to know if some other road is
12 historic.

13 MS. WEBB: Okay. Thank you, Mr. Chairman; thank
14 you, Member Walker.

15 MEMBER WALKER: Thank you.

16 MS. WEBB: To be quite frank, everything I have
17 referred to is not in the application. That was part of
18 my reasoning behind my testimony. And that's part of my
19 cross, was to determine if there were sites that were
20 missed. So I, quite honestly I can't. What I can refer
21 you to is the DEIS where it talks about -- it doesn't --
22 I am not talking about the TEP application. What I am
23 using is just for reference a list of things that they
24 use for the National Register of Historic Places. It is
25 not related. It is just a template of items. But as

1 far as the application goes, these items were not
2 inventoried for this.

3 CHMN. FOREMAN: I take it that the major reason
4 that you are here and that you have asked for party
5 status is to try and persuade this Committee to do what
6 it is you would like for them to do. Would that be
7 fair?

8 MS. WEBB: Probably.

9 CHMN. FOREMAN: It helps if we understand what
10 you are doing if you want to persuade us to do
11 something. So if you are referring to something -- you
12 have talked about what is on these two pages of the
13 application. Member Walker asked for a little more
14 specificity and asked the question whether we could tie
15 your questions to the particular enumerated eligible
16 historic properties that are listed on pages E-18 and
17 E-19, and I really thought that's where you were going.

18 Now, if I understand what you just told us, you
19 said you were thinking about something else. And so now
20 I am confused.

21 MS. WEBB: Okay, Mr. Chairman. If you will
22 allow me. My cross-examination was to determine what
23 was missed by this company when they did the inventory
24 of the corridors. And my understanding of a
25 cross-examination was not to provide testimony, and so

1 that's why I did not do what you had asked. I thought
2 that was when it was my turn to provide testimony.
3 Right now my understanding was to find out what was done
4 by this company and what their understanding of the
5 historic components of this particular property were.
6 And that was my understanding. And I am sorry if that
7 was not the correct understanding of doing
8 cross-examination, but that's what I understood it to
9 be. And I apologize if I was not clear in what I was
10 doing.

11 CHMN. FOREMAN: Okay. All right. Well, now
12 let's go ahead and proceed.

13 MS. WEBB: Okay, thank you, Mr. Chairman. Thank
14 you, Member Walker, for your guidance.

15 BY MS. WEBB:

16 Q. Okay. Ms. Weinstein, I believe -- let's circle
17 back. We were generally paralleling the Santa Rita
18 Road. While paralleling the Santa Rita Road, or would
19 you consider the Santa Rita Road to be a historic road
20 using the criteria of older than 50 years and criterion
21 A, B, C, or D?

22 A. BY MS. WEINSTEIN: Santa Rita Road is an
23 improved road. It is actively maintained and does not
24 have the historic artifacts or features that other roads
25 may have that would suggest it was eligible.

1 Q. Okay. My understanding, particularly from the
2 comments yesterday, that it is a dirt road that is very
3 bumpy and that it is wet, or yesterday would have been
4 wet. Would you agree that a historic road would have
5 been graded to maintain mining vehicles in a historic
6 mining town?

7 MR. GELLMAN: Objection; calls for speculation.

8 CHMN. FOREMAN: I am going to sustain the
9 objection, because I did not understand the question.

10 MS. WEBB: Okay.

11 BY MS. WEBB:

12 Q. I believe I understood you earlier to say that
13 Helvetia was a mining town, is that correct?

14 A. BY MS. WEINSTEIN: I am sorry, could you repeat
15 that question?

16 Q. I believe I understood you earlier to say that
17 Helvetia was a mining town, correct?

18 A. BY MS. WEINSTEIN: Correct.

19 Q. Would mining trucks have used Santa Rita Road?

20 A. BY MS. WEINSTEIN: Would, did you say would
21 mining trucks?

22 Q. Yes. Did mining trucks use Santa Rita Road?

23 A. BY MS. WEINSTEIN: No. They are using them now.

24 Q. Did they use them?

25 MR. GELLMAN: Same objection; calls for

1 speculation.

2 CHMN. FOREMAN: Overruled.

3 You may answer that.

4 MS. WEINSTEIN: I am not sure.

5 BY MS. WEBB:

6 Q. Okay. I am going to finish up with the roads.

7 Then I am going to circle back to that one.

8 Okay. Are you aware of any other historic roads
9 on the east side, I mean the west side of the Santa
10 Ritas on link 140 that would cross or parallel the
11 proposed, the preferred route?

12 CHMN. FOREMAN: Member Walker.

13 MEMBER WALKER: Ms. Webb, so you mean other than
14 the two roads that are identified in the table, is that
15 correct?

16 MS. WEBB: Yes. Mr. Walker, for your
17 clarification, if I am allowed to, those roads in the
18 application are on the east side of the Santa Ritas, is
19 my understanding.

20 MS. WEINSTEIN: In the table, items 11 and 12,
21 those, we are referring there to the historic roads.

22 BY MS. WEBB:

23 Q. And can you tell me which roads they are
24 referring to?

25 A. BY MS. WEINSTEIN: Okay. Numbers 11 and 12 are

1 generally both east and west of Lopez Pass, I am sorry,
2 west of Lopez Pass.

3 Q. Okay. And which one -- where are those located?

4 A. BY MS. WEINSTEIN: If you look, if you have the
5 place mat -- or I am sorry, I will point to it. Sorry.
6 On the board there, on the screen, Lopez Pass going
7 west.

8 Q. Can you point out New Rosemont on that map?

9 CHMN. FOREMAN: I am sorry, Ms. Webb, Rosemont
10 what?

11 MS. WEBB: There is a town called New Rosemont.

12 CHMN. FOREMAN: New Rosemont, okay.

13 MS. WEBB: It is number 13 on Table E-3.

14 MS. WEINSTEIN: We are going to see if we have
15 it in our cultural report, but generally we think it is
16 in the vicinity of the Rosemont project area.

17 BY MS. WEBB:

18 Q. Okay. And just for clarification, for the
19 preferred route, Alternative 1, and Alternative 2, it
20 says a historic mine and historic route. And the
21 pointer generally indicated the east side of 140 but
22 west of Lopez Pass. Can you tell me the name of that
23 mine?

24 A. BY MS. WEINSTEIN: No.

25 Q. And do you know the length or the general area

1 of either one of those historic roads to how you would
2 determine those to be eligible under the register
3 criteria?

4 A. BY MS. WEINSTEIN: It is generally unimproved
5 roads with features and artifacts.

6 Q. And what sort of features and artifacts?

7 A. BY MS. WEINSTEIN: It would be cans, broken
8 bottles.

9 Q. I am sorry, I didn't hear what kind of cans.

10 A. BY MS. WEINSTEIN: Tin cans.

11 Q. So if I understood you correctly, unimproved
12 roads with features such as tin cans and broken bottles
13 can help indicate a historic road?

14 A. BY MS. WEINSTEIN: Artifacts.

15 Q. Artifacts such as?

16 Using that criteria that you just described,
17 wouldn't Santa Rita Road also qualify as a historic
18 road?

19 MR. GELLMAN: Objection; asked and answered.

20 CHMN. FOREMAN: We talked about it before, but I
21 will allow the direct question and direct answer.

22 MS. WEINSTEIN: We surveyed a portion of Santa
23 Rita Road. Primarily most of our survey corridor was on
24 the north side of the road.

25 BY MS. WEBB:

1 Q. Does the corridor extend to both the north and
2 south side of Santa Rita Road, the proposed 500-foot
3 corridor?

4 A. Yes, it does.

5 Q. Okay. Do you know where Huerfano Butte is,
6 H-u-e-r-f --

7 A. BY MS. WEINSTEIN: Huerfano.

8 Q. Huerfano.

9 A. BY MS. WEINSTEIN: Yes.

10 Q. I am sorry I didn't pronounce it, especially to
11 the Nation.

12 A. BY MS. WEINSTEIN: Yes.

13 Q. Are you familiar with where it is?

14 A. BY MS. WEINSTEIN: Yes.

15 Q. Is there a way we can pull that up on the screen
16 anywhere maybe with a topo a little bit closer?

17 A. BY MS. WEINSTEIN: Let me see if one of our
18 other maps -- that's not -- let me just see if one of
19 our other exhibit maps have it in, has it labeled.

20 If you could go, Clark, to the existing land use
21 map, Exhibit A-2. It was in -- probably easiest to go
22 to the PDF. So it would be my right presentation. Yes.
23 There you go. And you can zoom in on that area. There
24 we go.

25 It is right in here, Elizabeth.

1 Q. Okay. Are you familiar with any cultural
2 associations with Huerfano Butte?

3 A. BY MS. WEINSTEIN: There was a reference made to
4 that in a Coronado National Forest letter.

5 Q. What was that reference? I think it is at the
6 back of the application.

7 A. By MS. WEINSTEIN: It is.

8 Q. We can go ahead and -- right.

9 Mr. Chairman, members of the Committee, that is
10 page J-39. Three is the beginning of the letter. I
11 believe that's from the Forest Service.

12 MS. WEINSTEIN: Yes. And that reference is to
13 page J-394 in the last paragraph.

14 MS. WEBB: Mr. Chairman, for the record, I would
15 just like to read that sentence into the record: Also,
16 segment 1 would pass quite close to Huerfano Butte, a
17 prominent landmark.

18 CHMN. FOREMAN: Ms. Webb, I think you meant to
19 say segment 100.

20 MS. WEBB: I thought I said that. Whoops. But
21 I did mean to say if I didn't say it. Thank you,
22 Mr. Chairman.

23 For the record, this is a letter from the
24 Coronado National Forest dated July 23rd, 2010 from Kent
25 Ellett, the then acting district ranger for the Nogales

1 district, I believe.

2 Also, segment 100 would pass quite close to
3 Huerfano Butte, a prominent landmark which members of
4 the Tohono O'odham and Pascua Yaqui have indicated --
5 let's see -- as an important traditional cultural place.
6 Thus, from a cultural resource perspective, adjacent
7 46kV family, Option 4 route would be by -- and I think
8 he might have even said by far the preferred route, but
9 I can't say.

10 BY MS. WEBB:

11 Q. Ms. Weinstein, did you send a letter of interest
12 or did you ask the Pascua Yaqui if they would like to be
13 involved in this process?

14 A. BY MS. WEINSTEIN: Because we prepared these
15 reports and submitted them to the Coronado National,
16 they handled all tribal consultation.

17 Q. Okay. Are you aware of any historic component
18 associated with Huerfano Butte?

19 A. BY MS. WEINSTEIN: Just the reference here in
20 the forest letter.

21 Q. Okay. So you are not aware that there is a
22 photo repeat location that's over 100 years old directed
23 at Huerfano Butte?

24 A. BY MS. WEINSTEIN: No, I am not.

25 Q. Okay. Can you tell me where the transmission

1 line and the preferred route would pass in relationship
2 to Huerfano Butte?

3 A. BY MS. WEINSTEIN: It is on the other side of
4 Santa Rita Road. Huerfano Butte is on the south side.
5 Distance-wise we would probably have to do a measurement
6 there how far, if that's what you are asking.

7 Q. Okay. Earlier I believe I understood you to say
8 that visual resources are typically indicated within two
9 miles, and that's why the two-mile detailed project
10 study area was chosen. Was that an accurate
11 understanding of the two-mile detailed study area?

12 A. BY MS. WEINSTEIN: Two miles is just to account
13 for land uses in the area and to some extent visual
14 resources, visual resources.

15 Q. In your professional opinion, how close would
16 you say Huerfano Butte is, not from a distance, but from
17 a viewshed class analysis? Foreground? Mid ground?
18 Background?

19 A. BY MS. WEINSTEIN: Foreground.

20 Q. Okay. And the impacts to scenery on Huerfano
21 Butte?

22 A. BY MS. WEINSTEIN: We don't cross the butte with
23 the route, so we did not assess impacts.

24 Q. Okay. Can we go to in the CEC application --
25 well, let's go ahead and finish up with cultural

1 resource. Let's go back. Can we go back to where we
2 were in the cultural resources.

3 Okay. In the application you indicated that
4 the -- or I understood you to say earlier that you had
5 consulted with the Arizona State Museum regarding the
6 Helvetia cemetery, and they indicated that it was still
7 in use. How did you consult with the Arizona State
8 Museum?

9 A. BY MS. WEINSTEIN: It was a phone call.

10 Q. Okay. Do you have any documentation? I mean,
11 did you follow up with a letter?

12 A. BY MS. WEINSTEIN: We did follow up with the
13 second phone call just last week.

14 Q. Okay, last week. Are you aware of my data
15 request dated December 4th where I asked for
16 documentation of all of the agency letters that the
17 company had sent out in regard to this process?

18 MR. GELLMAN: Mr. Chairman, outside the scope of
19 this witness' testimony. I object.

20 CHMN. FOREMAN: She can ask if she is aware.

21 MS. WEINSTEIN: Yes, I am.

22 BY MS. WEBB:

23 Q. Okay. Thank you, Ms. Weinstein. And do you
24 know the result of that? I believe you were the
25 respondent on that response that I received this

1 morning. Are you aware of the result of that request?

2 MR. GELLMAN: Objection; vague.

3 CHMN. FOREMAN: Overruled. You may answer.

4 MS. WEINSTEIN: I briefly saw it, but I would
5 need to look at it again.

6 BY MS. WEBB:

7 Q. Okay. I am sorry. Like I said, I got it this
8 morning. Let's go back to this paragraph in the
9 beginning. I understood that you agreed with me that
10 these are the requirements.

11 CHMN. FOREMAN: Ms. Webb.

12 MS. WEBB: What?

13 CHMN. FOREMAN: When you say go back to a
14 paragraph at the beginning, are you talking about
15 Genesis? Are you talking about the application?

16 MS. WEBB: I wouldn't do that to you. But yes,
17 in the application, Mr. Chairman, I am sorry, page E-17.

18 CHMN. FOREMAN: Okay. Very good. Thank you. A
19 page and paragraph reference.

20 MS. WEBB: I apologize.

21 CHMN. FOREMAN: There are some of us trying to
22 follow along.

23 MS. WEBB: I am doing the best I can. I do
24 apologize. And thank you for the guidance.

25 BY MS. WEBB:

1 Q. Page E-17, which requires state agencies
2 consider impacts of their programs on historic -- and
3 to provide the State Historic Preservation Office an
4 opportunity to review and comment on the ACC's actions
5 that affect properties listed on or eligible for listing
6 on the Arizona Register.

7 Did you consult with SHPO regarding the Helvetia
8 cemetery?

9 A. BY MS. WEINSTEIN: We are not in direct
10 consultation with SHPO. Coronado National Forest is
11 handling that.

12 Q. Do you agree with Mr. Beck's testimony earlier
13 that this process is under the purview of the Arizona
14 Corporation Commission?

15 A. BY MS. WEINSTEIN: Yes.

16 Q. Okay. Thank you.

17 If a property has not been evaluated and is not
18 considered eligible, what sort of protections must be
19 considered by the agency, any agency who is doing
20 permitting?

21 A. BY MS. WEINSTEIN: Helvetia cemetery is on state
22 land and is protected by state laws.

23 Q. Have you consulted with the archeologist for the
24 Arizona State Land Department?

25 A. BY MS. WEINSTEIN: Again, the Forest Service is

1 handling consultation. I believe State Land is a
2 cooperating agency for the EIS.

3 Q. Okay. Do you know if the archeologist to the
4 Arizona State Land Department has been contacted
5 regarding the Helvetia cemetery?

6 A. BY MS. WEINSTEIN: I am not aware.

7 Q. Okay. Let's circle back to my question before
8 this one, where I asked you if a property has not been
9 evaluated. So therefore I don't want to use it does not
10 exist, but if it has not been evaluated and is not
11 considered eligible or it is not eligible for the
12 National Register of Historic Places, what protections
13 are required in a state process?

14 MR. GELLMAN: Asked and answered.

15 CHMN. FOREMAN: I am going to sustain it because
16 I don't understand it.

17 MS. WEBB: Okay.

18 CHMN. FOREMAN: And I do think we have been down
19 this road before.

20 MS. WEBB: Okay.

21 CHMN. FOREMAN: I am sorry. Member Walker has a
22 question.

23 MS. WEBB: Okay.

24 MEMBER WALKER: Ms. Weinstein, am I missing
25 something? I thought the applicant proposed to avoid

1 the cemetery.

2 MS. WEINSTEIN: That is correct.

3 MEMBER WALKER: Okay. Okay. I am good.

4 MS. WEBB: I want to follow up with that.

5 BY MS. WEBB:

6 Q. Ms. Weinstein, is that proposed avoidance
7 voluntary or mandatory?

8 A. BY MS. WEINSTEIN: Voluntary.

9 Q. Okay. Thank you.

10 Ms. Weinstein, would you agree, given the number
11 of prehistoric sites that you have listed on page E-18
12 of the application, that there are mixed historic and
13 prehistoric components within the preferred route and
14 the alternative routes?

15 A. BY MS. WEINSTEIN: Yes.

16 Q. Okay. I am almost done.

17 All righty. Would you agree with Mr. Beck's
18 assessment that the 46kV line is more than 50 years old?

19 A. BY MS. WEINSTEIN: Mr. Beck would know better
20 than I how old the line is, so if he says that is the
21 case, I would agree with him.

22 Q. Okay.

23 CHMN. FOREMAN: Is that a not so subtle
24 reference to the fact that Mr. Beck is older than you
25 are?

1 MS. WEINSTEIN: I don't know that he is older.

2 MS. WEBB: And maybe we can switch that. I
3 believe they are a panel, Mr. Chairman. I can probably
4 just switch this particular piece of questioning to
5 Mr. Beck, if that's okay with you.

6 CHMN. FOREMAN: Yes.

7 MS. WEBB: Okay.

8 BY MS. WEBB:

9 Q. Mr. Beck, I believe I heard you say yesterday,
10 with the exception of having to replace a few wood poles
11 with metal poles, that essentially the engineering and
12 the integrity of the location, design, and the feeling
13 and association with that line was essentially the same,
14 is that correct?

15 A. BY MR. BECK: Could you maybe rephrase the
16 question? I am not sure I understood what you are
17 asking.

18 Q. Is it pretty much the same it has been over all
19 these years with the exception of having to replace a
20 couple poles here and there?

21 A. BY MR. BECK: Yes. Yes, it is. I am sorry.

22 Q. Okay. And do you agree with me that the fort is
23 pretty significant to us on a national perspective?

24 A. BY MR. BECK: I know they think they are very
25 important to us. I have no reason to question that.

1 Q. Okay. All right. So, and then I am probably
2 going to have to swap back over to Ms. Weinstein on
3 this, using all of those things that I just asked you,
4 couldn't the 46kV line be eligible for listing under the
5 National Register of Historic Places?

6 A. BY MS. WEINSTEIN: A lot of the structures have
7 been replaced. We have consulted -- hang on just a
8 moment. And we did record pieces of it, and in
9 coordination with the Coronado National Forest or in
10 discussions with them, they felt it did not add up to
11 what would qualify as a historic property.

12 Q. Just for clarification, can we pan back to the
13 small version of the proposed route and the
14 alternatives, please.

15 Ms. Weinstein, are routes 130, 110, and about
16 half of 150 on state land?

17 A. BY MS. WEINSTEIN: Did you say 30 or 130?

18 Q. I think it is 30 up there by that.

19 A. BY MS. WEINSTEIN: 30, 110, and, right, about
20 half of 150 are on state land.

21 Q. Okay. Well, I am glad this isn't a -- I don't
22 really remember. And this probably can go back to Ed, I
23 mean Mr. Beck. Has the design and quality of the Fort
24 Huachuca breaker changed?

25 A. BY MR. BECK: I am not aware that we have

1 actually done anything at the Fort Huachuca breaker. I
2 believe that has been there for many years the way it is
3 situated today.

4 Q. Okay. And how about the Greaterville
5 substation?

6 A. BY MR. BECK: The Greaterville substation has
7 seen changes over the years. The Greaterville supplies
8 some power to the region right around Greaterville.
9 That's the reason for it being there.

10 Q. And speaking of which, can you tell me how many
11 residents you serve with that line as well as backing up
12 the fort and serving Rosemont Copper's distribution?

13 A. BY MR. BECK: I am not sure the number offhand.
14 It is a very small number of customers that are served
15 out of Greaterville. We used to serve more. Some of
16 that load was transferred up to our system from the
17 north. And if you are referring to the Rosemont ranch
18 house that is served today, that's -- we serve the
19 ranch, just some lighting, generally.

20 Q. I thought I understood you earlier to say at the
21 beginning of the construction power would also be served
22 by the existing distribution system. Did I understand
23 that correctly?

24 A. BY MR. BECK: Let me clarify if I wasn't clear.
25 Early on in this project there was contemplation that we

1 would be supplying construction power to the mine prior
2 to having a 138 line constructed. And through the
3 process, and including public input, Rosemont chose to
4 withdraw their request for a construction power option
5 as part of this project, and to live with the fact they
6 would not have construction power until the 138kV line
7 was actually constructed. So there is no construction
8 power to be supplied via that 46kV line.

9 Q. I misunderstood something earlier when you said
10 something about construction power. So I apologize.

11 Okay. So, Ms. Weinstein, can we go to page 668
12 in the draft environmental impact statement.

13 A. BY MS. WEINSTEIN: Okay, I am there.

14 Q. Okay. In the table, Table 168, cultural
15 resources within the utility alignment alternative
16 excludes areas within the action alternative and access
17 corridors, see Figure 98, which is on page, let's see,
18 page 669 of the DEIS, which seems to imply that this
19 Table 168 is outside the mine plan of operations, which
20 would also include part of the transmission line.

21 Can we compare this to Table E-18 of the CEC,
22 which goes over to page E-19 in the CEC? Please let me
23 know when you have got those two.

24 A. BY MS. WEINSTEIN: Okay, I have them.

25 Q. Okay. And I am -- and maybe it is -- can you

1 explain to me what I understood under the inventory
2 results, is that there are 13 historic properties
3 recommended eligible for listing on the National
4 Register of Historic Properties along the various
5 routes?

6 So I understood that to mean 13 historic
7 properties amongst all of the alternative routes. And I
8 am assuming including the preferred route, and the CEC
9 on page E-18. Is that correct?

10 A. BY MS. WEINSTEIN: Correct.

11 Q. But when I read the table on page 668, excluding
12 the preferred alternative, so we don't get wrapped
13 around the axle with the water corridor, or excluding 1,
14 2, and 3, so we will just move on to Alternative 4, I am
15 counting 19 impacts to cultural resources. Can you
16 explain why there is such a disparity?

17 A. BY MS. WEINSTEIN: No, I cannot.

18 Q. Okay. In the DEIS on the Table 168 they list
19 traditional resource collection areas. Being that you
20 were working in consultation with the Coronado National
21 Forest, did you consider traditional resource collection
22 areas in your analysis for the CEC application?

23 A. BY MS. WEINSTEIN: You were referring to a
24 particular page and I didn't hear.

25 Q. It was the same page we were on.

1 A. BY MS. WEINSTEIN: Okay. And where are you at
2 on the page?

3 Q. 668.

4 A. BY MS. WEINSTEIN: I mean, are you referring to
5 a particular paragraph?

6 Q. It is in the same table, 168.

7 A. BY MS. WEINSTEIN: Okay.

8 Q. Again, just using Alternative 4 so we don't get
9 wrapped around the axle about the water corridor.

10 A. BY MS. WEINSTEIN: I am sorry, could you repeat
11 your question?

12 Q. Being that you are working in consultation with
13 the Coronado National Forest on this, did you also -- or
14 why didn't you include traditional resource collection
15 areas in your cultural resource survey for TEP
16 Alternative 4 in the CEC application?

17 A. BY MS. WEINSTEIN: The resource collection areas
18 are a part of the proposed TCP area.

19 Q. Okay. We will circle back to that. Can we go
20 to page 671 in the DEIS, please.

21 A. BY MS. WEINSTEIN: I am there.

22 Q. Okay. Would you agree, or would you agree that
23 this is what you are required to do under the
24 regulations of the National Register of Historic Places
25 criteria, with the definition that a traditional

1 cultural property is a unique category of historic
2 property, a traditional cultural property associated
3 with cultural practices or beliefs of a living community
4 that are rooted in that community's history and are
5 important in maintaining the continuing cultural
6 identity of the community; a traditional cultural
7 property may be a building, site, district, object, or
8 landscape, do you agree that that must be considered
9 under the National Register of Historic Places?

10 MR. GELLMAN: Mr. Chairman, objection. Seems
11 like we have covered this material before. This seems
12 repetitive, and I would object on those grounds.

13 CHMN. FOREMAN: I am not sure that that
14 particular question has been asked, but let me ask this.
15 What, again, is the materiality of the federal criteria
16 in this, a state proceeding?

17 MS. WEBB: Ms. Weinstein indicated, well, has
18 indicated several times when I have asked the question
19 about why certain things were not included in the CEC
20 application that it was in consultation, when I have
21 asked why state criteria were not included or why they
22 are not consulted at the state level with state
23 agencies, because it was included in the federal
24 process.

25 Given that, and given that the consultation with

1 SHPO occurs to determine whether or not properties are
2 eligible for listing on the national register, that's a
3 process that occurs together, even if there is no
4 federal nexus. That's why the consultation occurs with
5 SHPO. And I am probably butchering it up, I am not
6 using the technical archeological terms. And that's
7 what it says here in the book, that that consultation
8 occurs.

9 So this traditional cultural property thing,
10 even if it is on state land, my understanding would be
11 the National Register of Historic Places would have to
12 be evaluated. And so, therefore, this definition, to
13 me, would go to the Arizona Revised Statutes in
14 evaluating a historic site. And in the CEC application,
15 it says ASM and SHPO guidelines were used to determine
16 whether a property was classified as a historic
17 property, and then, in parentheses, site.

18 CHMN. FOREMAN: Where are you reading from,
19 please?

20 MS. WEBB: I am sorry, Mr. Chairman. That's
21 E-18 in the CEC.

22 CHMN. FOREMAN: And where on E-18?

23 MS. WEBB: It is under inventory methods in the
24 middle, the sentence starting with ASM and SHPO, or
25 S-H-P-O.

1 CHMN. FOREMAN: And the ASM guidelines are
2 Arizona state guidelines?

3 MS. WEBB: Yes.

4 CHMN. FOREMAN: And you have asked this witness
5 about federal guidelines. And my question to you was:
6 What is the materiality of your questions about the
7 federal guidelines in this, a state proceeding, where we
8 are talking about state guidelines?

9 MS. WEBB: Okay. All of the properties listed
10 in this table are listed under the same guidelines. If
11 we are going to consider Table E-3, then I think it is
12 fair to consider this item, which is considered under
13 exactly the same criteria, E-3 in the CEC application.
14 Where it says NRHP, that's exactly the same thing,
15 National Register of Historic Properties.

16 CHMN. FOREMAN: Perhaps now would be a
17 convenient time to take the afternoon recess. We will
18 break for 15 minutes. We will resume at 2:40. We are
19 in recess.

20 (A recess ensued from 2:24 p.m. to 2:42 p.m.)

21 CHMN. FOREMAN: All right. Let's take our seats
22 and get started. All right. We are going to resume our
23 hearing.

24 Ms. Webb, I believe you were questioning
25 Ms. Weinstein. And we had a question that had been

1 raised concerning our questioning on some federal
2 standards for National Historical Preservation, National
3 Register of Historical Preservation designations. And I
4 had asked you what relevance those had on our state
5 court proceeding. And what is the answer?

6 MS. WEBB: Mr. Chairman, my understanding is
7 that that is the typical registry that's used or that
8 criteria which is used typically in state, that involve
9 state properties to determine whether a property is
10 eligible. It is also, in addition to being used in the
11 table, it is the entire criteria that's used for
12 defining historical properties in the CEC application.

13 CHMN. FOREMAN: Ms. Weinstein, do you agree with
14 that?

15 MS. WEINSTEIN: Yes.

16 CHMN. FOREMAN: Okay. Then the objection or the
17 concern that I raised, I will, with that explanation,
18 allow you to proceed down that line.

19 MS. WEBB: Okay. My brain has to get recircled
20 back to my question.

21 BY MS. WEBB:

22 Q. Do you remember my question, Ms. Weinstein, or
23 do I need to restate it or reask?

24 A. BY MS. WEINSTEIN: It would be best if you
25 restate it.

1 Q. Okay. Thank you, I think.

2 Okay. On page 671 of the DEIS, towards the
3 bottom in bold, it says traditional cultural properties.
4 There is a sentence that reads:

5 A unique category of historic property, a
6 traditional cultural property is associated with
7 cultural practices or beliefs of a living community that
8 are rooted in that community's history and are important
9 to maintaining the continual -- continuing cultural
10 identity of the community. A traditional cultural
11 property may be a building, site, district, object, or
12 landscape.

13 Would you agree under this definition or do you
14 agree that this is the regulations that you are bound by
15 or that's typically used by EPG when it is evaluating
16 properties?

17 A. BY MS. WEINSTEIN: Yes. When we are evaluating
18 traditional cultural properties and in a particular
19 process, this would be our guideline, yes.

20 Q. Okay. I would like to circle back to page E-18
21 of the CEC application. And it says ASM and SHPO
22 guidelines were used to determine if the property was
23 classified as a historic property, in quotes, site.
24 Would you agree under the previous definition that a
25 cultural property could be defined as a historic site?

1 A. BY MS. WEINSTEIN: It would be historic
2 property.

3 Q. Okay. So the definition that you used here in
4 the book, historic property and site in parentheses, had
5 a different meaning than historic site used in a
6 different context?

7 MR. GELLMAN: Objection; misstates the witness'
8 testimony.

9 BY MS. WEBB:

10 Q. Or could you clarify for me what you meant,
11 please?

12 A. BY MS. WEINSTEIN: I think what I would come
13 back to is the that the traditional cultural properties
14 that we just recently became aware of is not something
15 that we did address in our application. We were not
16 aware at that time.

17 Q. Okay. Ms. Weinstein, I want to be very clear.
18 I am not referencing this at all, because that's not my
19 case. I am talking about a set of practices or beliefs
20 of there are people in my community -- I am sorry. I am
21 not supposed to testify. I apologize.

22 I just want to be very clear to the Committee
23 that I am not talking about that traditional cultural
24 place.

25 Anyhow, but you, I do want to clarify, you would

1 agree that a traditional cultural place could be
2 considered a historic property?

3 A. BY MS. WEINSTEIN: Yes.

4 Q. Okay. Thank you, Ms. Weinstein.

5 I have one question for Mr. Beck. And I think
6 we are done with cultural.

7 Okay. Mr. Beck, are you aware of a distribution
8 line being removed recently from the Gatlin site, which
9 is the national place up there in Gila Bend, I believe?

10 MR. GELLMAN: Objection; materiality. How does
11 this relate to the siting of the project?

12 CHMN. FOREMAN: The answer is?

13 MS. WEBB: The Committee is asked to consider
14 these, the ecology and the environment of Arizona, which
15 includes these beautiful and special places, which
16 includes these historic scenic places. And if there are
17 steps that are being taken, and I believe I heard
18 Mr. Walker say earlier talking about steps to protect
19 the fort, which is a different context, but steps that
20 are being taken to protect the state in different ways,
21 and if steps are being taken to protect the state, I
22 think it is relevant if we are talking about companies
23 that are taking steps to protect our beautiful places by
24 removing existing utility infrastructure.

25 CHMN. FOREMAN: And the incident to which you

1 refer is near Gila Bend?

2 MS. WEBB: I believe it is.

3 CHMN. FOREMAN: And that would be?

4 MS. WEBB: The Gatlin site.

5 CHMN. FOREMAN: 100 to 150 miles from where the
6 project study area is, is that true?

7 MS. WEBB: Yes. But it wasn't in reference to
8 something happening specifically at the site. It was
9 talking about preserving things that are beautiful and
10 important in the State of Arizona and what utility
11 companies are doing.

12 CHMN. FOREMAN: Okay. Can you articulate for me
13 a nexus between the two sites that you are referring to?

14 MS. WEBB: You know what, I may have to just
15 wait for my testimony for that because my brain needs to
16 move to be able to check.

17 CHMN. FOREMAN: Okay.

18 MS. WEBB: But thank you, Mr. Chairman. Wait.
19 I have one more cultural question for Ms. Weinstein.

20 BY MS. WEBB:

21 Q. In the CEC application under cultural, with what
22 I have observed in the past, sometimes I talk about what
23 I observed in the DEIS, they talked about sites that
24 were considered and considered ineligible. How many
25 sites were considered ineligible for the part of your

1 considering for the CEC, whether it be through the
2 Class I survey or whether you did the pedestrian survey?

3 A. BY MS. WEINSTEIN: I don't have those numbers.
4 We think it is about a handful of sites.

5 Q. A handful being one to six or six to 12?

6 A. BY MS. WEINSTEIN: One to six.

7 Q. Okay.

8 CHMN. FOREMAN: One to six?

9 MS. WEINSTEIN: One to six sites.

10 CHMN. FOREMAN: Is a handful?

11 MS. WEINSTEIN: She gave us that range --

12 MS. WEBB: My hands are very small.

13 MS. WEINSTEIN: -- choices.

14 CHMN. FOREMAN: I am sorry. My hand only has
15 five fingers on it, so I just was confused.

16 MS. WEBB: Okay. Mr. Chairman, I would like to
17 refer to the DEIS, page 682 again. Actually, it is not
18 that table.

19 BY MS. WEBB:

20 Q. All right. Page 668. Using the same criteria
21 under the National Register of Historic Places, did you
22 consider the springs that would be impacted by the
23 proposed route or preferred route and the alternatives.

24 A. BY MS. WEINSTEIN: No. There are no springs in
25 our survey corridors.

1 Q. Did you conduct the survey that's indicated in
2 Table 168 on page 668 of the DEIS?

3 A. BY MS. WEINSTEIN: Our surveys did not turn up
4 any springs.

5 Q. Okay. So that would be one of the other surveys
6 that were done?

7 A. BY MS. WEINSTEIN: Right.

8 Q. Okay. All righty then.

9 A. BY MS. WEINSTEIN: Ms. Webb, let me just clarify
10 as well that DEIS specifies that the springs are outside
11 of the corridors.

12 Q. For the record, Ms. Weinstein, would you agree
13 that on page 668 it says cultural resources within the
14 utility alignment alternative?

15 A. BY MS. WEINSTEIN: Are you asking me if I agree
16 that --

17 Q. That's what it says. I am not saying you agree
18 that's where it is, but I am asking that it says
19 cultural resources within the utility alignment
20 alternatives.

21 A. BY MS. WEINSTEIN: Got it. Yes.

22 Q. Okay. Okay. Can you go to E-16 in the CEC
23 application, please.

24 A. BY MS. WEINSTEIN: I am there.

25 Q. Okay. You indicated -- actually, let's go to

1 E-2 in the CEC.

2 A. BY MS. WEINSTEIN: Page E-2 did you say?

3 Q. Yes, correct.

4 Okay. Under scenery in the bold, the first
5 paragraph, would you agree that the U.S. Forest Service
6 uses specific landscape types, ranking them according to
7 three classes, Class A, distinctive; B, common, typical;
8 and C, minimal and indistinctive?

9 A. BY MS. WEINSTEIN: Yes.

10 Q. Okay. Can you explain what this last sentence
11 means, the evaluation of scenery for the project is
12 consistent with visual resource inventory procedures and
13 existing agency data for ranking scenic quality, variety
14 class, and scenic attractiveness?

15 A. BY MS. WEINSTEIN: You want me to explain that,
16 is that what you requested, asked?

17 Q. Can you explain what that sentence means, the
18 evaluation is consistent with visual resource inventory
19 procedures?

20 A. BY MS. WEINSTEIN: Yes. Our evaluation of
21 scenery in the study area is consistent with what has
22 been typical resource inventory procedures.

23 Q. For which agency?

24 A. BY MS. WEINSTEIN: This would be for both BLM
25 and Forest Service.

1 Q. Okay. When the Forest Service does a visual
2 assessment, what distance do they use when they use
3 their assessments? Or how do they start an assessment?

4 A. BY MS. WEINSTEIN: It is determined on a
5 case-by-case basis.

6 MS. WEBB: Mr. Chairman, may I have a moment,
7 please? I need to find -- I need to be in the DEIS. It
8 will save time.

9 CHMN. FOREMAN: All right. You may take a
10 moment to save time.

11 MS. WEBB: Thank you.

12 I am sorry, Mr. Chairman. I found it. Okay.

13 BY MS. WEBB:

14 Q. Ms. Weinstein, go to page 456 of chapter 3 of
15 volume 2 of the DEIS.

16 A. BY MS. WEINSTEIN: Could you provide me with
17 that page number again?

18 Q. Page 456.

19 A. BY MS. WEINSTEIN: Okay.

20 Q. And I understood you to say that you undertook
21 using the evaluation of scenery for the project
22 consistent with visual resource inventory procedures for
23 the forest?

24 A. BY MS. WEINSTEIN: Yes.

25 Q. Okay. Did you conduct a scenic analysis from

1 the perspective of public travelways, public use areas,
2 both within and outside the forest boundaries?

3 A. BY MS. WEINSTEIN: Yes.

4 Q. Okay. Did you incorporate the effects of
5 viewing distance from the potential impact using
6 distance zones of a foreground defined of a distance up
7 to a half mile of the potential impact?

8 A. BY MS. WEINSTEIN: Yes.

9 Q. The middle ground as half a mile to four miles?

10 A. BY MS. WEINSTEIN: Yes.

11 Q. Can you show me on the map where you did a
12 viewshed analysis on the -- to the east of 160, 190, and
13 210 and the eastern edge of 140 from a half mile to four
14 miles?

15 A. BY MS. WEINSTEIN: Our view analysis was based
16 on the general region topography. So it varies a little
17 bit in here as to what extent.

18 Q. Ms. Weinstein, I understood you to say that you
19 used visual resource inventory procedures consistent
20 with the forest system, is that correct?

21 A. BY MS. WEINSTEIN: Correct. But it is on a
22 project-by-project basis depending on those conditions.
23 And half mile, it ranges obviously a half mile out, is
24 the range you provided.

25 MS. WEBB: Mr. Chairman, may I read something

1 into the record from the DEIS from page 456, or can we
2 have that enlarged?

3 CHMN. FOREMAN: You may do either or both.

4 MS. WEBB: Okay. Mr. Chairman, I would like to
5 read for the record page --

6 CHMN. FOREMAN: If -- not the whole page.

7 MS. WEBB: No, no, no, page 456, this particular
8 sentence:

9 The Forest Service scenic management guidelines
10 direct scenic analysis to be conducted from the
11 perspective of public travelways and public use areas
12 both within and outside forest boundaries. Other scenic
13 management system criteria include assessing potential
14 project visual impacts or landscape; visibility to
15 viewers; the capability of the landscape to absorb or
16 accept human alterations without loss of existing
17 character; project slope angles, assuming the greater
18 the slope the greater the visibility; the project area
19 vegetation cover, assuming the greater the coverage the
20 greater potential that impacts may be screened. The
21 assessment incorporates the effects of viewing distance
22 from the potential impact using distance zones.
23 Foreground is defined as a distance of up to a half mile
24 from the potential impact. Middle ground is half mile
25 to four miles. And background is four miles to the

1 horizon.

2 BY MS. WEBB:

3 Q. Ms. Weinstein, is there anywhere within the
4 project for any of the preferred alignments or the -- I
5 mean the preferred alignment or any of the alternatives
6 where there was a visual analysis for the background?

7 A. BY MS. WEINSTEIN: Ms. Webb, Ms. Chelsea Johnson
8 was sworn in yesterday and participated in these visual
9 studies, so she is going to respond.

10 MS. WEBB: All right. Thank you.

11 A. BY MS. JOHNSON: As part of our inventory for
12 the visual resource study we did conduct fieldwork or
13 field reconnaissance throughout the regional project
14 study area, in which I guess I personally have been
15 beyond the two-mile detailed project study area. For
16 purposes of the CEC application, we did disclose the
17 effects and impacts within the two-mile boundary.

18 Q. Okay.

19 MEMBER WALKER: Mr. Chairman.

20 CHMN. FOREMAN: Member Walker.

21 MEMBER WALKER: I feel like Theseus,
22 T-h-e-s-e-u-s, who in the Greek myth was to be killed by
23 the Minotaur. But Ariadne loved him, so she gave him a
24 sword and a ball of thread so that he could go kill the
25 Minotaur and then find his way back. And from there, we

1 have the term Ariadne's thread.

2 I am desperately trying to follow where you are
3 going, Ms. Webb. What is the thread that connects the
4 journey that we have been on over the past couple hours?
5 I don't understand if you are, in your cross, trying to
6 demonstrate that Ms. Weinstein did comply with state,
7 didn't comply with state, did comply with federal. You
8 know, I am just one vote, but I feel it incumbent on me,
9 especially in the case of someone who is pro per, to let
10 you know I have no idea where you are.

11 MS. WEBB: I appreciate the guidance.

12 MEMBER WALKER: I can't find the thread.

13 MS. WEBB: Again, Mr. Walker, as I indicated
14 when I first asked to intervene and I talked about what
15 my testimony would be, there is not enough information
16 in the CEC application for you to make the kind of
17 decisions that you need to be making.

18 MEMBER WALKER: The draft EIS is attached,
19 correct?

20 MS. WEBB: Yes.

21 MEMBER WALKER: And I have had that for, I don't
22 know how many weeks I have had that, but I have gone
23 through it. And we have the testimony. We have the
24 application which addressed the factors and the statute.
25 We have the presentations that the witnesses made. And

1 we have now cross-examination on these exact subjects.

2 Under what test have we not complied or do we
3 lack the information to make a determination.

4 MS. WEBB: The preferred alternative, my
5 understanding, is, just err on the side of caution, less
6 than two miles on public lands. This, my understanding,
7 and Mr. Beck and Ms. Weinstein concurred, is under the
8 purview of the Arizona Corporation Commission based on
9 information that is provided through a state process.

10 And these viewshed analyses, if I can continue
11 with my cross, I can show you are not state viewshed
12 analyses. And when it says it is consistent with
13 another agency's process, then if it is consistent, then
14 it is consistent, but if it is not consistent, then it
15 is not consistent. But I haven't finished with my
16 cross. And that's where there is a piece missing.

17 MEMBER WALKER: Okay. When we get to that
18 moment, can you make sure to shine a bright light on it?

19 MS. WEBB: Let me know and I will try to shine
20 it.

21 MEMBER WALKER: I am, you know, I am in fear
22 that the Minotaur is going to eat me at this point. I
23 have no idea how to follow the maze.

24 MS. WEBB: And I apologize that for.

25 MEMBER WALKER: That's okay. You know, I am

1 just trying to be helpful.

2 MS. WEBB: I appreciate the guidance.

3 CHMN. FOREMAN: One at a time.

4 MEMBER WALKER: I am simply telling you --

5 CHMN. FOREMAN: We just need to have one of you
6 speak at a time.

7 MEMBER WALKER: -- if there is to be a Matlock
8 moment, you know, let's make sure that that's clear for
9 everyone so that we see it. Thanks.

10 MS. WEBB: Okay.

11 MEMBER HAENICHEN: Soon.

12 BY MS. WEBB:

13 Q. Ms. Johnson, to clarify for Member Walker, these
14 rankings in this system, this was a system that EPG
15 used, but it is not a system that the forest uses on
16 private or state land, correct?

17 A. BY MS. JOHNSON: Correct.

18 Q. Is that correct?

19 A. BY MS. JOHNSON: Correct.

20 Q. This is a system -- okay. Does the State Land
21 Department or do private land, is there a private land
22 system to develop viewshed analysis?

23 MR. GELLMAN: Objection; beyond the scope of the
24 testimony.

25 CHMN. FOREMAN: I am going to use wide open

1 cross-examination here. Just focus in on what is
2 material. Ask your question again.

3 MS. WEBB: Oh, I am sorry.

4 BY MS. WEBB:

5 Q. What do you typically use for viewshed analysis
6 on state land or private land?

7 A. BY MS. JOHNSON: I am sorry, could you repeat
8 again? I thought it sounded a little different the last
9 time.

10 Q. I was trying to make it easier. When you are
11 doing a viewshed analysis for state land or private
12 land, is there one that exists? Is there a criteria?

13 A. BY MS. JOHNSON: Our methodology for the visual
14 resource study encompassed all lands regardless of
15 jurisdiction. So we don't apply one viewshed for
16 Coronado versus private lands. So all of our inventory
17 and assessment was regardless of jurisdiction. So
18 everything was looked at equally, regardless if there
19 are, say, management objectives or certain designations
20 by the forest, federal agency versus private or state
21 lands.

22 Q. Okay. So are there management objectives for
23 forest, I mean for state or private land?

24 A. BY MS. JOHNSON: No --

25 Q. Okay.

1 A. BY MS. JOHNSON: -- not that I am aware of.

2 Q. Okay. And in this case, if I understood
3 Ms. Weinstein correctly, you used BLM and forest
4 management objectives for your viewshed analysis for
5 private and state land?

6 A. BY MS. JOHNSON: Yes.

7 Q. Okay. I believe in the CEC application, you
8 indicated that the area over Lopez Pass is Class A,
9 which would be considered outstanding. Would you agree
10 with that?

11 A. BY MS. JOHNSON: That's correct.

12 Q. Were you able to take the picture, or was that
13 Ms. Weinstein?

14 A. BY MS. JOHNSON: Yes, I took those photos.

15 Q. It is kind of pretty up there, isn't it?

16 A. BY MS. JOHNSON: It has got great views.

17 Q. Yeah.

18 Can I ask Clark to put a picture up?

19 I think Ms. Weinstein showed a picture yesterday
20 looking, okay, to the west. Can you indicate -- well,
21 first of all, since we got it here, can you indicate
22 where Huerfano Butte is on this picture?

23 A. BY MS. JOHNSON: Yes. It is located right here.

24 Q. Okay. Can you indicate what mountain ranges --
25 I believe would you agree with me it is pretty dusty

1 looking that day?

2 A. BY MS. JOHNSON: Yes.

3 Q. Would you agree that the forest in certain
4 conditions won't do a viewshed analysis when it is
5 dusty?

6 A. BY MS. JOHNSON: I can't speak for the forest.

7 Q. Okay. I think it is indicated in the DEIS. But
8 the -- can you indicate the mountain ranges to the west
9 there?

10 A. BY MS. JOHNSON: I am sorry, to the west?

11 Q. Yes.

12 A. BY MS. JOHNSON: The distant one here?

13 Q. Yes.

14 A. BY MS. JOHNSON: That's not in our project study
15 area.

16 Q. But do you know what they are?

17 A. BY MS. JOHNSON: I am not aware. No, I don't.

18 Q. Okay. Using the -- consistent with the Forest
19 Service, the evaluation would consider the background,
20 correct?

21 A. BY MS. JOHNSON: By background, that mountain
22 range is located within the background zone. But I feel
23 it is necessary to clarify, for looking at impacts to a
24 project, those distances are based on project specific
25 levels. So the Forest Service establishes foreground,

1 middle ground distance.

2 I will note in the draft EIS those are their
3 management distances. And we have established this is a
4 project level distance that we were looking at impacts.
5 So there is a distinction.

6 Q. Okay. And whose, to verify, whose land -- we
7 are looking west over the Helvetia piece of the Santa
8 Ritas towards some mountains in the distance, is that
9 correct?

10 A. BY MS. JOHNSON: Yes.

11 Q. Okay. And whose property, if we drew a little
12 piece of road, whose property is that?

13 A. BY MS. JOHNSON: Which? What road?

14 Q. There is a road, right, the road.

15 A. BY MS. JOHNSON: The land from this viewpoint --

16 Q. Yes.

17 A. BY MS. JOHNSON: -- back to the road?

18 Q. Yes.

19 A. BY MS. JOHNSON: It is my understanding that
20 this is private property, Rosemont property.

21 Q. That's a pretty spectacular view there, too,
22 isn't it?

23 I am sorry. I couldn't hear you.

24 A. BY MS. JOHNSON: It is a view of a landscape,
25 yes.

1 Q. Okay. If there was a pole to be sited anywhere
2 along that right there and you were standing there or in
3 your car, do you believe it would impact somebody's
4 view?

5 A. BY MS. JOHNSON: I am sorry. Could you repeat
6 the question?

7 Q. If there was a pole to be sited somewhere
8 generally in that location, would that impact somebody's
9 view?

10 A. BY MS. JOHNSON: What do you mean by somebody?

11 Q. An OHV enthusiast, a hiker, a photographer, a
12 birder.

13 A. BY MS. JOHNSON: Yes, there would be effects for
14 recreation and travel route viewers from this viewpoint.

15 Q. Can you tell me on this particular slide where
16 the corridor would be or anticipated that the poles
17 might be sited?

18 A. BY MS. JOHNSON: Well, as Ms. Weinstein pointed
19 out earlier, this location is approximately where the
20 pole would be located. We are basically at the saddle
21 point at that pass. So we believe the corridor would
22 come through these foothills. Where the specific poles
23 would be placed, there hasn't been any detailed
24 engineering.

25 So my best guess, there would be a pole where I

1 am standing right now, but I am not sure. I would have
2 to ask Mr. Beck.

3 Q. Okay. So a pole would have to go -- come up
4 that drainage and then up the hill?

5 A. BY MS. JOHNSON: I would imagine, yes.

6 Q. Okay. All righty. Are you familiar with
7 Baboquivari Peak?

8 A. BY MS. JOHNSON: Yes, I am familiar with that
9 peak.

10 Q. Is it anywhere in this picture?

11 A. BY MS. JOHNSON: No. I believe it is located a
12 little further to the south of you, to the south. It
13 wouldn't be within this picture.

14 Q. Are you aware of any viewshed issues associated
15 with Baboquivari Peak?

16 MR. GELLMAN: Objection. How is this material
17 to the siting of this project?

18 CHMN. FOREMAN: Ms. Webb.

19 MS. WEBB: I think we have already termed that
20 traditional cultural places, but I will leave that to
21 another party.

22 MEMBER HAENICHEN: Mr. Chairman.

23 MS. WEBB: I withdraw the question.

24 CHMN. FOREMAN: Just a moment.

25 MS. WEBB: Sorry.

1 CHMN. FOREMAN: Member Haenichen.

2 MEMBER HAENICHEN: Ms. Webb, do you remember
3 that yesterday it was I who put forward a motion to
4 allow you to participate in these proceedings?

5 MS. WEBB: Yes, I do.

6 MEMBER HAENICHEN: And do you remember the
7 comment I made that I hope you should be brief? Those
8 hopes are dashed.

9 MS. WEBB: I am sorry.

10 MEMBER HAENICHEN: And now I would like to ask
11 you, how much more time do you intend to take in these
12 proceedings?

13 MS. WEBB: Today I am almost done.

14 MEMBER HAENICHEN: What does that mean? You
15 have said that before.

16 MS. WEBB: Well, I was almost done with the
17 cultural. Probably 20 minutes maybe.

18 MEMBER HAENICHEN: Okay. Well, I have got a
19 clock here. I am going to be watching. Thank you.

20 MS. WEBB: Okay. All right. Can we have the
21 east side, please.

22 BY MS. WEBB:

23 Q. Where were you standing when you took this
24 picture, if you took this picture?

25 A. BY MS. JOHNSON: Yes, I took this picture. And

1 I was standing approximately in the same location as the
2 view to the west. I moved a little bit further along
3 the road. I wasn't quite on the saddle where I had
4 indicated a pole would be sitting.

5 Q. Okay. When you said to the west of --

6 A. BY MS. JOHNSON: I basically turned around,
7 walked maybe 10 feet towards the east to take this
8 photo.

9 Q. Okay. When you say the saddle, are you talking
10 about an existing road over the saddle and then you
11 would have walked to the north or south from that
12 existing road over the saddle?

13 A. BY MS. JOHNSON: Yes. I was on an existing
14 road. And by saddle I mean what would be the midpoint
15 of the road, of that pass.

16 Q. And this would be to the south of that existing
17 access road?

18 A. BY MS. JOHNSON: I was -- I am on the access
19 road, or I mean I am on the road right now.

20 Q. You were standing on the road?

21 A. BY MS. JOHNSON: Yes, in the middle of the road.
22 I am not sure if Clark can pan to the next
23 photo. You can see the road right here. It kind of
24 turns around so I am right at the pass.

25 Q. For the sake of identification, the photo you

1 are showing me now is called left 15, is that correct?

2 A. BY MS. JOHNSON: That looks like a 15 to me.

3 Q. Okay. So if we zoom back to the other one, that
4 would be left 14?

5 A. BY MS. JOHNSON: Correct.

6 Q. Okay. And left 14, can you indicate to me where
7 the Hilton Ranch Road community is?

8 A. BY MS. JOHNSON: Yes. As Ms. Weinstein pointed
9 out, it is located right over here, a portion of it.

10 Q. Okay. And can you indicate the mountains in the
11 closest foreground?

12 A. BY MS. JOHNSON: This would be the foothills of
13 the Santa Rita Mountains.

14 Q. Okay. And do you -- can you tell me what forest
15 trails are on those mountains?

16 A. BY MS. JOHNSON: There are concern level 1 and
17 concern level 2 travel routes within the forest area.

18 Q. Okay. Can you tell me how many users use those?

19 A. BY MS. JOHNSON: I do have some, I want to say,
20 view count information for some of the, I guess, more
21 heavily used Box Canyon Road average daily traffic uses.
22 I am not aware or I don't have detailed information on
23 the users on some of these inner roads here.

24 Q. Okay. So for the preferred route you don't have
25 detailed information on the users?

1 A. BY MS. JOHNSON: Like specific number you want?

2 MR. GELLMAN: Asked and answered.

3 CHMN. FOREMAN: Sustained.

4 MS. WEBB: Okay. What kind of users use the
5 preferred route?

6 A. BY MS. JOHNSON: Use the preferred?

7 Q. What kind of users for the forest?

8 MR. GELLMAN: Mr. Chairman, objection. How is
9 this material to the visual impacts of the route?

10 CHMN. FOREMAN: I have a more basic question. I
11 did not think the preferred route had yet been built.

12 BY MS. WEBB:

13 Q. Okay. If the preferred route were to be built
14 in this location, what impacts would it have on existing
15 users in this location?

16 A. BY MS. JOHNSON: Recreation viewers near the
17 preferred route, there is a concern level one travel
18 route. It is Forest Road 4051 noted in the Exhibit E.
19 There will be travel route views along that as well as
20 the potential for dispersed recreation of viewers,
21 hikers, like you mentioned before, bird watchers,
22 hunting through the forest. They could be, I assume,
23 anywhere having potential views of the project. So that
24 was also noted in the Exhibit E.

25 Q. Okay. There is a road that's on the left mid

1 foreground. Did you do an evaluation for those forest
2 roads?

3 A. BY MS. JOHNSON: What are you referring to?
4 Left mid foreground?

5 Q. There is a hill and then there is a road.

6 A. BY MS. JOHNSON: I believe, if I understand your
7 question, that would be Forest Route 4051 that I just
8 mentioned. That's the concern level one travel I
9 mentioned that is in the immediate foreground of the
10 Lopez Pass crossing.

11 Q. I am talking about on the far left edge --

12 A. BY MS. JOHNSON: Yes.

13 Q. -- on the hill.

14 A. BY MS. JOHNSON: That will be Forest Route 4051.

15 Q. And you said you are standing on the pass when
16 you are taking that picture?

17 A. BY MS. JOHNSON: Yeah. It winds around.

18 Q. Okay. What is the mountain range in the
19 background?

20 A. BY MS. JOHNSON: I am sorry, I don't know the
21 name of the mountain range in the background there.

22 Q. Okay. Do you know the mountain range in the mid
23 ground?

24 A. BY MS. JOHNSON: I am sorry, I don't.

25 Q. Okay. Can we go to the next slide, please.

1 Okay.

2 Yesterday I understood Mr., I mean Ms. Weinstein
3 to say that she thought that was State Route 83 in the
4 background, that white cut that's in the middle of the
5 photo. Do you agree with that?

6 A. BY MS. JOHNSON: Ms. Weinstein identified State
7 Route 83 at this cut right here. I don't agree that
8 that is in the background distance. State Route 83, as
9 noted over here, is within the two mile or two-mile
10 study area right there. I believe it is around two
11 miles away from this viewpoint.

12 Q. So you would agree that's in the mid ground.
13 Did you quantify how many people pass by that on a daily
14 basis or monthly basis?

15 A. BY MS. JOHNSON: For State Route 83, average
16 daily trips range around 30 to 100.

17 Q. A day?

18 A. BY MS. JOHNSON: Yes.

19 Q. Did you quantify the effect of the transmission
20 line on those viewers?

21 A. BY MS. JOHNSON: We noted that there would be
22 effects to those viewers as it is a scenic designated
23 route.

24 Q. Okay. And so that's a high level of concern
25 road?

1 A. BY MS. JOHNSON: Yes, it is.

2 Q. Okay. So I am not good with numbers, but 3800
3 people a day would be impacted by the transmission line
4 if they turn to look?

5 MR. GELLMAN: Objection; asked and answered.

6 CHMN. FOREMAN: Sustained.

7 MS. WEBB: Okay. All right.

8 BY MS. WEBB:

9 Q. Do you know what the mountain range is in the
10 middle background?

11 A. BY MS. JOHNSON: No, I don't.

12 Q. Do you know the mountain range on the right
13 background?

14 A. BY MS. JOHNSON: I am sorry, I don't.

15 MS. WEBB: All right. I am done. Thank you.
16 Thank you, Mr. Chairman.

17 CHMN. FOREMAN: Very good.

18 Mr. Magruder, are you ready to proceed?

19 MR. MAGRUDER: Just a second. My hearing aid
20 broke. And I will get my questions.

21 CHMN. FOREMAN: You may proceed.

22

23 CROSS-EXAMINATION

24 BY MR. MAGRUDER:

25 Q. Good afternoon, Mr. Beck and Ms. Weinstein.

1 First, before I begin, I would like very much to thank
2 you for hosting the stakeholder group sponsored by
3 Rosemont, because I think it was a very productive event
4 for the people that participated and hopefully got us
5 more knowledgeable and will make this a little less
6 painful.

7 Mr. Beck, I am going to talk to you first and
8 ask you some questions about your testimony. And on
9 page 5 you talk about a single circuit 138 kilovolt
10 line, and --

11 CHMN. FOREMAN: Mr. Magruder, this would be
12 page 5 of what?

13 MR. MAGRUDER: Of his testimony, of his prefilled
14 testimony.

15 CHMN. FOREMAN: Very good. Thank you.

16 BY MR. MAGRUDER:

17 Q. And it is a general question. Yesterday you
18 talked about a few poles close to the Toro substation
19 being double circuit 138 kilovolt line. Are there any
20 other utility poles that will be double circuit 138
21 kilovolt in this system in any of the other paths?

22 A. BY MR. BECK: Our intent is to use all double
23 circuit capable poles. And they will be built to 138kV
24 standards, but the only place where we intend to install
25 a second 138kV circuit is in that little piece just east

1 of Toro switchyard going over to where the line comes
2 down from the South substation.

3 Q. Thank you. That was my understanding. I just
4 wanted to confirm it.

5 In slide 10, we -- you showed a picture of
6 the -- TEP would install a breaker and switch at the
7 Rosemont substation. Will that line voltage -- which I
8 hope we can bring up -- will that line at the lower
9 right-hand corner that touches the Rosemont substation,
10 will that line transmit 138 kilovolt?

11 A. BY MR. BECK: You are referring to this point
12 here on the slide?

13 Q. Yes.

14 A. BY MR. BECK: Yes, that will be 138kV.

15 Q. Okay. New subject. In your discussion, in your
16 proposal, in your testimony you talk about something
17 called a statcom. Could you please inform what -- why
18 this cost \$5 million and what it is, this equipment?

19 A. BY MR. BECK: It is a very sophisticated piece
20 of electronic equipment, part of a facility. It is a
21 control system for controlling the static capacitor
22 banks that support the voltage on our system.

23 As to why it costs \$5 million, that apparently
24 is the market price. That's what we are paying for
25 them. But it does have a lot of electronics in it.

1 Q. Is that only installed in your switchyard, or is
2 there a component of that installed in the Rosemont
3 switchyard, substation complex?

4 A. BY MR. BECK: It will all be installed at the
5 Toro switchyard in one bay position.

6 Q. Okay.

7 A. BY MR. BECK: And just for the record, TEP
8 actually has an existing installation very similar,
9 similar type piece of equipment in the Tucson area. So
10 this isn't the first time it has been used.

11 Q. Will it take you longer to install the
12 switchyard or the transmission line?

13 A. BY MR. BECK: The timing will be approximately
14 the same, approximately, the transmission line just
15 very -- just a bit longer than the switchyard.

16 Q. Okay. And the switchyard at Rosemont
17 switchyard, will that take very long to construct?

18 A. BY MR. BECK: It will take less than the Toro
19 switchyard because there is much less in the way of
20 facilities.

21 Q. And do you have any estimate on how long it will
22 take Rosemont to construct their switchyard?

23 MR. GELLMAN: Objection; calls for speculation.

24 CHMN. FOREMAN: Sustained.

25 BY MR. MAGRUDER:

1 Q. For a switchyard of approximately the same
2 complexity that Rosemont might use, how long would that
3 type of a switchyard take to construct?

4 A. BY MR. BECK: Well, just to clarify, you are
5 referring to the Rosemont substation?

6 Q. Substation, I mean, substation, excuse me.

7 A. BY MR. BECK: Okay. For a similar TEP
8 substation, there is probably a year's worth of work.

9 Q. So if it -- so that substation would take a year
10 to construct. So it would take then a year to construct
11 and have operational this entire system, is that
12 correct?

13 A. BY MR. BECK: It would. TEP would typically
14 take approximately a year to construct that type of
15 substation. If you want to throw manpower at it, it can
16 be done quicker, and I am not sure what Rosemont plans
17 to do relative to that.

18 Q. Have you had conversations with contractors who
19 lots of times can give you valuable information before
20 you issue a request for proposal and to do a contract
21 such as the one we are talking about in this project?

22 MR. GELLMAN: Objection; materiality.

23 CHMN. FOREMAN: Sustained.

24 BY MR. MAGRUDER:

25 Q. Will TEP have a SCADA or equivalent

1 communication system between your control rooms for TEP
2 and the Rosemont substation?

3 A. BY MR. BECK: TEP will have communications to
4 control our termination facilities at the Rosemont
5 switchyard that we would install. And we would have
6 communication, telemetry information relevant to the
7 Rosemont substation. But our primary point of control
8 to TEP, or the only point of control, will be our
9 termination facility. But we will be communicating with
10 the Rosemont substation to be sure everything is online
11 and active.

12 Q. What communications do you need from the
13 Rosemont substation to efficiently operate the TEP
14 portion?

15 MR. GELLMAN: Objection; materiality.

16 CHMN. FOREMAN: Overruled.

17 MR. BECK: Basically the status of their
18 equipment.

19 BY MR. MAGRUDER:

20 Q. And will they give you enough warning if they
21 are having problems with their equipment with the
22 present update rate with the SCADA system?

23 A. BY MR. BECK: As far as protecting our system,
24 we will absolutely have enough communication in place to
25 open breakers and control our system accordingly to

1 react to anything that could happen at the Rosemont
2 substation.

3 Q. And would this be able to prevent cascading
4 failures to reach the South substation?

5 A. BY MR. BECK: Yes.

6 Q. I will try to make this so it is not too funny.
7 I sure remember the famous bird excrement that caused a
8 casualty in Phoenix a few years ago where a series of
9 protective devices did not work. How can you prevent
10 bird excrement or similar type of short from causing a
11 major failure?

12 A. Well, for one thing, we learn from all of the
13 incidents that occur on the systems. And so the Phoenix
14 issue was a learning experience for the whole utility
15 industry. As a result, the Western Electric
16 Coordinating Council adjusted their rules and
17 requirements for protection. And to the best of our
18 ability, we will have the system to protect us from any
19 issues that could occur on the line and/or at the
20 Rosemont substation.

21 Q. Okay. New subject. What was the original name
22 of your company 100 years ago?

23 MR. GELLMAN: Objection; materiality.

24 CHMN. FOREMAN: Sustained.

25 BY MR. MAGRUDER:

1 Q. Was your company once called Tucson Electric and
2 Lighting Company -- Gas and Lighting company? Excuse
3 me.

4 CHMN. FOREMAN: The objection is sustained.
5 Move on to the next question.

6 BY MR. MAGRUDER:

7 Q. Okay. Does your company, your superior company
8 called UniSource Energy and one of its subsidiaries have
9 a capability to construct a natural gas generation
10 plant?

11 MR. GELLMAN: Same objection --

12 CHMN. FOREMAN: Sustained.

13 MR. GELLMAN: -- materiality.

14 CHMN. FOREMAN: What is the materiality of that,
15 sir?

16 MR. MAGRUDER: As I indicated in my opening
17 comments, one of my major topics is an alternative to a
18 transmission line, which would involve natural gas
19 generation. And TEP, along with UNS Gas, are two public
20 service companies under UniSource Energy. And TEP could
21 have provided a natural gas turbine generation for
22 electricity instead of a transmission line to meet the
23 service requirements of Rosemont.

24 CHMN. FOREMAN: The objection is sustained.
25 That's just not material.

1 BY MR. MAGRUDER:

2 Q. On page 6 of your testimony you said that the
3 most cost effective way to serve Rosemont was through
4 the transmission line. Did you compare it with
5 alternative methods of electric generation?

6 A. BY MR. BECK: We did not do a detailed study of
7 alternatives, but we know generally what the cost of
8 building a generation plant is, what the cost of
9 building a transmission line is. And based on that, it
10 would not make sense to go build a power plant for this
11 project.

12 Q. Did you document this study in terms of a
13 trade-off? And it apparently was a subjective study.

14 MR. GELLMAN: Objection.

15 MR. BLACK: Objection; lack of foundation.

16 CHMN. FOREMAN: Sustained.

17 BY MR. MAGRUDER:

18 Q. Did your company participate in the original
19 Rosemont copper mine plan of operations that was
20 published in 2007 and is the basis for the present
21 ongoing NEPA process?

22 MR. BLACK: Objection; materiality.

23 CHMN. FOREMAN: Overruled.

24 You may answer.

25 MR. BECK: As I said, we were approached by

1 Rosemont mining in 2006. We had discussions with them.
2 We worked on some initial feasibility study work. And
3 as we were in that process, the mine plan of operation
4 was put together.

5 Very early on in the mine plan of operation,
6 there were some things in that mine plan of operation
7 that were not correct, and we had notified Rosemont of
8 that. And I believe they got ultimately adjusted in the
9 current mine plan of operation that exists.

10 BY MR. MAGRUDER:

11 Q. Do you remember if that involved paragraph 2.7
12 that used the upgraded 138 kilovolt line to Nogales from
13 Tucson and the use of gas turbine generators in
14 Tucson -- in Nogales to furnish power for the Rosemont
15 mine as the preferred alternative in that plan?

16 MR. GELLMAN: Objection; materiality.

17 CHMN. FOREMAN: The question is do you remember,
18 yes or no.

19 MR. BECK: Yes, I do remember.

20 BY MR. MAGRUDER:

21 Q. Did you think that was a good plan?

22 CHMN. FOREMAN: Mr. Magruder, I am an old man.
23 I am slow. Give me a chance to rule.

24 Now, the objection is overruled. You may answer
25 the question.

1 MR. BECK: That is why we requested that
2 Rosemont modify their plan of operation, because use of
3 the UNS Electric 115 line was not an acceptable option
4 due to load serving capability, insufficient load
5 serving capability over that system.

6 BY MR. MAGRUDER:

7 Q. Okay. So I understand, you are not at all in
8 favor of use of that line at all in this project?

9 A. BY MR. BECK: Not as part of this project, no.

10 Q. Okay. On page 7 of your testimony, at the end
11 of the first paragraph you talk about voltage regulation
12 would be a problem, and that you solved it with
13 additional capacitor banks. Does this resolve all of
14 the problems that involve harmonics, transient frequency
15 stability, and any other electric quality concerns that
16 are necessary to meet all NERC and WECC reliability
17 criteria standards?

18 A. BY MR. BECK: No.

19 Q. What remains to be solved?

20 A. BY MR. BECK: Part of the issue is that we have
21 had studies done. Rosemont has produced the studies and
22 shown us what equipment will be installed at their
23 mining site and at the Rosemont substation to resolve
24 some harmonic issues. And they have identified a
25 harmonic filter that will be installed as part of their

1 project to fully alleviate our concerns about that
2 issue.

3 Q. So the harmonic filter will be at the Rosemont
4 substation, is that correct?

5 A. BY MR. BECK: It will be within their
6 operations.

7 Q. Okay. Will this radial 138 kilovolt line meet
8 the NERC requirements for N-1?

9 A. BY MR. BECK: There is no requirement on a
10 radial line to meet an N-1.

11 Q. Okay. Does Rosemont Copper have any concerns
12 about backup capability or an alternative source of
13 power if the radial line fails?

14 MR. GELLMAN: Objection; calls for speculation.

15 CHMN. FOREMAN: Sustained.

16 You need to ask the Rosemont people about
17 Rosemont --

18 MR. MAGRUDER: Okay.

19 CHMN. FOREMAN: -- just so you will know the
20 reason why I am sustaining those objections.

21 MR. MAGRUDER: Yes, Chairman. The DEIS does
22 imply they will have that. I will save that for later,
23 that question.

24 BY MR. MAGRUDER:

25 Q. Does Coronado National Forest, have they

1 expressed any concerns about requiring a backup
2 capability at the mine during the service life of this
3 project?

4 A. BY MR. BECK: I am not, do not recall
5 specifically whether Coronado Forest has raised it. I
6 know it has been raised throughout the process by
7 individuals. It may have been raised by the Forest
8 Service. Again, that really is an issue for the
9 Rosemont mining company.

10 Q. Okay. On page 8 of your testimony, you implied
11 that construction of a natural gas line would have
12 greater impact than a transmission line. Could you
13 explain this?

14 A. BY MR. BECK: Yes. To put in a gas main to go
15 up into the Rosemont area, to put a gas generator up
16 there would require excavating a trench and putting the
17 pipeline underground. And when you are done with that
18 trench, especially in the lower levels, it may be a
19 little different as you get into the forest, the upper
20 mountaintop levels because there is more water and
21 moisture and so on, but it is very hard to restore where
22 you have trenched for a gas line to look natural, as it
23 did before you put the gas line in.

24 And one very good example of that -- and I know
25 you, Mr. Magruder, are well aware of this, and probably

1 a couple Committee members -- there is a gas line that
2 goes down to Nogales that came up in one of our previous
3 siting cases. And as we were siting the transmission
4 line, we pointed to that gas line and the fact that over
5 the 40 years it had been in service that scar was still
6 very visible on the landscape.

7 CHMN. FOREMAN: Member Walker.

8 MEMBER WALKER: Mr. Beck, you are familiar with
9 UniSource Gas and UniSource Electric, correct?

10 MR. BECK: Yes.

11 MEMBER WALKER: Those are affiliates of Tucson
12 Electric Power, correct?

13 MR. BECK: Yes.

14 MEMBER WALKER: How many miles of natural gas
15 pipeline does UniSource Gas own and operate in the
16 state, counting distribution?

17 MR. BECK: We have a lot, but I don't know what
18 the actual number is.

19 MEMBER WALKER: Counting LDC? I mean several
20 hundred at a minimum?

21 MR. BECK: At least, yes.

22 MEMBER WALKER: So you are familiar, then, with
23 the effects of natural gas pipelines, the effects of
24 placing them and the cost of placing them, correct?

25 MR. BECK: Yes.

1 MEMBER WALKER: Are you familiar with the Black
2 Mountain generating station?

3 MR. BECK: Yes, I am.

4 MEMBER WALKER: Did UniSource Electric recently
5 buy the Black Mountain generating station?

6 MR. BECK: Yes, we did.

7 MEMBER WALKER: How many megawatts is that
8 plant?

9 MR. BECK: It is either 75 or 100. I am not
10 positive.

11 MEMBER WALKER: And did that plant cost about
12 \$60 million?

13 MR. BECK: Yes, that is correct.

14 MEMBER WALKER: Was that plant already in
15 existence when you bought it?

16 MR. BECK: Yes. We bought it from an affiliate.

17 MEMBER WALKER: Correct. So just given those
18 broad economic facts then, is it even a close call in
19 terms of cost whether to build a 138kV line to serve
20 this or whether to in-place a 120 megawatt natural
21 gas-fired generating station?

22 MR. BECK: No. That was our position right off
23 the top, that it was not cost effective.

24 MEMBER WALKER: Doesn't require much analysis,
25 does it?

1 MR. BECK: Not any detailed analysis, no.

2 MEMBER WALKER: Thank you.

3 CHMN. FOREMAN: Proceed.

4 MR. MAGRUDER: You made it hard, Mr. Walker.

5 But that's all right.

6 MEMBER WALKER: Facts often do, Mr. Magruder.

7 MR. MAGRUDER: But I will continue.

8 BY MR. MAGRUDER:

9 Q. Does natural gas generated electricity generate
10 less greenhouse gases than fossil fuel generated
11 electricity?

12 A. BY MR. BECK: Depends on whether you --

13 CHMN. FOREMAN: I am sorry.

14 MR. GELLMAN: Objection; materiality.

15 CHMN. FOREMAN: Sustained.

16 MR. MAGRUDER: Okay.

17 BY MR. MAGRUDER:

18 Q. Is there any maintenance required for a gas line
19 compared to the maintenance required for a -- compare
20 the maintenance required for a natural gas line to the
21 maintenance required for a transmission line.

22 A. BY MR. BECK: There is maintenance that should
23 be done on a gas line periodically. Likewise, we do
24 periodic maintenance on a transmission line. To judge
25 whether one is more or less extensive, it is hard to

1 say. If you don't maintain your gas lines you can have
2 some major problems.

3 Q. Does a gas generation system have to be on the
4 top of the mountain or could it be at the bottom and use
5 distribution lines to furnish power to the mine?

6 MR. GELLMAN: Objection; immaterial.

7 CHMN. FOREMAN: What is the materiality here,
8 Mr. Magruder?

9 MR. MAGRUDER: One of my topics is to discuss
10 alternative generation. And that would be to put in a
11 natural gas plant and not use a transmission line. But
12 you could use distribution lines to furnish the power
13 for this plant and we wouldn't need to have a
14 transmission line siting meeting.

15 CHMN. FOREMAN: The question before the
16 Committee is the merit of the application, which
17 requires us to balance the environmental impact of the
18 alternatives against the need. Do you have some kind of
19 authority for the proposition that consideration, first
20 of all, of the type of generation used to produce
21 electricity that might be used by the, by the end user,
22 by --

23 MR. MAGRUDER: By authority I am not sure what
24 you mean.

25 CHMN. FOREMAN: What I mean, we have a statute,

1 40-360, that you are aware of. Where in there does it
2 say that we can take into consideration what you are
3 talking about in doing what the statute requires us to
4 do?

5 MR. MAGRUDER: Chairman, I have to go through a
6 little history here. July 14th, 2008 I submitted my
7 scoping comments on the EIS for the Rosemont copper
8 mine. And in that 50 plus page letter, I had an
9 Alternative No. 2, and Alternative No. 2 was to have the
10 draft EIS at that stage consider the alternative of a
11 natural gas generation capability from the convenient
12 natural gas line that's just a couple miles east of the
13 Rosemont Ranch to furnish power on that side of the
14 mountain by wires up to the mine.

15 The draft EIS did not even include a sentence in
16 response to my letter. I have since, since presented it
17 again at a public comment draft EIS review session to
18 the deputy director, deputy supervisor of the Coronado
19 National Forest, and a week later at a board of
20 supervisors meeting at Santa Cruz County requesting that
21 my alternative be looked at again. And I got sort of
22 head nods that they would at least look at it and give
23 an evaluation. And that's the -- I have no authority.
24 It is just I have given a suggestion. I would like to
25 have an answer by the Forest Service, and it won't come

1 from you.

2 CHMN. FOREMAN: And I appreciate the fact that
3 you would like an answer. The question that I have for
4 you, and I would like an answer to, is: Are you just
5 going to keep asking people or groups until somebody
6 gives you the answer that you want? I mean because you
7 want an answer to a question doesn't mean that the
8 Committee has a legal responsibility to answer the
9 question.

10 And from a psychological point of view, I
11 appreciate your position. From a legal point of view,
12 it doesn't appear to me that you have got a leg to stand
13 on. And we need to focus in on, in this hearing, on
14 what is legally appropriate for us to consider. And so
15 I am trying to give you the opportunity to persuade me
16 that there is any legal basis for us to continue to
17 pursue your natural gas generation option.

18 Member Richins.

19 MEMBER RICHINS: One of your major points was
20 that if they were to do a natural gas facility instead
21 of a power line that it would avoid a power line
22 hearing, is that correct?

23 MR. MAGRUDER: That's true.

24 MEMBER RICHINS: Don't we still have a power
25 plant siting hearing at that point?

1 CHMN. FOREMAN: Depends on the size of the
2 plant. Yes, if it is above --

3 MEMBER RICHINS: 120 megawatts is the
4 presumption that it would have to be. That would be
5 under the purview of this Committee. 100 is the cutoff,
6 correct?

7 MR. MAGRUDER: I understand that. And I
8 understand.

9 MEMBER RICHINS: We are kind of on a six of one,
10 half a dozen of another now.

11 MR. MAGRUDER: Let me try to answer that
12 question.

13 CHMN. FOREMAN: Just a moment. Member Haenichen
14 has a question.

15 Member Haenichen.

16 MEMBER HAENICHEN: Thank you, Mr. Chairman.

17 My recollection of testimony yesterday from
18 Mr. Beck was that providing electrical energy over lines
19 that are distribution class lines which are 69kV and
20 below would not be sufficient to carry the 120
21 megawatts.

22 Could you confirm that, sir.

23 MR. BECK: On a single line that is correct. I
24 think where Mr. Magruder was going, he wanted to build
25 multiple lines of lower voltages.

1 MEMBER HAENICHEN: Some for different motors,
2 for example, in the plant, different parts of the load?

3 MR. BECK: I would assume so, yes.

4 MEMBER HAENICHEN: Is that correct? Is that
5 your --

6 MR. MAGRUDER: That's correct, sir. And the
7 reason being is that two lines are more reliable than
8 one line.

9 MEMBER HAENICHEN: Well, unless they are feeding
10 different devices in the load and if one goes down they
11 can't run the plant. So I am not sure that's entirely
12 true without further information. Thank you.

13 CHMN. FOREMAN: Member Noland.

14 MEMBER NOLAND: Thank you, Mr. Chairman.

15 Mr. Magruder, I really appreciate your expertise
16 and I appreciate your involvement in the processes as
17 you have been before. You have in the past and I hope
18 you will at this hearing provide some good information
19 for us to utilize in our decision on this CEC.

20 However, we have not noticed a hearing on a
21 gas-generated plant. The hearing is noticed and the
22 application is for the transmission line and the
23 switchyard. And so to your beating a dead horse, this
24 is not the hearing for that. And I know it seems to be
25 your preference and you wish somebody would have taken

1 that and run with it, but the fact is they haven't yet.
2 And if they do, we will then have that properly noticed
3 and have a hearing on that. But we can't even take into
4 consideration what you are saying as it has no relevance
5 basically to the question before us. Thank you.

6 MR. MAGRUDER: Thank you.

7 CHMN. FOREMAN: Member Walker.

8 MEMBER WALKER: Well, Mr. Chairman, I just don't
9 know what more answer you want, Mr. Magruder. I mean
10 virtually everyone who is involved in the energy
11 industry can tell you the proposal you are talking about
12 is five, six, seven, eight times more expensive. I
13 don't think we should require applicants to do an
14 analysis -- I don't think we should ask them whether
15 they look at pebble bed nuclear reactor technology for
16 that. They don't have to. They can fall out of a tree
17 and know that the cheapest option would be just to put a
18 radial line out there. And that's probably as good an
19 answer you are going to get.

20 So if we can focus on the line itself and what
21 your concerns are vis-à-vis the line, that would be
22 useful.

23 MR. MAGRUDER: It is easy to change subjects and
24 go to the next set of questions, Mr. Chairman.

25 CHMN. FOREMAN: Then do so with ease.

1 MR. MAGRUDER: Okay.

2 BY MR. MAGRUDER:

3 Q. Mr. Beck, we talked about the draft EIS, that
4 you are going to wait until you get the -- you waited
5 until you got the draft EIS to file the CEC application.
6 But is the draft environmental impact statement a
7 decision making document?

8 A. BY MR. BECK: No, it is not the final decision
9 making document for the agency.

10 Q. Okay. Earlier we had comments concerning the
11 forest management plan change. Which is the forest
12 management plan change required before you can commence
13 construction on forest land?

14 A. BY MR. BECK: That is something we will have to
15 deal with with the Forest Service if we get to that
16 point.

17 Q. Is the forest management plan changed before or
18 after the record of decision is issued?

19 CHMN. FOREMAN: Mr. Magruder, why should this
20 Committee consider whether the answer to your question
21 is yes or no?

22 MR. MAGRUDER: Mr. Chairman, many times we have
23 said that the record of decision is going to be when
24 they can start the project. My question is do they have
25 to wait for the record of decision or do they have to

1 wait after the record of decision and that the forest
2 management plan is changed before they start the
3 project.

4 CHMN. FOREMAN: Okay.

5 MR. MAGRUDER: That's the purpose of my
6 question.

7 CHMN. FOREMAN: Okay. Mr. Beck, do you know the
8 answer to that question?

9 MR. BECK: Well, I believe that assuming the
10 condition that we have remains the condition for this
11 case, that when the record of decision were finalized we
12 could start construction on the project. Whether we
13 could start on forest land would depend where they are
14 at in their process and what they tell us, and we would
15 have to deal with the Forest Service. It doesn't mean
16 we couldn't start construction at the Toro switchyard
17 end working towards the forest.

18 BY MR. MAGRUDER:

19 Q. Okay. Is one of the major objections and a
20 general objection to transmission line due to visibility
21 of the structures?

22 A. BY MR. BECK: One of the biggest public comments
23 we received regarding the construction of transmission
24 lines is the visibility.

25 Q. Okay. About a decade ago you and I were talking

1 across the table to each other. And your witness
2 indicated that a three-inch conductor could be seen at
3 three miles. Is that a reasonable assumption, or has
4 that changed in the last decade?

5 A. BY MR. BECK: I don't recall that specific
6 conversation, but I don't see how anyone could see a
7 three-inch conductor at three miles. I know I
8 definitely could not.

9 Q. Okay. Let me change the question. The diameter
10 of your standing structure, tangential structure is two
11 feet six inches for about a 100-foot pole?

12 A. BY MR. BECK: Approximately.

13 Q. And is it about five feet diameter for the 150
14 foot pole?

15 A. BY MR. BECK: It is either five or six feet
16 diameter, yes.

17 Q. Not on here. And for the 199 foot pole, I
18 sent you a data request and you responded that the
19 diameter was 105 inches, is that correct?

20 A. BY MR. BECK: If that's what I stated, that's
21 what I stated, yes.

22 Q. That's over eight and a half feet in diameter.
23 Is that a pretty wide pole base?

24 A. BY MR. BECK: That is a wide pole base. On this
25 project we will not likely get anywhere near 199 foot

1 tall.

2 Q. You indicated that the 150-foot pole or the
3 taller poles would be used when you cross other power
4 lines. Is that the only time you will use the tallest
5 poles?

6 A. BY MR. BECK: I indicated one area that we would
7 use taller poles would be crossing of other lines.
8 There are cases where, for example, for purposes of
9 trying to avoid cultural sites, if we are trying to span
10 out, if we put taller structures on either side we could
11 do a longer span. That's an example where we could go
12 taller.

13 If, terrain-wise, we run into obstacles such as
14 hills and stuff, it may make sense in some cases to go
15 with a little taller pole to be able to straddle over
16 hills. If we could hit on top of ridge points, then we
17 will use shorter poles in those locations.

18 Q. Let me get those words again. On a ridge line
19 you will use shorter poles, is that correct?

20 A. BY MR. BECK: On a ridge top.

21 Q. Top?

22 A. BY MR. BECK: What I was trying to indicate is
23 to the extent if we could hit mountaintops, hilltops,
24 then we can use shorter structures. If we are running
25 along a ridge line, then the structures will be your

1 typical 85-foot structures.

2 Q. Is the highest ridge or the highest elevation
3 going to be probably at the Lopez Pass in this whole
4 project?

5 A. BY MR. BECK: Yes.

6 Q. And at that point you will not ride on the ridge
7 line, is that correct, you will just cross the ridge?

8 A. BY MR. BECK: Our intent is to cross over more
9 or less perpendicular to the ridge line.

10 Q. Okay. Our favorite subject, on page 12 we talk
11 about Corten monopoles. We looked at some simulations
12 the other day where both Corten and dulled gray steel
13 poles were shown. And if we looked at simulations that
14 were on the left slides, 18 and 19 again, if that's
15 possible to bring them up, we could see the difference
16 between the Corten and the dulled gray stainless steel.
17 Is that possible?

18 A. BY MR. BECK: Okay. You are seeing -- you are
19 asking for one on either side?

20 Q. Well, I am just -- the flipping back and forth
21 was also fairly dramatic. This is -- so that's the
22 steel and that's the Corten. From your viewpoint, is
23 the Corten more visible than the stainless steel in this
24 example?

25 A. BY MR. BECK: In this particular simulation, for

1 this particular pole, with this particular lighting,
2 arguably the galvanized pole may be considered a little
3 less visible. But there again, it depends whether you
4 are looking at the skyline or whether you are looking at
5 the mountains, so your perspective has a big part of
6 that.

7 So if you look at this again, if you are looking
8 at the skyline, the Corten definitely is darker, stands
9 out more. But then if you are looking against the
10 mountain, the Corten tends to blend in a little more.
11 So you move 50 feet and up and a little bit in
12 elevation, you have got the mountain as the backdrop,
13 probably the Corten makes sense. And that's kind of
14 been the indication we have gotten from the forest, is
15 they prefer the Corten because it tends to blend in with
16 their backgrounds.

17 Q. Does the Coronado National Forest a lot of times
18 think more forest oriented because that is their title,
19 their mission? And in their normal scheme of side rails
20 on roads, don't they normally use Corten brown or brown
21 paint for their motif instead of stainless steel?

22 MR. GELLMAN: Objection; compound question and
23 the second part immaterial.

24 CHMN. FOREMAN: Sustained.

25 MR. MAGRUDER: Okay.

1 CHMN. FOREMAN: Why don't we take a break. We
2 will take about 15 minutes. Come back at 4:15.

3 (A recess ensued from 4:02 p.m. to 4:17 p.m.)

4 CHMN. FOREMAN: All right. Let's go back on the
5 record.

6 Mr. Magruder, you may proceed.

7 BY MR. MAGRUDER:

8 Q. Mr. Beck, have you seen what I handed out this
9 morning called Magruder Exhibit MM-20, which is the
10 draft CEC document that I furnished to all of the
11 participants?

12 A. BY MR. BECK: Actually I will have it in just a
13 moment.

14 Q. Okay. I am going to refer you to page 3 under
15 Condition 12.

16 A. BY MR. BECK: You said Condition 12,
17 Mr. Magruder?

18 Q. Yes, in the middle of page 3.

19 A. BY MR. BECK: Okay.

20 Q. These are two minor changes to the one you have.
21 And the first one just adds the word gray or Corten
22 instead of after the word dull. Do you see that
23 condition, minor change?

24 A. BY MR. BECK: Yes, I do.

25 Q. And you also see this is a new sentence. I

1 would like you to read that, then I will read it back to
2 get it in the record, but let me make sure you refresh
3 yourself with it.

4 A. BY MR. BECK: I have read it.

5 Q. Does it make sense to you or do you think -- do
6 you have any comments on it?

7 A. BY MR. BECK: It is a proposed condition.
8 Again, I will state TEP's preference is that we use
9 Corten structures for multiple reasons, including cost,
10 maintenance issues, and so on. We feel it generally
11 blends in with the background for the most part in most
12 areas. But I do realize that color is basically in the
13 eye of the beholder.

14 Q. And does it limit the area that would even be
15 considered for either of the two finish options?

16 A. BY MR. BECK: I don't see that it limits it. It
17 allows either to be chosen.

18 Q. Okay. But I tried to limit it to within three
19 miles of residential areas. Do you agree with that?

20 A. BY MR. BECK: Yes, I do see that.

21 Q. Okay. Would you agree that the residential
22 areas that I am talking about would be Sahuarita
23 Heights, Quail Creek, and the residents that we talked
24 about earlier near the option between the primary, the
25 preferred route and the alternate route to go behind the

1 hill?

2 A. BY MR. BECK: Yes, generally that would cover
3 most of the residential areas.

4 Q. Okay, okay. Does this seem acceptable the way
5 this is written?

6 A. BY MR. BECK: Well, again I will say that TEP's
7 preference is to stay with Corten throughout. But we
8 understand that from the public eye, they may see things
9 differently. So if this is a condition the Committee
10 should choose, it is something we could live with.

11 Q. Okay. It is my understanding that all of the
12 distribution lines inside the Santa Rita Experimental
13 Range will be underground, is that correct?

14 A. BY MR. BECK: I can only speak relative to the
15 distribution service that will serve the one booster
16 pump which is generally located on the map that's on the
17 screen along segment 100, link 100, and pretty close to
18 this forest road where it joins the forest road or
19 crosses the forest road CR, County Road I guess, excuse
20 me, CR for County Road, and I can't see that number from
21 here --

22 Q. 100.

23 A. BY MR. BECK: -- County Road 424. So the only
24 thing I can speak to distribution-wise is the
25 distribution will come from the Santa Rita Experimental

1 Range boundary over to that one booster pump. Whatever
2 other distribution lines may exist I do not believe will
3 be affected by this project.

4 Q. I understand. So at least from County Road 424
5 to the eastern edge of the experimental range there will
6 be two trenches put into that easement, one for a water
7 pipeline and one for an underground distribution line,
8 is that correct? That's your understanding?

9 A. BY MR. BECK: That is Rosemont and TRICO's
10 design. I believe Rosemont engineers are designing that
11 as part of their water line project. I am not sure if
12 they intend to do it with one trench and put both
13 facilities in, or do individual trenches.

14 Q. You talked about earlier, to another question,
15 about undergrounding the 138 kilovolt line. What are
16 the major costs in putting it underground? Digging the
17 hole and burying it, is that one of the major costs?

18 A. BY MR. BECK: The trenching is just a portion of
19 the cost. The underground conduit that has to be
20 installed is another cost. The cooling facilities
21 related to oil cooling are other costs. TEP has not
22 actually constructed any 138kV underground to know all
23 of the details of that construction, but we do know that
24 it costs approximately 10 times as much as an overhead
25 line.

1 Q. If there are other construction going on, would
2 it be a little bit less expensive if they are putting in
3 a 30-inch diameter water pipe for you to put in an
4 underground wire?

5 A. Well, again, the excavation portion for
6 underground construction is probably a small portion of
7 the cost of the undergrounding that facility. So there
8 would be a little bit of synergy from that, but the cost
9 impact would be pretty negligible.

10 Q. What is the soil type in, the soil in segments
11 20, 60, 100 and 105? Is that generally a sand type
12 soil, sandy?

13 MR. GELLMAN: Objection; immaterial.

14 CHMN. FOREMAN: No, overruled.

15 You may answer that.

16 MR. BECK: As far as I can tell from having been
17 out there, it appears to be dirt and/or sand as opposed
18 to rock. If it actually were sand, it will make
19 excavation much more difficult. But I believe it is
20 just kind of our typical desert dirt.

21 BY MR. MAGRUDER:

22 Q. It is not bedrock that you would have to
23 dynamite?

24 A. BY MR. BECK: Correct.

25 Q. Okay. When we look at the preferred route, what

1 segments cost more per mile and which ones cost less per
2 mile? Just which ones are going to be most expensive
3 for you to install?

4 A. BY MR. BECK: Generally where we get up into the
5 rougher terrain and the rock, rocky area. So as we are
6 going over the Santa Rita Mountains, that will be the
7 more expensive area on the preferred route.

8 On the other routes there is a little bit of a
9 vegetation issue. In particular, on Alternative 4 there
10 would be a little bit of vegetation clearing. But as we
11 saw from the flyover yesterday, there is not much. So
12 for the most part it really is the soil conditions and
13 the terrain itself.

14 Q. Could you give approximate a ratio between the
15 most expensive mile to the cheapest mile? Some miles is
16 going to be maybe five times as much as another?

17 A. BY MR. BECK: No. You know, we haven't looked
18 at that specifically, but you are probably talking a 10
19 to 20 percent difference at the most.

20 Q. Okay. You mention in your testimony about state
21 land leases for the right-of-way. Are these leases
22 50-year leases?

23 A. BY MR. BECK: Yes, we are proposing 50-year
24 leases.

25 Q. Is the draft EIS predicated on a 20-year

1 lifecycle for the mine?

2 A. BY MR. BECK: You know, I don't know
3 specifically what was referenced in the draft EIS. I
4 know the discussion has been the mine would be around
5 approximately 20 years. So it could very well state
6 that in the draft.

7 Q. When you get a lease for right-of-way from the
8 State Land Trust, don't you pay that up front at the
9 beginning of the lease?

10 A. BY MR. BECK: Yes, Rosemont would be paying that
11 up front.

12 Q. So they will pay for a 50-year lease, is that
13 correct?

14 A. BY MR. BECK: That is the plan at this point,
15 yes.

16 Q. On page 15 in the first paragraph of your
17 testimony, you talk about the status of an application
18 to State Land Trust. Do you know the status of that
19 application?

20 A. BY MR. BECK: The application is sitting in
21 State Trust's hands, in the Land Department's hands.
22 They are awaiting the outcome of this process, which
23 will identify, hopefully, a route that is approved by
24 the Committee and ultimately the Commission that then
25 they can move forward with on acting on the application.

1 Q. You implied in your testimony it also included a
2 temporary construction easement. Is that still in their
3 application?

4 A. BY MR. BECK: Yes, it is.

5 Q. Would that option be exercised if you were
6 awarded a CEC?

7 A. BY MR. BECK: Let me clarify for you. The
8 temporary construction easement that is referenced is
9 those additional pieces of right-of-way or rights to
10 allow us to build the line. This isn't related to
11 construction power.

12 Q. This isn't the 160, 190, 210 leg?

13 A. BY MR. BECK: No, no.

14 Q. Okay. That was my concern.

15 On page 15, on line 16 and 17, you state that
16 Santa Rita Road was a heavily traveled road. Has a
17 traffic analysis been conducted on that road?

18 A. BY MR. BECK: Well, I have been out there on
19 days when the mining traffic is going by. And you would
20 be surprised at how much traffic actually uses that
21 road. There was a number count of number of trips, I
22 believe, in the EIS, or it may have actually been in our
23 application. I know there are some numbers representing
24 travel, vehicle travel.

25 Q. Will your line require additional travel on that

1 road other than construction, or how many extra trips
2 per month for maintenance?

3 A. BY MR. BECK: Typically it wouldn't be on a
4 per-month basis. We typically would do, twice a year,
5 surveys of our lines, especially something like this
6 where it is a 138kV radial. And we would go out there
7 and basically drive the length of the line to make sure
8 everything is intact. So other than if there were a
9 problem with the line we had to do maintenance, there
10 wouldn't be a trip every month.

11 Q. Would you use a service road or would you use
12 Santa Rita Road to do this survey?

13 A. BY MR. BECK: I think that it is likely that for
14 the inspections, the person that would do that
15 inspection would probably travel down Santa Rita Road
16 rather than the access road. It is much easier to
17 travel down Santa Rita Road. They can see the
18 insulators and the wire from that road and tell if there
19 is any issues.

20 Q. So after construction, Tucson Electric would not
21 need to use the service road unless there was an
22 emergency or something very unusual happening?

23 A. BY MR. BECK: We would seldom need to use it,
24 correct.

25 Q. Okay. There is a picture, and I believe it is

1 slide 24, that shows the cross-section of the roads. Is
2 that possible we could show that? It is also on the
3 lower right-hand corner.

4 A. BY MR. BECK: It is on the screen.

5 Q. Okay. Am I interpreting this right, there is a
6 100-foot transmission line easement that would start at
7 the boundary of Santa Rita Road and move northward? And
8 I am only talking about the area inside the experimental
9 range.

10 A. BY MR. BECK: Yes, that is correct. The road
11 right-of-way is basically a 66-foot road right-of-way.
12 We are planning from the edge of that right-of-way to
13 obtain a 100-foot transmission line easement.

14 And as I previously have testified, the pipeline
15 right-of-way would be underlapping or overlapping,
16 depending how you want to say that, with that
17 transmission right-of-way.

18 Q. Okay. And it looks like in the diagram that
19 pipeline right-of-way easement is 30 feet, is that
20 correct?

21 A. BY MR. BECK: Correct.

22 Q. And if you put your poles in the center of your
23 100 foot, you would be about 50 feet then away from the
24 road?

25 A. BY MR. BECK: Approximately, yes.

1 Q. Okay. After they put in the pipeline easement,
2 from your viewpoint, do you really see any need for the
3 14 foot wide service road from TEP's viewpoint?

4 A. BY MR. BECK: We would utilize that service road
5 for access for maintenance purposes primarily, with the
6 understanding that if there is a mine and a pipeline
7 that service road is going to be there for the operation
8 of the pipeline. They do periodically have to go out
9 and look at their valves and the pipeline.

10 State Land and the Santa Rita Experimental
11 Range, they have indicated their preference. They
12 wanted the access road to be outside of the Santa Rita
13 Road. They wanted to limit access off of Santa Rita
14 Road out into the range.

15 So the concept is there would be minimal places
16 to actually access from Santa Rita Road onto that access
17 road to drive up and down that right-of-way. And one of
18 the things to be worked out with State Land and the
19 range is fence the gates and how these access roads may
20 be blocked off to try and prevent off-road vehicle use.

21 Q. What I am trying to eventually see if we can do
22 is could you have access to your poles if you went
23 perpendicular from the road, from the Santa Rita Road,
24 and not require the use of the service road.

25 A. BY MR. BECK: From TEP's perspective, if we were

1 allowed to cut the fence, have an opening, and spur off
2 to each structure, that could be utilized by TEP for
3 maintenance and for installation.

4 But as I have stated, the preference of the
5 range and State Land, with the understanding that there
6 would be a collocated pipeline here, is that all of that
7 be located outside of the Santa Rita Road right-of-way
8 and be fenced separately.

9 Q. If the fence was moved to the north of the -- of
10 your pole, and we revegetate and some -- and the CEC
11 asked to revegetate the construction road, would there
12 be less total impact on the environment?

13 A. BY MR. BECK: There would be remediation that
14 might cover up some of the access road to some degree.
15 I am not sure that is acceptable to Rosemont. It is
16 something we would have to work out with the range and
17 with State Land. I am not sure it is something the
18 Committee should direct us to do. I could see the
19 direction being to work with the landowner to the extent
20 possible to minimize the length of the access road.

21 Q. Do you see that the service road could easily be
22 an off-road vehicle freeway?

23 A. BY MR. BECK: Well, I suppose.

24 Q. It is a possibility?

25 A. BY MR. BECK: Could be. I am not sure why an

1 off-road vehicle would use an access road when they can
2 use Santa Rita Road, which is a graded road. We don't
3 intend to do a lot of maintenance, and Rosemont may be
4 maintaining that to some degree, but it is not going to
5 be as good a road or smooth a road as Santa Rita itself.

6 Q. If the fence was on the north side of this
7 diagram, then they couldn't get to the rest of the
8 range. It only would be allowed the first maybe 75 feet
9 or so. Does that make sense? That's what I am trying
10 to suggest to us as an idea.

11 A. BY MR. BECK: And I am hearing your suggestion,
12 and we are glad to bring it up with State Land and the
13 range to have that discussion. But the discussion we
14 have had to date has been they don't want to go there.
15 They want that fence to be installed. That is to be
16 maintained along Santa Rita Road here. And then another
17 fence be put up over here is what they have actually
18 requested.

19 Q. Say again. The second fence, where would the
20 second fence be?

21 A. BY MR. BECK: They have indicated a second fence
22 to the north of the pipeline. And it is not clear to me
23 whether they want it between the pipeline and the line
24 or outside of the -- the other side of the transmission
25 line. But as I said, these are conditions and things

1 that we will be working out with State Land, because
2 they are the landowner and have their obligations and
3 requirements.

4 Q. Do you think if they could try to revegetate
5 this thing it would be better for the environment in the
6 big picture?

7 MR. GELLMAN: Objection; asked and answered.

8 MR. MAGRUDER: Okay.

9 BY MR. MAGRUDER:

10 Q. Is your company interested in managing, in
11 environmental management as a process of doing business?

12 A. BY MR. BECK: The only way I can respond to that
13 is environmental considerations are very important to
14 the company, if that responds to your question.

15 Q. Have you qualified your company as an
16 environmental management certified company in accordance
17 with ISO 14400?

18 MR. GELLMAN: Objection; immaterial.

19 CHMN. FOREMAN: What is the materiality,
20 Mr. Magruder?

21 MR. MAGRUDER: It is a -- thousands of companies
22 have qualified under ISO 14400. And it uses, it sets up
23 a process for your company that, when you make decisions
24 in the company, the environment is a consideration. And
25 if you sort up the processes that the environment is a

1 consideration -- and it is a lot more than just the
2 paper, the Xerox machine, it is thinking about
3 environment in normal decisions -- you become certified.
4 It is like ISO 9000 that has 4 million companies
5 certified for. It is just another one of the ISO
6 certifications.

7 CHMN. FOREMAN: Which brings me back to my
8 question, why is it material to this case?

9 MR. MAGRUDER: There are some utility companies
10 that are ISO 14400 certified. And they are very
11 environmentally conscious when they make all their
12 decisions. That was why I asked the question.

13 CHMN. FOREMAN: Do you intend to ask us to
14 impose a condition like that in this case?

15 MR. MAGRUDER: No, no, Mr. Chairman.

16 CHMN. FOREMAN: Okay. If you don't, then let's
17 leave that topic alone and move on.

18 BY MR. MAGRUDER:

19 Q. Okay. Page 18 of your testimony, you have a
20 check sheet for the environmental restrictions. On
21 No. 3 you talk about close all gates except during
22 vehicular use.

23 Some gates by some ranchers are to always be
24 open, other gates are locked. How do you handle those
25 two situations using this check sheet?

1 A. BY MR. BECK: Well, the intent is that our
2 employees and/or contractors will use a little bit of
3 common sense. And so if a gate, if we identify a gate
4 that is normally left open, we leave it open. I mean
5 this isn't intended to just close every gate you ever
6 see. So if there is one that should be left open, we
7 leave it open. To the extent they are closed when they
8 got there, they close back up. If they are locked and
9 have a key, we lock it back up behind us so no one else
10 can get through.

11 Q. On No. 8 you use the term artifact. Can you
12 define the term artifact?

13 A. BY MR. BECK: Basically it is any type of
14 cultural item that might be found out in the field.

15 Q. And your contractors would use the same
16 definition?

17 A. BY MR. BECK: Well, that's part of the reason
18 for going over this list with them at more or less a
19 tail board before the start of the project. It is to
20 identify to them that they don't pick up, if there is a
21 piece of pottery, they don't pick it up and take it
22 away.

23 Q. No. 9 is near and dear to Rosemont. I am not
24 sure, let me try for TEP. When you are welding, do you
25 have a fire watch?

1 A. BY MR. BECK: We typically don't do a lot of
2 welding out in the field, but if we do, we will take
3 whatever precautions that are prudent to prevent a brush
4 fire, forest fire, or whatever, and we also support
5 firefighting operations as needed.

6 Q. I did not see in your sample CEC submittal a
7 removal of the line when the Rosemont mine shuts down.
8 Will your company remove the line when -- if Rosemont
9 mine stops operation?

10 A. BY MR. BECK: I believe that's actually covered
11 in the, at least at this point, in the draft EIS, which
12 I am sure will remain in the EIS, putting the burden on
13 the Rosemont Company as well as, I am sure, through
14 conditions we will have in this case on TEP should we be
15 the owner.

16 One of the considerations at the time if it were
17 to get abandoned, the project, mine itself goes away,
18 would be are there any uses, other uses this line could
19 be put toward. And we would have to have those
20 discussions with the Commission at that time.

21 Q. Okay. Are you aware that the part of the
22 experimental range was a U.S. Air force bombing range in
23 World War II?

24 A. BY MR. BECK: Yes.

25 Q. Have you done an unexploded ordinance survey to

1 ensure that your workers aren't hurt?

2 A. BY MR. BECK: We haven't done a specific survey,
3 but we did, during the cultural survey, there was at
4 least one practice bomb that was found. They put a
5 picture of it in there, the cultural report. So we are
6 aware of the issues. I mean we take common precautions,
7 but we haven't done a specific survey for them,
8 artillery.

9 Q. Okay. But you would consider that a possible
10 hazard that you should at least inform your contractors?

11 A. BY MR. BECK: Well, we would let them know the
12 area where the range used to be, yes.

13 MR. MAGRUDER: Mr. Chairman, that, I believe,
14 completes my questions for Mr. Beck.

15 CHMN. FOREMAN: Very good. Let me ask counsel
16 for Rosemont. Do you have cross-examination questions
17 of these witnesses?

18 MR. BLACK: Yes, Chairman, we have just a few
19 for clarification purposes, and it should take no longer
20 than 10 or 15 minutes.

21 CHMN. FOREMAN: All right.

22 MR. MAGRUDER: I wanted to ask, Mr. Chairman, I
23 wasn't to Ms. Weinstein yet. I haven't even started.

24 CHMN. FOREMAN: Ah.

25 MR. MAGRUDER: I don't want to get out of order

1 here.

2 CHMN. FOREMAN: Well, that's my mistake.
3 Sometimes people accuse me of being an optimist and I
4 jump to occasional conclusions. All right then, proceed
5 with Ms. Weinstein.

6 BY MR. MAGRUDER:

7 Q. Okay. Ms. Weinstein, is the Arizona National
8 Scenic Trail nearby a visual item that might be where
9 the people could see this transmission line?

10 A. BY MS. WEINSTEIN: Yes.

11 Q. And I didn't notice that in your testimony. Is
12 that someplace in your testimony?

13 A. BY MS. WEINSTEIN: I believe so. Let me --

14 Q. Okay. I believe you. You don't have to show
15 me.

16 A. BY MS. WEINSTEIN: Okay.

17 Q. Also in your testimony I did not see the Santa
18 Cruz Valley National Heritage area mentioned once. Are
19 you familiar with that National Park Service
20 qualification for this region of southern Arizona?

21 A. BY MS. WEINSTEIN: I don't believe that we
22 actually crossed that with any of our routes.

23 Q. It is a whole valley. It is from Nogales
24 through --

25 A. BY MS. WEINSTEIN: Okay.

1 Q. -- Santa -- the Rincons, just -- I am sorry.

2 Okay.

3 Did you -- on page 8, you discuss SRER studies.

4 And there are a lot of studies that involve various

5 things such as the mammals and small mammals in the

6 range, is that correct? These are the type of studies

7 they do.

8 A. BY MS. WEINSTEIN: Yes.

9 Q. Okay. When we install 50, 75, 100, 150 foot
10 tall utility poles, have they been known to become
11 reasonable perches, places for raptors?

12 A. BY MS. WEINSTEIN: Yes.

13 Q. And if we -- last week I drove up Old Nogales
14 Highway and drove up to Tucson in the morning and
15 encountered 21 raptors on the top of utility poles.
16 Only one raptor was in the pecan forest. Do raptors
17 seem to like utility poles as a perch place, place to
18 look for breakfast?

19 A. BY MS. WEINSTEIN: I believe so.

20 Q. Okay. The steel poles all have a flat plate on
21 top. Do you agree with that, when you look at them in a
22 distance, they are flat on top?

23 A. BY MS. WEINSTEIN: I guess, yes.

24 Q. I could ask Mr. Beck.

25 A. BY MS. WEINSTEIN: Sure.

1 Q. Okay. To prevent a raptor from landing on top,
2 if you put a cone or something similar so that the
3 raptor didn't have a nice place to stand, would that
4 reduce the raptors eating up all the little bitty
5 mammals that changes the ecology and the 100 years world
6 of study they have been doing on the experimental range
7 if we could keep the raptor doing what the raptors would
8 normally do before the power lines?

9 A. BY MS. WEINSTEIN: There are probably different
10 things you could put at the top of the pole. I am not
11 sure that would be -- that would keep raptors from being
12 able to land there.

13 Q. In my Exhibit 20, MM-20, I have a short one
14 sentence requesting that a raptor prevention type device
15 be considered by the company. Would that seem a
16 reasonable type of condition to add?

17 MR. GELLMAN: Mr. Chairman, if I could ask for a
18 moment to give a copy to the witness of Exhibit 20, I
19 don't believe she has one yet.

20 MR. MAGRUDER: I have got to find one myself.
21 Here it is. It is on page 3, Condition 11. And I will
22 read it. The applicant shall choose utility pole
23 equipment that is designed to discourage raptors within
24 one mile and inside the SRER.

25 MEMBER WALKER: Mr. Chairman, I have a question.

1 CHMN. FOREMAN: Member --

2 MR. MAGRUDER: That was a proposed condition.

3 CHMN. FOREMAN: Member Walker.

4 MEMBER WALKER: This is to all the parties.

5 Someone point me to the record where we have a wildlife
6 biologist testifying on whether or not we want to
7 preclude raptors or encourage raptors or bore raptors or
8 in any way deal with raptors? I don't recall it. Where
9 do I need to look?

10 MR. MAGRUDER: Can I ask Ms. Weinstein if she
11 has information on that subject?

12 CHMN. FOREMAN: I --

13 MEMBER WALKER: I just asked all the parties,
14 Mr. Magruder. And you have no witness at all on the
15 subject, and Ms. Webb has no other witness on it, so
16 maybe one of the other parties can reply.

17 CHMN. FOREMAN: Mr. Gellman.

18 MR. GELLMAN: Mr. Chairman, Mr. Walker, I don't
19 believe there is any testimony to this precise point
20 that Mr. Magruder is going to. The only thing I was
21 going to point out is Exhibit D of the application that
22 talks about species in the area, as well as some
23 testimony from Ms. Weinstein, again, regarding species
24 in the area and general biological impacts.

25 MEMBER WALKER: Right. And it said it wouldn't

1 have any negative impact, correct?

2 MR. GELLMAN: I should --

3 MEMBER WALKER: Oh, your witness.

4 MR. GELLMAN: It is probably not a question --
5 probably a question that should be addressed to my
6 witness.

7 MEMBER WALKER: Witness.

8 MS. WEINSTEIN: We don't know of any baseline
9 for this requirement.

10 MEMBER WALKER: Right. We don't have anything
11 in this record. What we have is there is not going to
12 be a negative impact to raptors from the project, but we
13 don't have any expert testimony delineating whether we
14 should take one step or another encouraging or
15 discouraging raptors in this area, correct?

16 MS. WEINSTEIN: Correct.

17 MEMBER WALKER: Thank you.

18 Thank you, Mr. Chairman.

19 CHMN. FOREMAN: Well, now, as I understand it,
20 Mr. Magruder, your concern here is not that the raptors
21 association is being discriminated against, but that the
22 raptors association would be given an unfair advantage
23 and a small rodent association would bear the brunt of
24 that advantage. Is that your point?

25 MR. MAGRUDER: Yes, yes, Chairman, and that

1 would affect the -- I will go further down the road, is
2 that the mice eat seeds and the seeds get buried by the
3 mice in their holes and it affects the plant life. It
4 affects the mammal life. And it affects the whole
5 lifecycle. And raptors are known to do that. I am
6 sorry I don't have evidence to show you that. But it is
7 a common problem.

8 MEMBER WALKER: Mr. Magruder, are you a wildlife
9 biologist?

10 MR. MAGRUDER: No, I am not.

11 MEMBER WALKER: What are your degrees in?

12 MR. MAGRUDER: I have a master of science in
13 physical oceanography and a master of science in systems
14 management.

15 MEMBER WALKER: Have you worked in the area of
16 wildlife biology?

17 MR. MAGRUDER: I have had biology courses, but I
18 have not worked as a biologist.

19 MEMBER WALKER: Okay. So there is nothing I can
20 say. This is not your area of expertise. You are not
21 trained in it. You don't work in the field. Other than
22 that --

23 MR. MAGRUDER: It is common sense.

24 MEMBER WALKER: It is common sense.

25 MR. MAGRUDER: Yes, that's my -- I am not trying

1 to be smart-alecky here. I am just saying that the
2 raptors -- and I have heard Audubon Society meetings and
3 groups like that are concerned about that issue. That's
4 why I brought it up. And I am not a representative of
5 those types of people.

6 CHMN. FOREMAN: They are concerned about the
7 raptors being overfed?

8 MR. MAGRUDER: About the raptors impacting the
9 total environment --

10 CHMN. FOREMAN: Okay.

11 MR. MAGRUDER: -- from utility poles.

12 CHMN. FOREMAN: All right. We will look forward
13 to your testimony on this point when that time comes.
14 Let's see if we can move on now.

15 BY MR. MAGRUDER:

16 Q. Ms. Weinstein, do you remember when I was --
17 long time ago in the stakeholder meetings we had the
18 northern route, and I initially wanted the northern
19 route. I can't ask you do you remember why I chose the
20 northern route, but one of the reasons that the northern
21 route has the benefit would be it avoids having any
22 poles inside the environmental -- inside the
23 experimental area, is that true?

24 A. BY MS. WEINSTEIN: Not necessarily, no. We
25 looked along the boundary and for the most part assumed

1 it would be inside the boundary.

2 Q. But how far? 100 feet? 200 feet?

3 A. BY MS. WEINSTEIN: I don't think we ever
4 determined just how far in, but it was going to be close
5 or adjacent to the boundary, if I remember correctly.

6 Q. Wasn't, in fact, a biological study going on in
7 the center of the environmental range, experimental
8 range?

9 A. BY MS. WEINSTEIN: According to the range it was
10 because of their concerns with opening access and
11 trespassing into the range. So they expressed concerns.

12 Q. Okay. Well, that got dropped, but my -- the
13 reason I was supporting it early was to avoid any lines
14 in the range, or the least amount.

15 CHMN. FOREMAN: Perhaps this is something you
16 could address in your testimony.

17 MR. MAGRUDER: Yes, I will.

18 BY MR. MAGRUDER:

19 Q. You have completed a level 3 archeological
20 study, is that correct?

21 A. BY MS. WEINSTEIN: Yes.

22 Q. Could you explain the difference between level
23 1, 2, and 3?

24 A. BY MS. WEINSTEIN: 1 is basically a literature
25 search. 2 is more of a random survey. And 3 would be

1 full 100 percent coverage.

2 Q. And you have done the full 100 percent coverage
3 here?

4 A. BY MS. WEINSTEIN: Yes, we have.

5 Q. Okay. And it is documented?

6 A. BY MS. WEINSTEIN: Yes, it is.

7 Q. On page 18 in the last two lines you mention a
8 historic properties treatment plan. What is this plan?
9 Who do you submit it to, and --

10 A. BY MS. WEINSTEIN: It would actually be prepared
11 in this case by the Coronado -- well, with the Coronado
12 National Forest and other organizations or agencies that
13 would have some role in that.

14 Q. And what does it contain?

15 A. BY MS. WEINSTEIN: And it contains, my
16 understanding is it contains direction on how to treat
17 historic properties in an affected area.

18 Q. Okay. On page 20, the pineapple cactus is
19 mentioned. What is the protocol that would be followed
20 if one of these are found?

21 A. BY MS. WEINSTEIN: We don't know for sure what
22 would be required. Fish & Wildlife consultation will be
23 occurring through the Forest Service, and those
24 determinations on what would be required will be set at
25 that time.

1 Q. On line 12, you say a contribution will be made.

2 A. BY MS. WEINSTEIN: That is one option for
3 mitigation.

4 Q. Is that monetary or land?

5 A. BY MS. WEINSTEIN: It is monetary.

6 Q. Monetary. Okay.

7 When is the Section 7 biological opinion going
8 to be released for this project?

9 MR. GELLMAN: Objection; calls for speculation.

10 CHMN. FOREMAN: First of all, what is a Section
11 7 biological --

12 MR. MAGRUDER: It is -- the U.S. Fish & Wildlife
13 Service does a very detailed biological opinion on the
14 impact of the project.

15 CHMN. FOREMAN: All right.

16 MR. MAGRUDER: And I believe it is done for the
17 mine, and I assume this would be done with the mine.

18 CHMN. FOREMAN: Okay. Ms. Weinstein, do you
19 know what he is talking about?

20 MS. WEINSTEIN: Yes, I do, Section 7, Endangered
21 Species Act.

22 CHMN. FOREMAN: Okay. And do you know the
23 answer to his question?

24 MS. WEINSTEIN: I know that -- I understand that
25 there is a draft of a biological assessment, and it is

1 going through reviews, and at some point will be
2 submitted to the Fish & Wildlife Service that begins
3 that process.

4 BY MR. MAGRUDER:

5 Q. Does the biological opinion sometimes include
6 mitigation plans?

7 A. BY MS. WEINSTEIN: Yes, it does. And let me
8 just also clarify that that is something that the forest
9 will take the lead.

10 Q. So the mitigation plan will be implemented,
11 monitored, and enforced by the Forest Service, is that
12 correct?

13 A. BY MS. WEINSTEIN: By both Forest Service and
14 Fish & Wildlife Service.

15 Q. And for the transmission line, I don't
16 assume -- outside of the Forest Service area, who will
17 be the enforcers?

18 A. BY MS. WEINSTEIN: The utility corridor, utility
19 alignment, pipeline and transmission line are being
20 included in this same consultation process.

21 Q. Okay. I don't want to go back to page E-18 and
22 the EIS, but there was a Table E-3 that we looked at for
23 a long period of time. And in that they had a
24 centerline length by each one of the 13 different
25 historic regions. Is that the length of the

1 transmission line that would go through each one of
2 those designated areas, sites, page E-18?

3 A. BY MS. WEINSTEIN: E-18, are you looking at the
4 route, the column that says route at the top?

5 Q. I will get the right page. It is Table E-3
6 called eligible historic properties along preferred and
7 alternative routes. Fourth column says CL length
8 through site. The first one, for example, Helvetia is
9 1830 feet. Does that mean 1830 feet of the transmission
10 line corridor will pass through that site?

11 A. BY MS. WEINSTEIN: Yes, the center of it, right.

12 Q. Okay. And for the prehistoric, for No. 2 it is
13 817 feet on the primary and first alternative, and 846
14 on the second, third and fourth alternative, is that
15 correct?

16 A. BY MS. WEINSTEIN: Correct.

17 Q. That was -- I just wanted to know how to
18 interpret --

19 A. BY MS. WEINSTEIN: Sure.

20 Q. -- and how to read those CL lengths, what that
21 really meant.

22 That completes my questions of Ms. Weinstein.

23 CHMN. FOREMAN: Very good. And may I infer from
24 that that it completes your cross-examination?

25 MR. MAGRUDER: And completes my

1 cross-examination.

2 CHMN. FOREMAN: All right. Very good. I didn't
3 want to get ahead of myself.

4 We will take the evening recess. We will begin
5 tomorrow morning at 9:00 a.m. with the cross-examination
6 of Rosemont.

7 May I assume that there will be redirect
8 examination from the applicant?

9 MR. GELLMAN: Mr. Chairman, that's probable, but
10 I don't anticipate more than five to ten minutes.

11 CHMN. FOREMAN: Okay. Ms. Berglan, I think we
12 can assume that we will be to your case relatively early
13 in the morning. Will you be prepared to proceed?

14 MS. BERGLAN: Yes, Mr. Chairman.

15 CHMN. FOREMAN: About how long do you anticipate
16 your direct examination to last?

17 MS. BERGLAN: I would say about an hour, a
18 little less than an hour.

19 CHMN. FOREMAN: Okay. It then occurs to me,
20 Ms. Webb and Mr. Magruder, you should be prepared --
21 well, let me back up. I may be jumping to another
22 conclusion.

23 Mr. Robertson, you had indicated at one point, I
24 think, you were not sure that you were going to have
25 live testimony, you were just going to make your proffer

1 of proof. Have you changed your mind on that, or am I
2 misremembering what you were going to present?

3 MR. ROBERTSON: No, Mr. Chairman. At this point
4 the Scenic Santa Ritas group is basically proceeding on
5 the offer of proof that was accepted yesterday and the
6 record developed in this proceeding. We do not intend
7 to call any additional witnesses.

8 CHMN. FOREMAN: Okay. Then, Ms. Webb and
9 Mr. Magruder, you should be prepared to proceed even
10 shortly before lunch, but more likely after lunch
11 tomorrow.

12 MS. WEBB: Can I --

13 CHMN. FOREMAN: Ms. Webb.

14 MS. WEBB: Can I ask a procedural question?

15 CHMN. FOREMAN: Yes.

16 MS. WEBB: I had -- and I did disclose this to
17 the parties last night when we received this letter, or
18 maybe it was this morning -- at this point I can't
19 remember -- the Arizona, and I am sorry, the Arizona
20 Game & Fish letter that was docketed. And I apologize.
21 I am really tired. I can't remember whether it was this
22 morning or whether it was last night.

23 I asked if they would be opposed to me calling a
24 biologist. And given Mr. Walker's comments which sort
25 of sparked that memory, I was going to ask, and I

1 apologize not asking this morning -- so it must have
2 been last night I got the letter -- would that be okay?

3 CHMN. FOREMAN: Be okay what?

4 MS. WEBB: If I called a biologist as a witness.

5 CHMN. FOREMAN: Well, you are going to need to
6 talk to the other parties and see whether any of them
7 object. And then you are going to need to come to me
8 and talk about that.

9 MS. WEBB: Okay.

10 CHMN. FOREMAN: My suggestion is that, given the
11 contents of the letters, which I have now read, it will
12 be interesting to me whether you folks intend to object
13 to the admission of those letters and whether the
14 applicant, if you do object to the admission of those
15 letters, says, oh, shucks, we will just leave them out.

16 So I think that you folks need to get together
17 and talk, and maybe you can do that either later this
18 afternoon after we break here or do it in the morning.
19 You need to contact these people or decide whether you
20 really want to talk to them or need to talk with them.
21 And then if you are serious about calling them as a
22 witness, then we need to talk about it first thing in
23 the morning.

24 My guess is this late in the proceeding, it is
25 going to be difficult to get them down here so that they

1 would be able to testify tomorrow afternoon. But that's
2 something that I can't speculate about right now.

3 MS. WEBB: Okay. All right. If the other
4 parties are okay with that, I would like to spend a
5 couple minutes at least to be able to discuss the Game &
6 Fish. And I did, like I said, speak with them before
7 the hearing started today via e-mail about that.

8 CHMN. FOREMAN: All right. So we will proceed
9 in that fashion. And we still have lots of work to do
10 tomorrow.

11 We will look forward to seeing you folks at 9:00
12 in the morning. And if there are issues to address with
13 regard to the letters, with regard to prospectively some
14 new witnesses, I will be available shortly before 9:00
15 and we can talk about it then.

16 We are in recess for the evening.

17 (The hearing recessed at 5:04 p.m.)

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

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

WITNESS my hand this 18th day of December,
2011.

COLETTE E. ROSS
Certified Reporter
Certificate No. 50658