

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

11
12
13 At: Tucson, Arizona
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Offers of Proof exhibits.)

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 9:03 a.m. on the 14th 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

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1 CHMN. FOREMAN: Let's see. Looks like we are
2 all here and ready. Are we ready to proceed?

3 MR. GELLMAN: Yes, Mr. Chairman. One procedural
4 matter. We had offered two letters yesterday, the Game
5 & Fish letter and the Sierra Club letter. We will
6 withdraw moving those at this time. We had met and
7 conferred with the parties after the conclusion of
8 yesterday's proceedings.

9 CHMN. FOREMAN: Okay. Is anybody else going to
10 offer either or both of those?

11 Mr. Robertson.

12 MR. ROBERTSON: Mr. Chairman, Save the Scenic
13 Santa Ritas was part of the meet and confer that
14 Mr. Gellman referred to just a moment ago. And we are
15 in support of his description of the outcome of that
16 meeting, that the letters would not be offered. So I
17 just wanted to state that for the record. The letters
18 are a part of the Commission's docket, so they are part
19 of the overall information.

20 CHMN. FOREMAN: All right. And I think it is
21 important to explain the situation. These two letters,
22 unfortunately, arrived too late for them to be
23 meaningfully considered in the hearing. And I am not
24 saying it would have not been possible to have included
25 these two letters, but I would encourage the authors of

1 the letters in future line siting proceedings to try and
2 provide their input in writing enough in advance so that
3 the parties have a meaningful opportunity to respond to
4 it.

5 It is one thing when we have just an applicant.
6 When we have multiple parties and it has been clear for
7 some time that there were multiple parties and
8 conflicting interests, it is just not reasonable to
9 expect that this sort of input would be able to be
10 considered.

11 So I regret that we will be setting these
12 letters aside. Both of these, both of the sources of
13 the letters are sources of information that are usually
14 provided, and as I said, I think it is unfortunate under
15 the circumstances that the letters arrived as late as
16 they did, and so did not make it into the evidentiary
17 record for our hearing.

18 MR. ROBERTSON: Mr. Chairman, your remarks are
19 most appreciated from the standpoint of the Scenic Santa
20 Ritas. And against that background, at this time I
21 would like to offer the two letters as exhibits to be
22 received into the record. I know from the standpoint of
23 Mr. Metli and me, when we participated in the meet and
24 confer yesterday, we did not have the dates of the
25 letters in mind, and we assumed they had been in Docket

1 Control for some time. So your comments do alter my
2 thinking.

3 I would like to offer them at this time,
4 speaking only on behalf of the Scenic Santa Ritas group,
5 as Exhibits S-7 for the Sierra Club letter and S-8 for
6 the Game & Fish Department letter. And then obviously I
7 would defer to each of the other parties who were part
8 of the meet and confer to express their view with
9 respect to each letter.

10 CHMN. FOREMAN: Okay. Well, let me recover from
11 my case of whiplash here. And so we are going to go 180
12 on this.

13 All right. Is there anybody now who objects to
14 S-7 and S-8?

15 MR. ROBERTSON: Yes, S-7 would be the Sierra
16 Club letter dated December 12, 2011. That was addressed
17 to you in your capacity as Chairman of the Committee.
18 And S-8 would be the letter from Game & Fish which was
19 addressed to Mr. Beck. And I don't see a date on that
20 letter.

21 CHMN. FOREMAN: All right. Is there an
22 objection to either letter?

23 MR. GELLMAN: Mr. Chairman, the applicant has no
24 objection. The reason why we withdrew them, quite
25 frankly, is that we were going to object if this opened

1 the door to certain other parties calling additional
2 witnesses at this time. And we don't believe that these
3 letters open the door to allow additional parties to
4 disclose witnesses at this late time. So to clarify why
5 we withdrew them, that's the reason.

6 And again, we don't object as long as it doesn't
7 open the door to parties calling additional witnesses
8 that have not been previously disclosed at this time.

9 CHMN. FOREMAN: All right. Mr. James.

10 MR. JAMES: Mr. Chairman, Committee members --
11 hopefully this is working -- we do object. And we
12 object primarily for the reason that you had indicated
13 previously. And that is, while there may be some value
14 to these letters, particularly the Game & Fish
15 Department letter that indicates their preference for
16 the preferred alternative, at some point we have got to
17 draw the line in terms of evidence.

18 And you established a schedule, you set
19 deadlines. I think at the beginning of the hearing you
20 admonished the parties to adhere to those deadlines and
21 procedural requirements. And it was our position
22 yesterday during the meet and confer that, as
23 Mr. Robertson indicated, they are in the docket, they
24 could be received as public comment and given
25 appropriate weight as comment. But to admit them into

1 the hearing at this point, without having an opportunity
2 to see them until yesterday, I think is inappropriate.

3 CHMN. FOREMAN: What is your prejudice?

4 MR. JAMES: Well, the prejudice primarily is,
5 again, the Sierra Club letter basically says that the
6 Sierra Club is opposing the project because it would
7 help to further facilitate one of the most destructive
8 mining proposals in our state, the Rosemont Copper
9 project, it is inappropriate to review the line in a
10 vacuum, and so on.

11 It is, again, directly contrary to your ruling
12 at the procedural conference last Thursday that the
13 issue of the impacts of our client's mine should not be
14 at issue in this case, the line siting case. It is not
15 a case about Rosemont's project.

16 CHMN. FOREMAN: Is there anything that surprises
17 you about the Sierra Club's position?

18 MR. JAMES: Well, I think there is some
19 statements in here that we would -- factual statements
20 that we would disagree with in this letter, and, you
21 know, for example, the statement that, again, our
22 client's project would indirectly affect more than
23 145,000 acres of land. I mean, again, it is a situation
24 where evidence is being introduced attacking Rosemont's
25 project.

1 And, again, we have indicated, Mr. Chairman,
2 that we did not intend to call witnesses today unless we
3 were put in the position of having to address some of
4 these assertions about the impacts of the mine. And the
5 way we look at this, to be blunt, this is sort of a back
6 door way of getting, again, getting those attacks on my
7 client's project into the record.

8 And, again, as you have ruled and as we have
9 maintained all along, this is a line siting hearing. It
10 is not a hearing about Rosemont's project. Rosemont's
11 project is regulated by a variety of other agencies. As
12 you know, we are in the middle of obtaining those
13 approvals. And this is just another instance of the
14 mine leaking into this proceeding, and we think it is
15 inappropriate, as I said earlier.

16 CHMN. FOREMAN: Are there any other objections?
17 Mr. Magruder.

18 MR. MAGRUDER: Mr. Chairman, I remember reading
19 in the purchase order that -- procedural order that
20 exhibits could be entered as long as the parties had
21 seen copies before, and you can enter them actually the
22 day you were going to use them as long as they were
23 understood and they could respond to them. And I think
24 that that's right.

25 CHMN. FOREMAN: That's almost right. I said for

1 good cause.

2 MR. MAGRUDER: For good cause. And I think that
3 the state department is a reasonable entity to write a
4 letter, and one of the more, the larger environmental
5 organizations in the state to write a letter. I'm sorry
6 they have late. I have nothing to do with that. I just
7 think that if the case needs to be presented by a party
8 to review the evidence and they haven't had a chance to
9 present their case, they can still use that in their
10 case if they want to counter the evidence.

11 CHMN. FOREMAN: All right. Well --

12 MS. WEBB: Wait, Mr. Chairman.

13 CHMN. FOREMAN: I am sorry, Ms. Webb, you had
14 something you wanted to say.

15 MS. WEBB: Yes. Mr. Chairman, I was one of the
16 ones who objected to having them entered into the record
17 yesterday, number one, the Sierra Club one because I
18 have been trying for years to get public comment to be
19 part of the record. And I assumed it was part of the
20 docket just like in the past. I am all about fair is
21 fair, so 100 percent would I like that to be part of the
22 record. But fair is fair.

23 So the one I have the concern about was the
24 agency letter. I did not have a chance to question that
25 witness as a member of the stakeholder group for a long

1 time. I absolutely know that the stakeholders were
2 never made aware of the statutes that allow the
3 Committee or the Commission to deny a CEC, and I was not
4 able to question that witness to ask whether do they
5 understand that they had the right to say they didn't
6 want any line at all. So that was my reason behind
7 wanting the letter to not be entered.

8 However, I was not going to oppose
9 Mr. Robertson's after hearing your words this morning.
10 But since Mr. Black brought up the point about the
11 145,000 acres or thereabouts being impacted, that
12 information is in the DEIS, and is being entered, my
13 understanding is, through the offer of proof aspect.

14 But the one thing I never thought I would say, I
15 do agree with Rosemont. This is supposed to be a line
16 siting case. So I hope that that's what we can get back
17 to, and talk about what the regulations are and
18 understand that this is about Arizona and what Arizona
19 is supposed to be doing in regulating.

20 I can go either way on this. I originally
21 objected, but I was not going to oppose Mr. Robertson's
22 motion.

23 CHMN. FOREMAN: So today, now, right this
24 minute, you do not object to either letter; true or
25 false?

1 MS. WEBB: True.

2 CHMN. FOREMAN: Very good. All right. Well, it
3 is always humbling to have someone who is ruling on
4 evidence to have the rug pulled out from underneath him
5 like this. But I am going to sustain the objection with
6 regard to Exhibit S-7, the Sierra Club. I am going to
7 overrule the objection with regard to S-8, the Game &
8 Fish Department letter.

9 Both are late. Late disclosed material can
10 nevertheless be admitted into evidence if good cause is
11 shown. None of the parties here caused either of these
12 letters to be late. All of the parties have had an
13 opportunity to review them. I have read them now and it
14 doesn't appear to me that there is anything in either
15 that is, or should be surprising to anyone, or that a
16 party now could not reasonably respond to.

17 The reason for sustaining the objection to S-7,
18 the Sierra Club letter, is the ground raised by
19 Mr. James. It is consistent with my prior ruling with
20 regard to what is material in this matter.

21 S-8 does talk about the variable desirability of
22 alternatives to the line site proceeding, and therefore
23 I believe it has materiality. The Game & Fish
24 Department is an important state agency, in fact, used
25 to have representation on this Committee, and is one of

1 the agencies to which I anticipate the conditions of the
2 CEC will require the applicant to report. And so having
3 their views integrated into the consideration of the
4 Committee, it seems to me, is desirable.

5 (Exhibit S-8 was admitted into evidence.)

6 CHMN. FOREMAN: Again, I would hope that in the
7 future these letters could be provided further in
8 advance of the hearing so that the parties would have a
9 better opportunity to prepare for the hearing. It is
10 hard to get everybody together in one spot for one
11 period of time. These things cost money. They take
12 time. And sometimes you have to say, you know, you just
13 waited too late to try and inject information into the
14 process. And to allow late objective information into
15 the process can be unfair. So you have to -- I don't
16 like to keep what would otherwise be valuable
17 information out of the record, but sometimes you just
18 have to draw a line. So that's what I have done here.

19 Any questions about my ruling?

20 (No response.)

21 CHMN. FOREMAN: All right. Are there other
22 procedural issues we need to address before we begin
23 this morning? Anything else?

24 (No response.)

25 CHMN. FOREMAN: All right. Now, as I -- what do

1 I remember. I remember that we were about ready to
2 conclude cross-examination. And I think we had gotten
3 to the -- to Rosemont. You folks were next. Okay.

4 MR. BLACK: Yes, Chairman.

5 CHMN. FOREMAN: Please proceed.

6 MR. BLACK: Chairman, members of the Committee,
7 I just have a few clarifying questions for Ms. Weinstein
8 and Mr. Beck.

9

10 CROSS-EXAMINATION

11 BY MR. BLACK:

12 Q. Ms. Weinstein, was Pima County invited to
13 participate in the stakeholder group?

14 A. BY MS. WEINSTEIN: Yes.

15 Q. And did Pima County representatives participate
16 in the stakeholder group?

17 A. BY MS. WEINSTEIN: We had a representative at
18 our last meeting.

19 Q. And how many meetings did you have total?

20 A. BY MS. WEINSTEIN: Seven, seven meetings.

21 Q. Was there any indication as to why they did not
22 participate in the other six stakeholder group meetings?

23 A. BY MS. WEINSTEIN: They indicated because of
24 their position on the line, they declined to participate
25 in the stakeholder group.

1 Q. Thank you.

2 Clarification concerning your visual impact
3 analysis, Ms. Weinstein. Have you testified before,
4 before the Line Siting Committee?

5 A. BY MS. WEINSTEIN: Yes.

6 Q. And in those cases, did you use the same visual
7 impact analysis methodology?

8 A. BY MS. WEINSTEIN: Typically, yes.

9 Q. And were any concerns raised by the Siting
10 Committee or the Commission concerning that methodology?

11 A. BY MS. WEINSTEIN: Not that I recall.

12 Q. Okay. Thank you.

13 One more question, if you could please bring up
14 photo number 7 of Lopez Pass. Thank you.

15 And in questions by Ms. Webb yesterday, with
16 respect to that view, do you know if the property
17 located from that view is private or public property?

18 A. BY MS. WEINSTEIN: Private.

19 Q. So isn't it true that anybody looking at that
20 particular view would need to be an invited guest?

21 A. By MS. WEINSTEIN: Yes.

22 Q. Thank you. That's all my questions for you.

23 Mr. Beck, is it your understanding that if the
24 CEC is approved and power is eventually delivered to
25 Rosemont Copper, that those rates that would be applied

1 would be tariffed rates?

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

3 Q. So there is no special contract that's being
4 currently discussed between the parties?

5 A. BY MR. BECK: No, there is not.

6 Q. Thank you.

7 I would like to go to this exhibit here, and I
8 would just like to ask you a few questions concerning
9 Alternative 1 versus the preferred route. Can you
10 explain why this section starting here to node, I think,
11 140, why that would be double circuit?

12 A. BY MR. BECK: The reason for that to be double
13 circuit would be to allow for a distribution circuit
14 that would be serving the booster pumps along the water
15 pipeline.

16 Q. So if Alternative 1 were chosen, isn't it true
17 that you would still have impacts to viewsheds based on
18 the distribution poles that would be located along this
19 section?

20 A. BY MR. BECK: That is my position, that the
21 purposes of the water line would, there would still be a
22 distribution line required that likely would be an
23 overhead line along the water pipeline.

24 Q. And so that would mean that there would be
25 ground disturbance along this line as well as

1 Alternative 1?

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

3 Q. So just to clarify, one of the advantages of the
4 preferred route is less ground disturbance?

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

6 CHMN. FOREMAN: Let me -- Member Haenichen had a
7 question.

8 MEMBER HAENICHEN: Mr. Beck, I thought you
9 testified yesterday that that line, that distribution
10 line could be buried along with the water facility.

11 MR. BECK: What I testified to yesterday is that
12 the distribution line is planned to be underground from
13 the Santa Rita Experimental Range boundary to the west
14 to one booster pump.

15 MEMBER HAENICHEN: Yeah.

16 MR. BECK: It doesn't preclude the probability
17 of undergrounding distribution in the other direction.

18 MEMBER HAENICHEN: Thank you.

19 CHMN. FOREMAN: Let me back up and make sure I
20 understand then. You were planning, then, if the option
21 posited by Mr. Black in his question occurred, to have
22 an above ground distribution line along the links like
23 155 and 105 to feed the water line booster pumps, is
24 that correct?

25 MR. BECK: It would not be along 105, it would

1 be along 155. And to clarify for the record, that would
2 not be TEP, because the distribution service is either a
3 function of the Rosemont Copper Company and/or TRICO
4 Electric, because the booster pumps east of the Santa
5 Rita Experimental Range up to a certain point are within
6 the TRICO service territory.

7 CHMN. FOREMAN: But there would be a
8 distribution line, not a TEP distribution line, but a
9 distribution line along link 150 or segment 155, even if
10 there was -- even if the alternative was used?

11 MR. BECK: There will have to be a distribution
12 service of some type along link 155 and also link 140.

13 CHMN. FOREMAN: So in that area right in there?

14 MR. BECK: Correct.

15 CHMN. FOREMAN: Okay. All right. Thank you. I
16 am sorry, make sure I understood the question.

17 MR. BLACK: I think Member Haenichen had a
18 question.

19 BY MR. BLACK:

20 Q. Just to clarify, Mr. Beck, the reason why the
21 line would be underground in this section is because the
22 Santa Rita Experimental Range has requested it?

23 A. BY MR. BECK: Not only has the Santa Rita
24 Experimental Range requested it, I believe State Land is
25 now requiring it as a result of that request.

1 Q. But isn't it true that from this section on,
2 that is private land?

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

4 Q. And that land is owned by Rosemont Copper?

5 A. BY MR. BECK: Yes.

6 Q. And any distribution line that goes along this
7 section would be above ground?

8 A. BY MR. BECK: I am sure that would be the intent
9 of Rosemont, yes.

10 Q. Thank you.

11 CHMN. FOREMAN: Member Haenichen.

12 MEMBER HAENICHEN: This is a question for you,
13 Mr. Chairman. Given this discussion, could we as a
14 Committee put as one of the conditions that both of
15 those distribution lines be put underground?

16 CHMN. FOREMAN: And off the top of my head I
17 think the answer would be no, because the party -- if
18 TRICO is the party that is responsible for the line,
19 they are not a party to this proceeding, and they are
20 not building something new. They already have a legal
21 right to have that line there. It is not about -- and
22 also the line, I believe, would be below our
23 jurisdiction amount. So there are multiple reasons why
24 we would not be able, not be in a position where we
25 could do something about it.

1 Now, the Commission might be able to do
2 something about it, but I am not sure that they could do
3 it under the line siting statutory authority. It would
4 have to come under another way. And I am not sure that
5 they could, since -- and Mr. Beck can please confirm my
6 understanding -- that mine is presently in existence.

7 What you are talking about doing with that
8 distribution line was either -- was collocating it with
9 the line that would be built that was along the
10 preferred route, is that correct?

11 MR. BECK: That is not quite correct.

12 CHMN. FOREMAN: Okay.

13 MR. BECK: There is an existing distribution
14 line along the Santa Rita Road boundary that TRICO has.
15 And the intent was that they would serve the one booster
16 pump from that existing distribution line. They would
17 likely tie that line to a distribution line coming down
18 from the Rosemont substation that would provide
19 distribution service to the subsequent booster pumps.
20 And that would be a new line, whether it be collocated
21 with the 138 or a stand-alone, depending on the route
22 selected.

23 CHMN. FOREMAN: But as a distribution line it
24 would be below the jurisdictional level for
25 consideration by this Committee?

1 MR. BECK: Yes. The TRICO line is a 23kV --

2 CHMN. FOREMAN: Okay.

3 MR. BECK: -- distribution line.

4 CHMN. FOREMAN: So I think that answers the
5 question.

6 Member Haenichen.

7 MEMBER HAENICHEN: Mr. Chairman, I wasn't aware
8 that there already were possible viewshed issues
9 associated with an existing line. So with that in mind,
10 I am satisfied.

11 CHMN. FOREMAN: Okay. Very good.

12 You may proceed.

13 MR. BLACK: Thank you. Just a couple more
14 questions, Chairman, members of the Committee.

15 BY MR. BLACK:

16 Q. Mr. Beck, there were some questions yesterday
17 concerning line ownership, line construction and
18 maintenance.

19 A. BY MR. BECK: Yes.

20 Q. In the event that Rosemont were to own a portion
21 of the transmission line, isn't it true that in terms of
22 construction, Rosemont would use TEP qualified vendors?

23 A. BY MR. BECK: Yes. As part of our negotiation
24 of any agreement where we serve the Rosemont load, we
25 would require that the line be built to our standards,

1 that the contractors would be jointly selected, or we
2 would at least have some kind of review and approval
3 right over the contract.

4 Q. And that would include contract maintenance?

5 A. BY MR. BECK: In addition to the construction,
6 we would also have requirements regarding who would
7 operate the line, and that there would be a qualified
8 operator and person to maintain.

9 Q. So, in essence, it would be TEP would certainly
10 still have a role?

11 A. BY MR. BECK: Absolutely.

12 MR. BLACK: No further questions, Your Honor.

13 CHMN. FOREMAN: Okay. Any redirect?

14 MR. GELLMAN: Yes, Mr. Chairman.

15

16 REDIRECT EXAMINATION

17 BY MR. GELLMAN:

18 Q. Mr. Beck, how sturdy are these monopoles that
19 are going to be used for this project?

20 A. By MR. BECK: They are very sturdy. I provided
21 testimony in the past in other cases regarding similar
22 poles up in the Las Vegas area being hit by a Suburban
23 vehicle and the poles still standing. Our experience
24 has been similar, that we just haven't had failures of
25 poles from vehicle hits. And even in storms our steel

1 poles hold up very well.

2 Q. So how likely does TEP believe that they will be
3 able to continue service to Rosemont with this project?

4 A. BY MR. BECK: We are very confident that, with a
5 steel pole line, service will not be interrupted due to
6 loss of poles.

7 Q. And even if there was a loss of the pole, how
8 likely or how much time would it take for TEP to restore
9 service, generally speaking?

10 A. BY MR. BECK: If it is a single pole, within
11 24 hours we should have that pole back up and the line
12 back in operation.

13 Q. Mr. Beck, I think in the application it talks
14 about the poles typically being 75 to 100 feet high.
15 Based on what you know about the design and engineering
16 to date, will the poles tend to be on the shorter side,
17 the taller side?

18 A. BY MR. BECK: Generally they will be in the
19 85-foot range that we have indicated in the application.
20 We will only go taller as needed for terrain situations
21 where we have to cross other lines, and/or in instances
22 where we are trying to avoid cultural sites or other
23 sites by spanning. And the way we can make longer spans
24 is to put taller structures on either side of the
25 constraint.

1 Q. So when the application and your testimony
2 discusses 750 feet as a span, is that a typical span, an
3 average span?

4 A. BY MR. BECK: It is a typical, slash, average
5 span. We will have longer spans as required due to
6 terrain and/or trying to span sites.

7 Q. Mr. Beck, I think there was some
8 cross-examination about the notice for this hearing.
9 Regarding the signs that were posted, is there any
10 additional information in response to those questions?

11 A. BY MR. BECK: Yes, there is. Just to clarify
12 the record, we did not include photos of all of the sign
13 installations in our exhibit to the application. We put
14 a representative sample of photos of the signs. We have
15 31 signs installed. They were installed over multiple
16 days. And the actual last sign that was installed was
17 installed on the 27th. We were a couple signs short and
18 we had to order a couple more.

19 Q. And by the 27th you mean the 27th of November?

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

21 Q. So approximately two weeks before the beginning
22 of these hearings?

23 A. BY MR. BECK: Yes. And also just for the
24 record, the last couple of signs that were installed
25 were installed along Highway 83. They were not actually

1 on the alternative routes, but they were to kind of give
2 a general indication of where the project was.

3 Q. There were many questions raised about the
4 ownership of the line. Regardless of ownership, what
5 kind of control will TEP have over the design and
6 engineering of this project?

7 A. BY MR. BECK: Well, as I briefly indicated to
8 Mr. Black, one of the requirements we will have is to
9 have oversight of any contractors. We will also require
10 construction to our specifications. We have offered up
11 to Rosemont, should we go there, that we have an
12 alliance with our suppliers, and those will be available
13 for the project. So I think we will be fully involved
14 in the design of the line.

15 Q. Thank you, Mr. Beck.

16 Ms. Weinstein, there were a few questions raised
17 about the Helvetia cemetery. And even if that was
18 designated a historic property or historic site, do you
19 and EPG believe that that area could still be avoided?

20 A. BY MS. WEINSTEIN: Yes.

21 Q. And why do you believe that it is not a historic
22 site?

23 A. BY MS. WEINSTEIN: We consulted with the Arizona
24 State Museum and were directed by them to not record the
25 cemetery as a historic or archeological property,

1 primarily because it appeared to be active, in active
2 use, currently being maintained. There are fairly fresh
3 plastic flowers out there, figurines and some
4 maintenance of vegetation.

5 So based on their direction, what we did do is
6 fill out a SHPO form referred to as the SHPO historic
7 property inventory form for cemeteries and graves. And
8 that was submitted to Arizona State Museum in a letter
9 report.

10 Q. There were also some questions raised about
11 visual impacts from State Route 83. This may be a
12 better question for Ms. Johnson. Why did EPG consider
13 the mine operations when considering the visual impacts
14 of the project from State Route 83?

15 A. BY MS. JOHNSON: Primarily because the
16 transmission line would not be built without the mine,
17 and in that particular viewshed, the mine would dominate
18 the landscape, or that would be the primary
19 modifications that you would see.

20 Q. Finally, Ms. Weinstein, there were some
21 questions raised about Committee Exhibit 3, particularly
22 on page 2, regarding, I believe it is, Mr. Pepper's
23 comments about what I believe is the preferred route
24 likely to have minimal impacts to land use. Do you have
25 a copy of that exhibit in front of you?

1 A. BY MS. WEINSTEIN: Yes, page 3. Okay. Yes.

2 Q. And why does EPG believe that there is evidence
3 to support your finding that the preferred route will
4 likely have minimal impacts?

5 A. BY MS. WEINSTEIN: EPG considers impacts to land
6 use as a direct physical barrier, for example, to the
7 use out there. We consider these to be minimal impacts
8 with the power line, in that the operations that are
9 occurring out there can continue to occur. We are also
10 with the preferred route, along the route, the alignment
11 that the range, who was the primary land user in our
12 study area, prefers for their purposes. So we feel we
13 are meeting their intent.

14 MR. GELLMAN: Thank you, Ms. Weinstein,
15 Ms. Johnson. With that I have no further questions.

16 CHMN. FOREMAN: All right, very good.

17 Let me ask Colette. Do you have a copy of
18 Exhibits S-7 and S-8?

19 THE REPORTER: No.

20 CHMN. FOREMAN: All right. I have copies. Does
21 somebody have copies that we could mark as S-7 and S-8?

22 We will get those to you at the break. Remind
23 me. Thank you.

24 Now we are ready to move on, I think, and we are
25 going to start with the Tohono O'odham Nation.

1 Ms. Berglan, are you ready to proceed?

2 MS. BERGLAN: Yes, Mr. Chairman. Can I have a
3 five-minute recess to get Mr. Steere arranged at the
4 table?

5 CHMN. FOREMAN: Yes, we will take a recess. We
6 will get the exhibits marked then.

7 (A recess ensued from 9:37 a.m. to 9:45 a.m.)

8 CHMN. FOREMAN: Let's go back on the record now.
9 Mr. Gellman.

10 MR. GELLMAN: Again, my apologies.

11 BY MR. GELLMAN:

12 Q. Mr. Beck, if you could, just quickly clarify
13 your answer to my question regarding posting of signs
14 regarding notice.

15 A. BY MR. BECK: Yes. I believe I misstated when I
16 said that the last three signs installed were along
17 Highway 83. They were actually signs that were placed
18 at the Gunsight Pass and Lopez Pass. So they were
19 after-the-fact signs that were put up at the request of
20 one of the parties. And they were not the Highway 83
21 signs; they were the ones up at the pass, just for the
22 record.

23 Q. And that was in late November?

24 A. BY MR. BECK: That was on November 27th.

25 MR. GELLMAN: Thank you. Again, my apologies.

1 CHMN. FOREMAN: All right. Very good.

2 Let's proceed now to the case for the Tohono
3 O'odham Nation. Ms. Berglan, you may proceed.

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

5 One quick housekeeping matter, I passed out an
6 amended Exhibit O-4. The purpose of that is there were
7 objections lodged by counsel for Rosemont in response to
8 that. And there is some additional redactions to the
9 written testimony of Peter Steere.

10 CHMN. FOREMAN: All right.

11 MS. BERGLAN: With that, the Nation calls Peter
12 Steere.

13 CHMN. FOREMAN: All right. Mr. Steere, do you
14 prefer an oath or affirmation?

15 MR. STEERE: Oath is fine.

16 (Peter Steere was duly sworn.)

17 CHMN. FOREMAN: Would you tell us your name and
18 spell your last name for the court reporter.

19 MR. STEERE: My name is Peter Steere, and my
20 last name is spelled S-t-e-e-r-e.

21 CHMN. FOREMAN: Counsel, you may proceed.

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

23

24

25

1 PETER STEERE,
2 called as a witness on behalf of the Tohono O'odham
3 Nation, having been previously duly sworn by the
4 Chairman to speak the truth and nothing but the truth,
5 was examined and testified as follows:

6

7 DIRECT EXAMINATION

8 BY MS. BERGLAN:

9 Q. Mr. Steere, where are you employed?

10 A. I am employed by the Tohono O'odham Nation.

11 Q. And what is the position there?

12 A. I wear three different hats. I am the tribal
13 historic preservation officer, I am the tribal
14 archeologist, and I am a manager of the cultural affairs
15 office.

16 Q. And in Exhibit O-4 of the Nation's binder in
17 front of you, you filed some prefiled testimony, written
18 testimony in this matter?

19 A. Yes. I have that in front of me.

20 Q. Okay. Thank you.

21 And was this testimony prepared by you or under
22 your guidance?

23 A. It was prepared by me.

24 Q. And the exhibit sets out a series of questions
25 and answers. If I ask you those same questions today

1 would your answers be the same?

2 A. Yes, they would.

3 Q. And do you have any changes or corrections that
4 you would like to make to your written testimony at
5 Exhibit O-4?

6 A. Could you repeat that, please?

7 Q. Do you have any corrections or changes that you
8 would like to make to Exhibit zero four?

9 A. The only correction we would make would be
10 impacts on one site that was not considered in the EPG
11 report.

12 Q. And what is that?

13 CHMN. FOREMAN: Excuse me, Ms. Berglan, you mean
14 Exhibit O-4?

15 MS. BERGLAN: Yes, Mr. Chairman. Yes, O-4 not
16 zero four.

17 CHMN. FOREMAN: Thank you. Proceed.

18 THE WITNESS: Say again.

19 BY MS. BERGLAN:

20 Q. What site are you referring to?

21 A. Huerfano Butte.

22 Q. Okay. Thank you.

23 And so is it fair to say that you will adopt the
24 written testimony set out at O-4 as part of your
25 testimony today?

1 A. Yes.

2 MS. BERGLAN: I would move to admit Exhibit O-4
3 of the Nation's exhibits.

4 CHMN. FOREMAN: Is there any objection?

5 MR. JAMES: Your Honor.

6 CHMN. FOREMAN: Mr. James.

7 MR. JAMES: Just a clarifying question. We had
8 some issues with the original version of the testimony.
9 I just want to verify that what has been marked as
10 Exhibit O-4 contains the redactions that the Nation's
11 counsel and I had discussed.

12 MS. BERGLAN: Yes, Mr. James. We addressed that
13 a couple seconds ago, and it is entitled the amended
14 redacted version.

15 MR. JAMES: Okay. I just wanted to make sure
16 that what goes into the record, Your Honor, is what we
17 had discussed, that's all. With that, we have no
18 objection.

19 CHMN. FOREMAN: Very good. Are there any other
20 objections?

21 (No response.)

22 CHMN. FOREMAN: All right. Very good. No
23 objection, good cause appearing, it will be ordered
24 admitting Exhibit O-4.

25 (Exhibit O-4 was admitted into evidence.)

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

2 BY MS. BERGLAN:

3 Q. And Mr. Steere, if you could, turn to the
4 exhibit that has been marked for identification
5 Exhibit O-1. And what is that document?

6 A. That's the testimony?

7 Q. No, in the binder, the --

8 A. My binder has all come apart. Hang on a sec.

9 MEMBER RODRIGUEZ: Mr. Chairman, our exhibits
10 are not marked. So can we get clarification exactly
11 which ones? We have papers in front of us but they are
12 not marked with an exhibit number.

13 CHMN. FOREMAN: You are talking now about the
14 small binder or the larger white binder?

15 MS. BERGLAN: The small binder that's entitled
16 Tohono O'odham Nation and Marshall Magruder exhibits,
17 the small white binder passed out on Monday.

18 MEMBER RODRIGUEZ: Well, our seats were set up
19 late so Mr. Palmer and I do not have one. Do you have
20 one?

21 MR. ROBERTSON: Mr. Chairman.

22 CHMN. FOREMAN: Mr. Robertson.

23 MR. ROBERTSON: Just listening to what
24 Ms. Berglan said, I am wondering if she is referring to
25 the offer of proof notebook, because that did have

1 sections for the Tohono O'odham Nation, Mr. Magruder,
2 and Ms. Webb, in addition to the Scenic Santa Ritas. I
3 don't know if there was another notebook passed out or
4 not, but I know ours were white notebooks.

5 MEMBER RODRIGUEZ: We got it. We have it.
6 Thank you for clarifying that.

7 CHMN. FOREMAN: We have two -- I have two white
8 notebooks.

9 MEMBER RODRIGUEZ: We do not have this one.

10 CHMN. FOREMAN: On the outside says offers of
11 proof on behalf of Save the Scenic Santa Ritas, Tohono
12 O'odham Nation, Elizabeth Webb, Marshall Magruder. That
13 has a section in it that is tabbed Tohono O'odham
14 Nation. And my binder has one exhibit, Exhibit O-6. In
15 the smaller binder, I have a tab that says Tohono
16 O'odham Nation, and I have five exhibits, O-1, 2, 3, 4,
17 and 5. And I am assuming that the amended redaction is
18 supposed to replace what is presently in the small white
19 binder. Is that true?

20 MS. BERGLAN: Yes, Mr. Chairman.

21 CHMN. FOREMAN: All right. So you wish us now
22 to look at which exhibit?

23 MS. BERGLAN: In the small, small white binder,
24 Exhibit O-1.

25 CHMN. FOREMAN: O-1, okay. All right. Very

1 good. Thank you.

2 MS. BERGLAN: Sorry for the confusion.

3 BY MS. BERGLAN:

4 Q. And that document is entitled the National
5 Register of Historic Places registration form, correct?

6 A. I have that in front of me.

7 Q. Okay. And just in summary, what is that
8 document?

9 A. This is a nomination form that was prepared by a
10 contractor at the direction of the United States Forest
11 Service at the request of the Tohono O'odham Nation to
12 nominate to the National Register of Historic Places the
13 Ce:wi Duag traditional cultural place, which includes
14 almost all of the Santa Rita Mountains. And this is the
15 form that was prepared by a contractor submitted to the
16 Nation for review, submitted to the Forest Service for
17 review, and then subsequently submitted to the State
18 Historic Preservation Office.

19 Q. And is it a true and accurate copy of the
20 document submitted to the State Historic Preservation
21 Office?

22 A. Yes, it is.

23 Q. And would this document assist the Committee in
24 understanding your testimony today?

25 A. Yes.

1 Q. And with regard to the exhibit that has been
2 marked for identification as O-2, and that is a letter
3 with a letterhead Arizona State Historic Parks to Jim
4 Upchurch, dated November 14th, 2011, do you have that in
5 front of you?

6 A. Yes, I have it.

7 CHMN. FOREMAN: Counsel, before you move on,
8 Member Richins had a question about O-1.

9 MEMBER RICHINS: Mr. Steere, when was the
10 application submitted for historic designation? The
11 date I see on it is October 10th, 2011. Is that
12 correct?

13 THE WITNESS: That's when the final paperwork
14 was submitted. The planning for it began almost two
15 years ago. And the contractor prior to -- this is
16 basically like a third draft. There were several
17 earlier drafts. This was a final draft that, after
18 review by the Forest Service and the Nation, was sent in
19 October, sounds about right for the date, but the
20 planning for it went back almost two years. And the
21 initial work, the contractor who was directed by the
22 Forest Service to do this started about 10 months ago.

23 MEMBER RICHINS: Was the application submitted
24 in response to the proposal?

25 THE WITNESS: What proposal?

1 MEMBER RICHINS: The line siting proposal.

2 THE WITNESS: No, it was not.

3 MEMBER RICHINS: What about the mine?

4 THE WITNESS: It was submitted.

5 MEMBER RICHINS: In response to the mine?

6 THE WITNESS: In relation to the Rosemont mine.

7 CHMN. FOREMAN: Did you get that?

8 Colette has two ears, but she has only one
9 machine. So it is helpful if just one person talks at a
10 time.

11 All right. Let's proceed.

12 MEMBER RICHINS: Thank you.

13 CHMN. FOREMAN: Member Noland.

14 MEMBER NOLAND: Thank you.

15 I have a question about the application also.

16 It has a date that says expires 5/31/2012. What does
17 that mean?

18 THE WITNESS: Where is that?

19 MEMBER NOLAND: It is on the top of page 7 and
20 page 8, page 9, and so on at the very top above Pima
21 County, Arizona.

22 THE WITNESS: I am not sure what that is, unless
23 that is a date stamp from the State Historic
24 Preservation Office that any additional edits they
25 wanted, changes they want, have to be submitted by that

1 date. I am not really sure. I am assuming that's a
2 date that's put on there by the State Historic
3 Preservation Office, not by us.

4 MEMBER NOLAND: Okay. Mr. Steere, do you have a
5 copy of what they actually submitted? Is this supposed
6 to be it?

7 THE WITNESS: I have a copy of the form, yes.

8 MEMBER NOLAND: Is it not signed? I am looking
9 at page 1 where it would have signature of certifying
10 official and a date. We have neither of those on this.

11 THE WITNESS: I can't answer. I do not know why
12 the Coronado National Forest did not sign it when they
13 submitted it to the State Historic Preservation Office,
14 unless the copy I have I just didn't get the signed copy
15 that Supervisor Upchurch would have signed, you know,
16 when it was sent on to the State Historic Preservation
17 Office.

18 MEMBER NOLAND: It would seem to me -- and we do
19 this every day in my office -- that it would have some
20 kind of a received stamp with a date, which it is
21 lacking, and signatures that are certifying the
22 information, which this is lacking.

23 I would really prefer to have a document that is
24 official than what that is proposed or that we don't
25 know who submitted it. So I am just saying I think that

1 would be a better piece of evidence for me to look at,
2 something that seems to be authentic.

3 THE WITNESS: Ma'am, I am sure that the Forest
4 Service, when they sent this to the State Historic
5 Preservation Office, did send a signed copy and sent it
6 with a signed cover letter. I just don't have those.
7 The Nation did not submit these. It is up to the Forest
8 Service to submit them. And I am sure that if I make a
9 phone call we can get a copy of, you know, the original
10 cover letter transmitting the form and a signed copy of
11 the form. I think it is just the copy I got did not
12 happen to be the final one that was sent in with
13 signature.

14 MEMBER NOLAND: Thank you.

15 CHMN. FOREMAN: Proceed.

16 I am sorry. Member Rodriguez has a question.

17 MEMBER RODRIGUEZ: Thank you.

18 You indicated, Mr. Steere, that the Nation
19 requested this to be submitted for preservation to the
20 national Forest Service. Did I understand that
21 correctly?

22 THE WITNESS: Yes.

23 MEMBER RODRIGUEZ: Was there an official letter
24 sent to them requesting this?

25 THE WITNESS: This came out of a series of

1 cooperating agency meetings, that the Nation was a
2 cooperating agency working with the Forest Service, and
3 a number of other cooperating agencies on the Rosemont
4 mine project. And this goes back, you know, at least a
5 year and a half.

6 Amongst those discussions the issues of cultural
7 resources came up. And during those conversations at
8 those cooperating agency meetings, a request was made to
9 adequately consider the cultural resource impacts of the
10 Rosemont mine project, that an evaluation of the
11 mountains as a traditional cultural place for the
12 O'odham was made.

13 I don't remember a special letter. I think it
14 was a verbal request. It was incorporated by the
15 cultural resource personnel of the Forest Service and
16 they instructed their contractor to go ahead and prepare
17 those documents.

18 MEMBER RODRIGUEZ: Am I also to understand you
19 correctly that the Nation is requesting this because of
20 the Rosemont operation, the mine project?

21 THE WITNESS: Yes, ma'am.

22 MEMBER RODRIGUEZ: Okay. In multiple
23 documents -- maybe you can answer this -- it has been
24 alluded, and even in Ms. Webb's testimony, they are
25 using the word eligible. Can you tell me, when this

1 area became eligible for the national historic
2 preservation, when was the qualifying mark? I
3 understand in homes it is 50 years. When does something
4 like this become eligible?

5 THE WITNESS: The eligibility process is a
6 process that State Historic Preservation Office uses
7 under the auspices of Section 106 of the National
8 Historic Preservation Act to evaluate property, be it
9 TCP be an historic building in downtown Tucson, whatever
10 the case may be.

11 The State Historic Preservation Office is
12 charged with making recommendations as to the
13 eligibility of that site for the national register. And
14 they evaluate that against a number of different
15 criteria. And then, based on the evidence that has been
16 submitted, you know, for a particular site or for a TCP,
17 then they review all the evidence. In that case it
18 would be largely this registration form. And then they
19 make a decision whether they agree the site is eligible
20 under the appropriate criteria of the national register
21 or it is not illegible. And that's basically how the
22 process goes.

23 MEMBER RODRIGUEZ: I understand that. But there
24 are years involved. Somebody can't say and make a
25 submission for like 10 years. I have done this process.

1 So I need to know for clarity when did this -- in years,
2 was it 25 years ago it became eligible? Was it 50
3 years? What is the time limit that somebody can start
4 the application process?

5 I understand in homes, the home has to be at
6 least 50 years old to get redemption in property taxes
7 for historic value. Is land like this similar, like it
8 becomes eligible after 50 years?

9 THE WITNESS: 50 years is the minimal cutoff
10 mark that is used as part of the national register
11 regulations. For nominating or asking for a
12 determination of eligibility, something has to be at
13 least 50 years old.

14 MEMBER RODRIGUEZ: Okay. So the Nation could
15 have done this 20 years ago, is what I am getting at.

16 THE WITNESS: Yeah. Most of these nominations
17 for individual sites for larger areas like this TCP most
18 of the time are project driven.

19 And the sites that EPG was talking about
20 yesterday as part of their surveys for the power line,
21 the new sites they recorded were the first time, you
22 know, somebody had recorded those sites. It actually
23 walked out, found those sites, prepared a site map,
24 wrote up a documentation of it, and then at the end of
25 that, you know, submitted a recommendation for

1 eligibility.

2 So, much of this is project driven. I have got
3 on my desk right now, in addition to this project,
4 probably 50 other projects for the same size, the same
5 duration, in which various aspects of the National
6 Register of Historic Places are being applied. And it
7 is generally project driven.

8 There are some cases where a significant site
9 will be addressed. It is not absolutely part of an
10 ongoing or part of upcoming project, but by and large I
11 think the majority of the national register
12 determination as to eligibility come out of projects
13 that are happening and occurring. In other words -- I
14 am trying to think of a better example.

15 Building Route 19 down south heading towards
16 Green Valley, before the highway department built that
17 project, there had been a little bit of work out there,
18 but not much, and that project basically then drove,
19 kicked in all of the federal regulations that require
20 surveys to be done. So a lot of this is project
21 driven.

22 MEMBER RODRIGUEZ: Okay, thank you.

23 CHMN. FOREMAN: Member Haenichen.

24 MEMBER HAENICHEN: So, Mr. Steere, in listening
25 to your testimony, can I conclude that it is true that

1 until the Nation became aware of the Rosemont mine
2 project, they didn't even know where these sacred or
3 important sites were?

4 MR. STEERE: No, we did know.

5 MEMBER HAENICHEN: Thank you.

6 CHMN. FOREMAN: Proceed.

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

8 BY MS. BERGLAN:

9 Q. Turning back to the Exhibit marked as O-2, the
10 letter addressed to Jim Upchurch, could you give a brief
11 summary of what that is?

12 A. The November 14th, 2011 letter to Mr. Upchurch,
13 forest supervisor, from the State Historic Preservation
14 Office is a summary of their initial comments on the
15 documents that were submitted for a national register
16 nomination for the Ce:wi Duag traditional cultural
17 place.

18 The Staff person from the State Historic
19 Preservation Office simply has a letter there indicating
20 they are inclined to concur with the Coronado National
21 Forest's determination that it is an eligible property,
22 and that it also requests some, you know, some
23 clarifications and, you know, some editing.

24 Q. Okay. Thank you.

25 And is this copy of the letter a true and

1 accurate copy that was received by the Nation?

2 A. Yes, it is.

3 Q. Thank you.

4 And turning to exhibit that has been marked as
5 O-3, that would be the map.

6 A. That's not up yet.

7 Q. Yeah, I think he is working on it.

8 A. There it is.

9 Q. Thank you.

10 And what does this map show?

11 A. This map is a composite of two maps. The
12 underlying map is a map that was done by Tucson Electric
13 Power Company, and that was basically a map that showed
14 the various alternative routes for the proposed power
15 line, you know, preferred, the Alternatives 1, 2, 3 and
16 4.

17 And we received an electronic copy of that base
18 map from TEP, and then we took a map that was
19 created -- this map you see, the dark green you see here
20 and the maroon line that goes around it is the boundary
21 line for the Ce:wi Duag traditional cultural property
22 nomination. So we had a map, there was a map that was
23 submitted as part of the national register nomination by
24 Forest Service, and we took that Forest Service map and
25 just overlaid it on top of the TEP map.

1 So the Committee can see, obviously, the map,
2 but which they are very familiar with already that those
3 are the alternative routes, but they can also see the
4 map that shows the boundary of the Ce:wi Duag
5 traditional cultural place. And I will say this shows
6 only part of the traditional cultural property, just
7 this northern part of it, because this continues some
8 distance to the south.

9 And what you can see on this map is, you know,
10 where the transmission, the different proposed
11 transmission lines -- and somebody will have to correct
12 me if I got it wrong, but I think this is the preferred
13 alternative and No. 1 sort of come in this line here,
14 and all the other ones are sort of down here -- but the
15 map shows these transmission lines would cross into the
16 boundary of the traditional cultural place both up in
17 here where the preferred routes go and also down in here
18 where some of the alternative routes go.

19 And this was mainly put together so the
20 Committee could have a visual of where this traditional
21 cultural property was located in relationship to the
22 proposed power lines.

23 Q. And is it fair to say that you assisted in the
24 preparation of this map?

25 A. I assisted the Forest Service when we worked out

1 a boundary on this. And then the Forest Service staff,
2 you know, produced the Forest Service map. TEP produced
3 the underlying map. And my mapping staff at our range
4 management office basically laid one map on top of
5 another on the computer, and then made an electronic
6 copy and printed copies that I believe the Committee
7 members have.

8 Q. And does the map fairly and accurately represent
9 the boundaries of the traditional cultural property of
10 Ce:wi Duag as you understand them?

11 A. Yes. As those boundaries were submitted with
12 this nomination form, that does reflect those
13 boundaries.

14 Q. And would the map assist the Committee in
15 understanding your testimony today?

16 A. I believe so.

17 MS. BERGLAN: I would move to admit Nation's
18 Exhibit O-1, 2, and 3, with the caveat of Member
19 Noland's, we will attempt to get the signed version of
20 O-1. I hadn't noticed that was unsigned.

21 CHMN. FOREMAN: Member Haenichen.

22 MEMBER HAENICHEN: Mr. Steele, is it true --

23 CHMN. FOREMAN: Steere.

24 MEMBER HAENICHEN: Steele. Oh, Steere. I am so
25 sorry.

1 Mr. Steere, is it true this application to the
2 Forest Service has not been acted upon as of this date?

3 THE WITNESS: The Forest Service received the
4 letter that we just talked about a minute ago from the
5 State Historic Preservation Office indicating that they
6 concur with the nomination of the property to the
7 national register and are requiring, you know, some
8 edits, some clarifications.

9 And I will say in response to your question, the
10 preparation of documentation for these traditional
11 cultural places is generally a very long process. It is
12 drawn out. It takes awhile to put all this information
13 together. And usually when the first letter comes back
14 from the SHPO, they either concurred or don't concur.
15 In this case they concur and they wanted, you know, if
16 you look through the letter, you will see some of the
17 additional information they want, some clarifications.

18 MEMBER HAENICHEN: So is it approved or not
19 approved as of this date?

20 THE WITNESS: It is, I think, tentatively
21 approved by the State Historic Preservation Office, but
22 they want the Forest Service to come back and make a few
23 editorial changes.

24 MEMBER HAENICHEN: So it is not officially
25 approved as of today.

1 THE WITNESS: There will be a final letter that
2 will come out of this, but the initial letter does
3 approve it.

4 MEMBER HAENICHEN: Okay.

5 CHMN. FOREMAN: Member Parke.

6 MEMBER PARKE: Yeah. I am looking at this map,
7 and I see that the majority of the routes are not within
8 the TCP boundaries as it appears. Have you done any
9 evaluation of the line sites or do you have a percentage
10 of the TCP that would be impacted by either the
11 preferred or alternative routes?

12 THE WITNESS: You are correct that -- which is
13 obvious from the map -- that a majority, whatever
14 alternative you pick, a majority of it, you know, would
15 be constructed outside, you know, of the boundaries of
16 the traditional cultural place.

17 I don't have a specific percentage on the
18 preferred route there. You can see visually that it is
19 a percentage of the power line. I don't want to hazard
20 a guess if it was 10 percent or 15 percent, but it is a
21 smaller area, obviously, than what is outside of the
22 boundary.

23 And then the other alternatives are, the
24 southern end there where they go down and scoot back up,
25 that percentage would be considerably larger, you know,

1 if those routes were selected, because it would cover
2 more terrain, you know, physical terrain that is within
3 the boundaries of the national register TCP.

4 MEMBER PARKE: And one follow-up is it appears
5 to me that the preferred, Alternative 1, Alternative 2,
6 and Alternative 3 all converge at the boundary of the
7 TCP, proposed TCP area. What is the land ownership at
8 that point?

9 THE WITNESS: Where it hits the boundary?

10 MEMBER PARKE: Correct.

11 THE WITNESS: As best as I can see from here I
12 believe that's Rosemont.

13 MEMBER PARKE: Thank you.

14 Thank you, Mr. Chairman.

15 CHMN. FOREMAN: You have a legal point you wish
16 to raise?

17 MR. JAMES: I thought you had asked whether
18 there were any objections, Your Honor. I apologize.

19 CHMN. FOREMAN: Oh, I did. And are there?

20 MR. JAMES: I am not sure whether this is an
21 objection or appropriate for cross-examination. But I
22 am uncertain about the accuracy of the map. Now, I can
23 ask Mr. Steere questions about that on cross, or we
24 could address them now, but obviously I am reluctant not
25 to object when I am not sure the boundaries are

1 accurate.

2 CHMN. FOREMAN: Why don't you ask on voir dire,
3 then, questions that are directed specifically to the
4 admissibility of the exhibit.

5 MR. JAMES: All right. Thank you, Your Honor.

6

7

VOIR DIRE EXAMINATION

8 BY MR. JAMES:

9 Q. Mr. Steere, again, I am just trying to get
10 clarification here. I understood, and I think this
11 is -- and maybe I misread the application, Exhibit O-1,
12 but I understood that the application encompasses only
13 land that's within the Coronado National Forest. Is
14 that right?

15 A. It encompasses all the land that is within the
16 boundary as you see on the map there. Now, with the
17 national register nomination, for a large property like
18 this, or for that matter any property, if there are
19 private land holdings, you know, within the boundaries
20 of the proposed monument, I mean, excuse me, of the
21 proposed traditional cultural place, then as part of the
22 finalization of the process, property owners within that
23 area would be notified by the State Historic
24 Preservation Office, or probably in this case by the
25 Coronado National Forest since they are the lead agency,

1 and they would be queried as to whether they would want
2 their properties included, you know, as an official part
3 within the boundary.

4 So the law is very specific on that with a large
5 property like this with a traditional cultural place or
6 with, another good example would be, an historic
7 district in downtown Tucson that has a boundary around
8 it, and all the homeowners living within that have a
9 choice being recognized as part of that or they can
10 choose not to be.

11 And so the law is very specific on that, that
12 private property holders within a boundary of an
13 historic proposal like this would be contacted and would
14 be asked, you know, if they want to be included,
15 officially included, and have their lands included.

16 And again just to, one -- that process, you
17 know, has not happened yet. I mean the Forest Service
18 at some point would contact people, you know, whether it
19 is Rosemont or whether it is other private property
20 owners in there, BLM. I think some of this, I can't
21 really tell from here if there is any BLM land that is
22 actually within the -- but any property owners within a
23 designated boundary area for TCP like this would have to
24 be notified, their permission given if they wanted to be
25 officially included.

1 Q. An additional question. If you will, turn to
2 Exhibit O-1 on page 4. And this is perhaps, again, I
3 may just be confused.

4 A. Is that the nomination form?

5 Q. Yes, it is. I am sorry.

6 A. Okay, go ahead.

7 Q. On page 4, nomination form, there is a section
8 that starts out physical description. Do you see that?

9 A. Yes.

10 Q. If you move on down, there is a short paragraph
11 below that that reads, quote, the TCP. And that's the,
12 what, traditional property, right? That's referring to
13 the Ce:wi Duag, correct?

14 A. Yes.

15 Q. It says:

16 The boundary encompasses 141,572 of the 148,448
17 acres in the Santa Rita unit of the Forest's Nogales
18 Ranger District. Private inholdings within the TCP
19 boundary constitute 11,391 acres that are excluded from
20 the proposed district; therefore, the total acreage of
21 the TCP is 130,181, all administered by the Forest.
22 Close quote.

23 Now, I thought that meant that the private land,
24 including Rosemont's land, was not part of the proposed
25 eligibility determination.

1 A. No. And that sort of follows up with the
2 question you asked before, which I responded to. And at
3 this point the Forest Service excluded that acreage
4 which you just described, which I am assuming the
5 majority of which is Rosemont owned property. But still
6 at some point the Forest Service probably will contact
7 Rosemont and ask if they wish to have their properties
8 officially included.

9 But at this initial phase, any federal agency
10 when they are preparing this and getting ready to go, if
11 there is private land holders, they don't have time to
12 contact all these people at the early stage. That's why
13 I think your property -- I will say that I think there
14 may be a couple other private owners up there, but I
15 think the bulk is Rosemont's property -- at this point
16 is excluded.

17 And then there is a possibility later on they
18 will be included. And that would obviously be up to
19 Rosemont because it is private property. And as I said
20 before, you would be contacted by the Forest Service if
21 you would officially want your property included or to
22 remain excluded.

23 MR. JAMES: Your Honor, with that clarification
24 on the record, we don't have an objection to admitting
25 this exhibit.

1 CHMN. FOREMAN: That would be Exhibit O-3, or
2 O-1, O-2, and O-3?

3 MR. JAMES: I apologize. I was focusing
4 primarily on the map. We don't have any objection to
5 the exhibits with Mr. Steere's clarification.

6 CHMN. FOREMAN: Are there any objections to any
7 of the exhibits?

8 (No response.)

9 CHMN. FOREMAN: All right. It will be ordered
10 then admitting Exhibits O-2 and O-3.

11 (Exhibits O-2 and O-3 were admitted into
12 evidence.)

13 CHMN. FOREMAN: Member Noland.

14 MEMBER NOLAND: I didn't mean to interrupt you.
15 Were you going to include O-1 in that?

16 CHMN. FOREMAN: I was going to defer ruling on
17 O-1 to see if we could get a signed copy.

18 MEMBER NOLAND: I would prefer that. I think it
19 is an important point, that we see exactly what was
20 filed with the signature with a received stamp so that
21 we know exactly what the time frames are. There is a
22 tolling of time with this process, and especially if
23 they show an expiration date. So I would like to have
24 that as part of the exhibit to be accepted.

25 CHMN. FOREMAN: All right. We will defer ruling

1 on the request for O-1. I will let you use the
2 proffered exhibit in your examination subject to a
3 determination later on that what is proffered is
4 consistent with or a replica of what was ultimately
5 provided to us. Understood?

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

7 CHMN. FOREMAN: All right. Everybody understand
8 the ruling? You can go ahead and use O-1 for the time
9 being. It is not in evidence yet, and we will hopefully
10 get something that will indicate its official status
11 later on in the hearing.

12 Please proceed.

13

14 DIRECT EXAMINATION CONTINUED

15 BY MS. BERGLAN:

16 Q. Mr. Steere, could you briefly describe what a
17 traditional cultural place is and the significance of a
18 designation for the Committee?

19 A. Yes, I will. I wanted to ask Mr. Foreman a
20 question.

21 There was a question earlier I believe from --

22 CHMN. FOREMAN: Let me help you to understand
23 how things work here, Mr. Steere. You are called as a
24 witness. You are sworn to respond to questions that you
25 are asked. And you are asked questions, and it would be

1 helpful if you gave -- we are going to try and make
2 questions simple and direct and we are going to hope
3 that your answers to those questions will be simple and
4 direct.

5 Now, do you have a question about how I am
6 running the meeting?

7 THE WITNESS: No, sir. It was a response to the
8 question I believe that Committee Member Noland had
9 asked me a minute ago about the date on the top of the
10 page of the nomination form.

11 CHMN. FOREMAN: So you have remembered something
12 about that now?

13 THE WITNESS: Well, my colleague from EPG
14 reminded me that date is a National Park Service form
15 expiration date.

16 CHMN. FOREMAN: Okay.

17 THE WITNESS: I just want to get that clear. I
18 wasn't sure what it was.

19 CHMN. FOREMAN: All right. And so what is a
20 form expiration date?

21 THE WITNESS: It means that form would be used
22 up to that date, and then it is possible the Park
23 Service would revise the form, you know, and add new
24 boxes and new lines.

25 CHMN. FOREMAN: Okay. Very good. Thank you for

1 that.

2 Ms. Berglan, you may proceed.

3 BY MS. BERGLAN:

4 Q. Do you remember the question, or should I ask it
5 again?

6 A. Why don't you repeat it, please.

7 Q. Okay. Could you briefly describe what a
8 traditional cultural place is and what the significance
9 of its designation is for the Committee.

10 A. A traditional cultural place is a -- it is a
11 legal designation that initially came out of the
12 National Register of Historic Places.

13 In 1980, the National Historic Preservation Act
14 was amended and it directed to the Secretary of the
15 Interior to preserve and address certain elements of
16 cultural heritage in the country that had not been
17 addressed before. And a traditional cultural property
18 is generally eligible for the register because of its
19 association with cultural practices or beliefs in the
20 living community that are either rooted in that
21 community's history or important in maintaining the
22 continuing cultural identity of that community.

23 And when the amendments were made in the 1980s
24 they felt that the initial law that was passed by
25 Congress in 1966 needed to be broadened a little bit to

1 include different kinds of properties, as I just
2 described.

3 Q. Thank you.

4 And could you describe the specific nominating
5 process with respect to Ce:wi Duag?

6 A. As I mentioned earlier, conversations with the
7 United States Forest Service that came out of meetings
8 of the cooperating agencies regarding the Rosemont mine,
9 conversations began in terms of a way to try to identify
10 and include the cultural resource sites that were found
11 in the Santa Rita Mountains that were significant to the
12 members of the Nation, both historic sites and
13 prehistoric sites.

14 I don't know the specific date that the Forest
15 Service instructed their contractor to begin this
16 process, but it was, I think, about eight or nine months
17 ago to prepare the documents that you have, the
18 nomination form that you have that was prepared by them.
19 That form was prepared by the contractor in consultation
20 with tribal members in consultation with Forest Service
21 archeologists, in consultation with Forest Service
22 personnel, both at the Coronado and their regional
23 office in Albuquerque.

24 A draft of that was sent to Albuquerque to the
25 Forest Service regional offices. They reviewed that,

1 had edits and comments. It went back to the Coronado
2 and to the contractor. They addressed those edits,
3 which we reviewed also. And then at that point, once
4 the Forest Service was happy with the edits that had
5 been made and issues addressed, then the Coronado
6 National Forest, with a cover letter, forwarded that
7 nomination form to the State Historic Preservation
8 Office in October.

9 Q. Thank you.

10 And can you briefly describe the Nation's
11 interest in the area.

12 A. The cultural history of the whole Santa Rita
13 Mountains area, you know, spans back at least 10,000
14 years through a variety of different cultures that have
15 occupied parts of southern Arizona, ranging from a
16 paleoindian period through an Archaic period through an
17 early agricultural period, ceramic period, Hohokam, and
18 up into historic times.

19 The prehistoric sites that occur within that
20 national register nominated Ce:wi Duag traditional
21 cultural place include sites -- not all of them, but a
22 significant number of them -- that are from the Hohokam
23 period. The Hohokam and the Archaic peoples preceding
24 the Hohokam are regarded by the members of the Tohono
25 O'odham Nation as their ancestors.

1 These sites are regarded as sacred sites,
2 particularly the sites that contain other burial remains
3 of ancestors. There is a large number of sites in that,
4 within that boundary that were at least tested or
5 partially excavated by the Arizona State Museum in the
6 late '70s and 1980s as part of an earlier mine project,
7 the Anamax mine project. Almost 200 burials were
8 removed from those sites. Those burials were
9 repatriated to the Tohono O'odham Nation on the Nation's
10 reburial ground.

11 So we have a large number of prehistoric sites,
12 prehistoric peoples that were regarded by the Nation as
13 their ancestors. And a significant number of sites, you
14 know, contain burial remains.

15 We also try to address as part of this the uses
16 that were made of this area by the Tohono O'odham Nation
17 going back at least to the time of Spanish contact --
18 you know, some of our earliest information and bits and
19 pieces of information we have are from Spanish
20 records -- that this area, this upland area in the Santa
21 Rita Mountains was utilized by members of the Tohono
22 O'odham Nation for hunting, for gathering plant
23 medicine, for gathering basket making materials, for
24 young men particularly doing vision quest ceremonies up
25 on the high peaks, for collection of certain kinds --

1 there is a certain kind of red clay that occur up there
2 that have been favored by O'odham potters at San Xavier
3 for many, many years as a place they go to collect this
4 particular type of clay to make this particular kind of
5 red pottery that they make up there.

6 In addition, there is either documentary
7 evidence of O'odham use of this area; I have been up in
8 the area with elders, people who are now in their 70s,
9 80s or 90s, who describe to me trips up there to collect
10 medicine plants, to collect basket making materials.

11 We also have information, you know, relating to
12 another site, Huerfano Butte, which we can talk about
13 later because we are really not addressing that right
14 now.

15 In addition, we had six or seven field visits up
16 into that area for members of the Tohono O'odham Nation.
17 This included the members of the executive branch, the
18 legislative council, the district chairs of the Nation,
19 the Nation's cultural preservation committee. And
20 throughout those trips up there into that area we were
21 accompanied by colleagues from the Hopi Tribe, the Zuni
22 Tribe, the Gila River Indian Community, the Salt River
23 Pima Community, the Ak-Chin Indian Community, and the
24 Yaqui Tribe, and also by colleagues from the Mescalero
25 Apache Reservation in New Mexico, from the Apache

1 communities at Fort Sill in Oklahoma, and from the
2 San Carlos and White Mountain Apache Reservations in
3 Arizona.

4 And while I am not here to speak specifically
5 about all of their concerns, the way the tribes work
6 these kinds of projects out, they tend to designate a
7 lead on a particular project, and the Nation has been
8 designated a lead on this. And I believe, I won't go
9 through all these, but some of the issues and concerns
10 of the other tribes are mentioned, you know, in the
11 national register document form.

12 And just by way of one example, the Box Canyon
13 area is regarded as a very special place by the Yaqui
14 because it is a place where their medicine people go to
15 prepare for ceremonies. And I won't go into any more
16 detail on that, on the other tribe because some of that
17 information is mentioned in the National Register of
18 Historic Places nomination form.

19 Q. Thank you, Mr. Steere.

20 Could you describe in a nutshell the purpose of
21 the National Historic Preservation Act, as you
22 understand it?

23 A. The National Historic Preservation Act was
24 passed by Congress in 1966. It directed the federal
25 agencies involved with federal land disturbing projects,

1 federally funded projects had to take cultural, had to
2 take cultural consideration, cultural site
3 consideration, had to consider those sites as part of
4 their studies.

5 And a lot of the early work regarding the
6 construction of highway projects, you know, if a highway
7 project was going to be built and there were
8 archeological sites in the way, National Historic
9 Preservation Act for the first time directed and
10 provided a method to address those sites, record those
11 sites, document those sites. And then it directed the
12 agencies to have different alternatives in terms of how
13 to deal with that. I mean one way to avoid the impact
14 on the site would be by building around it, you know.

15 It set up an evaluation system which was a
16 national register criteria. So if a site was eligible
17 to the register, then the agency had to take that into
18 consideration when they were making their planning, and
19 I think in the same way that the members of this
20 Committee, you know, are considering various issues, you
21 know, relating to this particular project.

22 National Historic Preservation Act, it was
23 amended in the 1980s to include the concepts of
24 traditional cultural properties. It was amended again
25 in 1992 to allow tribes to set up tribal historic

1 preservation offices. The original act had designated
2 state historic preservation offices in 1966, and so
3 every state in the country set up a State Historic
4 Preservation Office to monitor the compliance with
5 Section 106 in their particular state.

6 So that responsibility in Arizona fell on the
7 Arizona State Historic Preservation Office up in
8 Phoenix, which has been in existence since the late
9 1960s. And as I said, the '92 act allows tribes to set
10 up their own tribal historic preservation office, and
11 the Tohono O'odham Nation did set up its own tribal
12 historic preservation office, and we were certified by
13 the Park Service in the fall of 2009.

14 So since that time, you know, we have been a
15 tribal historic preservation office. And what that
16 means is we have the responsibility now that SHPO had
17 before for all projects on tribal lands. We still are
18 involved in projects such as this in terms of commenting
19 on issues relating to 106 compliance, because 106
20 compliance mandates that federal agencies, you know,
21 consult with tribes on issues on projects even if those
22 projects are located off tribal lands.

23 Q. Thank you.

24 So would it be fair to say that the basic
25 purpose of the National Historic Preservation Act is to

1 determine whether or not specific sites are eligible to
2 be listed on the National Register of Historic Places?

3 CHMN. FOREMAN: Before --

4 THE WITNESS: Yes.

5 CHMN. FOREMAN: -- we begin, we have a question
6 from Member Walker.

7 MEMBER WALKER: Thank you, Mr. Chairman.

8 Mr. Steere, so am I correct in understanding --

9 THE WITNESS: Can you speak up? I can't hear.

10 MEMBER WALKER: I am trying to understand the
11 effect, then, of the National Historic Preservation Act.
12 Am I understanding your testimony correctly in that it
13 requires federal agencies to coordinate with tribes and
14 that it requires the federal agency to consider
15 avoidance and mitigation? Is that the effect of the
16 laws?

17 THE WITNESS: Yeah. Basically the law would
18 first direct that they -- if cultural properties are
19 located, you know, within an area where the project is
20 going to occur, that a survey be done, those sites be
21 identified, be evaluated by the national register
22 criteria. And then at that point, in terms of the kinds
23 of decisions that could be made, I mean one decision
24 could be, depending what is being built, is that you
25 could avoid them by building around them.

1 If they can't be avoided, then you have to make,
2 a determination would be made that there is an adverse
3 effect on the site because we can't avoid it. We are
4 building this thing, we have nowhere else to go, we have
5 to build through it, so there would be an adverse
6 effect.

7 And once an adverse effect has been determined
8 by the State Historic Preservation Office, then in order
9 to mitigate that adverse effect, a treatment plan would
10 be prepared and submitted by whatever the lead agency
11 happened to be on the particular project. And that
12 treatment plan, depending on the type of site, could
13 include a variety of things.

14 Two quick examples would be if you had a site
15 that consisted of historic above-ground buildings, then
16 the mitigation -- and those buildings are going to be
17 destroyed, the mitigation could be the full
18 documentation, mapping and photography of those
19 buildings to record them because then they are going to
20 be gone.

21 With archeological sites, a prehistoric
22 archeological site becomes a bit more problematic
23 because most of the site is underground, and if you are
24 building a road or digging sewer line or pipeline or
25 something through the area, then the treatment plan

1 would very likely involve mitigation by excavating a
2 portion of that site to recover the information from
3 that site, you know, about what the site was about, how
4 old the site was, what kind of buried features were
5 there. And what would come out of that would be a
6 contractor's report that would be prepared.

7 And just by way of example for this particular
8 project, you know, if there was a site that emerged out
9 of this project that could not be avoided and had to be
10 mitigated, then the Forest Service, you know, would
11 submit a treatment plan to be carried out, you know, by
12 a contractor to mitigate that site, and then throughout
13 that process the tribes will be consulted in terms of
14 what they approved or didn't approve or how they wanted
15 to proceed.

16 I hope that answers your question.

17 MEMBER WALKER: No, it is excellent. Thank you,
18 Mr. Steere. So when I look at page 10 then of your
19 testimony, beginning at line 1 through line 3 -- if you
20 could, look at that for a second.

21 THE WITNESS: I am on page 10.

22 MEMBER WALKER: Wonderful. I have a question
23 then. The first paragraph on line 2 then, it says to
24 minimize visual impacts to the Ce:wi Duag traditional
25 cultural property. It sounds to me like it is a bit

1 more than visual then, right? You would, if we adopted
2 this as a condition, you would go beyond the visual? I
3 mean, you would look at the cultural, archeological
4 impacts, wouldn't you?

5 THE WITNESS: I am having trouble hearing you.
6 Could you speak in your mike.

7 MEMBER WALKER: Okay. I am looking at line 2,
8 where the Tohono O'odham Nation requests, you know, the
9 cultural monitor on-site to minimize visual impacts for
10 the Ce:wi Duag traditional cultural property. But it
11 seems to me the way you explained the act, it is more
12 than the visual impact, correct? It is cultural impact.

13 So if we adopted a condition along the lines of
14 what the Tohono O'odham Nation suggests here, you
15 wouldn't want us to limit it to the visual impact, would
16 you?

17 THE WITNESS: There are two kinds of impact that
18 could occur from the power line. One impact would be a
19 direct impact due to construction on an individual site.
20 The second kind of impact would be a visual impact to
21 the cultural landscape of the traditional cultural
22 property, the Ce:wi Duag TCP.

23 MEMBER WALKER: So are you agreeing with me,
24 then, that the Tohono O'odham Nation would like the
25 cultural monitor to have more of a role than simply

1 minimizes visual impact?

2 THE WITNESS: That may be not phrased exactly --
3 the monitor system, the way the monitors work is -- let
4 me back up just one step.

5 The first choice of the Nation in relation to
6 this project would be for this power line not to be
7 built, not to have any impacts on these sites both
8 direct or visual. You know, however, you know, if the
9 Committee approves, let's just say, the preferred
10 alternative here, then impact, direct impact would have
11 to be dealt with relating to those sites.

12 And visual impacts would have to be addressed in
13 some way, shape, or form. And the Nation's monitors
14 would -- the way our monitors would be utilized, we
15 would have them working with the archeological crews
16 that might be out there mitigating the sites, you know,
17 actually doing excavation on some sites that could not
18 be avoided. We would have staff that would work with
19 the project proponent on individual sites to figure out,
20 you know, can this site be avoided, and we will talk
21 more about some of those specific issues later, but can
22 this particular site be avoided, is the span length
23 enough to avoid impacting on this site.

24 But generally we have monitors in the field.
25 And the best example I can give you, sir, is right now

1 my monitors called me from Highway 86 this morning at
2 7:30. They are out there monitoring geotech drilling
3 being done by the Arizona Department of Transportation
4 for construction along the highway there, and they found
5 something this morning. And I told them my other staff
6 person had to come out and look at it because I would be
7 here.

8 But in that particular we are working within the
9 boundaries of an archeological site. We have a monitor
10 from the Nation there to make sure that if something
11 does show up that we stop work and that we have somebody
12 take a look at it to ascertain exactly what it is. And
13 that would be a similar thing here. If archeological
14 excavations were taking place as part of mitigation,
15 then we would want to have monitors from the Nation
16 working with the crews.

17 We also, we also generally have cultural
18 sensitivity training done for projects like this where
19 the construction people are working in and around
20 archeological sites and stuff like that. We are in the
21 process of doing something similar like that for
22 St. Mary's Hospital now for a project that is occurring
23 on an archeological site on the properties of St. Mary's
24 Hospital. And we have monitors, you know, and we have
25 cultural sensitivity training for all the people that

1 are involved working in and around the archeological
2 site, what the dos and don'ts are.

3 MEMBER WALKER: Okay. So the act doesn't
4 proscribe development, but it sets forth the approach
5 that need to be followed to avoid and minimize impacts
6 and those go beyond visual. So if -- and I am thinking
7 about this -- if I was to offer a condition to the CEC
8 that adopted your proposal on page 10, but struck the
9 word visual, so it would just say to minimize impacts to
10 the Ce:wi Duag traditional cultural property, that would
11 seem to comport with the act, wouldn't it?

12 THE WITNESS: No, I understand that. And I
13 think the visual impacts is a totally separate issue.
14 And that's an issue that would have to be addressed in
15 terms to some extent of design of the power line in its
16 proximity to what kinds of sites that we are talking
17 about.

18 And, you know, I have worked on projects before
19 with Mr. Beck where these kinds of conversations have
20 come up. And I know that TEP has, for the lack of a
21 better word, innovative ways to try and design, paint,
22 size power lines to make them less disturbing to the
23 landscape. That's something that obviously would have
24 to be worked out if this line proceeded with TEP and
25 with their design people.

1 MEMBER WALKER: Thank you, Mr. Steere.

2 CHMN. FOREMAN: Mr. Steere, there is an old joke
3 about lawyers, that sometimes when you ask a lawyer for
4 the time they build you a watch. It occurs to me that
5 you have built us a number of wonderful watches this
6 morning.

7 It is possible to answer questions sometimes
8 with a yes or a no. I have not heard you use those
9 words. Let me encourage you to consider their use, if
10 you can do that in responding to questions. It is
11 helpful to get background information, but it is -- the
12 Committee is interested very much in the testimony that
13 is being presented and we are trying to get to the
14 bottom of it.

15 I am having difficulty grasping how directly
16 some of your responses are being made to the questions
17 that are asked, and so let me encourage you to listen to
18 the questions carefully and then try and respond as
19 directly to them as possible. Would you do that for me?

20 THE WITNESS: Yes, I will make an effort to do
21 that, Mr. Chairman. I am known as a person who tends to
22 ramble on sometimes, so I will try to restrict my
23 rambling and be a bit more direct.

24 CHMN. FOREMAN: Your legend precedes.

25 Mr. Parke.

1 MEMBER PARKE: Thank you, Mr. Chairman.

2 Counsel and Mr. Steere, in the submission of
3 your prefiled written testimony, page 5 of Exhibit O-6,
4 on No. 7, this would be about lines 12 through 15, there
5 is discussion, and it appears to me just generally about
6 the TCP in general, the impacts to the TCP in general.
7 With regard to the line of questioning of Member Walker
8 and your discussion about avoidance, it appears,
9 although not all of the TCP is present on the map, that,
10 and would you agree, that building around, as you put
11 it, is impossible in this case?

12 THE WITNESS: Building around?

13 MEMBER PARKE: The TCP to still provide the
14 transmission line to the ultimate end user.

15 THE WITNESS: Yes.

16 MEMBER PARKE: Given that, I have not heard, and
17 maybe I am just mistaken, does the Nation have a
18 preferred route?

19 THE WITNESS: The Nation's preferred route if
20 the power line would be built would be the preferred
21 alternative --

22 MEMBER PARKE: Thank you, Mr. Chairman.

23 THE WITNESS: -- that we discussed earlier.

24 MEMBER PARKE: Thank you, Mr. Chairman.

25 CHMN. FOREMAN: Member Haenichen.

1 MEMBER HAENICHEN: Thank you.

2 Mr. Steere -- I got it correct this time -- in
3 answering this question, please consider only the
4 preferred route and Alternatives 1, 2, and 3, not 4.
5 Looking at the map on the left, with the green, the
6 boundary between the green area and the blue area -- I
7 am color blind so they might be the wrong colors -- to
8 the right of the line separating the two, does any part
9 of those three, four routes I suggested you consider
10 cross land that is not owned by Rosemont?

11 THE WITNESS: I believe there is some small
12 pieces of Forest Service land.

13 MEMBER HAENICHEN: So they would be subject to
14 this, if assuming the applicant or the mining company
15 decided not to be part of this historic site, there
16 still would be some issues on, would you say, a small
17 part. How small?

18 THE WITNESS: In terms you are speaking of the
19 power line now?

20 MEMBER HAENICHEN: Yes.

21 THE WITNESS: Yes.

22 MEMBER HAENICHEN: Only the power line?

23 THE WITNESS: Only the power line, yes.

24 MEMBER HAENICHEN: How small?

25 THE WITNESS: I don't know for sure. They are

1 very small.

2 MEMBER HAENICHEN: Thank you.

3 CHMN. FOREMAN: Member Palmer.

4 MEMBER PALMER: Thank you, Mr. Chairman.

5 Mr. Steere, at the risk of sounding like the old
6 Abbott and Costello who's on first routine, I would like
7 to have a discussion -- and maybe you have a specific
8 answer -- regarding who is the final enforcement
9 authority. And I will be specific.

10 There is no preclusion of a property on the
11 national historic register to have a transmission line,
12 is that correct?

13 THE WITNESS: I am sorry. I couldn't --

14 MEMBER PALMER: There is no specific preclusion
15 for a property on the national historic register to have
16 a transmission line traversing across the property,
17 there is not a specific prohibition against that?

18 THE WITNESS: No. What would want to be done is
19 evaluate what the impact would be.

20 MEMBER PALMER: My question is: We have got a
21 lot of participants in this process; who is the final
22 authority? You alluded to the fact that the Nation had
23 to contact the Forest Service in order to make
24 application for the register, is that correct?

25 THE WITNESS: Yes.

1 MEMBER PALMER: What happens if a transmission
2 line is proposed and the Forest Service agrees to it?
3 Are they the final controller of what happens on Forest
4 Service property, or who is the enforcement authority
5 for the national register and SHPO's responsibility?

6 THE WITNESS: Well, the Forest Service is
7 required on issues relating to cultural resources to
8 contact and consult the State Historic Preservation
9 Office. You know, once the State Historic Preservation
10 Office has made a decision about what they want to see,
11 how they want this to proceed, then the lead agencies --
12 and this is going to be Forest Service because the power
13 line is part of the draft environmental impact statement
14 being prepared for the Rosemont mine project, and the
15 Forest Service is included in that and has been included
16 as part of the draft environmental impact statement --
17 so the Forest Service would have the ultimate authority
18 in terms of implementing, let's say, a treatment plan
19 for the sites. If sites could not be avoided and had to
20 be excavated and a treatment plan had to be presented,
21 then the Forest Service would instruct their contractor
22 to prepare a treatment plan.

23 That treatment plan would then be sent to the
24 State Historic Preservation Office by the Forest Service
25 and the treatment plan would then be approved or asked

1 for changes, you know, whatever the case may be.

2 It is very likely in a project this complex and
3 this scale that the national advisory council on
4 historic preservation would be asked to participate, and
5 that would add another review element. But the ultimate
6 decision coming out of the national advisory council and
7 SHPO to implement what has been approved would be the
8 Forest Service's responsibility.

9 MEMBER PALMER: So in other words, if the Forest
10 service disagreed with SHPO's interpretation of means to
11 mitigate impact, and they were satisfied with the
12 actions of this Committee, what would happen in that
13 regard if SHPO decided that it wasn't, the actions of
14 this Committee were not appropriate? Is there an
15 enforcement mechanism or leverage that would occur?

16 THE WITNESS: No, not really. In most cases,
17 agreement is not reached, you know, on most projects
18 fairly easily. If there is disagreement, it has been my
19 experience that the federal agency, in this case the
20 Forest Service and the State Historic Preservation
21 Office, would continue to have dialogue until they could
22 reach a satisfactory conclusion that they both agreed
23 to.

24 And then the National Historic Preservation Act
25 also requires throughout that process that the tribes be

1 part of the consultation process if the tribes have an
2 interest in that particular area. I have not
3 experienced any case directly that I can think of in
4 recent memory where a federal agency and the SHPO
5 weren't able to reach some sort of final agreement on,
6 you know, how a treatment would proceed.

7 MEMBER PALMER: Because the authority of this
8 Committee is clearly articulated in 40-360. There is no
9 doubt about it. And if you don't get a CEC, you don't
10 operate.

11 THE WITNESS: Yes, sir.

12 MEMBER PALMER: And that's not the case at the
13 federal level. What you are saying, there is not a
14 specific agency other than in this case the Forest
15 Service that administers the property within their
16 boundaries.

17 THE WITNESS: Yes.

18 MEMBER PALMER: There is not another federal
19 agency that could stop this from happening.

20 THE WITNESS: No. The Forest Service would be
21 the agency in this case.

22 MEMBER PALMER: Thank you.

23 CHMN. FOREMAN: Let's proceed.

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

25 BY MS. BERGLAN:

1 Q. The last question I had asked you was basically
2 about the purpose of the National Historic Preservation
3 Act. And I believe you agreed with me that basically
4 the essential purpose of it is to evaluate specific
5 sites to determine whether or not they qualify for the
6 national register?

7 A. Yes.

8 Q. And is there a difference in treatment between
9 sites that are eligible for the national register and
10 those that are actually appearing on the national
11 register?

12 A. If a site is determined eligible for the
13 national register, then what happens to that site has to
14 be taken into consideration as part of the planning for
15 the project. If a site is determined not eligible by
16 the national register procedures, then generally that
17 site is not part of the equation anymore, it is not
18 considered. And since it is not eligible, it won't be
19 considered anymore in any future planning. Only the
20 sites that are determined as eligible for the register
21 would be considered.

22 Q. And that same process would be followed for a
23 site that actually is on the national register?

24 A. Yes, that's the case.

25 Q. Thank you.

1 And over the last couple of days we have heard a
2 number of terms being used in respect to specific sites.
3 And those terms include historic sites, archeological
4 sites, and cultural resource sites. Could you explain
5 to the Committee the differences between those sites and
6 whether any of the terms could be used simultaneously
7 for the same site?

8 A. Historic sites are generally sites that date to
9 the historic period. And in Arizona, the historic
10 period, you know, begins with the early Spanish
11 explorers. Some of the earliest records of sites we
12 have, some of which have been located, relate to
13 Coronado's expedition in the 1530s which he traversed
14 probably parts of southeast Arizona. And people for
15 years have been trying to locate some of his campsites
16 and such. But historic period sites would start with
17 that Spanish period.

18 Prehistoric period would be before that, before
19 the time of Eurasian contact into the area, European
20 contact into the area, excuse me. And the prehistoric
21 period would stretch back, you know, nearly 10- to
22 12,000 years ago. And sites falling within the
23 prehistoric category would range across that broad
24 spectrum that I mentioned earlier.

25 And there is another type of site that generally

1 is not recorded by standard archeological surveys as
2 historic or prehistoric, and those are sites that can be
3 sites in this case important to a tribe. And the type
4 of sites we are talking about are not sites a normal
5 archeological survey would contact.

6 These would be a site where members of a tribe
7 go repeatedly to a particular area to collect plant
8 medicine, go to a particular area to collect basket
9 making materials, go to a particular area to collect
10 clay for making certain kinds of pots, a place where
11 young men went to do vision quests, religious
12 ceremonies. Those are kinds of sites that members of
13 the Nation are aware of, but these are not sites that
14 are generally recorded, you know, by a standard
15 archeological survey. And that would be sort of a third
16 category of sites. And these are sites that are of
17 great concern to tribal members. And particularly in
18 terms of some of the areas of the Santa Rita Mountains,
19 a number of those kinds of locations are places that are
20 included within the TCP that has been nominated.

21 CHMN. FOREMAN: I think Member McGuire had a
22 question.

23 MEMBER MCGUIRE: Yes, Mr. Chairman.

24 Mr. Steere, have you, has there ever -- well,
25 tell you what. In my business I have been a rancher all

1 over the west, and I have never been on one that didn't
2 have places you can find. I have always been interested
3 in those kind of places that, you know, cultural had
4 been there a long time.

5 I am just curious, has there ever been a site
6 that has been turned down.

7 THE WITNESS: I am sorry, a site turned down?

8 MEMBER McGUIRE: For registration as historical.

9 THE WITNESS: For the national register?

10 MEMBER McGUIRE: Yes.

11 THE WITNESS: There have been certainly projects
12 in the past where a contractor may have recommended, you
13 know, the site was eligible for the national register
14 and the federal agency might have disagreed. And in
15 some cases the State Historic Preservation Office might
16 have disagreed.

17 I would say the vast majority of the time the
18 State Historic Preservation Office generally would
19 concur with recommendation made by the professional
20 archeologist in the field, but sometimes there are
21 disagreements, certainly.

22 MEMBER McGUIRE: So yes or no, have any ever
23 been turned down?

24 THE WITNESS: I would -- yeah, I think there
25 have, certainly there have been ones turned down. There

1 has been a site recommended as eligible and the federal
2 agency said, well, we don't think it is eligible, and
3 SHPO said we agree, we don't think it is eligible
4 either. So that does happen sometimes.

5 MEMBER MCGUIRE: Thank you.

6 THE WITNESS: You are welcome.

7 CHMN. FOREMAN: Proceed.

8 MS. BERGLAN: Thank you.

9 BY MS. BERGLAN:

10 Q. Just for clarification, I had actually asked you
11 about the term archeological sites, and you defined
12 prehistoric sites. Are those two terms interchangeable?

13 A. Yeah, archeological sites can be either
14 prehistoric or historic period. Archeology, prehistoric
15 archeology is one aspect of a discipline. And there are
16 archeologists that specialize in historic sites
17 archeology where they tend to deal primarily with
18 historic sites. But archeology would be the larger,
19 more general term.

20 Q. And does the term archeological sites, does that
21 encompass the term cultural resource sites?

22 A. Cultural resource sites, yes, that would
23 encompass that also.

24 Q. And could the term historic sites, could that
25 encompass the term historic resource?

1 A. Yes.

2 Q. Okay, thank you.

3 And you have reviewed the archeological survey
4 that was completed by TEP's consultant, EPG, in this
5 matter.

6 A. Yes, I have. I have read the various reports
7 that EPG has put out.

8 Q. Okay, thank you.

9 And in your opinion, does the EPG survey
10 consider all cultural resource sites?

11 A. I believe as far as their directive was, they
12 do. I think there is one site in particular that was
13 not addressed in the final report that was mentioned in
14 the earlier Class I overview, but that did not follow
15 through to the final report, the most recent report
16 being the report they prepared for, you know, the
17 preferred alternative.

18 Q. And what site is that?

19 A. That's Huerfano Butte.

20 Q. And what is the significance of Huerfano Butte?

21 A. Just to bring the Committee -- can someone blow
22 that map up? This one here?

23 I just wanted people to remember we looked at
24 Huerfano Butte the other day. It is right there.

25 That's it right there. That little unmarked hill right

1 there is just south of the right-of-way for the
2 preferred alternative, and also, I believe, for
3 Alternative 1.

4 Huerfano Butte, it has a site number AZ E1-84.
5 It was recorded with the Arizona State Museum a number
6 of years ago. EPG, in their Class I overview when they
7 reviewed the whole large area for the study, the study
8 area, I think as it was referred to, did include that as
9 one of the previously recorded sites there. But when it
10 came down to the final report which addressed the
11 preferred alternative, it was not included.

12 And, you know, I understand to an extent it
13 falls just outside the 500-foot right-of-way. But I
14 haven't been out there in awhile, but I would guess
15 probably 500 or 600 feet.

16 Huerfano Butte is a traditional cultural place
17 of great significance to the Tohono O'odham Nation.
18 This is the site that is a site that is still visited by
19 medicine people. It is still visited by families. It
20 is also, at the same time it is a prehistoric site. It
21 is a prehistoric Hohokam site. There is bedrock mortars
22 there. There are small cupules or ground holes there.
23 There is rock art present there.

24 And in 1965, a family was picnicking there and
25 found a huge pot shoved and hidden in the crevice in the

1 rock there. And the pot was full of carved Hohokam
2 turquoise jewelry that had been left at the site. And
3 it was recovered by this family.

4 And shortly after that, an article was written
5 up on that particular cache that was found there, and it
6 was interesting to note that that was the first
7 scientific paper that was published on archeology on a
8 site occurring in the Santa Rita Experimental Range.

9 In my interviews with elders a few years ago, I
10 interviewed a gentleman who was in his 90s at the time.
11 He was born around the turn of the century. And he
12 remembered, you know, traveling from San Xavier along
13 what was very likely the Santa Rita Road then, but it
14 was a wagon road probably narrower than it is now, on
15 trips doing hunting in the Santa Ritas, trips to go
16 acorn collecting, trips to go collecting basket making
17 materials, and trips for a great aunt who was a medicine
18 person collecting medicine plants. And if they came in
19 this way they would always stop at Huerfano Butte. And
20 this gentleman told me his father, his grandfather would
21 leave small offerings at that site because of its
22 significance to the Nation.

23 I visited the site eight years ago with a
24 medicine lady from San Xavier who performed some
25 ceremonies out there. I have worked for the tribe for

1 15 years. I am certainly not privy to every single
2 religious importance that a medicine person would have
3 on a site. But, you know, generally this site was
4 explained to me as being an important site for coming
5 out ceremonies for young people. It apparently was also
6 related to some agricultural blessings of sites and also
7 was related to hunting, but it remained a very important
8 site.

9 And this medicine lady who I told you about who
10 I visited the site with about eight years ago has passed
11 away now, but it is interesting to note that certain
12 members of the San Xavier community up to present or
13 very recent were still visiting this site as an
14 important religious site.

15 There may be some astronomical significance to
16 the site. We are not completely sure yet.

17 And this site, again, I think it probably should
18 have been addressed to a certain extent in EPG's report
19 simply because of the significance of it and because of
20 its very close proximity to where the line will be
21 built. But I do understand that EPG, you know, was
22 directed to do their survey within their 500-foot
23 corridor, but in this particular case I believe this
24 site should have been included and evaluated.

25 Q. Thank you.

1 And the site that you are referring to, Huerfano
2 Butte, is considered an archeological site, is that
3 correct?

4 A. It is an archeological site. It is also a TCP.

5 Q. Thank you.

6 Generally do archeological surveys that are
7 performed pursuant to the National Historic Preservation
8 Act consider these sort of other culturally significant
9 sites that you were talking about earlier, clay
10 collection sites, et cetera?

11 A. Generally they do not. If they -- if the
12 archeological firm is doing the work on the Nation, the
13 answer to that question would be yes. If there are
14 sites like that going to be impacted off the Nation,
15 probably not.

16 Q. In your opinion, are these, what I am sort of
17 terming, other culturally significant sites, would they
18 qualify as historic sites or archeological sites?

19 A. Most of those would probably be regarded as
20 historic sites because most of the documentation we have
21 about those kinds of sites are from people that are
22 living today or recently living or from their parents or
23 grandparents.

24 Q. Thank you.

25 And in this particular project area, what are

1 the specific other culturally significant sites that you
2 can think of?

3 A. Sites that could occur, as I mentioned earlier,
4 I believe could occur within the large TCP, there would
5 be sites where people went to collect plant medicine,
6 medicines for plants, excuse me, plant medicines,
7 particular kinds of clays for making pottery, particular
8 kinds of soils for making paint, places for collecting
9 basket materials, and also a place sometimes on the high
10 outcrops of the mountains and the ridges, places where
11 young men would go for vision quest sites that were part
12 of a religious coming of age for young men in O'odham
13 culture.

14 And I will just elaborate a teeny bit on that.
15 Most people don't necessarily continue to go on vision
16 quest sites today. But it is interesting to note -- and
17 I think it is okay to say this, Mr. Chairman. If you
18 don't want it, you can tell me. But the gentleman that
19 spoke to you the other day, Mr. Joaquin, is one of my
20 staff people. And it is interesting to note that when
21 Mr. Joaquin came back from his second tour of duty as a
22 Marine in Vietnam, the first place he went was a vision
23 quest site up in the Baboquivari Mountains to spend two
24 or three days alone up there, resting, meditating,
25 talking with his creator about, you know, certainly some

1 of the things that were experiences he did incur in
2 Vietnam. So some of these places are still visited.

3 In many cases, now, we have a gentleman who just
4 came back from Afghanistan who went up in the mountains
5 to visit a site that was an important site like a vision
6 quest site. And these are the kinds of sites that are
7 sometimes not standardly recorded by archeological
8 surveys.

9 Q. Thank you.

10 And in your opinion does the EPG survey,
11 archeological survey consider these other significant
12 cultural areas?

13 A. No, I don't believe they do.

14 Q. Okay. And do archeological surveys performed
15 pursuant to the National Historic Preservation Act
16 generally consider archeological or historic sites that
17 are in the vicinity of the proposed project?

18 A. I think the answer to that would be yes,
19 sometimes, and no, sometimes they don't.

20 Q. Okay. And could you elaborate on just the
21 sometimes they don't?

22 A. I think sites that occur outside of right-of-way
23 projects that are significant, large, well-known sites
24 will often be taken into consideration if they occur
25 outside of a project area.

1 And I am trying to be brief, Mr. Chairman,
2 following your instructions.

3 One very simple example I think would be a lot
4 of the building activity that has occurred in the
5 proximity of the Casa Grande National Monument in the
6 last 10 years. Part of the evaluation process there has
7 often been including an evaluation of what impact will
8 this road, this new shopping center have on the Casa
9 Grande National Monument. So that's a case where you
10 have a very well-known site that has taken into
11 consideration projects that may not be directly
12 impacting but may have an indirect impact.

13 Q. Thank you. And --

14 CHMN. FOREMAN: Excuse me. Member Parke had a
15 question.

16 MEMBER PARKE: So given that testimony, is it
17 your position that either the preferred or the alternate
18 routes would have those impacts?

19 THE WITNESS: Would have an impact?

20 MEMBER PARKE: Yeah, just like you said, maybe
21 not direct, but indirect.

22 THE WITNESS: Yes, I think the route proposed on
23 the right-hand map there which passes very close to that
24 Huerfano Butte would have an indirect impact. The
25 indirect impacts could involve, we have already had an

1 example, we already had cases at that site of people,
2 pot hunters' holes. We have the example where Huerfano
3 Butte and a few other sites on the range, of looting
4 taking place, people coming out and illegally
5 excavating.

6 I think some of the indirect impacts, I don't
7 know, and Mr. Beck would have to answer this, you know,
8 I don't believe, but if there is any blasting that would
9 occur as part of construction in that area, that could
10 have an impact on the butte.

11 There could be indirect visual impact on the
12 butte. I think there could be indirect impacts from
13 construction crews working in the area, people going
14 over, looking at things, taking things. I mean that
15 always is a situation. It is one of the reasons we do
16 cultural sensitivity training with contractors to make
17 sure if they are working next to a significant cultural
18 site that they know the things they should not do around
19 that site.

20 But yeah, I think the impacts here would not be
21 direct but indirect.

22 MEMBER PARKE: So there is no particular sites
23 on either the preferred or alternate routes that have
24 medicinal plant collection sites, basket collection,
25 material collection sites, particular clay deposits that

1 the Nation or that you have identified?

2 THE WITNESS: The answer to that would be yes,
3 the only place that might occur would be at the
4 termination points. Once you get up in the mountains up
5 there, there could be sites up there like that.

6 MEMBER PARKE: Could be.

7 THE WITNESS: The bulk of the route across the
8 experimental range would not contain those kind of
9 sites.

10 MEMBER PARKE: And just to your point about
11 folks going into the area and searching illegally for
12 archeological remnants, it has been testified to that
13 Santa Rita Road has been in this place for many years.
14 So this is not -- would you agree that at least along
15 those routes that have established right-of-way or road
16 that is in existence, it wouldn't have an additional
17 impact in terms of there is already a road there?

18 THE WITNESS: That's correct. There already is
19 a road there. I think the kind of impact I was talking
20 about in regard to Huerfano Butte would be if there are
21 large numbers of people, construction crews working in
22 the area introduces an element of a lot more people into
23 an area that might not necessarily have that kind of
24 presence. And, you know, I believe that if the
25 Committee's decision was to go ahead with that line, we

1 would want to propose certain restrictions that would
2 take place, you know, if construction was taking place
3 in close proximity to that site.

4 MEMBER PARKE: And you have been here for the
5 testimony of TEP's witnesses, that they actually have
6 included conditions, and you have reviewed the proposed
7 CEC and have seen those conditions?

8 THE WITNESS: Yes.

9 MEMBER PARKE: And those appear acceptable to
10 you?

11 THE WITNESS: Yes. I think we would want to
12 specify a little bit more, particularly for a site like
13 we were just discussing on the map, we want to be a
14 little more detailed in terms of what we want to do or
15 not do out there.

16 And this becomes a particular concern. Because
17 I got a call yesterday from the Arizona State Museum.
18 They are out investigating, if the weather allows them
19 to get out there today, they are investigating reports
20 of three sites that have been looted out on the Santa
21 Rita Experimental Range. None of these appear to be
22 within the preferred alternative, but they appear to be
23 further south. But it just is an indication that as
24 more and more people get in that area, then this problem
25 of site looting becomes more and serious. And I do

1 believe with regard to Huerfano Butte, if it is
2 considered an area for indirect impacts, then measures
3 could be proposed that would lessen any of those kinds
4 of impacts.

5 MEMBER PARKE: I hope that you would have
6 something to proffer on that.

7 And thank you, Mr. Chairman.

8 CHMN. FOREMAN: Proceed.

9 MS. BERGLAN: Thank you.

10 BY MS. BERGLAN:

11 Q. And do you consider the Ce:wi Duag TCP
12 traditional cultural property a historic site?

13 A. It is both historic and prehistoric, because the
14 boundaries include a large number of the historic kinds
15 of locations we just discussed a few minutes ago that
16 are still visited by people from the Nation, and it also
17 includes a large number of prehistoric sites that are
18 regarded as ancestral.

19 Q. And does the EPG survey address the Ce:wi Duag
20 traditional cultural property?

21 A. No, it does not.

22 Q. Thank you.

23 And yesterday you heard Ms. Weinstein testify
24 that two sites --

25 CHMN. FOREMAN: I am sorry, go ahead.

1 BY MS. BERGLAN:

2 Q. -- that two sites along the proposed route would
3 be affected, is the word that EPG was using, along that
4 route. Do you agree with that position?

5 A. Yeah, there definitely would be two sites that,
6 it appears from at least a preliminary glance, would be
7 very difficult to span over with the transmission line.

8 Q. And you agree it is only two sites that would be
9 affected?

10 A. Well, the other five sites -- you know, my
11 colleagues from EPG, when they were discussing the seven
12 sites out there, they had recommended the two sites
13 probably could not be spanned. And the other five sites
14 might be able to be spanned by the power poles. The
15 logistics involved with spanning a site with poles and
16 not putting poles in the site, you know, require that a
17 good map be made of the site so you know where the site
18 boundaries are, and then you would also know what the
19 spanning interval is, which I believe Mr. Beck said was
20 roughly around 750 feet between poles. And then you
21 would work this out for each particular site. You know,
22 you would make sure you could do this on the particular
23 site.

24 And so some of these sites I have no doubt
25 probably could be spanned by the poles. And there is at

1 least two and perhaps a couple others that might -- may
2 be more difficult to span with the poles. But I think
3 it is important to note that the poles are not the only
4 impact.

5 And if whoever is in charge of the exhibits, Ed,
6 the picture we had, the cross-section that had the road
7 and poles, that is illustrative in this answer to this
8 particular question.

9 That's it. That's perfect.

10 This cross section map, obviously we have all
11 looked at this before, you know, shows where the
12 potential electric power line will go. It shows where
13 the existing Santa Rita Road is. It shows where a
14 pipeline, water pipeline may be constructed. And it
15 also indicates a 14 foot wide service road.

16 If you had an arc -- it is not drawn here, but
17 if this was crossing over an archeological site, you
18 have several issues. If the site was contained, you
19 know, between the two poles, assuming this distance
20 between the two poles is approximately 750 feet, while
21 the poles would span the site, and that would be one of
22 the issues that would be addressed, you are not going to
23 put a pole in a site, so the poles would be, the line
24 would be able to go over the site.

25 But that still would not address the issues of

1 the access road or the construction of a water line,
2 because if there is a site that is sitting roughly in
3 this area I am outlining here, you may be able to avoid
4 by the poles, but the site may be, still may be impacted
5 by the construction of an access road and the
6 construction of a water pipeline.

7 And then the other thing Mr. Beck was asked
8 about yesterday, you know, when they go from a service
9 road out to a pole, putting the pole in the ground or
10 whether doing maintenance on the ground, I think the
11 term Mr. Beck used was spur roads that might go out to
12 the pole site. And this pole site could be anywhere.
13 It could be 50 feet from the access road. It could be
14 200, 300 feet. It depends on where it sits in terms of
15 the particular right-of-way.

16 So I think it is important to remember that
17 while you, yes, you may be able to span a site in terms
18 of the pole placement, there still may be an impact on a
19 registered eligible site by the construction of an
20 access road of also the laying in of, you know, an
21 underground water pipeline. Because I am assuming this
22 pipeline is going to be an underground water line, so
23 there would be ground disturbance in those areas that
24 could potentially impact on a site even if the
25 electrical transmission line went over it.

1 Q. And if any of the cultural resource sites in the
2 project area had to be mitigated, what sort of impact
3 does that have on the integrity or the quality of a
4 site?

5 A. Well, as most archeologists know, and certainly
6 my colleagues behind me know, when you mitigate a site
7 and you excavate a site you destroy it. And it is a
8 trade-off. And the national register says, well, if you
9 are going to destroy the site, we want to get all the
10 information we can out of it. And that's done by
11 mitigation. And by mitigation on a buried prehistoric
12 site, it is by excavating the site.

13 As I mentioned earlier, there could be other
14 mitigation on historic properties above ground. But by
15 and large, most of the sites we are dealing with on the
16 preferred out are prehistoric sites that would primarily
17 be buried under the ground and would have to be
18 excavated according to the procedure outlined and a
19 treatment plan that would be approved by the State
20 Historic Preservation Office and would also be approved
21 by the Coronado National Forest.

22 Q. Thank you.

23 And if I could get you to turn to what has been
24 marked as the Nation's Exhibit O-5, it is entitled
25 Tohono O'odham proposed conditions of certificate of

1 environmental compatibility.

2 A. Which one? I am losing track.

3 Q. The CEC.

4 A. What page?

5 Q. Just it is only page. The first page.

6 A. Hang on. Got it.

7 Q. Okay. Thank you.

8 And the first condition that the Nation has
9 recommended is that the applicant shall engage the
10 services of a Tohono O'odham Nation cultural monitor
11 that shall be present during all construction
12 activities.

13 Could you briefly explain the Tohono O'odham
14 Nation's cultural monitor for the Committee.

15 A. Yes. The cultural monitoring program involves
16 the placement of trained monitors who are tribal members
17 working at archeological site projects. Sometimes this
18 can be on surveys. Sometimes it can be on excavations,
19 sometimes it can even be working in a lab doing analysis
20 of artifacts.

21 The San Xavier district of the Nation started a
22 monitor training program probably 25 years ago. And the
23 reason the San Xavier district did it, there is lots of
24 projects that occur at the San Xavier district because
25 of its proximity to Tucson projects where they are

1 interfacing with Pima County, the City of Tucson, the
2 highway department.

3 So they began a project where they would do two
4 or three training sessions a year, and the goal was to
5 train a cadre of experienced monitors who could work
6 with contractors on survey excavation projects. Our
7 office for the last 15 years has been involved in
8 helping plan and carry out the training sessions. Other
9 members of the Nation participated in it. The Nation's
10 biological staff, the Nation's range management staff,
11 the Nation's engineering department and planning
12 department participate. But it usually ends up with a
13 two-day training session two or three times a year in
14 which monitors are trained and certified and then these
15 monitors are placed at various projects. As I mentioned
16 earlier, I have got a monitor working on a project on
17 the Highway 86 as we speak today.

18 Then in addition to, our office is involved in
19 providing training for monitors on the Nation more
20 directly, not just the San Xavier district, but on
21 projects on the Nation. And we have done approximately
22 10 to 15 training sessions over the last three or four
23 years and have trained, I would say, around 100 to 125
24 monitors.

25 Some of this impetus came for monitors to work

1 with the Border Patrol and Border Patrol construction
2 projects along the border, and then we also do training
3 sessions for the districts of the Nation. The San
4 Xavier district is made, as many of you know, of
5 different districts, and San Xavier district being one.
6 At request we do training sessions for the districts,
7 too, so the districts have monitors that are somewhat
8 familiar. And in addition, we try to get some of these
9 monitors to attend some of the training opportunities
10 that are put on sometimes by archeological contractors
11 in town and also sometimes by the national park system
12 and the State Historic Preservation Office.

13 Q. Thank you.

14 And specifically to the cultural monitor
15 program --

16 CHMN. FOREMAN: Excuse me. Member Noland had a
17 question.

18 MEMBER NOLAND: I am not sure whether I should
19 ask Ms. Berglan this or Mr. Steere. I am going to start
20 with you, Ms. Berglan. The wording that you have
21 proposed for the CEC says applicant shall engage the
22 services. And to me that means that they are going to
23 be paid by TEP.

24 Isn't that a conflict of interest? Shouldn't
25 there be a separation there with the Nation supplying a

1 monitor by the Nation for the Nation to monitor this
2 construction, rather than a relationship between a
3 utility and the monitor?

4 MS. BERGLAN: Thank you, Member Noland. Just
5 for a little background, the Tohono O'odham cultural
6 monitor program, all construction projects that occur on
7 the Nation are required to have that. We don't view it
8 as a conflict of interest. And the reason that it
9 would, it is important that these are members of the
10 Nation is that we ensure that they report back. And I
11 think the reason, a lot of the reason that this program
12 was created is that, yes, you can consult and engage
13 services, have a contractor to do that, but a lot of
14 times they just weren't reporting back to the Nation.

15 MEMBER NOLAND: Well, maybe you misunderstood
16 what I am saying. First of all, this isn't on the
17 Nation, as far as I can see. But why doesn't the Nation
18 supply the person, if this is a condition that you want
19 and you want a monitor on this project, rather than
20 having TEP engage and pay someone, why doesn't the
21 Nation take that on as their responsibility because of
22 their concern? And then that person would work for the
23 Nation and would report back to the Nation.

24 MS. BERGLAN: Thank you for the clarification,
25 Member Noland. These aren't employees of the Nation.

1 They are just private individuals. So that would be a
2 burden upon the Nation to pay for that for a project.
3 So I mean the way that we have always worked projects in
4 the past is the proponent of the project pays for the
5 cultural monitor.

6 MEMBER NOLAND: Well, I want a clarification.
7 Is that for projects on the Nation's land or off?

8 MS. BERGLAN: Well, the only time we can
9 actually require a cultural monitor would be on Nation's
10 lands.

11 MEMBER NOLAND: Okay, thank you.

12 THE WITNESS: Can I -- that question was also
13 addressed to me.

14 MEMBER NOLAND: No, it wasn't.

15 CHMN. FOREMAN: Member Richins.

16 MEMBER RICHINS: What is the approximate
17 additional cost for a monitor? I mean how much does
18 this cost?

19 THE WITNESS: The hourly rate that is paid to
20 monitors varies a little bit depending on their
21 experience, but generally it is between 11 and \$15 an
22 hour.

23 MEMBER RICHINS: Thank you.

24 CHMN. FOREMAN: How much longer do you
25 anticipate your direct examination will last?

1 MS. BERGLAN: That was actually my last
2 question. Thank you.

3 CHMN. FOREMAN: Oh, okay. Now, let's see. We
4 would go next for cross-examination to the Scenic Santa
5 Ritas. Do you have questions?

6 MR. ROBERTSON: Mr. Chairman, when I entered the
7 hearing room this morning I did, but between
8 Ms. Berglan's direct and the witness' responses to
9 questions from members of the Committee, we have none.

10 CHMN. FOREMAN: Very good.

11 Ms. Webb, Mr. Magruder, do you have questions?

12 MS. WEBB: Yes, Mr. Chairman, I do.

13 CHMN. FOREMAN: Okay. I can't remember when we
14 took our last break. I think we are going to take a
15 break just to make sure that Colette has an opportunity
16 to let the blood run back into her fingers. We are
17 going to take about 10 minutes. We will start at 11:35.

18 (A recess ensued from 11:26 a.m. to 11:39 a.m.)

19 CHMN. FOREMAN: All right. We have our witness
20 back. We have counsel here.

21 Ms. Webb, you may proceed.

22 MS. WEBB: I had a request to make sure that the
23 microphone was closer to me.

24

25

1 CROSS-EXAMINATION

2 BY MS. WEBB:

3 Q. Okay. Mr. Steere, thank you for being here.

4 Earlier I heard you say that most
5 recommendations are project driven. When you say most,
6 can you tell me what percentage would you estimate are
7 project driven for the recommendation for eligibility?

8 A. I am not quite sure I understand your question,
9 but I think I had answered that question earlier in
10 response to questions about why the Ce:wi Duag TCP was
11 not nominated and pushed forward at the particular time
12 it was.

13 And I believe in response to that, I said it, a
14 lot of these are project driven. A project occurs,
15 there are potential impact, and the whole evaluation
16 process under NEPA. And NEPA is certainly a driving
17 document for a lot of these. There are certainly some,
18 you know, projects that occur that are not directly
19 related to a project that may be motivated by a research
20 grant, an interest of a contractor in doing a research
21 project. We work with contractors on those. And
22 sometimes coming out of those projects, often working in
23 cooperation with the land management agency, what comes
24 out of some of those projects would be recommendations
25 as to eligibility for the national register of a

1 particular site.

2 Q. Okay. Would the Empire Ranch on Los Cienega be
3 a land management agency working on determining
4 eligibility for historic property?

5 A. Yes, it could be.

6 Q. Okay. Earlier I heard some discussion about
7 whether or not this nomination had been approved or not
8 approved. In your understanding does that mean
9 because -- well, let me circle back.

10 Would you say that this application had been
11 approved as far as being administratively complete?

12 A. I would say it is not completely
13 administratively complete because the Forest Service,
14 while the SHPO concurs with the recommendation for
15 nomination, SHPO had some questions and some edits and
16 some issues they wanted the Forest Service to address.
17 And those issues would be addressed by the Coronado
18 National Forest in the coming weeks or months before the
19 final approval of the nomination, you know, was
20 accomplished.

21 Q. But the National Park Service concurs with the
22 nomination that it would be?

23 A. The Forest Service would respond to the SHPO
24 questions. They might make some edits in the document
25 and then it would be resubmitted to SHPO for their final

1 approval.

2 Q. Okay. Can I refer you to TON-1. Do you have,
3 do you --

4 CHMN. FOREMAN: TON?

5 MS. WEBB: Or O-1, page 1.

6 THE WITNESS: That's the nomination form,
7 correct?

8 BY MS. WEBB:

9 Q. Correct, No. 3, state/federal agency
10 certification.

11 A. I am on page 3.

12 Q. Page 1.

13 A. Page 1. Okay. Hang on. Okay.

14 Q. I hereby certify that this request for
15 determination meets the documentation standards for
16 registration properties in the National Register of
17 Historic Places and meets the procedural and
18 professional requirements set forth in 36 CFR Part 60.
19 In my opinion the property meets the national register
20 criteria. I recommend that this property be considered
21 significant at the following levels of significance.

22 Does this mean this part of it is considered
23 administratively complete on this page? Yes or no.

24 A. Yes.

25 Q. Okay. So when we are using the words approved

1 or not approved, would you agree that means eligible or
2 not eligible, or do you think there was another meaning
3 between, behind the approved or not approved?

4 A. No, approved would mean concurrence that it is
5 eligible.

6 Q. Okay. So if I read this correctly, the
7 forest -- assuming that we get a signed copy, but under
8 the Chairman's directive we can use this for right
9 now -- it appears that the forest concurred that this
10 meets the national registry criteria for eligibility,
11 would you agree?

12 A. Yes.

13 Q. Okay. Has the proposed Rosemont copper mine
14 been approved?

15 A. Please repeat the question.

16 Q. Has the proposed Rosemont copper mine been
17 approved?

18 MR. JAMES: Objection, Your Honor; relevance,
19 materiality.

20 CHMN. FOREMAN: What is the relevance?

21 MS. WEBB: I heard a lot of conversation earlier
22 asking if the Ce:wi Duag nomination had been approved.
23 And they were asking the timing as to whether the
24 nomination had come forward, and --

25 CHMN. FOREMAN: It is interesting that you heard

1 conversation. But we are interested in testimony here.

2 MS. WEBB: Okay. I will restate the question.

3 CHMN. FOREMAN: Okay.

4 BY MS. WEBB:

5 Q. Mr. Steere, is your process closer to approval
6 or is Rosemont Copper's process closer to approval?

7 MR. JAMES: Objection; calls for speculation by
8 the witness.

9 MS. WEBB: Okay, I will restate the question.

10 BY MS. WEBB:

11 Q. Mr. Steere, how close is your process to
12 determination of eligibility?

13 A. I really can't answer that question. I mean the
14 Forest Service has to respond to the questions that the
15 State Historic Preservation has. And, you know, I
16 believe that the -- that process is ongoing right now.
17 When exactly the Forest Service will have an official
18 response to the State Historic Preservation Office, I
19 don't know.

20 Q. In your experience how long do those responses
21 typically take?

22 A. Based on my previous experience I would suspect
23 that the Forest Service working with their contractor
24 would have a response to the SHPO probably within 30 to
25 60 days.

1 Q. From when?

2 A. From the date that the Forest Service received
3 the letter back from SHPO, which I believe was the
4 letter that is in here that is dated early December.

5 Q. Early December of 2011 or early December of
6 2010?

7 A. '11.

8 Q. Okay. So based on your experience, you should
9 have a decision early December until -- well, it looks
10 like maybe the end of this month. The end of
11 December 2011 or the end of January 2012 you should have
12 a decision, based on your experience as an archeologist?

13 A. I would suspect that, you know, the Forest
14 Service would have a response to the questions raised by
15 the SHPO office probably by the end of January. Then
16 how long that paperwork takes to come back, you know, it
17 takes a little while. The State Historic Preservation
18 Office has a lot of projects going on. And this would
19 also be considered in conjunction with the draft EIS,
20 whose comments are due on the middle of January.

21 And since this is an issue that relates, you
22 know, primarily to the draft environmental impact
23 statement to a certain degree, I would suspect that the
24 Forest Service would want to conclude this matter,
25 respond to the SHPO, you know, fairly quickly. But I

1 can't predict the exact time frame.

2 Q. Would you say that eligibility would be
3 determined within six months, typically? Yes or no.

4 A. Yes.

5 CHMN. FOREMAN: "I don't know" also is an
6 appropriate response, especially where you have already
7 said I don't know, so...

8 MS. WEBB: Okay.

9 BY MS. WEBB:

10 Q. Okay. So yes, typically it would be six months?

11 A. Yes.

12 Q. Okay. I heard you had mentioned earlier that
13 you were a cooperating agency. Can you just in maybe
14 two or three sentences explain what a cooperating agency
15 is?

16 A. A cooperating agency under NEPA for a particular
17 project like the Rosemont mine, the Forest Service,
18 which is the lead agency, has the option under NEPA to
19 set up a group of cooperating agencies to advise them on
20 all aspects of the project. And that is a -- under
21 NEPA, the federal lead agency on the project does have
22 the option of bringing in cooperating agencies. And I
23 believe that on most large projects, whether Rosemont or
24 anything else, there will be a group of cooperating
25 agencies.

1 Q. Okay. It kind of sounds like sort of a fancy
2 name for a stakeholder group. Would that be accurate?

3 MR. JAMES: Objection. Your Honor, I think that
4 calls --

5 CHMN. FOREMAN: Sustained.

6 MS. WEBB: Okay.

7 BY MS. WEBB:

8 Q. Do you have any regulatory authority as a
9 cooperating agency?

10 A. No, we do not.

11 Q. Okay.

12 A. We do not.

13 Q. Do you work with the Army Corps of Engineers as
14 a cooperating agency?

15 A. We have worked with Army Corps in past years,
16 nothing right now.

17 Q. Do you recall earlier when you were asked
18 whether or not there were any other governmental
19 agencies or federal agencies that could deny the
20 Rosemont copper mine?

21 A. Yes.

22 Q. What agency is that?

23 MR. JAMES: Your Honor, again I object to this
24 line of questioning which deals with the Rosemont mine.

25 CHMN. FOREMAN: Is that the intent of your

1 question, Ms. Webb?

2 MS. WEBB: I can rephrase.

3 BY MS. WEBB:

4 Q. Are there any other federal governmental
5 agencies that can deny the transmission line?

6 A. I believe there are other federal agencies that
7 could have input into this, but I believe the decisions
8 relating to the specific line we are discussing about
9 are the responsibility of this Committee. And if the
10 Forest Service, as the lead agency on that, has
11 questions for this Committee, I am sure they will
12 address this to the Committee once the Committee issues
13 their report.

14 Q. Okay. Have you read the report that has been
15 issued by the Army Corps of Engineers on the federal
16 register?

17 MR. JAMES: Objection, Your Honor.

18 MS. WEBB: This is specific to the transmission
19 line project, if I could have a question.

20 MR. JAMES: I am not sure it is, Your Honor. I
21 am not even sure it has been identified for the record
22 so we know what is going on. There is an application my
23 client submitted for a Section 404 permit for the mine.
24 I am not sure that there is a 404 permit application for
25 the transmission line.

1 CHMN. FOREMAN: Okay. Ms. Webb.

2 MS. WEBB: Mr. Chairman, I disclosed this in my
3 exhibits, and most certainly the transmission line is an
4 integral part of the Section 404 application. It was
5 submitted very, very recently the federal register
6 notice of application. There is not a separate
7 transmission line application.

8 CHMN. FOREMAN: Mr. James.

9 MR. JAMES: Your Honor, what I saw were some
10 copies of diagrams that have been prepared by Westland
11 Resources, which is a consultant to Rosemont on their
12 mining project, a 404 permit for some aspect of the
13 transmission line. And if I recall Mr. Beck's testimony
14 correctly, he had mentioned the possibility -- in fact,
15 I believe he was asked a question perhaps by Ms. Webb
16 about whether a 404 permit would be needed for the line.
17 And he indicated they did not think so because they
18 would simply span jurisdictional wires.

19 And I don't believe -- and counsel for TEP can
20 correct me -- I don't believe TEP has filed an
21 application for a 404 permit for the transmission line.
22 So we are clearly talking about Rosemont's project
23 again.

24 CHMN. FOREMAN: Okay. I am going to sustain the
25 objection, Ms. Webb, until you provide some sort of

1 foundational basis that would demonstrate that a 404
2 permit is needed for the construction of the line.

3 MS. WEBB: Okay. Can I have a moment?

4 CHMN. FOREMAN: Yes.

5 BY MS. WEBB:

6 Q. Mr. Steere, can I direct you to O-1 of the
7 federal register of nomination, page 2. Do you need a
8 moment?

9 A. I have that page.

10 Q. Okay. And then can I direct your attention to
11 Exhibit O-3 to the left on the screen. Under current
12 functions on O-1, page 2, under landscape, do you see
13 the word drainages?

14 A. What is the second exhibit you are referring to?
15 I don't have that. I have got the first one.

16 Q. Mr. Steere, if I might direct you up there to
17 the screen, on the screen, the map.

18 A. Okay.

19 Q. Okay? Are there any drainages in the Ce:wi Duag
20 for the preferred alignment on the map?

21 A. Yes, the alignment crosses drainages.

22 Q. Okay. Are drainages typically considered in a
23 404 permit?

24 MR. JAMES: Objection. Again, I think that
25 calls for a legal conclusion. And I think it also

1 misstates the law. I can explain more, Your Honor.

2 CHMN. FOREMAN: Well, first of all, I want to
3 find out whether the witness has any knowledge in this
4 area.

5 Do you know, do you have an opinion concerning
6 whether or not the -- yeah, do you have an opinion in
7 response to the question? Do you know what it is she is
8 asking you to do?

9 THE WITNESS: I think so.

10 CHMN. FOREMAN: Okay. All right.

11 THE WITNESS: I think so.

12 CHMN. FOREMAN: All right. So now you have
13 objected on the basis that it calls for a legal
14 conclusion. Do you want to expand on that?

15 MR. JAMES: Well, Your Honor, I think again we
16 are back to the 404 permit issue, which applies to
17 discharges of dredge or fill material into drainages
18 that are classified under the Clean Water Act as waters
19 of the United States.

20 CHMN. FOREMAN: Okay. Stop there.

21 MR. JAMES: All right.

22 CHMN. FOREMAN: Is there another purpose other
23 than that for which you asked the question, Ms. Webb?

24 MS. WEBB: Other than being waters of the U.S.?

25 CHMN. FOREMAN: Okay. I --

1 MS. WEBB: I am trying to think how to say this
2 to be the most efficient. When I am talking about the
3 waters of the U.S. and impacts to the waters of the
4 U.S., to circle back to the question are there other
5 federal agencies that can deny --

6 CHMN. FOREMAN: And I think, to use your phrase
7 of circling back, I think what you do, are doing, is
8 circling back to the question of the Corps of Engineers
9 permit for the mine. And so I am going to sustain the
10 objection, unless you provide some foundational basis
11 for me to believe that this would be relevant to the
12 transmission line.

13 MS. WEBB: So I just use that during my
14 testimony with my exhibit? I mean I am just trying to
15 understand the process.

16 CHMN. FOREMAN: All right. Understanding the
17 process is you don't need to go down the path that you
18 are following. Now, if you are asking me --

19 MS. WEBB: Okay.

20 CHMN. FOREMAN: -- by denying you the ability to
21 go down the path now I am allowing you to go down the
22 path later, that's not an inference that you should
23 draw.

24 MS. WEBB: Okay. And I understand that. It is
25 just that some of the things that Mr. James was saying

1 that I had done were not true. So I don't know when I
2 am allowed to address that particular part. So...

3 CHMN. FOREMAN: Okay. Well, you are allowed to
4 address the issue of the Corps of Engineers 404 permit
5 when you provide some sort of foundational basis for me
6 believing that it is relevant or material to the line,
7 siting the transmission line, rather than the mine.

8 MS. WEBB: Okey-dokey. All right. Thank you,
9 Mr. Chairman, for your guidance.

10 BY MS. WEBB:

11 Q. Okay. Mr. Steere, were you here for
12 Mr. Joaquin's public comments on Monday night?

13 A. Yes.

14 Q. Did you hear him say his people view the land
15 differently?

16 A. Say again. I couldn't hear you.

17 Q. Did you hear him say something to the effect
18 that his people view the land differently?

19 A. Yes.

20 Q. Okay. In reference to Member Rodriguez'
21 comments earlier that the property could have been
22 registered 20 years or so earlier, from a cultural
23 perspective, would this have been typical of your 15
24 years of experience in working with the O'odham people?

25 A. Most of the projects that we have been -- most

1 of the times we have gone forward with nominations of
2 projects has been project related. There have been a
3 few times where we have independently, working with a
4 collaborative agency, moved forward with a nomination
5 that was not necessarily specifically driven by a
6 project.

7 Q. So most of the nominations or requests that you
8 put forward have been project driven?

9 A. Yes, they have.

10 Q. So this is not out of the ordinary?

11 A. No.

12 Q. Okay. Have you ever been involved in a case
13 before the Arizona Corporation Commission or the
14 Committee where a CEC was denied?

15 A. Yes.

16 Q. Can you tell me what that case was?

17 A. I am doing this from memory. It was a long time
18 ago. It was a Toltec --

19 Q. Toltec?

20 A. -- project.

21 Q. Toltec what? I mean what did it involve?

22 A. The Nation was involved in opposition to that
23 project. And again, I am doing this from memory, but
24 the then chairman of the Nation sent a letter to the
25 then -- whose name I don't remember -- the then Chairman

1 of the Corporation Commission regarding the Nation's
2 position on the Toltec project.

3 Q. And do you recall what the basis of that letter
4 was?

5 MR. GELLMAN: Objection; immaterial to the
6 siting of this project.

7 CHMN. FOREMAN: What is the materiality?

8 MS. WEBB: I do believe the Toltec transmission
9 line power plant was denied based on the need versus the
10 ecology and environment of the State of Arizona. And I
11 believe that the information that was sent from the
12 O'odham Nation was related to those statutes. And I
13 think it is very relevant in this case so the Committee
14 can understand that it does have the rights under the
15 statutes to deny.

16 CHMN. FOREMAN: I think you have a record on the
17 fact that it was denied, and a record on the fact that
18 the Nation provided input on that. If you want at this
19 point to try and find some way to inquire into the
20 mental processes of the members of the Committee at that
21 time or the Commission, that's a road we are not going
22 to travel. So...

23 MS. WEBB: Okay. I will think of another
24 question.

25 BY MS. WEBB:

1 Q. Did the Nation ask them to deny based on
2 viewshed issues?

3 A. I can't hear you.

4 Q. Did the Nation ask the Committee or the
5 Commission to deny based on issues related to viewshed?

6 A. On the Toltec project?

7 Q. Correct.

8 A. Yes.

9 Q. I believe I heard you testify earlier that the
10 Ce:wi Duag cannot be avoided through viewshed
11 mitigation, is this correct?

12 A. It is difficult to -- it is, one of the hardest
13 things to do is to mitigate visual impact to a
14 traditional cultural place. Efforts can be made in
15 terms of the size of the transmission line, the size of
16 a pole, the situation of the poles, the coloring of the
17 poles. Those are some of the issues that can be
18 considered when one is attempting to mitigate the
19 impacts of a power line.

20 Q. Okay. So from what I understood of your
21 definition of mitigate earlier, that is to destroy or to
22 excavate. Is that the same thing as to avoid?

23 MR. JAMES: Objection, Your Honor. I think that
24 misstates the witness' testimony.

25 CHMN. FOREMAN: Sustained.

1 MS. WEBB: Okay.

2 BY MS. WEBB:

3 Q. Does mitigate mean avoid?

4 A. Mitigate does not mean avoid.

5 Q. Okay. Thank you.

6 In response to Mr. Haenichen's -- and I
7 apologize if I said that wrong -- question of how many
8 acres of Coronado National Forest would be directly
9 impacted by the transmission line, is it --

10 Clark, is it possible to put up a map? Or
11 Mr. Chairman, can we ask Clark to pull up a map on this
12 side that shows the topography without the green on the
13 right-hand side?

14 Mr. Steere, can you see the map on the
15 right-hand side that shows the detailed study area of
16 the topography of the preferred route?

17 A. Yes.

18 Q. Okay. Can you see the outline of the Rosemont
19 Copper private land?

20 A. Yes.

21 Q. Okay. How many acres to the right, which would
22 be the northeast, are Coronado National Forest,
23 approximately, from a percentage perspective?

24 A. I would say -- please repeat the question.

25 Q. Okay. If you look at the Rosemont Copper

1 property and holdings and then you look at the Coronado
2 National Forest, and you can see the title at the top,
3 percentage-wise that have a direct line of sight to the
4 proposed preferred route, what is the percentage?

5 MR. JAMES: Objection. I think it calls for
6 speculation, Your Honor.

7 CHMN. FOREMAN: Speculation or a level of
8 expertise that would be extraordinary, so I will sustain
9 it.

10 MS. WEBB: Okay.

11 BY MS. WEBB:

12 Q. Mr. Steere, looking at the map, from the words
13 Lopez Pass to the planned Rosemont substation, where
14 does it appear to be adjacent to Coronado National
15 Forest?

16 A. You are speaking of the power line?

17 Q. That's all I am speaking of. This is a line
18 siting process, so yes.

19 A. Well, the power line, when it follows the
20 preferred route and it leaves the experimental range, it
21 crosses onto lands that are, you know, best of my
22 understanding are primarily Rosemont properties. And
23 there may be from the maps that Mr. Beck showed the
24 other day a touch here or there on some BLM or Forest
25 Service land on the preferred route. The other routes

1 down to the south --

2 Q. Okay.

3 A. -- obviously cross considerably larger amounts.

4 Q. Mr. Steere, I am sorry to interrupt. I know
5 everybody wants to go to lunch or something.

6 Looking at the words Lopez Pass, see Lopez Pass
7 by the purple outline of --

8 A. Yes, I see it.

9 Q. Okay. Between that part and the Rosemont
10 substation, how much acreage along that area do you
11 think, do you see percentage-wise?

12 MR. JAMES: Same objection, Your Honor. I think
13 that would call, as you said, for an extraordinary
14 amount of expertise.

15 BY MS. WEBB:

16 Q. Would you agree you could see the proposed power
17 line from the acreage to the northeast, the forest land?

18 A. I have been up in that area. And while the
19 power line is not constructed, I would expect that the
20 power line will be visible, you know, from that area.
21 You know, how much of it, all of it, some of it, is only
22 going to depend on the topographic layout.

23 Q. Did you hear Ms. Weinstein's testimony
24 yesterday?

25 A. Yes.

1 Q. Would you agree that there was not an adequate
2 viewshed analysis from those forest lands looking
3 towards the power line, proposed power line?

4 A. I would agree.

5 Q. I believe I heard you say earlier if a site is
6 determined eligible it must be considered in the
7 planning process, and if it is considered ineligible, it
8 is not in future planning, was that correct?

9 A. By federal, by the federal statute, that is
10 correct. In practice, however, there are many
11 circumstances where efforts will still be made to avoid
12 sites that aren't eligible.

13 Q. Is that voluntary or is that required?

14 A. That is basically voluntary, usually, between a
15 project proponent. We do that on the Nation all the
16 time.

17 Q. Okay. If a site has not been discovered or
18 determined for eligibility or ineligibility, what
19 protections does that have?

20 A. If you are talking about a site that's
21 discovered during a project, is that what you are
22 talking about, an unanticipated discovery?

23 Q. No. When a site is being evaluated, say when
24 the transects are being walked under the 100 percent,
25 and if it is not evaluated to determine if it is

1 eligible or ineligible, essentially like it is not seen,
2 then what protections does it have? An example would be
3 the Helvetia cemetery.

4 A. An example would be what?

5 Q. The Helvetia cemetery.

6 A. If the site is not seen during a survey, the
7 site would not be recorded. The Helvetia cemetery was
8 certainly visible to anyone that drives up that road.
9 And I understand from what was said by EPG yesterday
10 that site was not included as part of their survey
11 report. But I think the Helvetia site certainly is very
12 visible. Everyone knows it is there. It is a cemetery
13 that's still being used and would, you know, expect
14 would be avoided by the transmission line.

15 Q. When you say still being used --

16 CHMN. FOREMAN: Ms. Webb, how much longer do you
17 anticipate your examination will last?

18 MS. WEBB: I have about three and a half pages.

19 CHMN. FOREMAN: Okay. We are going to take the
20 lunch recess. We will start again at 1:30.

21 (A recess ensued from 12:09 p.m. to 1:35 p.m.)

22 CHMN. FOREMAN: Ms. Webb, are you ready to
23 proceed?

24 MR. BLACK: Your Honor.

25 CHMN. FOREMAN: Yes. I am sorry, Mr. Black.

1 MR. BLACK: Can I bring up a short procedural
2 issue?

3 CHMN. FOREMAN: You can even bring up a tall
4 procedural issue.

5 MR. BLACK: Your Honor, members of the
6 Committee, in the interest of time and efficiency,
7 Rosemont would be willing to stipulate that
8 cross-examination be limited to 20 or 30 minutes, with
9 the understanding that Ms. Webb can continue on her 20
10 to 30 minutes on this particular witness. That's the
11 motion that we would like to make at this time.

12 MR. GELLMAN: The applicant would join.

13 CHMN. FOREMAN: That's another burst of optimism
14 here. So far I have not imposed time limits on
15 cross-examination. In a hearing like this, it is
16 something that it is tempting under the circumstances.
17 I am not going to grant the motion now, but maybe in 20
18 or 30 minutes I will hear it re-urged.

19 So, Ms. Webb, let's see if we can wrap up your
20 examination of Mr. Steere in the next 20 or 30 minutes.

21 MS. WEBB: Thank you, Mr. Chairman. And I
22 was -- I did consult with some of the other parties and
23 they did explain some of the things I was doing
24 incorrectly with my cross-examination. So I will
25 procedurally try to fix those problems.

1 Mr. Steere, let me know when you are ready.

2 THE WITNESS: I am all set. If you would speak
3 directly into your mike, I would appreciate.

4 MS. WEBB: Yes, I am having a lot of problems
5 over here.

6 THE WITNESS: My hearing isn't what it used to
7 be.

8 MS. WEBB: Let me try this. There we go.

9 BY MS. WEBB:

10 Q. I believe I heard you say earlier that EPG
11 considered all sites for their directive, is that
12 correct?

13 A. Yes.

14 Q. Were you referring to Class I or Class III
15 surveys?

16 A. EPG considered all sites they found within their
17 designated survey area and what their report is about.

18 Q. Did that include the Santa Rita Experimental
19 Range?

20 A. That includes that portion of the Santa Rita
21 Experimental Range that the right-of-way crosses.

22 Q. So are you saying that in the reports you read
23 the Santa Rita Experimental Range was considered for
24 eligibility for the national register for a historic
25 park?

1 A. I am sorry, say it again.

2 Q. In the reports that you have read was the Santa
3 Rita Experimental Range considered for eligibility?

4 A. Yes.

5 Q. And which report was that?

6 A. There were at least four reports that I reviewed
7 that EPG sent to me. One was their Class I overview in
8 which they covered a very large area, you know, not only
9 the area represented on the map, but a very large,
10 bigger area. And then their subsequent reports that I
11 received, you know, covered all of the alternative lines
12 that were proposed, all, I think it is, five variations,
13 the preferred alternative, 1, 2 and 3 and 4. Their
14 reports covered the surveys in all those rights-of-ways.

15 Q. I am not sure we are talking about the same
16 thing. They covered the areas on the Santa Rita
17 Experimental Range. Did they call out the Santa Rita
18 Experimental Range as a site?

19 A. No, they did not.

20 Q. Okay.

21 A. No, they did not.

22 Q. I believe I heard you indicate that you have
23 worked for the Nation for 15 years and then that you
24 were not privy to all Tohono O'odham religious sites and
25 so forth, is that correct?

1 A. Yes.

2 Q. Does that mean that there are other sites you
3 are unaware of in the Santa Ritas along the transmission
4 line preferred route?

5 A. I don't believe so. I think so much work has
6 been -- has transpired on everything relating to this
7 project that I believe that we have a pretty good idea
8 of the kinds of sites that are out there, but certainly
9 not every single one.

10 Q. Okay. I believe I heard you indicate that
11 there are sites considered important for basket
12 gathering materials. What kind of materials would be
13 considered important?

14 A. Probably the primary material that was, you
15 know, collected, is still collected, as reported to me
16 by traditional O'odham basket makers, is bear grass.
17 And there are areas on the Coronado National Forest
18 where members of the Nation who need bear grass work
19 with the Forest Service to go up to an area to collect
20 it. But bear grass would be the primary material that
21 would be collected in the upland area.

22 Q. Have you been to Lopez Pass via Helvetia?

23 A. Yes, I have, a long time ago.

24 Q. Okay. And are agave used for any traditional
25 basket making?

1 A. No. Agave, sometimes agave root is used by
2 basket makers, but agave itself is used as a food, not
3 as a basket making material.

4 Q. If it is used for food, is it still considered
5 culturally important?

6 A. I would say agave is a culturally important
7 plant for the members of the Nation. And there continue
8 to be elaborate get-togethers of people when they go
9 agave harvesting and the preparation of agave for food.

10 Q. When you read the cultural reports, I hesitate
11 to use the word I like to circle back, when you -- but
12 let's circle back. When you -- these reports you are
13 discussing, are these reports anything that were
14 available to the Committee or in a form that we can
15 read?

16 A. I can't --

17 MR. GELLMAN: Objection.

18 THE WITNESS: I can't answer that.

19 MR. GELLMAN: What reports are we referring to?
20 I think the question is vague.

21 MS. WEBB: The four reports Mr. Steere indicated
22 earlier he read regarding this project.

23 CHMN. FOREMAN: Do you understand the question,
24 Mr. Steere?

25 THE WITNESS: Yes. I don't know if all the EPG

1 reports were distributed to the Committee.

2 CHMN. FOREMAN: The answer to my question then
3 was yes?

4 THE WITNESS: Yes.

5 CHMN. FOREMAN: Okay. Because he knows what he
6 is talking about I will overrule the objection.

7 Now you may answer.

8 THE WITNESS: I do not know if all the technical
9 archeological reports were provided to all of the
10 Committee members. I know that they are referenced in
11 this large document here, but I don't know if every
12 specific cultural resource report was provided to the
13 Committee. I cannot answer that question.

14 BY MS. WEBB:

15 Q. Okay. Mr. Steere, in those reports that you
16 were able to read, were impacts to bear grass and agave
17 referenced?

18 A. No.

19 Q. I have a question regarding indirect impacts and
20 viewshed. And this is something truly I don't
21 understand, so I am asking you because I don't know. If
22 you are looking at something, if you are looking out --
23 and for the record, I have got a bottle of water in
24 front of my face -- is this bottle of water an indirect
25 impact or a direct impact?

1 A. I am not sure I understand your question. Could
2 you please repeat it again?

3 CHMN. FOREMAN: Impact to what?

4 MS. WEBB: My view.

5 BY MS. WEBB:

6 Q. Is this bottle of water a direct impact to my
7 view or an indirect impact to my view, the bottle of
8 water that is two inches from my face?

9 MR. GELLMAN: Objection; immaterial. And I
10 don't know if this expert has been -- or this witness
11 has been qualified as an expert in viewshed analysis.
12 So I think it is outside the scope of Mr. Steere's
13 testimony as well.

14 CHMN. FOREMAN: Mr. Black, do you want to make
15 your motion?

16 MR. BLACK: Yes. I would like to move that we
17 limit cross-examination to no more than 30 minutes per
18 party.

19 CHMN. FOREMAN: Okay. I am going to -- we will
20 use that as a presumptive cross-examination time. You
21 may ask for time in excess of that, and if there is good
22 cause appearing I will let you go beyond 30 minutes.

23 You have gone way beyond 30 minutes, Ms. Webb.
24 You have five more minutes. And we have, in the recent
25 past, covered whether a bottle six inches from your face

1 is a direct or indirect impact and we have discussed
2 bear grass and agave.

3 MS. WEBB: Okay.

4 CHMN. FOREMAN: And I encourage you, if you want
5 the Committee to take seriously your presentation to it,
6 that you focus in on what it is you are really -- what
7 it is that's important and what it is you feel this
8 witness can provide the Committee that will assist you
9 in making your case.

10 MS. WEBB: Okay. I am just trying to figure out
11 what I can ask in five minutes.

12 BY MS. WEBB:

13 Q. Mr. Steere, I believe I heard you indicate
14 earlier that there would be indirect viewshed impacts to
15 Huerfano Butte. And I don't understand if a pole is in
16 front of me, is that a direct or indirect impact. And
17 have you done viewshed analysis for cultural resources
18 in your job as an archeologist?

19 MR. JAMES: Objection; that's a compound
20 question.

21 CHMN. FOREMAN: Which one of those questions
22 would you like for Mr. Steere to answer?

23 MS. WEBB: The first one and then the second
24 one.

25 CHMN. FOREMAN: Okay. Let's restate the first

1 one, and after he answers the first one then we will go
2 to the second one.

3 MS. WEBB: Okay.

4 BY MS. WEBB:

5 Q. In your experience as an archeologist or -- is
6 viewshed part of your cultural resources analysis?

7 A. Yes, it is.

8 Q. Okay. In determining direct and indirect
9 impacts to viewshed, if something is right in front of
10 you, is that a direct or indirect impact?

11 A. It could be either. Depending on the
12 orientation of the particular site and the significance
13 of that site, it could be indirect or direct in terms of
14 a cultural landscape impact.

15 Q. Okay. In the reports that you were able to
16 access was there any information that discussed impacts
17 to lay down -- lay-down sites for the construction of
18 the transmission line, and lay-down sites meaning areas
19 where they have to lay down the poles and so forth that
20 I have seen in other applications?

21 A. There were sections of the report, not the
22 cultural report, of the CEC report that addressed
23 viewshed impacts, you know, based on, as EPG staff told,
24 primarily on Forest Service and BLM standards which are
25 largely based on scenic issues.

1 A. Yes.

2 Q. Are you representing a sovereign nation?

3 A. Yes, I am.

4 Q. And what is the difference between a sovereign
5 nation and the State of Arizona, in general terms?

6 A. There is a special relationship between all
7 tribes in the United States and the United States
8 government. This is based on federal laws that go back
9 into the 1700s in terms of the relationship between
10 Native American tribes and Nations and the United States
11 government. That is a different relationship than the
12 State of Arizona, which is tied into the United States
13 Constitution, from the original 13 states and all the
14 states that have joined the Union since. It is a
15 different relationship.

16 Q. So there is a different type of legal
17 relationship between a sovereign nation and the State of
18 Arizona?

19 A. Yes, it is.

20 Q. And do you have a working relationship with the
21 State of Arizona on archeological matters?

22 A. Yes, we do.

23 Q. And do you do this work through the SHPO office?

24 A. We used to, but we -- we deal with the SHPO
25 office on cultural projects that are off the Nation.

1 Since we set up our own tribal historic preservation
2 office and took over those responsibilities almost three
3 years ago, now on all Section 106 projects on the
4 Nation, we take care of meeting Section 106 compliances
5 on projects. Off the Nation, such as the ones we have
6 been discussing here, we -- the SHPO would consult with
7 us, but SHPO has the responsibility for dealing with the
8 cultural resource issues, you know, interacting with the
9 lead agency, which is the Coronado National Forest.

10 Q. So in general you run the SHPO equivalent office
11 for the Nation?

12 A. For the Nation on tribal lands only.

13 Q. And for this project, you are required to,
14 because it is off your Nation, to coordinate with the
15 State of Arizona?

16 A. We do, we coordinate with the SHPO office
17 because it is, federal legislation mandates that federal
18 agencies consult with tribes on projects on federal
19 lands in which there may be impact to cultural sites.
20 And off the Nation, whether it is Arizona or Indiana, we
21 would deal with the State Historic Preservation Office.

22 Q. And the application that you submitted for this
23 T -- tribal -- I forget the word. TC, tribal?

24 A. TCP.

25 Q. TCP. You are representing not only the Nation,

1 but also several other tribes, is that correct?

2 A. We consult with the other tribes; we don't
3 represent the other tribal nations. We requested that
4 the Forest Service submit a nomination to the national
5 register for the Ce:wi Duag traditional cultural place.
6 As part of the research for that there was consultation
7 that went on with other tribes, but we are primarily the
8 lead on this in terms of requesting the Forest Service
9 to do this.

10 Q. Okay. And so you are representing and working
11 with the other tribes?

12 A. Yes, sir, we work with a number of the other
13 tribes on projects, yes.

14 Q. Okay. With respect to the area that we are
15 talking about, looking at the preferred route, would you
16 say that would be the primary road that some members of
17 your Nation might go to cultural sites such as to gather
18 soil samples for making pottery or for basket weaving
19 material if they wanted to go up to, let's say, Lopez
20 Pass?

21 A. The times I have been out with elders, sometimes
22 we have gone out on the Santa Rita Road. Sometimes we
23 have gone up, you know, Highway 83, the road over to
24 Sonoita, and come in from the other side, you know.

25 Q. Okay.

1 A. Both areas have been used for access.

2 Q. Is there more than one way to get to Lopez Pass
3 from the west without -- other than -- is there any
4 other way other than the primary?

5 A. I don't think so. No, I don't think so.

6 Q. So the gatherers -- and I will call them the
7 gatherers for these different materials -- or people
8 going to religious services would all be going down the
9 same route that the transmission line would go on the
10 preferred route?

11 A. Some would go in that way. Some would come in
12 on the east side of the map there from Highway 83.

13 Q. Okay. But from the west side they would go --

14 A. Oh.

15 Q. -- in the vicinity of the preferred route?

16 A. There are some people that would use Box Canyon
17 Road also.

18 Q. Let me say it another way. They would use the
19 Forest Service roads that are presently in existence?

20 A. Yes. They would use Santa Rita Road and any of
21 the other roads present in the area.

22 Q. And we are using a Forest Service road along the
23 preferred route to Lopez Pass?

24 A. That is the Forest Service road, yes.

25 Q. Okay. And looking at the factors that the

1 Committee needs to consider for a certification of
2 environmental compatibility, factor 5 is titled existing
3 scenic areas, historic sites, and structures or
4 archeological sites at or in the vicinity of the
5 proposed site. Is that the area of your principal
6 testimony?

7 A. Yes.

8 MR. MAGRUDER: Thank you.

9 Those answer my questions, Your Honor,
10 Mr. Chairman.

11 CHMN. FOREMAN: Very good. Now, let's see. We
12 have Rosemont.

13 MR. JAMES: Yes, Mr. Chairman, just a few
14 questions.

15

16 CROSS-EXAMINATION

17 BY MR. JAMES:

18 Q. Good afternoon, Mr. Steere. Can you hear me
19 okay?

20 A. Yeah.

21 Q. Okay. I will try to speak up. And I think --
22 Hang on a second, Your Honor. Many of my
23 questions I think have actually been answered based on
24 questions from the Committee.

25 I do want to go back, though, and take another

1 look at the issue we talked about with respect to the
2 map, which is Exhibit O-3, and it is the map that is
3 shown now. If you go back, Mr. Steere, and take a look
4 at Exhibit 1, O-1, excuse me.

5 A. I got that.

6 Q. And again, we looked at that language on page 4
7 previously under the heading physical description, that
8 second short paragraph that indicates, and again correct
9 me if I am wrong, but that indicates to me that all of
10 the land that's within the area proposed as the
11 traditional cultural property is administered by the
12 Forest Service, is that right?

13 A. Yes.

14 Q. Okay. So any private land that would be within
15 the boundaries shown on Exhibit O-3 would not be part of
16 this nomination to the national register, correct?

17 A. That is correct.

18 Q. Okay. And if you turn to page 11 of
19 Exhibit O-1, near the bottom of the page there is a
20 heading called verbal boundary description. And there
21 is a -- the paragraph says the TCP boundary encompasses
22 as much of the land above the 4500 foot elevation on the
23 Santa Rita Mountains as is within the forest, excluding
24 any private lands.

25 And again, that's your understanding of the

1 scope of the nomination?

2 A. Yes.

3 Q. So as you -- as we talked about before then, any
4 of the private land owned by Rosemont which is shown in
5 the outlined area on Exhibit O-3 would not be part of
6 the nomination, is that right?

7 A. Not unless Rosemont agreed for it to be.

8 Q. Well, I thought we just established looking at
9 Exhibit O-1 that the Forest Service itself says the
10 nomination is simply limited to land that it
11 administers, right?

12 A. I think what I said earlier, what generally
13 happens with a large area nomination like this, whether
14 it is a TCP or district, at some point the State
15 Historic Preservation Office or the lead federal agency
16 would send letters to all the land owners letting them
17 know what is going on. And the landowners could be
18 invited to, you know, have their property included or
19 not included.

20 And that typically takes place in historic
21 districts in urban areas in Arizona frequently where you
22 may have three city blocks that are designated a U.S.
23 historic district, and each landowner would get a copy
24 of a letter asking whether they wanted to have their
25 property included or not. And I would suspect at some

1 point Rosemont would receive a letter from the Forest
2 Service or from State Historic Preservation Office to
3 that effect. But as it stands now, those lands are
4 excluded.

5 Q. And that was what I was getting at.

6 A. Yeah.

7 Q. Okay. If I could, if I could have one of
8 Ms. Weinstein's tables put up. I think left page 40.
9 And what I would like to do very quickly, Mr. Steere, is
10 just compare the different alternative routes and see
11 what portions of those routes are actually within the
12 area that's been nominated for the national register.

13 Now, as you can see from this estimate -- well,
14 and I will just ask you the question. Under the
15 preferred route, how much of the preferred route is
16 within the Coronado National Forest?

17 A. Looking at that table, about a half mile.

18 Q. Okay. And that would be the area that comes
19 down from the north along the preferred route, is that
20 right?

21 A. Yes.

22 Q. Okay. And it looks like all the other
23 alternatives are also the same, the same distance of the
24 route as within the Coronado National Forest except for
25 the last alternative, Alternative 4, which because it

1 comes up from the south contains considerably more land
2 within the nomination area?

3 A. Yes.

4 Q. Okay. And I think you had indicated previously
5 that the Nation does prefer, of the various routes, does
6 prefer the preferred alternative, is that right?

7 A. Yes, it is.

8 Q. Okay. I also want to ask you a few questions
9 about your CEC conditions. Let me find those. It is
10 Exhibit O-5.

11 A. Okay.

12 Q. All right. And your attorney asked some
13 questions about the first proposed condition, about
14 engaging the services of a cultural monitor. Do you
15 recall that?

16 A. Yes.

17 Q. And Member Noland also inquired about how
18 exactly that would work, and we are frankly a bit
19 curious ourselves.

20 Would the cultural monitor be employed by Tucson
21 Electric?

22 A. Yeah, Tucson Electric Power would have the
23 ultimate responsibility. But the person would very
24 likely be employed by the archeological contractor who
25 may be doing the work out there.

1 So, in other words, if a site was to be
2 mitigated and excavated and the Nation requested that a
3 monitor be there, that monitor would work with, you
4 know, the contractor, let's say he was EPG, and then --
5 but ultimately I believe that, you know, TEP would be
6 footing the bill for that.

7 Q. Okay. So the point is -- well, there are a
8 couple points then. So the cultural monitor would not
9 be employed, under your proposal, by the Tohono O'odham
10 Nation itself?

11 A. That's not the way we do it, no.

12 Q. Okay. So either Tucson Electric or a contractor
13 of Tucson Electric would hire the monitor, is that
14 right?

15 A. That's correct.

16 Q. And will the monitor -- well, strike that. Are
17 there sufficient numbers of people qualified to serve as
18 cultural monitors to ensure that the project would be
19 adequately staffed?

20 A. Yes, there is.

21 Q. And you had indicated that there are training
22 requirements, I assume, for cultural monitors, correct?

23 A. Yes, there is.

24 Q. And can you give me an estimate of how many
25 cultural monitors are currently qualified?

1 A. Out of the San Xavier cultural monitor program I
2 would say currently they have between 30 and 40 monitors
3 certified on their list; on the Nation as a whole, I
4 probably have an additional six or seven that I
5 frequently use on projects that have gone through
6 training and gone through experience, and so probably
7 altogether, you know, 40, 45, somewhere in that
8 vicinity.

9 Q. Okay. So again, under your proposed condition,
10 the monitor must be present during all construction
11 activities, is that right?

12 A. Not exactly. We would request the monitor to be
13 present if any activities were occurring, let's say,
14 during the mitigation of an archeological site. If the
15 site could not be avoided and they had to excavate the
16 site, we would want the monitor to be with the
17 archeology crew while that work was taking place on that
18 particular site. We would probably also want the
19 monitor to be with the construction crew when it was in
20 an avoidance mode going over a site.

21 So according to the numbers that EPG presented,
22 you know, there were seven sites altogether; two sites
23 may not be able to be avoided, five sites may be able to
24 be spanned. And so we would request a monitor not to be
25 there for the entire construction, but to be there when

1 any construction activities were taking place in any
2 form on or near one of the archeological sites.

3 Q. Okay. That's a bit different than what
4 Exhibit O-5 says, though. It says the monitor shall be
5 present during all construction activities.

6 A. That is slightly different, yes.

7 Q. Okay. So that would need to be adjusted then to
8 specify that the monitor needs to be present during
9 activities that may impact a cultural property?

10 A. That's correct.

11 Q. Okay. Now, the second proposed condition wasn't
12 discussed. It says applicant shall avoid all cultural
13 resource sites. And it is a bit unclear to Rosemont
14 what that means when you say cultural resource sites.

15 A. What I am referring to specifically would be any
16 one of those seven sites that were recorded by EPG, you
17 know, within, you know, the right-of-way corridor that
18 was proposed. So I believe it was seven sites
19 altogether.

20 Q. So that would mean, then, that if, as you just
21 indicated, and as the record I think shows, if there are
22 two sites where it is uncertain that the project can
23 avoid impacting those sites, then the project couldn't
24 go forward. Is that the intent of this condition?

25 A. Yeah. I believe if the Committee approves this

1 line, the conditions the Nation would like to see would
2 be reflected in those comments there, you know,
3 avoiding, if at all possible, you know, to avoid all the
4 cultural sites. If that's not possible, and you can't
5 span some of the sites, then mitigation activities would
6 have to take place under a treatment plan, you know,
7 approved by the Forest Service by the State Historic
8 Preservation Office. And when all that activity is
9 taking place around those cultural sites, we would like
10 to have a monitor in place.

11 And the only addition I would make to that would
12 be the one site we discussed earlier, Huerfano Butte,
13 which falls just outside of the right-of-way but is a
14 very significant religious site, ceremonial site. And
15 while the line will not impact on it directly, we would
16 certainly want to have people in that area when they are
17 working close to the Huerfano Butte, you know.

18 Q. So additional monitors in effect to monitor the
19 butte?

20 A. We want to have a monitor working in that area,
21 yes. So there would actually be eight sites altogether,
22 the seven recorded by EPG and then the one site that is
23 just outside the right-of-way, which is a very
24 significant site, as I mentioned earlier.

25 MR. JAMES: And I apologize to the court

1 reporter.

2 BY MR. JAMES:

3 Q. Let's go back to Condition, to proposed
4 Condition 2, because once again, what you testified a
5 moment ago is a bit different than Exhibit O-5.

6 It says applicant shall avoid all cultural
7 resource sites. And it sounded to me, and I am not
8 trying to put words in your mouth, Mr. Steere, but it
9 sounds to me like what you really mean is that the
10 applicant shall, what, make a good faith effort to avoid
11 cultural resource sites, but if they can't be avoided,
12 then reasonable efforts shall be made to mitigate any
13 adverse impacts?

14 A. Correct. Our first choice would be to avoid all
15 sites. And if some of that's possible by spanning,
16 that's fine. And then if it is not, then, and another
17 way of avoiding a site, too, would be not only changing
18 it, but changing the right-of-way a little bit to go
19 around that would be another possibility. If you can't
20 avoid it by going around it or going over it, then those
21 sites that are going to be impacted would have to then
22 undergo mitigation.

23 And as I mentioned earlier, we are also a little
24 concerned not only about the power line, but the other
25 things that are being built in the right-of-way, the

1 access road and the water line, because, like I said,
2 when we talked earlier, if the power line goes over the
3 site, that's one issue. But if there is also an access
4 road and a pipeline also going through the same site,
5 that is going to disturb the site. So it is not just
6 the power line up above, it is the other items shown on
7 Mr. Beck's little drawing up on the board.

8 Q. But you are aware that the Line Siting Committee
9 doesn't have jurisdiction over other activities that
10 might be occurring within the Santa Rita Road
11 right-of-way?

12 A. No, I understand that the Line Siting Committee
13 does not, but those issues would probably be addressed
14 in the EIS.

15 Q. Okay. As part of the treatment plan that ends
16 up coming out of the 106 consultation process for the
17 plan of operations?

18 A. Yes.

19 Q. Okay. So what I am trying to do is boil down
20 the conditions that you are proposing. And --

21 CHMN. FOREMAN: Mr. James, let me interrupt you.

22 Let me see, Mr. Steere, if this language may be
23 acceptable to the Nation.

24 And Ms. Berglan, I would appreciate your input
25 here, too.

1 As I am listening to you folks going back and
2 forth, it occurred to me if we modified No. 1 to say at
3 the end of the sentence, put relating to identified or
4 discovered cultural sites, so that it would read
5 applicant shall engage the services of a Tohono O'odham
6 Nation cultural monitor that shall be present during all
7 construction activities relating to identified or
8 discovered cultural sites, does that frame your concern?
9 Am I understanding your testimony that that's what you
10 are interested in?

11 THE WITNESS: Yes, with the only proviso being
12 if construction activities are going on at multiple
13 places, you know, at the same time, in other words, they
14 are working on this spot here and this spot here, and
15 there is cultural sites in both sites, there would have
16 to be more than one monitor. Follow me? Because
17 sometimes there will be construction crews working more
18 than one spot at a time.

19 CHMN. FOREMAN: I do. But I would suggest this
20 language addresses that. It just doesn't address the
21 number of monitors. Or perhaps the sequential nature,
22 it would require sequential construction activities.

23 Ms. Berglan, does that appear to address your
24 concerns?

25 MS. BERGLAN: The only concern I would have

1 related to that, Mr. Chairman, would be this issue of
2 Huerfano Butte. It wasn't identified in the cultural
3 resource survey. And it is not going to be discovered,
4 I don't think. It is not going to be a newly
5 discovered. So if that could be included in the
6 language, then the Nation would be agreeable.

7 CHMN. FOREMAN: Okay. Well, and Mr. James, does
8 that language move towards what you are interested or
9 what your expectation would be?

10 MR. JAMES: I think the language you proposed,
11 Your Honor, does. I think it covers it. As far as
12 Huerfano Butte is concerned, I think it is simply a
13 matter of --

14 CHMN. FOREMAN: Okay. Well, I don't want to get
15 into the business of negotiating it now. But I am just
16 trying to move the constructive -- I move the discussion
17 with the witness along and suggest that this language we
18 are getting down now for something that's imminently
19 practical.

20 So I want to suggest this, if we can tweak this
21 language or refine it, then I would suggest that's the
22 way that we can address this. And it seems to me you
23 folks are close enough together that we might be able to
24 do that.

25 So let me suggest this language for the second

1 one. Applicant shall make reasonable efforts to
2 minimize impact to all cultural resource sites that
3 cannot be avoided. Now, is that language for the second
4 one something that you folks think --

5 THE WITNESS: Could you repeat that, please.

6 CHMN. FOREMAN: Sure. Applicant shall make
7 reasonable efforts to minimize impact to all cultural
8 resource sites that cannot be avoided. So the burden
9 would be to try to avoid other sites. For those that
10 can't be avoided, reasonable efforts would have to be
11 made to minimize any impact to them. Is that --

12 THE WITNESS: I don't -- I could not go with
13 that for the simple reason is if a site can't be
14 avoided, it is not a matter of minimizing impacts to it.
15 I mean you can minimize impacts, but you are still going
16 to have to do mitigation under the National Historic
17 Preservation Act. If there is eligible sites that can't
18 be avoided, you know, you are going to build a power
19 line through it and it can't be spanned, you know, can't
20 be avoided in any manner, you are going -- it is not
21 just a matter of -- you can design things to help
22 minimize impacts, but mitigation --

23 CHMN. FOREMAN: The answer to my question is no,
24 and you have said that. I am just throwing --

25 And Mr. James, does this language move you -- is

1 this something you can live with?

2 MR. JAMES: We are fine with this language, Your
3 Honor.

4 CHMN. FOREMAN: Okay. Let me suggest then that
5 there may be some middle ground that you folks can talk
6 about after we recess and before we begin our
7 deliberations that would be acceptable to all sides.

8 And I throw this out at this point only, number
9 one, to try and expedite things, and two, it sounds to
10 me from listening to what you are saying that you folks
11 are relatively close, and it is a matter of putting
12 appropriate language in that would mean not only that
13 the company would not have an open ended cost risk, but
14 it would mean that the tribe would have a way to make
15 sure that all of the sites that are of importance to it
16 can be appropriately addressed. So I will just leave it
17 at that and allow you, Counsel, to proceed.

18 MR. JAMES: Thank you, Mr. Chairman. I just
19 have one, and actually I am done with my
20 cross-examination, I just have one housekeeping matter.

21 Based on the testimony, and as you recall, I
22 didn't object to the introduction -- well, okay. Oh, I
23 didn't even realize it was up there.

24 The Exhibit O-3, which was the map, I think it
25 has been established through the record that the map is

1 inaccurate. Again, I am not being critical of the
2 Nation, but I think it does create the impression that
3 Rosemont and other private land is part of the
4 nomination.

5 And I just would like to see if we can get an
6 agreement on the record now or ruling by Your Honor to
7 amend that exhibit to make it clear that it only applies
8 to the Coronado National Forest and not to Rosemont or
9 other landowners.

10 CHMN. FOREMAN: Member Noland.

11 MEMBER NOLAND: Thank you, Mr. Chairman.

12 I had a problem with the map, also. I think
13 that it doesn't accurately indicate what was described,
14 in that it doesn't tell what that green area is that you
15 have overlaid onto the TEP map. So you are using a
16 different exhibit number but using the old exhibit, but
17 placing this whole green area on there. And there is no
18 reference to what that is. You have left all the
19 reference points the same as they were for TEP's map, so
20 it doesn't relate to anything. If someone should pick
21 up that exhibit, they are not sure what that whole green
22 area overlay is. So I was going to bring that up. And
23 I have a problem with that being used as an exhibit
24 unless it is accurate.

25 CHMN. FOREMAN: Well, it is in evidence now. Of

1 course, it could be taken out of evidence. I think it
2 has some evidentiary value if for no other reason it
3 appears to be the only bit of evidence we have that to
4 some degree sketches the boundaries of the application.
5 Every bit of evidence obviously is not 100 percent
6 accurate. And what we just have to do is make a record,
7 make sure that the record is clear that it is possible
8 to mistake when reading the map and whether the green
9 area, the entire green area is a part of the
10 application.

11 And in sitting here and listening to the
12 testimony, it has occurred to me that O-1 may have some
13 independent relevance to the matter for exactly this
14 reason, because O-1 has a statement in it on page 4 to
15 which Mr. James has made reference that says that 11,391
16 acres are excluded from the application.

17 So I still would like to have the signed
18 document, but if we get to a point where we -- you
19 aren't able to generate a signed document or exchange a
20 signed document, I may be willing to, for a limited
21 purpose, admit O-1 to demonstrate the problem with O-3
22 that has been pointed out.

23 MEMBER NOLAND: Mr. Chairman.

24 CHMN. FOREMAN: Member Noland.

25 MEMBER NOLAND: Well, Mr. Chairman, I think,

1 though, that the legend on this exhibit that is proposed
2 should be corrected. And I think it should indicate
3 what that overlay area is. And I think that's only
4 right. You can't just say, oh, I am going to take TEP's
5 Exhibit A-1 and that's ours except we are changing it.

6 I think you go to the legend. And it is saying,
7 you know, U.S. Forest land for the green, but it doesn't
8 say what the -- you know, there are different shades of
9 green there. It is not reflecting what it was that
10 Ms. Berglan said it was. They have used the old legend
11 from TEP's exhibit, not corrected it to make it their
12 legend for their exhibit.

13 CHMN. FOREMAN: Member Walker.

14 MEMBER WALKER: Yeah, Mr. Chairman, for the
15 record, I agree with Ms. Noland. And I agree with
16 Mr. James. If we are going to admit a map that shows
17 the proposed TCP, I think it needs to be crystal clear
18 where the private property is that isn't necessarily
19 going to be part of this so that when this gets reviewed
20 by the Commission they don't pull up a map and say,
21 well, it is a TCP over the whole area. That's not -- it
22 is not established. And even if it gets a TCP, the
23 private property owner has a right to say we don't want
24 to be part of it.

25 CHMN. FOREMAN: All right. Well, that's -- and

1 I think those are -- that's a legitimate point. And so
2 what I am going to ask then is that counsel meet and
3 confer and figure out a way that the legend to this map
4 can be amended so that it accurately reflects the
5 concerns that have just been raised.

6 And it seems to me that that's probably not
7 going to be too difficult to do, but it will -- I would
8 guess what it will involve is going to the copy of the
9 map that is in evidence, or will be, that the court
10 reporter has, and on that map adding something on the
11 legend that will indicate what the dark red broad
12 boundary is and what it is not.

13 And so I think it can be solved. I think it can
14 be solved that way, but I don't want to spend the time
15 to try and do that. But I don't think -- I think those
16 are legitimate points so we will see if we can get that
17 done. Okay? All right. Very good.

18 Mr. James, do you have further examination?

19 MR. JAMES: The only thing I would just also
20 note for the record, and we will confer with counsel for
21 the Nation, the map also, because of, as you had
22 indicated, it was originally prepared for the line, to
23 show the line siting routes, there is other private land
24 there, too, that isn't depicted. So again, we will
25 discuss that with counsel for the Nation. Hopefully we

1 can work something out. So with that, I will terminate
2 my cross-examination.

3 CHMN. FOREMAN: All right. Very good. Does the
4 applicant have cross-examination?

5 MR. GELLMAN: Yes, we do, Mr. Chairman.

6

7 CROSS-EXAMINATION

8 BY MR. GELLMAN:

9 Q. Good afternoon, Mr. Steere.

10 A. Good afternoon.

11 Q. You mentioned in your direct that planning for
12 what has been marked as Exhibit O-1 began almost two
13 years ago?

14 A. Yes.

15 Q. So that would be approximately 2009?

16 A. Yes.

17 Q. And that the initial work for the registration
18 form, what has been marked as Exhibit O-1, began
19 approximately 10 months ago?

20 A. Approximately, yes.

21 Q. That coincides with the NEPA process for the
22 Rosemont mining plant operations?

23 A. Yes.

24 Q. So this would basically, or, what, Exhibit O-1
25 was basically a reaction to the EIS for the Rosemont

1 plan of operations, correct?

2 A. Yes.

3 Q. Okay. And it was a reaction even though you
4 mentioned that the cultural history for this area
5 spanned some 10,000 years?

6 A. Yes, it does.

7 Q. So it is fair to say that the Nation had the
8 option to submit this registration form earlier than
9 October 10th, 2011, correct?

10 A. Yes, but as I said earlier, most of these are
11 project driven.

12 Another short response to your question, the
13 Nation has worked closely with the Forest Service in
14 identifying and managing cultural sites in that entire
15 area long before the Rosemont mine was even proposed. I
16 mean we have had a working relationship with the Forest
17 Service 15 or 20 years.

18 Q. They are typically project driven, but they
19 don't have to be project driven, though?

20 A. Many of them are, though.

21 Q. Do you have a copy of Exhibit O-2 in front of
22 you? That is the letter, the November 14th, 2011 letter
23 to Mr. Upchurch. And that is from Arizona State Parks.

24 A. I should. Hang on one second.

25 Q. Please take a minute.

1 A. I got it.

2 Q. Okay. That letter says, starting after the
3 number 2 on the first page that, quote, we are inclined
4 to concur with the CNF's determination, semicolon.

5 A. Yes.

6 Q. It goes on to say, quote, however, we need more
7 information regarding the CNF's consultations with the
8 Tohono O'odham and other tribes regarding the
9 preparation of the DOE -- which I believe stands for
10 determination of eligibility -- in order for us to
11 complete our review?

12 A. Yes.

13 Q. And in paragraph 3 it goes on further to state,
14 looking at the first sentence, quote, we would also like
15 the CNF to provide us with more information regarding
16 tribal perspectives on the boundary of the TCP, correct?

17 A. Correct.

18 Q. And TCP stands for traditional cultural
19 property?

20 A. Correct.

21 Q. Further on in that paragraph, I think it is the
22 sixth line down, do you see the sentence starting based
23 upon our review?

24 A. Yes, I do.

25 Q. And that sentence states in full, quote, based

1 upon our review of the draft environmental impact
2 statement for the proposed development of the Rosemont
3 copper mine, it appears that the Tohono O'odham supports
4 boundaries that follow the CNF administrative boundary?

5 A. Yes, I see that.

6 Q. And it further states, quote, this information,
7 including supporting documentation, should have been
8 included with the DOE nomination form, right?

9 A. I see that.

10 Q. Okay. Paragraph, or top of the second
11 page after number 4 it states, quote, it is our opinion
12 that the TCP DOE could be further developed, especially
13 in terms of tribal traditional use, contemporary use,
14 and the sacred component of the TCP?

15 A. I see that.

16 Q. Sounds to me like this letter is asking for
17 significantly more information, is that correct?

18 A. It is asking for more information, correct.

19 Q. And it is asking for more information in several
20 paragraphs, correct?

21 A. Yes, it does.

22 Q. I think you mentioned when Ms. Berglan was
23 conducting her direct examination there were innovative
24 ways to try and design and engineer power lines. Do you
25 recall that?

1 A. Yes, I do.

2 Q. So that would include spanning greater spans
3 between structures?

4 A. Depending on how far they can span, yes. I mean
5 sometimes they can, they can expand to the limits of
6 engineering capabilities. And my understanding from
7 Mr. Beck, that was around 750 feet would be an average
8 span size.

9 Q. You understand that to be an average span,
10 correct?

11 A. From what Mr. Beck told me, 750, and I think it
12 is in the documents, too, would be the average span
13 length.

14 Q. You also understand -- well, were you here for
15 Mr. Beck's entire testimony?

16 A. Yes, I was.

17 Q. So you understand that that span length could be
18 adjusted to avoid cultural sites, correct?

19 A. In some circumstances, depending on the
20 individual circumstances, yes, it would be extended even
21 more than 750 feet.

22 Q. And you also understand that TEP is requesting a
23 500-foot corridor for this project, correct?

24 A. Yes, I do.

25 Q. But you also understand that they are asking

1 for, or they have -- well, not asking for, but they have
2 indicated that they will seek a 100-foot right-of-way
3 for this project?

4 A. Correct.

5 Q. And do you understand that part of the reason
6 they are asking for a 500-foot corridor is for the
7 flexibility to avoid cultural sites if possible?

8 A. Yes, I understand that.

9 Q. Ms. Berglan went into some detail with you about
10 the difference between historic sites, archeological
11 sites, and culturally significant sites, is that
12 correct?

13 A. Yes.

14 Q. And would that be something that -- well, let me
15 ask you this. Would the tribes be included as part of
16 the consultation process with the Coronado National
17 Forest for the environmental impact statement?

18 A. Yes, they would. Federal law mandates that.

19 Q. And that would include the development of what
20 is known as a historic treatment plan?

21 A. Yes. The tribes would be involved in that also.

22 Q. So they could have input regarding the different
23 types of sites into what would eventually become the
24 historic treatment plan, correct?

25 A. Yes.

1 Q. Are you familiar with what has been marked as
2 Exhibit TEP-8, which is the applicant's proposed form of
3 CEC conditions?

4 A. No. I am not sure. Is that what is up on the
5 screen?

6 Q. I don't believe so. If we could have a moment
7 and pull that up.

8 Well, let me ask you this while we are waiting.
9 Are you familiar with the conditions that the applicant,
10 Tucson Electric Power Company, has proposed for this
11 project?

12 A. I am not sure I understand the question.

13 Q. Let me see if I can rephrase it.

14 CHMN. FOREMAN: I think the answer to your
15 question is no.

16 THE WITNESS: Are you speaking about this large
17 report over here?

18 BY MR. GELLMAN:

19 Q. No, I am not. If you are not aware of it, okay,
20 I will move on.

21 Are you aware that the Environmental Planning
22 Group, EPG, attempted to contact the Nation or the
23 Tohono O'odham Nation before EPG conducted its
24 pedestrian surveys for this project?

25 A. I was, yeah, I was aware of when the surveys

1 were taking place and then I received copies of all the
2 reports.

3 Q. Are you aware that EPG contacted the Tohono
4 O'odham around the middle of 2010?

5 A. Not specifically.

6 Q. Are you aware that EPG requested to see if the
7 Nation would like to send somebody to accompany EPG on
8 their pedestrian survey?

9 A. I don't specifically mention that -- excuse me.
10 I simply, I don't remember that request, no.

11 Q. So you are not aware of it?

12 A. No, I am not aware of it.

13 Q. Regarding -- how do you pronounce Huerfano
14 Butte?

15 A. Huerfano Butte, yes.

16 Q. I apologize. You understand that that's outside
17 the 500-foot corridor that TEP is requesting for this
18 project?

19 A. Yes, I do.

20 Q. In fact, it is on the south side of Santa Rita
21 Road?

22 A. Correct.

23 Q. And as you understand it, the project corridor
24 is going to be on the north side of Santa Rita Road?

25 A. Correct.

1 Q. And you mentioned that there is, I guess,
2 disturbance that's already taking place?

3 A. There has been some disturbance at that site and
4 some other sites on the experimental range.

5 Q. So that's disturbance that's taking place
6 independent of whether this project gets approved or
7 not?

8 A. Absolutely.

9 Q. I think you in your direct examination, or when
10 Ms. Berglan was conducting her direct examination, you
11 agreed that for the preferred route only two sites will
12 be affected. Did I hear your testimony right?

13 A. Based on EPG's recommendations out of the
14 report, it looks like two sites may not be able to be
15 avoided in any way, and that five sites may be able to
16 be avoided by a combination of, you know, spanning or
17 moving the route a little bit, or other options.

18 Q. I am sorry. Were you finished?

19 A. No, I am finished.

20 Q. So the five sites could be avoided with the
21 things that we were talking about earlier, larger spans,
22 moving the right-of-way within the corridor so that
23 certain sites can be avoided?

24 A. As far as the power line, yes; as far as the
25 access road, no.

1 Q. But as you understand it, the access road is
2 only going to be 14 feet, approximately?

3 A. 14 feet across but, you know, depending on the
4 site and where it is situated, you know, it could
5 impact, you know, on parts of the archeological site.

6 I just want to make sure that we understand it
7 is not just the spanning of the power line, but there is
8 also, you know, an access road that's going to be
9 constructed, and then the water line issue which is part
10 of the larger DEIS, but it is going to be right in the
11 same corridor.

12 Q. But the 14-foot access road could be potentially
13 shared between the proposed project and the water line,
14 correct?

15 A. It could be. And there could be adjustments of
16 where exactly you put the access road, too.

17 Q. So you have flexibility within that 100-foot
18 right-of-way to --

19 A. On an individual site basis there would be, you
20 know, some opportunity to look at the potential impacts
21 to the site and look at ways, as you suggested, of
22 avoiding by moving things around within the
23 right-of-way.

24 MR. GELLMAN: Can I have one moment,
25 Mr. Chairman?

1 (Brief pause.)

2 BY MR. GELLMAN:

3 Q. Do you understand, Mr. Steere, that the access
4 road could be the access road for the pipeline,
5 especially for the preferred route in this case?

6 A. My understanding, correct me if I am wrong, was
7 the access road would be used potentially for access to
8 for the water line and access also for the power line.

9 Q. So you have the same access road that
10 addresses --

11 A. Correct.

12 Q. Just so that the record is clear, you have the
13 same access road that can be used for both the project
14 and for the water pipeline?

15 A. That's my understanding from Mr. Beck's
16 description, that that road could be utilized for access
17 to both structures.

18 MR. GELLMAN: Thank you, Mr. Steere. I have no
19 further questions.

20 CHMN. FOREMAN: Redirect?

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

22

23 REDIRECT EXAMINATION

24 BY MS. BERGLAN:

25 Q. Mr. Steere, Mr. Gellman was asking you about

1 Exhibit O-2, the letter to Mr. Upchurch dated
2 November 14th, 2011. And there were a number, you agree
3 that there was some additional documentation that was
4 going to be needed to process --

5 A. Yes.

6 Q. -- the application?

7 Is it unusual for the SHPO office to ask for
8 additional cultural information in response to an
9 application?

10 A. No, it is not. I have probably done two or
11 three dozen of these large nomination or eligibility
12 determinations before for large areas, including some in
13 the City of Tucson. And typically when the materials
14 are submitted, the State Historic Preservation Office
15 will frequently come back, want a clarification, an
16 edit, additional information as they talk about.

17 It is a complicated process to put a TCP
18 nomination together. We were operating on a very short
19 time span. And we certainly will make every effort.
20 The Forest Service is already beginning to work with our
21 contractor to make prompt responses to the requests from
22 the State Historic Preservation Office.

23 Q. Do you have cultural concerns regarding this
24 project even if Rosemont's private lands are not part of
25 the TCP?

1 A. I think the Nation has concerns about, you know,
2 obviously what we have already discussed already, the
3 impacts to individual sites. The Nation has concerns to
4 visual impacts, two of the traditional cultural
5 properties. We certainly have concerns about potential
6 visual impacts to Huerfano Butte, which is a traditional
7 cultural place in and of itself, you know, separate from
8 the Ce:wi Duag traditional cultural place.

9 Q. And you had testified earlier on direct that EPG
10 performed their archeological survey using the National
11 Historic Preservation Act analysis, correct?

12 A. Correct.

13 Q. And in your opinion, is the National Historic
14 Preservation Act the only archeological criteria that
15 should have been used in this project?

16 A. No, there is an additional one.

17 Q. And what is that?

18 A. It is one of the, part of the statutes for the
19 Corporation Commission subcommittee, 40-360.06, factors
20 to be considered in issuing a certificate of
21 environmental compatibility, No. 5. No. 5 states
22 existing scenic areas, historic sites, and structures or
23 archeological sites at or in the vicinity of the
24 proposed site need to be considered when making an
25 evaluation.

1 And the difference between that and the national
2 historic preservation standards, the national historic
3 preservation usually focuses entirely in most cases on
4 what is occurring, you know, within the actual impact
5 area. This particular item which is part of the
6 statutes has a little bit of a change in there because
7 it also talks about the vicinity of the proposed site.
8 And that language is a little bit different than the
9 national historic preservation.

10 Q. So would it be fair to say that the provision
11 set out in the line siting statute sort of broadens the
12 analysis?

13 A. I think it slightly broadens the national
14 register criteria, yes.

15 Q. Okay. And when we were -- Mr. Gellman was
16 asking you earlier about Huerfano Butte, which analysis
17 are you using to indicate that Huerfano Butte should
18 have been included in the archeological survey?

19 A. I think the statutes for the certificate of
20 environmental compatibility, you know, mandate that the
21 areas in the vicinity of the proposed site need to be
22 considered as part of the impact. And Huerfano Butte
23 would be the one distinct site in this area that is
24 slightly outside the power line right-of-way, proposed
25 power line right-of-way, but it is in the vicinity of

1 the proposed project. So that would need to be
2 considered.

3 MS. BERGLAN: Thank you, Mr. Chairman. Nothing
4 further.

5 CHMN. FOREMAN: Very good. Thank you,
6 Mr. Steere, for coming and testifying.

7 THE WITNESS: Thank you, sir.

8 CHMN. FOREMAN: Do you have any other witnesses
9 to call, Ms. Berglan?

10 MS. BERGLAN: No, Mr. Chairman.

11 CHMN. FOREMAN: Do you have any other evidence
12 to present as a part of your case?

13 MS. BERGLAN: To your point earlier, Ms. Noland,
14 Member Noland had requested the signed version of the
15 application. I did receive that over the break and I
16 will be making a copy at the next break for
17 dissemination.

18 CHMN. FOREMAN: Very good. And hopefully you
19 and the others will meet and confer and figure out
20 something that's agreeable to all to modify the legend
21 in O-3 so that it can, as precisely as possible,
22 identify the area that is the subject of the National
23 Register of Historical Places application.

24 MS. BERGLAN: Yes, Mr. Chairman.

25 CHMN. FOREMAN: Very good. Why don't we take a

1 brief recess, and then we will turn to --

2 And Mr. Metli, you folks are still not going to
3 present any witnesses, is that correct.

4 MR. METLI: That's correct, Mr. Chairman.

5 CHMN. FOREMAN: All right. Then Ms. Webb, we
6 will turn to you in 15 minutes, at 2:55.

7 We are in recess.

8 (A recess ensued from 2:40 p.m. to 2:57 p.m.)

9 CHMN. FOREMAN: All right. Ms. Webb, you may
10 proceed. Now we are on the record.

11 MS. WEBB: Clark, you told me to yell at you.
12 Did you have my EW-1?

13 MR. BRYNER: I believe so.

14 MS. WEBB: Conservation land systems, the
15 Maeveen.

16 CHMN. FOREMAN: Ms. Webb, what is happening
17 here?

18 MS. WEBB: These are the exhibits on the exhibit
19 list and in the binder.

20 Although, Clark, if possible, can I have them on
21 the right? It is hard for me to see the ones on the
22 left.

23 And I am with Mr. Gellman on the exhibits.
24 However you would like to do this, Mr. Chairman, if it
25 so pleases you, we go ahead and ask to enter W-1, 2, and

1 3, which would be my request to intervene, the initial
2 memorandum, and then the reply memorandum.

3 CHMN. FOREMAN: You want to admit Exhibits W-1,
4 W-2, and W-3.

5 MS. WEBB: Correct.

6 CHMN. FOREMAN: Would anybody like to object?

7 MR. GELLMAN: Mr. Chairman, the applicant would.
8 I think those are pleadings.

9 CHMN. FOREMAN: The objection is sustained.

10 MS. WEBB: I will move them over to the OOPs, if
11 that's okay.

12 CHMN. FOREMAN: You are going to move them over
13 to the OOPs?

14 MS. WEBB: The offer of proof binder.

15 CHMN. FOREMAN: No, you are not.

16 MS. WEBB: Okay. That was a question.

17 CHMN. FOREMAN: It is not appropriate.

18 MS. WEBB: Okay. May I enter Exhibit W-1, my
19 request to intervene?

20 CHMN. FOREMAN: May you enter? It is a legal
21 pleading. It is not evidence. It is not going to be
22 admitted as an exhibit in this case, and it is not going
23 to be a part of your offer of proof.

24 MS. WEBB: I apologize. I have done it in the
25 past, so I was just going what I had done in the past.

1 All righty.

2 CHMN. FOREMAN: Well, if you got it by me
3 before, shame on me.

4 MS. WEBB: I apologize. I didn't know.
5 I guess I will go ahead and start with my
6 witness, if that's okay.

7 CHMN. FOREMAN: That would be wonderful.

8 MS. WEBB: I would like to call Ms. Fonseca --

9 CHMN. FOREMAN: Okay.

10 MS. WEBB: -- who is intervening on my behalf.
11 Ms. Fonseca.

12 CHMN. FOREMAN: It is customary to swear
13 witnesses before they testify.

14 MS. WEBB: Thank you.

15 CHMN. FOREMAN: Could you tell us your name,
16 ma'am.

17 MS. FONSECA: My name is Julia Fonseca, spelled
18 F as in frank, o-n-s-e-c-a.

19 CHMN. FOREMAN: All right. Do you wish an oath
20 or affirmation?

21 THE WITNESS: An oath is fine.

22 (Julia Fonseca was duly sworn.)

23 CHMN. FOREMAN: All right. Now you may proceed.
24
25

1 dialogue came up, there was reference to about Pima
2 County?

3 THE WITNESS: I do remember.

4 MEMBER RODRIGUEZ: So could you tell us before
5 we start, which capacity are you here? Are you here as
6 a private citizen or here as an official of Pima County?

7 THE WITNESS: Yesterday Mr. Metli responded on
8 my behalf.

9 MEMBER RODRIGUEZ: I would like you to respond
10 to my question.

11 MS. WEBB: Mr. Chairman, if I may.

12 CHMN. FOREMAN: No, you may not.

13 MS. WEBB: Okay.

14 MEMBER RODRIGUEZ: We just need clarification,
15 that's all.

16 THE WITNESS: Yes. So I am here today as a
17 witness for Ms. Elizabeth Webb. I am here on tax
18 dollars. I am paid by Pima County to discharge my
19 responsibilities at Pima County, and this is considered
20 part of those.

21 MEMBER RODRIGUEZ: So this is in your official
22 role as an employee of Pima County?

23 THE WITNESS: Yes. Everything that I know is
24 because I worked at Pima County.

25 MEMBER RODRIGUEZ: Okay. That was it for

1 clarification.

2 CHMN. FOREMAN: All right. Very good. Now you
3 may proceed.

4 MEMBER WALKER: Mr. Chairman.

5 CHMN. FOREMAN: Member Walker.

6 MEMBER WALKER: I apologize. What I heard you
7 say is everything that you are about to testify to you
8 know because of your employment with Pima County. So
9 are you testifying on behalf of Pima County or as a
10 private citizen now, setting aside the source of your
11 knowledge? Are you here as a representative of Pima
12 County officially, or are you here as a private citizen
13 who happens to work at Pima County?

14 THE WITNESS: I believe, Mr., or Member, that I
15 am here as a representative of Pima County.

16 MEMBER WALKER: Okay.

17 THE WITNESS: However, I am not legally -- I
18 don't know all the ins and outs of your procedures, but
19 it is my understanding I am here on behalf of Pima
20 County --

21 MEMBER WALKER: Okay.

22 THE WITNESS: -- not as a citizen, definitely
23 not here as a citizen.

24 CHMN. FOREMAN: Member Haenichen.

25 MEMBER HAENICHEN: What is your job at Pima

1 County?

2 THE WITNESS: My title is environmental planning
3 manager. And I am at Pima County office of conservation
4 and sustainability. Would you like to hear more or is
5 that --

6 MEMBER HAENICHEN: That's enough.

7 THE WITNESS: -- responsive?

8 CHMN. FOREMAN: That's fine. Simple direct
9 answer, simple direct question.

10 Mr. James.

11 MR. JAMES: Your Honor, at this point, Your
12 Honor, we brought this up during the prehearing
13 conference, but I would like to again raise an objection
14 to Ms. Fonseca's testimony in this proceeding. As you
15 know, Pima County filed an application for limited
16 appearance pursuant to A.R.S. 40-360.05. And subpart B
17 of that statute allows any person to make a limited
18 appearance in a proceeding by filing a statement in
19 writing with the Chairman of the Committee, which Pima
20 County has done.

21 The statute then says the statement filed by a
22 person making a limited appearance shall become part of
23 the record. A person making a limited appearance shall
24 not be a party or have the right to present oral
25 testimony or cross-examine witnesses.

1 And it seems to us that this is, to be blunt, a
2 backdoor attempt by Pima County to present evidence as
3 Pima County, while at the same time filing an
4 application for limited appearance to avoid becoming
5 involved in this proceeding. And it just strikes us
6 that this is, again, to be blunt, an abuse of the right
7 to file and participate by means of a limited
8 appearance.

9 CHMN. FOREMAN: Ms. Fonseca, are you authorized
10 to withdraw the application for limited appearance by
11 Pima County?

12 THE WITNESS: I believe so.

13 CHMN. FOREMAN: So you believe you have the
14 legal authority to withdraw the application for limited
15 appearance filed by Paula Perrera, deputy county
16 attorney, that was submitted to me on, it looks like --
17 I can't read the date -- earlier, sometime earlier in
18 December, like the 1st of December?

19 THE WITNESS: If I might say more than a yes or
20 no.

21 CHMN. FOREMAN: Sure.

22 THE WITNESS: Okay. It was discussed about that
23 issue of a limited appearance and whether that would
24 prevent further testimony. And we together, Paula and I
25 and others, in communication decided to do both, because

1 it was her belief that the limited appearance would not
2 exclude my testimony. However, if that is something
3 that will facilitate my testimony here today, I believe
4 I am authorized to withdraw that.

5 CHMN. FOREMAN: Okay. Ms. Webb, do you have any
6 legal authority for the proposition that Ms. Fonseca
7 could testify as a representative of Pima County after
8 Pima County has filed what appears to be an officially
9 authorized application for limited appearance, in view
10 of the language of the statute that was quoted by
11 Mr. James?

12 MS. WEBB: Mr. Chairman, I am not an attorney so
13 I am not going to make a legal judgment, but I will tell
14 you that I emphatically asked Pima County to withdraw
15 that limited appearance, because my reading from the
16 common sense perspective that, although you had ruled
17 the other direction, that later on down the road it
18 would be a problem. That was my common sense layperson
19 opinion.

20 CHMN. FOREMAN: I don't remember ruling
21 definitively on this. I thought what I did was defer to
22 find out in what capacity Ms. Fonseca would be
23 testifying.

24 MS. WEBB: I apologize. I understood you to say
25 it wouldn't be a problem for her to testify, but I must

1 have misunderstood.

2 CHMN. FOREMAN: Well, one of us obviously did.
3 I have a transcript of the hearing with me. So we are
4 going to take about a five-minute recess and I am going
5 to read the transcript and we will come back on the
6 record in just a minute or two.

7 (Brief pause.)

8 CHMN. FOREMAN: I have had a chance to review
9 the transcript. And I will confess that my
10 understanding of what was going to happen was that Pima
11 County was filing this application for limited
12 appearance, and that Ms. Fonseca might testify as an
13 individual for Ms. Webb, or possibly Mr. Robertson. I
14 was not aware or did not -- I did not understand the
15 facts as presented to me to be an indication that Pima
16 County would present an application for a limited
17 appearance and they would have an official
18 representative come and testify.

19 I did not definitively rule on Mr. James'
20 request to preclude Ms. Fonseca from testifying at the
21 prehearing conference. I did say we would just have to
22 wait to see how it came out, because, as I indicated,
23 again, I honestly thought the way this was going to come
24 out was that Ms. Fonseca was going to testify as an
25 individual.

1 If she is going to testify in an official
2 capacity for Pima County, then I think the application
3 for limited appearance by Pima County has to be
4 withdrawn. If the application for a limited appearance
5 for Pima County is not withdrawn, then I am not going to
6 allow her to testify in an official capacity. I will
7 allow her to testify as a private citizen on behalf of
8 Ms. Webb.

9 But in view of the testimony that she has
10 already provided us so far, it doesn't appear to me that
11 that's what was intended, or that in which she says all
12 of her knowledge is based on her employment as a county
13 employee and that she is here representing the county, I
14 take her at her word. So it looks to me we are in a
15 position of either having to have official confirmation
16 that the application for a limited appearance can be
17 withdrawn -- I see that as the only way for Ms. Fonseca
18 to proceed as a witness for Ms. Webb, but testifying, or
19 for anyone, but testifying in an official capacity as a
20 representative of Pima County.

21 So Ms. Webb, do you have any other testimony to
22 present other than Ms. Fonseca?

23 MS. WEBB: Mr. Chairman, I do. And I just spoke
24 with the county attorney. And she said that can be
25 done, there is a procedure that has to happen. And I

1 think out of fairness, because my entire process was
2 based on this, and this was sent through Docket Control
3 as requested through the procedural order, and I am not
4 opposed, well, I don't have any authority, obviously,
5 but I would request that we adjourn until tomorrow so
6 that we can deal with this and get the procedural stuff
7 done to get Pima County to withdraw the limited
8 appearance.

9 CHMN. FOREMAN: We are not going to do that. As
10 a matter of fact, we discussed last Monday about the
11 fact this hearing was going to go ahead, and expected
12 this matter to be resolved before now.

13 MR. WEBB: I agree. So I am wondering why
14 Mr. Black waited until now when this has been in Docket
15 since December 5th or 6th, or it was e-mailed to him on
16 the 5th, for Mr. James to raise this right now. We
17 discussed it.

18 CHMN. FOREMAN: You seem to be saying everybody
19 else is responsible for the situation but you. And the
20 way I look at it, the way I understood it was left on
21 last Thursday, was you were the person who was
22 responsible for straightening this out.

23 There are some responsibilities that come with
24 becoming a party to a proceeding like this, and one of
25 them is seeing that matters like this are resolved. And

1 I don't see a resolution.

2 What we are going to do is, Ms. Fonseca, you are
3 going to remain under oath, but you are going to step
4 down. And we are going to take a brief recess. And
5 Ms. Webb, I am going to expect you to proceed with your
6 case.

7 We are going to be in recess.

8 (A recess ensued from 3:22 p.m. to 3:28 p.m.)

9 CHMN. FOREMAN: Let's go back on the record.

10 Two members of this Committee are officials of
11 Pima County. They have attempted to independently
12 corroborate testimony that Ms. Fonseca just gave and an
13 avowal that Ms. Webb just made on the record without
14 success.

15 I am not going to make a record on the attempts
16 to confirm the procedural issues of whether or not there
17 was authorization to withdraw the application for
18 limited appearance now. But I am going to advise all of
19 the parties that I would like for the parties to
20 independently contact the county attorney's office to
21 determine whether or not Ms. Fonseca was authorized to,
22 number one, testify on behalf of Pima County at this
23 proceeding and, number two, to withdraw the limited
24 appearance application that she indicated that she was
25 prepared to withdraw.

1 Ms. Webb.

2 MS. WEBB: Yes.

3 CHMN. FOREMAN: I have just had an opportunity
4 to review the transcript that Colette has been taking
5 for us in this proceeding. And I wanted her to go back
6 and read for the record a representation that you made
7 to me just a few moments ago.

8 Colette would you do that.

9 (The record was read by the reporter as
10 requested as follows:

11 Ms. Webb: Mr. Chairman, I do. And I just
12 spoke with the county attorney. And she said that
13 can be done, there is a procedure that has to
14 happen. And I think out of fairness, because my
15 entire process was based on this, and this was
16 sent through Docket Control as requested --)

17 CHMN. FOREMAN: That's enough.

18 You told me that you had just spoken to the Pima
19 County county attorney, is that correct?

20 MS. WEBB: I spoke with Paula Perrera --

21 CHMN. FOREMAN: So --

22 MS. WEBB: -- with the county attorney's office.

23 CHMN. FOREMAN: -- Barbara LaWall is the Pima
24 County attorney.

25 MS. WEBB: Paula Perrera with the county

1 attorney's office.

2 CHMN. FOREMAN: Is the person with whom you
3 spoke?

4 MS. WEBB: Yes.

5 CHMN. FOREMAN: And when did you speak with her?

6 MS. WEBB: Approximately 3:20-ish.

7 CHMN. FOREMAN: Okay. We are going to take
8 another brief recess. We have just had a call. I am
9 going to have an opportunity, apparently, to speak with
10 Ms. Perrera. We are in recess.

11 (Brief pause.)

12 CHMN. FOREMAN: All right. I guess I need to
13 make a record on this. I just spoke with a Paula
14 Perrera, who indicated that she had spoken with a
15 Mr. Huckelberry who has given the authorization for
16 withdrawing the application for limited appearance by
17 Pima County, and who indicated that she got that as a
18 result of calls from Ms. Webb and Ms. Fonseca.

19 So I think we are taking a long loop and we are
20 going back now to where we were about 15 or 20 minutes
21 ago. The request to preclude Ms. Fonseca from
22 testifying as a representative of Pima County is denied
23 because of the representation that was just made to me
24 that she is representing Pima County.

25 Does any other party wish to take a recess to

1 independently confirm what I have been told?

2 This is the most unusual proceeding, I confess,
3 that I have been involved with. And it is a procedural
4 matter, but I would still say that I am uncomfortable
5 with the way this has come down.

6 Counsel.

7 MR. DERSTINE: Mr. Chairman, I don't want to
8 take up any more time with this than we already have. I
9 would simply state for the record that my concern and my
10 objection is that, given Ms. Fonseca's testimony, that
11 the county filed the limited appearance, and at the same
12 time apparently recognized that Ms. Fonseca was going to
13 be testifying on behalf of the county in her official
14 capacity, recognized that that was not authorized by the
15 statute, but yet proceeded in that manner anyway, I
16 think that it seems to me improper at the last minute
17 for the county to be now withdrawing this limited
18 appearance simply to allow Ms. Fonseca to testify. Her
19 testimony today was predicated on the representations
20 that she was previously testifying in her individual
21 capacity. And so it is highly irregular, at best, that
22 we are now faced with this situation.

23 CHMN. FOREMAN: Anybody else want to be heard on
24 it?

25 Mr. James.

1 MR. JAMES: Just to expand -- pardon me --
2 Mr. Chairman, Committee members, to expand on that
3 slightly, there are a couple other factors I just want
4 to call to the Committee's attention.

5 First of all, there is also testimony from
6 Ms. Fonseca that's included in the offer of proof that
7 was submitted by Mr. Robertson, Mr. Metli. Again, I am
8 not being -- no criticism of them, but, again, it is
9 again testimony by this witness on behalf of the county.

10 In addition, the notice of limited appearance
11 and Ms. Fonseca's testimony, if we get into cross we can
12 develop this further, with the exception of the last two
13 issues that deal with ratemaking, are virtually
14 identical. I don't know which one plagiarized which,
15 but they are virtually identical.

16 What I would suggest to you, Mr. Chairman, and
17 the Committee members, given these very unusual
18 circumstances, is I would allow -- I would deny
19 withdrawal of the notice of limited appearance, leave it
20 in the record, give it the appropriate weight, and
21 exclude Ms. Fonseca from testifying today. That would
22 be the motion that Rosemont would make.

23 CHMN. FOREMAN: Ms. Berglan, do you have a
24 position you want to articulate?

25 MS. BERGLAN: Mr. Chairman, the Nation doesn't

1 take a position on this matter.

2 CHMN. FOREMAN: Okay. Mr. Metli.

3 MR. METLI: Yes. Mr. Chairman, as you know, I
4 addressed this issue. I believe it was a question from
5 Member Walker on Monday. It is the Scenic Santa Ritas'
6 position that Ms. Fonseca was testifying in her
7 individual capacity as an expert witness, and that is
8 still our position. She is not testifying for the
9 Scenic Santa Ritas on behalf of Pima County, but as an
10 individual expert witness.

11 CHMN. FOREMAN: Okay.

12 MS. WEBB: Mr. Chairman.

13 CHMN. FOREMAN: Just a moment. Mr. Magruder has
14 apparently left the room. Okay. Well, we will not get
15 his input on this.

16 Ms. Webb.

17 MS. WEBB: I always represented that Ms. Fonseca
18 is testifying on behalf of me in her capacity for Pima
19 County. My written testimony was given to the other
20 parties on December 5th. It was docketed on
21 December 6th. It clearly states she is employed by Pima
22 County. Her testimony says does Pima County agree with
23 TEP's conclusions. It goes on to talk about what Pima
24 County voters have done. And it specifically addresses
25 issues related to Pima County.

1 I apologize if I did not articulate it any
2 clearer, but I did. And I think that there was plenty
3 of time for the other parties to raise this concern with
4 me. And I believe that her testimony absolutely is
5 appropriate. I asked her to testify on my behalf. I
6 have worked with Pima County in other line siting cases
7 in the past as well as other environmental issues. And
8 this is absolutely appropriate, in my opinion.

9 CHMN. FOREMAN: Well, my understanding of the
10 status of Ms. Fonseca's testimony for you, Ms. Webb, was
11 that she would be testifying in exactly the same way as
12 she was testifying for the Scenic Santa Ritas, as a
13 private individual employed by Pima County, and I did
14 not see at the time last Thursday that that would be a
15 disqualifying issue under the line siting statute.

16 Having her come and testify that she was
17 representing Pima County was a surprise to me,
18 inconsistent with what I understood the representations
19 that had previously been made to me. And so that's the
20 reason that I have stopped to try and figure out what
21 was going on.

22 I think the record is now clear. I would
23 preclude her testimony had she had the limited
24 appearance by Pima County remain in the record. I
25 accept her representation that she is authorized to

1 withdraw it. That's confirmed by Paula Ferrera, who
2 signed the document, who is not here present at this
3 time. And so we will just indicate that Committee
4 Exhibit No. 1 is no longer to be considered. It will be
5 withdrawn. And we will leave it at that.

6 MEMBER WALKER: Mr. Chairman.

7 CHMN. FOREMAN: Member Walker.

8 MEMBER WALKER: So will Ms. Fonseca's testimony
9 in the offer of proof for Santa Ritas be withdrawn as
10 well?

11 CHMN. FOREMAN: No.

12 MEMBER WALKER: Okay.

13 CHMN. FOREMAN: No. Ms. Fonseca is here; she
14 can testify in person. And so I intend to proceed. We
15 wasted an hour on this, and an hour that is valuable.
16 So let's not waste any more time. Let's get into it.

17 Ms. Webb, proceed.

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

19 BY MS. WEBB:

20 Q. Ms. Fonseca, your written testimony of
21 December 5th, would you agree that that is still
22 accurate?

23 A. Yes, I would.

24 Q. Okay. Is there --

25 A. I think.

1 Q. Oh, I am sorry. Go ahead.

2 A. I don't have an actual copy of it in front of
3 me. I should.

4 MS. WEBB: Mr. Chairman, if she might have a
5 minute to get a copy to her.

6 CHMN. FOREMAN: Sure.

7 MR. JAMES: Your Honor, excuse me.

8 CHMN. FOREMAN: Yes, sir.

9 MR. JAMES: While we are waiting for testimony,
10 there is a -- and I apologize to you and to the
11 Committee. If you have a copy of Ms. Fonseca's
12 testimony that is the copy I have, it is her first --
13 the first page of her testimony is page 6 of 9.
14 Question 4 indicates that the purpose of her
15 testimony --

16 MEMBER RODRIGUEZ: What exhibit is that?

17 MR. JAMES: I am sorry?

18 MEMBER RODRIGUEZ: Which one?

19 MS. WEBB: Exhibit 4.

20 MR. JAMES: I apologize. I am sorry, Your
21 Honor. I am sorry. I am, like everybody else, I am
22 afraid I am getting a little bit confused. I apologize.

23 CHMN. FOREMAN: All right. I have --

24 MEMBER PARKE: I don't know, Exhibit 4 and this
25 and that and the other. I am completely at a loss here.

1 MEMBER WALKER: Me, too.

2 CHMN. FOREMAN: I have been handed a notebook
3 that has some numbers on it. It appears to me that
4 there is a W-4 behind an orange tab, which I take to be
5 Webb Exhibit No. 4. It appears after that there is a --
6 there are two sheets of paper and they are denominated
7 written testimony of Julia Fonseca, Pima County, for
8 intervenor Elizabeth Webb.

9 MEMBER PARKE: Thank you, Mr. Chairman.

10 CHMN. FOREMAN: Is that the testimony to which
11 you are referring, Ms. Webb?

12 MS. WEBB: Yes, Mr. Chairman.

13 MEMBER PARKE: Mr. Chairman.

14 CHMN. FOREMAN: Yes, sir.

15 MEMBER PARKE: Ms. Webb, do the Committee
16 members have that notebook?

17 MS. WEBB: No. I have been working every night
18 on those about four hours a night to get them done. Per
19 the procedural order, the applicant may or shall and the
20 parties may, and I have been working my best to get that
21 done, but I can't buy more time. And I have somebody
22 helping me today. And within the next hour hopefully we
23 will have the binders to you. But I would like to say
24 that they have been docketed and you did receive a copy
25 in the mail.

1 MEMBER PARKE: Mr. Chairman, Ms. Webb, I don't
2 even know, I don't know how to respond to that. None of
3 the Committee members appear to have that material. How
4 was that provided? Was that provided electronically?

5 MS. WEBB: Via Docket Control.

6 MEMBER PARKE: In what form, Ms. Webb?

7 MS. WEBB: When you receive the envelopes in the
8 mail when I submit my 26 copies to the Docket Control
9 and it is mailed out to all the Committee members.

10 CHMN. FOREMAN: You will get them in the mail
11 next week.

12 MEMBER PARKE: Thank you, Mr. Chairman.

13 MS. WEBB: Is that Member Parke? I can't see.

14 Okay. I can also, if you would like, and I have
15 done in the past for other people, I can give you the
16 information as to how to access the Docket Control
17 online as well.

18 CHMN. FOREMAN: All right. Ms. Webb, because
19 you have only one copy of this to share amongst the
20 members of the Committee --

21 MEMBER PARKE: Mr. Chairman, would it be proper
22 to just move on and then try to, if she says she needs
23 some hours, to do this for another time? I have not --

24 CHMN. FOREMAN: We could do that. The concern
25 that I have is that we waste the rest of the day. If we

1 waste the rest the day, there is no way we are going to
2 get done tomorrow. And we have enough members of the
3 Committee that are not going to be available on Friday.
4 That means we are going to be coming back in January. I
5 have been trying very, very hard to see if we could get
6 this matter done by the end of the day tomorrow. And I
7 am concerned that this incident may put the nail in the
8 coffin for that.

9 So there are two pages. Is there a copying
10 center here?

11 MS. WEBB: Mr. Chairman, I have a copy machine
12 in my room and I did have somebody who was helping me
13 with these. And if it, if you would like to spend five
14 minutes, he can just make these two copies without the
15 rest of the binder.

16 CHMN. FOREMAN: All right. Let's at least do
17 that. We will take a break. If you are going to refer
18 to the testimony of this witness, the Committee members
19 need to be able to follow it.

20 Again, Ms. Webb, it makes no sense to make a
21 presentation that is not accessible to the Committee if
22 you are really serious about trying to persuade the
23 Committee to do something that you want it to do. We
24 are all trying desperately to keep up with what it is
25 you are trying to do. And frankly, you have got

1 11 pretty intelligent people that you have completely
2 confused. And it is not only a waste of time and money
3 for everybody, it trespasses on the lives of every other
4 person who has gathered in this room to take part in
5 this hearing.

6 So, yes, we are going to take a break. I am
7 going to walk around outside where it is cool. And in
8 five minutes I am hopeful that we will have copies of
9 this.

10 Yes, Member Walker.

11 MEMBER WALKER: Mr. Chairman, Mr. Chairman, is
12 there a provision that allows us to exclude a party
13 midway through the process?

14 CHMN. FOREMAN: What the Committee does the
15 Committee can undo.

16 MEMBER WALKER: Mr. Chairman, I move we exclude
17 Ms. Webb as a party. There has been no rhyme nor reason
18 to her approach. The games that have been played now
19 with the testimony of the county apparently, the
20 inability and unwillingness to provide the Committee
21 with the documents to which she refers to and relies
22 upon I believe are making the job of this Committee more
23 difficult and reducing the ability of this Committee to
24 have a reasonable, transparent, and reliable record
25 upon which to make a decision.

1 MEMBER PARKE: I will second that motion,
2 Mr. Chairman.

3 CHMN. FOREMAN: All right. You know, I try my
4 hardest to get these things organized so that we can
5 have a hearing that goes smoothly, that does not waste
6 people's time, that allows the Committee to have a body
7 of information from upon which it can make a sensible
8 decision. I did not get the job done this time. And I
9 regret that. But, Ms. Webb, you have been very, very
10 challenging this time. That's all I can say.

11 Is there further discussion from other members
12 of the Committee?

13 (No response.)

14 CHMN. FOREMAN: All right. All in favor of
15 withdrawing party status for Ms. Webb signify by saying
16 aye.

17 (A chorus of ayes.)

18 CHMN. FOREMAN: Opposed no.

19 (No response.)

20 CHMN. FOREMAN: There are no noes. Chair votes
21 aye.

22 Ms. Webb, your status as a party has been
23 revoked. We are going to take a five-minute recess.
24 And, Mr. Magruder, it is going to be your opportunity to
25 begin.

1 (A recess ensued from 3:52 p.m. to 4:00 p.m.)

2 CHMN. FOREMAN: All right. The first thing that
3 I am going to do is reinsert into the record the limited
4 appearance by Pima County. Ms. Fonseca is gone, but
5 since she apparently is not going to testify, and the
6 withdrawal of the application for limited appearance was
7 predicated upon the understanding that she would be
8 testifying directly, obviously that factual predicate no
9 longer exists, so Committee Exhibit No. 1 will be
10 reinstated subject to change if Ms. Fonseca ends up
11 testifying for somebody else as a representative of Pima
12 County.

13 Now, that done, it will be ordered that the
14 other exhibits submitted by Ms. Webb will be returned to
15 her and the offer of proof made by Ms. Webb will be
16 returned to her.

17 Now, we will go to Mr. Magruder. Are you ready
18 to proceed?

19 MR. MAGRUDER: I thought I had my testimony. I
20 got the others. Just a minute.

21 I left my testimony at the other table. Can I
22 go get it and be back in a second? Sorry.

23 CHMN. FOREMAN: Yes.

24 MR. MAGRUDER: I got it. I retrieved my
25 testimony. Mr. Chairman, I am ready to testify.

1 CHMN. FOREMAN: All right. Do you wish an oath
2 or affirmation?

3 MR. MAGRUDER: I would like an oath.

4 (Marshall Magruder was duly sworn.)

5 CHMN. FOREMAN: All right. Now, how would you
6 like to proceed, Mr. Magruder?

7 MR. MAGRUDER: Mr. Chairman, if the Committee or
8 other parties don't object, I would like to do it in a
9 narrative form.

10

11

MARSHALL MAGRUDER,

12 called as a witness on behalf of himself, having been
13 previously duly sworn by the Chairman to speak the truth
14 and nothing but the truth testified as follows:

15

16

DIRECT TESTIMONY

17

18 MR. MAGRUDER: My name is Marshall Magruder,
19 M-a-g-r-u-d-e-r.

20

21 CHMN. FOREMAN: Stop there. If other members,
22 other parties wish to object at any part of
23 Mr. Magruder's testimony, please interject your
24 objection then, or if there is anybody who objects to
25 his testimony in narrative form, now is the time to make
the objection.

1 (No response.)

2 CHMN. FOREMAN: Okay. Apparently no objection,
3 you may proceed, Mr. Magruder.

4 MR. MAGRUDER: I live in Tubac, Arizona. I am a
5 resident of Santa Cruz County, and I have been accepted
6 as an intervenor in this case.

7 I have submitted a prefiled testimony summary,
8 and my prefiled testimony summary is an outline of what
9 I intend to talk about this afternoon. I have listed
10 eight topics which are combinations of different issues
11 that I had in my letter to intervene that I have
12 combined and made a shorter list.

13 And I would like to go through my testimony by
14 going through each topic one at a time, because that's a
15 group of information, and I will go to the next group.
16 At the end of each topic I will talk about the exhibits
17 that I will enter that support that topic and try to get
18 those exhibits entered into the record.

19 The first topic is an alternative to the 138
20 kilovolt transmission line. That was discussed
21 yesterday, and based on that discussion, my presentation
22 this afternoon is much shorter than originally planned.

23 For a number of reasons I personally feel that
24 an alternative should be available in case the Committee
25 decides to deny the application, because if there is an

1 alternative available, Rosemont Copper can still obtain
2 electrical power to operate.

3 I have introduced my Exhibit MM-4 which is a
4 letter I wrote in July 2008. My exhibits are in a
5 packet. They start out with the first page being a
6 table that shows you and lists all of the exhibits. And
7 subsequent to handing that out on the first day I have
8 added two more exhibits, MM-19 and 20. And I believe
9 the Committee and all parties should have those 20
10 exhibits.

11 Exhibit 4 is a long letter that I am not going
12 to go through and read. But it goes into great detail
13 on an alternative way to furnish power for this company.

14 MEMBER NOLAND: Mr. Chairman.

15 CHMN. FOREMAN: Member Noland.

16 MEMBER NOLAND: Mr. Chairman, Mr. Magruder, I
17 want to thank you, because I can actually find your
18 information.

19 MR. MAGRUDER: Appreciate it.

20 MEMBER NOLAND: And we appreciate it. I want
21 you to know that. And you have been methodical in
22 putting it together and referencing, and I do appreciate
23 it.

24 MR. MAGRUDER: Thank you very much. I don't get
25 very many compliments like that, Ms. Noland.

1 No. 4, MM-4 is that letter where I talked about
2 EIS scoping comments. Exhibit MM-5 are the notes that I
3 used and handed out to a meeting on the 19th of November
4 for the draft EIS public comment session and were again
5 provided to the forest supervisor about a week later at
6 a board of supervisors meeting.

7 Both of those exhibits discuss the alternative
8 power plant that I am not going to go into detail,
9 because I have -- believe I can read the tea leaves
10 correctly that the Committee probably does not want to
11 approve an alternative plant, but I would like to have
12 those exhibits accepted in case the application is
13 denied and an alternative is available for the company.

14 MM-6, which is another --

15 CHMN. FOREMAN: So, excuse me, are you offering
16 then M-4 and M-5?

17 MR. MAGRUDER: M-4, I am going to 5 and 6 also
18 in this same topic. Chairman, do you want to do 4 and
19 5, let me offer them now?

20 CHMN. FOREMAN: Get all the alternative
21 electricity exhibits put together so we can have
22 objections at that time and then I will rule on them.

23 THE WITNESS: Okay. Exhibit MM-6 discusses the
24 additional demands on the Tucson area due to mines. One
25 is due to the growth in the present mines that TEP has

1 contracts for. The second is the growth for the
2 Rosemont mine. And the third growth factor is from
3 Case 144, the additional transmission line from the TEP
4 sources to Santa Cruz County, because presently Santa
5 Cruz County receives its power from WAPA, the Western
6 Area Power Administration.

7 So when we look at the SEC Form 10-K summarized
8 in my Exhibit M-6, we see that the present mines are
9 approximately 11.6 percent of the power that TEP
10 delivers. The mine growth will be another 9.4 percent.
11 Rosemont mine is about 10.4 percent. UNS Electric is
12 about 7 and a half percent. So we see the mines and new
13 growth equaling 36.9 percent of the load for Tucson
14 Electric, of which 19.8 percent are demands from mines.

15 And the reason I went into the alternative power
16 plant that I am not going to cover is I was trying to
17 have more local generation. TEP's summer load is about
18 2600 megawatts. They can generate about 500.

19 CHMN. FOREMAN: I think Member Walker has a
20 question.

21 MR. MAGRUDER: Yes, Mr. Walker.

22 MEMBER WALKER: First of all I would like to
23 associate with Ms. Noland's compliment. I followed you
24 throughout this case. I just have a question on M-6.

25 Page 1 in your table, row 2, the fourth column,

1 it says reference UniSource 2020 SEC Form 20. That's
2 2010?

3 MR. MAGRUDER: I am sorry, 2010. I am sorry.

4 MEMBER WALKER: That's fine. Thanks.

5 MR. MAGRUDER: And for UNS Electric I didn't
6 have the load, so I just put in 50 as an average. Their
7 peak is about 75 or 80. And I am not going to say these
8 are the world's greatest numbers. I am just trying to
9 use this as an order of magnitude.

10 There is a tremendous amount of additional load
11 which has to come through transmission lines to serve
12 this community. Those transmission lines are not helped
13 by this case. This case just sucks more power away from
14 Tucson. And I am worried about getting enough power for
15 this community in case -- because it all has to be
16 imported. It all, it is transmission losses, power
17 losses to get here. And it is just a concern. And
18 that's why I was pushing for an alternative power plant.

19 CHMN. FOREMAN: All right. Let's then deal with
20 Exhibits 1 through 6. I guess you are withdrawing 1, 2,
21 and 3?

22 MR. MAGRUDER: I'm not withdrawing. Based on
23 the last intervenor's results on Exhibits 1, 2, and 3,
24 which were my request to intervene, my initial
25 memorandum response, and my final memorandum response, I

1 would like them in the record, but apparently the Chair
2 has ruled that that's not appropriate in the previous
3 witness.

4 CHMN. FOREMAN: So are you offering it?

5 MR. MAGRUDER: I would like to offer all six of
6 these that I have talked about.

7 CHMN. FOREMAN: Okay. In your position just go
8 ahead and offer the exhibits. You don't need to predict
9 how I am going to rule.

10 MR. MAGRUDER: Okay, all right.

11 CHMN. FOREMAN: Exhibits 1, 2, and 3 will not be
12 admitted into the evidentiary record in this case
13 because they are not evidentiary documents. They are
14 legal documents that are already in the Corporation
15 Commission's legal file. So that's the reason they are
16 out.

17 Now, with regard to Exhibits 4, 5 and 6, are
18 there objections?

19 MR. GELLMAN: Mr. Chairman, just as they
20 relate -- or appear to be immaterial to the siting of
21 the transmission line, the applicant would object.

22 CHMN. FOREMAN: Okay. Any other objections?

23 MR. BLACK: Chairman, Line Siting Committee
24 members, Rosemont would object as well. Some of these
25 exhibits do concern issues that are outside the scope of

1 this proceeding.

2 CHMN. FOREMAN: Anyone else?

3 Okay. It is going to be ordered denying
4 admission, sustaining the objections to M-4 and M-5.
5 Basically those appear to be, from what you have
6 testified to and from what I can read of the documents,
7 relating to alternative power sources for the mine and
8 deal more with the question of the mine than the
9 question of the line.

10 Exhibit 6 deals more, I think, with need of the
11 mine or the impact of the mine need on transmission
12 needs in the area. And so I think again this goes
13 beyond the scope of what we are doing here and is not
14 material to this proceeding, but for a slightly
15 different reason.

16 I admit that all three of them have, to the
17 extent I can tie them down, all three seem to be, have
18 some similar elements. But for those reasons, Exhibits
19 4, 5 and 6 are going to be out.

20 You may proceed.

21 MR. MAGRUDER: The second topic that I would
22 like to talk about is reliability. For electricity to
23 be reliable you need there to be transmitted into the
24 area. There will be about six megawatts worth of local
25 generation due to solar systems being involved in the

1 Rosemont Ranch area, but I am excluding those six
2 megawatts because it is solar.

3 In Exhibit MM-7, which is in the TEP application
4 pages 393 through 395, I have reproduced those. And it
5 is a letter from Kent C. Ellett, Nogales Ranger
6 District, Coronado National Forest, to Lauren Weinstein
7 of Environmental Planning Group. And it discusses
8 various issues. And it is the only letter I can find
9 from the Coronado National Forest that pertains to the
10 transmission line.

11 When you look at this letter, which is
12 Exhibit 7, at the bottom of the first page it talks
13 about for backup power relying on backup generators is
14 preferred, but there is some air quality management
15 problems if you use a diesel generator.

16 On the second page it goes through and talks
17 about outages that TEP had reported to the national
18 forest and said they will have about 99.8 percent
19 reliability. That's 17.3 hours of outage per year,
20 which is not acceptable for residential customers. The
21 average should be five hours or less.

22 There is a concern about the use of limited
23 backup power, which is not in the purview of the
24 Committee. And I understand that. But it was one of
25 the things that my alternative plant could have solved

1 and would also make it so the mine could operate on more
2 than just binary. It either has power or doesn't have
3 power.

4 The next exhibit, MM-8, which was something that
5 would affect reliability, it is a picture of the website
6 firm map for the flooding area involved with the South
7 substation. All power to this line will come from the
8 South substation.

9 It is, of course, as a Naval officer usually
10 having to do things on the cracks between two maps or
11 charts what happened here. So I left the crack in there
12 because I cut and pasted and you can see that they do
13 match.

14 Now, on the bottom part, just below the center,
15 there is sort of an angle going northeast/southwest,
16 east-west box. That is the South substation. The white
17 line coming up from the bottom all the way through the
18 map is the Santa Cruz River. Just north of the
19 substation is Pima Mine Road.

20 I was on Pima Mine Road. And to the west this
21 morning I passed the sign that I have seen many times.
22 It says beware of flooding, do not cross the bridge when
23 it is flooded. There is a bridge that crosses right
24 under the numbers that say 2662 right in the center of
25 the map. There is also a railroad bridge, a railroad

1 that runs parallel to West Pima Mine Road. It is to the
2 south. And then there is the substation further south
3 of that. The river of course flows north.

4 The dippled area to the left up to Greenought
5 Road is in what is called a floodplain. The area to the
6 right that has angled slashing is what is called the
7 floodway. The floodway has hydraulic pressure that can
8 destroy structures. A floodplain just gives you water
9 and floods out. If you look at the South substation,
10 about half of that substation is inside the 100-year
11 floodplain.

12 CHMN. FOREMAN: How far is anything depicted on
13 these maps from the study area of the application before
14 us?

15 MR. MAGRUDER: This is the source of power for
16 the transmission line and the only source of power. How
17 far? Several miles.

18 CHMN. FOREMAN: Okay. So your concern is about
19 the status of a substation that is several miles from
20 the proposed line.

21 MR. MAGRUDER: It is the substation that
22 furnishes power to the switchyard that is then at the
23 eastern -- at the western end of the transmission line.

24 CHMN. FOREMAN: The proposed new Toro line.

25 MR. MAGRUDER: Toro line originates at this

1 substation.

2 CHMN. FOREMAN: Okay.

3 MR. MAGRUDER: And the addition of a second line
4 and making a loop -- which is excellent for reliability
5 of which I fully support -- would give a second junction
6 at this same substation. The only way this mine or this
7 power transmission line is going to receive power is
8 from this substation.

9 This is a critical facility. And in my county,
10 my flood manager says critical facilities are defined as
11 something that is very significant for the neighborhood.
12 There are only three substations that receive power
13 externally for the City of Tucson. This is one of the
14 three. And if this substation is lost, one-third of the
15 substations that bring in power to the City of Tucson
16 get lost. My flood control guy says it is a critical
17 facility and therefore has to be outside of the 500-year
18 floodplain --

19 CHMN. FOREMAN: Okay.

20 MR. MAGRUDER: -- which is not shown on this
21 map.

22 CHMN. FOREMAN: And I take it you are offering
23 Exhibit 7 and 8 then?

24 MR. MAGRUDER: 7 and 8. And this is actually --
25 and I can give you the map number and all that, but if

1 you want that I can give it for this.

2 CHMN. FOREMAN: Are there objections to Exhibit
3 7 and 8?

4 MR. GELLMAN: None to 7, Mr. Chairman.

5 Regarding 8, it appears to us that it is beyond
6 the scope of location or siting of this transmission
7 line. We would object on those grounds.

8 CHMN. FOREMAN: Other objections?

9 MR. BLACK: Chairman, members of the Committee,
10 we do not object to 7. We object to 8 on the same
11 grounds.

12 And I, too, would like to thank Mr. Magruder for
13 providing us the exhibits prior to today. Thank you.

14 CHMN. FOREMAN: Exhibit 7 will be admitted.

15 (Exhibit MM-7 was admitted into evidence.)

16 CHMN. FOREMAN: As I understand, it already is
17 an exhibit or it already had been admitted as a part of
18 Exhibit TEP-1. That's the --

19 MR. MAGRUDER: Yes, it is. Yes, it is, Your
20 Honor. Can I talk just a little more on this Exhibit 8?

21 CHMN. FOREMAN: Actually no, because I am about
22 ready to rule that it is out. M-8 is out. The
23 objection to it is sustained. This Committee would lack
24 the power to do anything about the flood situation in a
25 place that's outside the study area. So it is not

1 material to this proceeding.

2 MR. MAGRUDER: Mr. Chairman, my second topic is
3 on reliability. And I believe it is in the purview of
4 the Committee to have reliable, reliable systems. And I
5 am -- I don't have a choice. But I am talking in terms
6 of reliability here. And that's why I brought that up.

7 I would like to also bring up MM-9, which is an
8 e-mail. It is from Katherine Arnold, dated August 18th,
9 2010. And I will just read it. It is an e-mail to Ed
10 Beck.

11 Ed, I understand there was another power outage
12 for 23 hours at Silver Bell over the weekend. Just
13 wish -- just want to be sure you don't forget to put it
14 in the assessment of radial lines to the forest when you
15 look at system outages.

16 The reason I want to enter this is that there is
17 a concern from the mine that reliable power be
18 furnished. I think it is a concern of the Commission
19 that reliable power be furnished. And if 1 percent of
20 the time you are going to lose the substation that
21 furnishes it, or for there is only one line, you have a
22 problem. And I am going to say that we might not have
23 the most reliable system when we are through.

24 CHMN. FOREMAN: Help me to understand this. So
25 you are at this point trying to protect the interests of

1 the mine in receiving consistent power. And you would
2 propose to protect that by building a second line into
3 the mine? Is that what I heard you testify to earlier?

4 MR. MAGRUDER: I didn't say to build a second
5 line into the mine. Two lines are significantly more
6 reliable than one line or one source of power.

7 CHMN. FOREMAN: So do you want us to accept this
8 application, do you want us to pass this application, or
9 do you want us to deny the application?

10 MR. MAGRUDER: In my opening remarks I said I
11 would like to have an alternative power source, was one
12 of my --

13 CHMN. FOREMAN: Okay. And I think --

14 MR. MAGRUDER: -- which is what I would approve.
15 If that is not approved, then I want to do the very best
16 I can with what is left. And at the end of my testimony
17 I intend to go through my selection sources, because I
18 know you asked me that question before.

19 CHMN. FOREMAN: Okay. And I am still trying to
20 understand it. Okay. All right.

21 Is there any objection to Exhibit 9?

22 MR. GELLMAN: I am not sure how -- I would
23 object to it is immaterial.

24 MR. BLACK: We have no objection, Your Honor.

25 CHMN. FOREMAN: I am going to exclude Exhibit 9.

1 It does not appear to me to be material.

2 All right, Exhibit 10.

3 MR. MAGRUDER: The third topic from my letter to
4 intervene and in my prefiled testimony was the subject
5 of water resources. Water is essential to operate the
6 mine. The water pipe that is located at the -- next to
7 the switchyard, the 30-inch water pipe in my other
8 alternative in the EIS comments that I made was to be a
9 CAP pipeline used, the central Arizona pipeline, because
10 of the shortage of water in Santa Cruz Valley.

11 CHMN. FOREMAN: Mr. Magruder, do you intend to
12 present evidence that the building of the transmission
13 line in either the preferred or any of the alternative
14 routes would adversely impact the availability of water?

15 MR. MAGRUDER: I didn't quite understand what
16 you asked me. Could you say it again, sir?

17 CHMN. FOREMAN: Sure. Do you intend to argue,
18 is it your position that the building of the
19 transmission line that is the subject of this
20 application would in some way adversely impact the
21 availability of water?

22 MR. MAGRUDER: Indirectly.

23 CHMN. FOREMAN: Okay. And how so? What is the
24 line of indirection? Because without the line you
25 couldn't have the mine?

1 MR. MAGRUDER: Yes, yes.

2 CHMN. FOREMAN: Okay. Is there anybody who
3 would like to object to Exhibit 10?

4 MR. BLACK: Your Honor, we do object to
5 Exhibit 10 in terms of materiality.

6 CHMN. FOREMAN: Okay. Seems to me that
7 consistent with the ruling that I made earlier on, and
8 the Committee agreed with this, this goes to the impact
9 of the mine, not the impact of the line. And so
10 Exhibit 10 will be excluded.

11 MR. MAGRUDER: Topic 4, economic impacts, and I
12 intend to be very brief on this one, also, that there
13 will be additional load requirements for the local
14 electric company that will cost money and capital to be
15 furnished -- to furnish the power, the 39.4 percent
16 additional power that's going to be needed by this
17 company in the next couple of years, part of which is
18 going to go on this line.

19 And I don't intend to talk about this topic
20 anymore, because I am -- obviously, this is not going to
21 be favorably received, so I will go to the next topic,
22 which is topic 5, natural and cultural resources. I
23 will try this one over again.

24 Last week when I drove up the Old Nogales
25 Highway on the western boundary of the study area, I

1 passed the pecan groves. And I counted 21 raptors
2 sitting on utility poles waiting for breakfast. There
3 was one raptor on a pecan tree, which is considerably
4 shorter than the utility poles.

5 Due to the special environmental status of the
6 experimental range and the studies that I have offered
7 in MM-11, another exhibit, many involving small mammals,
8 a delicious raptor breakfast will change the total
9 ecology and total environment of portions of the range.
10 Because of the hundred year studies, and if you look
11 through this exhibit on wildlife ecology and management
12 of the Santa Rita Experimental Range from the U.S.
13 Forest Service proceedings in 2003 on the hundredth
14 anniversary of the range, there are several places about
15 the impacts of animals.

16 For example, the kangaroo rat eats seeds that
17 prevent grass to grow and has a major impact on
18 livestock. So kangaroo rats and cattle are probably not
19 the best in the same location. That's not an intuitive
20 observation. And this paper is filled with another
21 dozen of those types of things.

22 By putting in a man-made device, let's say,
23 85 feet tall and the nearest mesquite tree or bush or
24 stuff is 10 feet, we really are giving the raptors an
25 advantage. And they -- and in other line siting

1 hearings I have been at where biologists have testified,
2 they are concerned about transmission line poles in
3 areas that are new for raptors because it will change,
4 like the kangaroo rat wiping out live stock, it will have
5 impacts that are unintended and are contrary to the
6 long-term agricultural studies being performed by the
7 University of Arizona.

8 My solution was fairly simple. And when I talk
9 about my comments for the CEC, it is to put a small
10 antiraptor capability into the transmission line, into
11 the utility poles. TEP, until a few years ago, for over
12 15 years sponsored an antiraptor program, until the
13 Audubon Society intervened on a case against the
14 transmission line and they withdrew their funding. The
15 company has supported antiraptor efforts. I would like
16 them to continue to do that.

17 And it is not apt to discuss this with Mr. Beck,
18 the use of putting a small cap on the flat plates that
19 are on top of these steel poles. And he said it is not
20 a big deal. Is it? He won't nod. It is not, it is not
21 a major deal. And that's the whole purpose of that
22 discussion. That's why I have entered Exhibit MM-11.

23 CHMN. FOREMAN: Any objection to Exhibit M-11?

24 (No response.)

25 CHMN. FOREMAN: Okay. Exhibit M-11 is admitted.

1 (Exhibit MM-11 was admitted into evidence.)

2 MR. MAGRUDER: I can't believe I did it, first
3 one.

4 Next, I would like to have exhibit map A-3 shown
5 on the screen, if you could do that. Another thing
6 that's going to affect the area will be, as we will see
7 in this map, especially if you expand A-3 in the upper
8 right-hand corner when he gets it, it is called a
9 planned development for the area. No, upper right-hand,
10 northeast corner, not northwest. Near the mine, near
11 the routes, yeah, right in that area.

12 Okay. When we look at the map we know the area
13 that the mine -- we see where the transmission line
14 corridors are. We also see that there is an area that's
15 covered by the mine in the present environmental impact
16 statement. But we also see angled, going from northwest
17 to southeast, slashed lines. And if you look at the
18 legend, the legend says, and this is shown in
19 Exhibit MM-16, the legend says future use under the
20 mining act.

21 MEMBER WALKER: Mr. Magruder, could you use a
22 pointer? Thank you.

23 MR. MAGRUDER: Okay. We are talking about this
24 area up in here. Okay? This is from the CEC
25 application. So I am not bringing in stuff that's not

1 in the CEC application. But when we look at
2 Exhibit MM-15 we see that has been discussed, that in
3 these areas up here --

4 CHMN. FOREMAN: I am sorry, MM-15 or MM-16?

5 MR. MAGRUDER: MM-15 and 16. 15 is the map
6 that's darkly shaded section are these areas up here
7 which are for, according to the legend if you look on
8 the second page of MM-16, future use under the mining
9 act.

10 CHMN. FOREMAN: On my documents it is -- MM-16
11 is the map? Yes.

12 MR. MAGRUDER: Two pages.

13 CHMN. FOREMAN: Yeah, I understood that you said
14 15 just a moment ago.

15 MR. MAGRUDER: 15 is an article out of the
16 newspaper.

17 CHMN. FOREMAN: Okay.

18 MR. MAGRUDER: MM-15 is out of the Thursday,
19 December 8th, Arizona Daily Star. And it is a short
20 story. But it talks about the additional capabilities
21 that are being planned by this figure in the CEC
22 application.

23 Yesterday Mr. Beck indicated that the
24 transmission line could carry between 400 and 500
25 megawatts. This mine needs 120 megawatts. So this line

1 is authorizing power for up to 400 megawatts for these
2 future mines.

3 MR. BLACK: Your Honor.

4 MR. MAGRUDER: And that was the point I am
5 trying to make on this subject.

6 CHMN. FOREMAN: Okay. Any objection to the
7 admission of Exhibits M-15 and M-16?

8 MR. BLACK: Rosemont would object to the
9 introduction or entering Exhibit MM-15 on purposes of
10 materiality.

11 CHMN. FOREMAN: Anybody else have an objection?

12 MR. GELLMAN: Applicant would join in the
13 objection to MM-15.

14 CHMN. FOREMAN: I actually will allow that. As
15 I understand the argument that Mr. Magruder wants to
16 make, it is that the need -- that this line is being
17 built for a need other than that that is articulated in
18 the application, in other words, for multiple copper
19 mines rather than just one. And this article could, an
20 inference could be drawn from this article that would
21 support that argument. And so I will, I will allow
22 that, the admission of that article.

23 (Exhibit MM-15 was admitted into evidence.)

24 CHMN. FOREMAN: Okay. Any objection to M-16,
25 the map?

1 (No response.)

2 CHMN. FOREMAN: Okay, very good. No objection,
3 16 will be admitted.

4 (Exhibit MM-16 was admitted into evidence.)

5 MR. BLACK: Did we skip MM-14?

6 CHMN. FOREMAN: We skipped 12 and 14.

7 MR. MAGRUDER: Skipped 13 and 14 and 12.

8 MR. BLACK: Thank you.

9 MR. MAGRUDER: There is another subject under
10 natural and cultural resources which is light pollution.
11 Through the discovery process I submitted data requests
12 to both Rosemont Copper and TEP with respect to lighting
13 from the line and the switchyard. With respect to the
14 lighting requirements for the line and for the
15 switchyards, we have a Pima County ordinance on
16 lighting. They can meet that.

17 Now, the environmental, draft environmental
18 impact statement says that Rosemont isn't required to do
19 that, and they also cannot do that for the mine. But
20 that is not the issue I am bringing up. I am bringing
21 up lighting for the switchyards, substation, and
22 transmission line. And I think -- and in my sample CEC
23 I have requested that the Pima County lighting ordinance
24 be considered when you finish writing your CEC. I am
25 not controlling the light at the mine.

1 CHMN. FOREMAN: Okay. And that's in the
2 exhibits that refer to that testimony?

3 MR. MAGRUDER: I have no exhibits to refer to
4 testimony, Your Honor.

5 CHMN. FOREMAN: Okay. All right.

6 MR. MAGRUDER: That's verbal.

7 Topic 6, this subject is Rosemont Copper is a
8 utility. I brought up a motion; it was denied. But
9 just to refresh, Mr. Beck said that there will be
10 electricity transmitted at 138 kilovolts on lines owned
11 by Rosemont Copper. I just wanted that to remain in the
12 record, that they will be transmitting electricity at
13 138 kilovolt on transmission lines. And they also do
14 not have a CEC.

15 Topic 7, substations and switchyards. I
16 originally -- I got some responses back on data
17 requests. The Toro switchyard is the subject of
18 Exhibit MM-12, which is a letter from the Town of
19 Sahuarita. And this has its comments, and it is also in
20 the CEC application on page G-7 -- no, excuse me.
21 Excuse me. That's wrong. It is on page J-397, page 397
22 at the end of the application.

23 And it says, for the record, the town does not
24 support the larger mine project but recognizes that TEP
25 has an obligation to serve the user. And it recommends

1 that poles that will be replaced along existing 46
2 transmission line be as low as possible. And reading
3 between the lines, this is the community of Quail Creek
4 speaking loud and clear.

5 The next bullet is that they prefer the 46, the
6 town prefers the 46 kilovolt alignment that is to the
7 east of the Town of Sahuarita. It also recommends
8 easements along the roadway alignments adjacent to
9 certain segments in order to minimize disturbance in
10 plant life. And they -- and I have not seen the answer
11 to this one. And this letter is 2009. The town
12 requests a map for the project that outlines the
13 footprint, the location, and the necessary
14 infrastructure needed for the proposed switchyard. I
15 have not seen that map.

16 Normally when I'm in Line Siting Committees they
17 are talking about the type of vegetation they have
18 growing on a fence that's around the switchyard or
19 substation. That has not been presented. And normally
20 the, whatever it is going to be inside the box, called a
21 switchyard or a substation, is presented as an
22 architectural drawing. And it is not in this
23 application for either ends of this line. And that's
24 why I would like to enter Exhibit MM-12.

25 CHMN. FOREMAN: Okay. Any objection to M-12?

1 MR. GELLMAN: No objection.

2 MR. BLACK: No objection.

3 MR. MAGRUDER: And Exhibit MM-13, I am only
4 going to --

5 CHMN. FOREMAN: It is customary for me to rule.
6 M-12 is admitted.

7 That's all. Go ahead now.

8 (Exhibit MM-12 was admitted into evidence.)

9 MR. MAGRUDER: I am sorry. I am just
10 enthusiastic. I have been this way my whole life. You
11 should have seen the admirals I used to work with, they
12 could hardly get a word in.

13 MM-13 is another letter that discusses the
14 transmission line. And it is from the Chairman of the
15 Pima County Supervisors. And his first paragraph I will
16 read:

17 I write to put into the record my opposition to
18 the installation of an electric power transmission line
19 from any Tucson Electric Power Company facilities to the
20 site of a proposed Rosemont copper mine in the Santa
21 Rita Mountain foothills southeast of Tucson.

22 The last paragraph summarizes that this proposal
23 to transmit electric power over and through sensitive
24 desert habitats, across washes and canyons and into
25 forest areas to serve the mine's needs promises further

1 habitat loss and environmental degradation. It should
2 be rejected.

3 That's -- there are also four resolutions that
4 are attached to that that are also found in the pages
5 that follow inside the CEC application. So this is
6 effectively already entered.

7 CHMN. FOREMAN: Any objection to it?

8 MR. GELLMAN: No.

9 CHMN. FOREMAN: Admit M-13.

10 (Exhibit MM-13 was admitted into evidence.)

11 MR. MAGRUDER: Okay. Topic 8, which is my last
12 topic, transportation impacts. Exhibit M-14 is a
13 newspaper article about the Arizona Trail. This has
14 taken a long time to get this trail finished. This
15 article has a few errors in it, though, when you read
16 the draft environmental impact statement, because
17 Rosemont mine says they won't let the people go on that
18 trail in their property. Also, the draft environmental
19 impact statement requires them to move five miles of
20 that trail. Where that trail is moved has not been
21 decided.

22 But this transmission line will cross that
23 trail, or is in the vicinity of that trail. This is a
24 national scenic trail administered and managed by the
25 National Park Service.

1 This is just an information article. I don't
2 know what we can do about the national trail, but it was
3 not presented in the application. And I think it should
4 be information that should be considered by the
5 Committee. And that's why I am requesting it be
6 entered.

7 CHMN. FOREMAN: Any objection to M-14?

8 MR. BLACK: Your Honor, Rosemont objects to M-14
9 on the grounds of materiality and hearsay.

10 CHMN. FOREMAN: If we start -- if I started
11 sustaining objections on the grounds of hearsay in this
12 proceeding, you know, we would have been out of here
13 Monday afternoon.

14 MR. BLACK: Just to clarify, the Arizona --
15 sorry. The Arizona Trail is on the east side of the
16 mountain.

17 CHMN. FOREMAN: All right. The objection will
18 be overruled. M-14 will be admitted.

19 (Exhibit MM-14 was admitted into evidence.)

20 MR. MAGRUDER: Okay. Could I have the picture,
21 the road cross section that we have seen before a dozen
22 times?

23 I have discussed earlier this access road. And
24 due to the importance of the agricultural experimental
25 range and the studies conducted and the, in my

1 viewpoint, less interference to the continuation of the
2 standard operation of that range would be if we did not
3 have to have that 14-foot road.

4 We do have to put -- they do have to put in a
5 pipeline. That's dig it up and fill it up. And water,
6 30-inch pipeline leak is very noticeable very fast.
7 Very few people cannot find that there is a leak in a
8 30-inch diameter pipe. So to use that road to inspect
9 the pipe is not that important. The fence, if it was in
10 the picture to the left or to the north of the
11 transmission line structures, would then keep off-road
12 vehicles from using that road as a freeway.

13 And I really think that off-road vehicles are
14 not conducive, and I will go back to my poor kangaroo
15 rats or even the raptor problem, it is -- it causes
16 dust. Dust is a serious issue in this area. And I
17 don't know how to move the fence and tell them to do
18 this any other way. But I have discussed it with the
19 people from Tucson Electric. And Mr. Beck used the word
20 he can go out to this pole on a spur. The spur is 70
21 feet long and you have 750 feet between poles.

22 CHMN. FOREMAN: Mr. Magruder, what you are doing
23 now is you are making your argument, a closing argument.
24 Do you want this to be your closing argument?

25 MR. MAGRUDER: Well, I just want to -- I believe

1 my road, this is my road issue. I will be through in
2 five minutes.

3 CHMN. FOREMAN: Okay. Let's hit the road.

4 MR. MAGRUDER: Inside the national forest, the
5 Energy Policy Act of 2005, Section 356, set up utility
6 corridors for utility corridors in all national forests,
7 BLM lands in the western states.

8 No utility corridor was submitted by the
9 Coronado National Forest. So the corridor that's going
10 into this national forest was not one that the
11 utility -- that the Coronado National Forest had in its
12 plans as a multi-purpose utility corridor. It is a
13 statement. That's all I am trying to say there.

14 The last subject is Corten versus dull gray.
15 And in my example for the CEC in Exhibit MM-20, I tried
16 to write language that should not cause serious problems
17 under Condition 12. And I will read that.

18 The pole finish should be chosen to reduce the
19 pole's visual impacts based on -- and you can read it --
20 dull gray or Corten finish that has the least contrast
21 with background for utility poles within three miles of
22 residential area. Community involvement is to be
23 undertaken in order to resolve the community's interest
24 in the finish color. However, such involvement will not
25 change the approved corridor without revising the CEC.

1 For poles on federal land, the federal land manager
2 shall be requested to determine the pole finish to be
3 used with the default being Corten.

4 I think this is not too, too directive. It
5 leaves lots of flexibility. And compared to the fiasco
6 that occurred on Case No. 144 on this subject, I think
7 this is a better resolution.

8 The other items that I have in my CEC
9 proposal -- and if you have that, it is Exhibit M-20.
10 Paragraph 1 is a trivial thing. I just think we ought
11 to put where the people came from that are not listed
12 with jobs on your Committee.

13 And the Condition 3, I added the word applicable
14 dark sky ordinances and standards.

15 And Condition 6, I talked about the road, all
16 road construction will be revegetated with natural plant
17 species that were removed outside of an authorized
18 right-of-way. First -- and I haven't discussed this
19 yet -- is clear-cut vegetation management should not be
20 used to unless -- whenever less intrusive processes are
21 allowed. And I discussed this with Mr. Beck and he
22 doesn't see clear-cut being required for this
23 transmission line.

24 Next is Condition 7. I recommended it only be
25 good for five years, the CEC, and the reason being is

1 that a final EIS after five years has to be reviewed and
2 public hearings held due to the unintended consequences
3 that occur in an environment after a five-year period.
4 So when the final EIS is approved, it isn't a function
5 of the date of the record of decision, it is the EIS.
6 If they haven't constructed in five years, they got to
7 go get another EIS or supplemental EIS. And if, I think
8 if they have to get a supplemental EIS, it is time to
9 call the Siting Committee. And that's why I think the
10 five-year rule, why I am suggesting five years.

11 We have -- there are dozens of CECs that are 40
12 years old that are still active and are still being used
13 by this utility company, where the environment is
14 totally different than when the CEC was originally
15 granted. And that's the discussion I had on that item.

16 Condition 11, I read that, talked about that
17 before. That's discourage to raptors. I have talked
18 about 12.

19 On 13 I added in the Army Corps of Engineers
20 because of the testimony, because of the memorandum
21 written by the applicant, that the Corps of Engineers is
22 required to give a record of decision before they can
23 move further with this transmission line. I think that
24 they should be listed in that particular paragraph.

25 And the other changes are minor, with the last

1 exception being Condition, oh, let's see, and Condition,
2 excuse me, 18. This is a little more technical, and it
3 involves electric current that can be transmitted into
4 this electric fence, induced into this electric fence,
5 into this fence and make an electric fence from the
6 transmission line, or induced into the pipe, if the pipe
7 is made out of steel. And all I am saying is rewrite
8 that. And I personally have been through my words a
9 couple times. I think this is better than the standard
10 condition you used on this subject.

11 And this is the first time I have had to talk
12 about fences and water pipes. Normally it is just gas
13 pipes. But it is really ferro magnetic material that
14 will transmit electricity. It is a safety concern why I
15 am so interested in this particular item.

16 CHMN. FOREMAN: Well, I appreciate the fact that
17 you won't have to discuss the CEC now in your closing
18 argument.

19 MR. MAGRUDER: Okay. Well, I didn't know.
20 Thank you. I won't -- I will just assume it is being
21 approved as is. No, sir.

22 Now I am going to ask you a last question, the
23 question you always ask me, what do I prefer. My
24 preference in order is an alternative. I really think
25 it is better for the community, better for the

1 environment to put an alternative power plant, in
2 particular a natural gas. I am not going to discuss
3 that any more.

4 My first recommendation on a transmission line
5 route was the northern route. The reason I chose the
6 northern route is I personally think the experimental
7 range is an area that should not have transmission lines
8 in it. It was deleted.

9 I then came out with the recommendation that
10 Routes 2 and 3 be used to double up on the 46 kilovolt
11 line, and then go up the road there and join back into
12 what is the preferred route.

13 In view of the testimony and in view of
14 additional information, I now, if, in my last case, if I
15 had to have a transmission line, I would use the
16 preferred alternative. However, the trade-off between
17 the preferred alternative and Alternative 1 is minor,
18 but I think it is a very important decision that will
19 have to be made. And I leave that up to the Committee
20 because they are -- there is a lot of trade-offs there.

21 So that completes my testimony. And I am
22 available for cross-examination.

23 CHMN. FOREMAN: All right. Member Walker.

24 MEMBER WALKER: Mr. Chairman, did 17, 18 and 19
25 get offered?

1 MR. MAGRUDER: 17 and 18 were in case I needed
2 to talk about some data requests which didn't come up.

3 19 is a little unique. It is an excerpt of
4 Section 45-157 of the Arizona Revised Statutes. And
5 contrary to what the mining people will say is that mine
6 is the -- mine and power companies are the third on the
7 list of priorities to receive water. And I will just
8 leave that there. And that's the law. I am just
9 passing that to you and I will let you interpret it
10 however you want to. But that's --

11 CHMN. FOREMAN: Mr. Magruder --

12 MR. MAGRUDER: -- very important on the water.

13 CHMN. FOREMAN: -- Mr. Walker anticipated a
14 conversation I was going to have to have with you in
15 just a moment, but I will jump to you right now. My
16 notes indicated I have admitted into evidence, M-11,
17 M-12, M-13, M-14, M-15, and M-16, and that the remaining
18 exhibits have either been, their admission has either
19 been denied or they have not been offered.

20 MEMBER NOLAND: Mr. Chairman, I have in my notes
21 that MM-7 was admitted.

22 CHMN. FOREMAN: You are correct. M-7 is in my
23 notes, too. So 7, 11, 12, 13, 14, 15 and 16 are in.
24 Everything else is out. Is that consistent with
25 everybody's?

1 (No response.)

2 CHMN. FOREMAN: Okay. Member Haenichen.

3 MEMBER HAENICHEN: Thank you, Mr. Chairman.

4 Mr. Magruder, you made a discussion about
5 lighting, light on the transmission line and on the
6 terminus on either end. Could you amplify on a little
7 bit what that was all about? I didn't quite follow it.

8 MR. MAGRUDER: First of all, it is my
9 understanding that lights for FAA are not required until
10 the tower is over 120 feet. So we probably won't see
11 any FAA red light requirements. But that's not the
12 lights I am talking about.

13 CHMN. FOREMAN: Previously we heard testimony it
14 is 200 feet, but in any --

15 MR. MAGRUDER: Did I say 2 --

16 CHMN. FOREMAN: No. You said 120.

17 MR. MAGRUDER: I am sorry, sir. I meant to say
18 200.

19 MEMBER HAENICHEN: It is late.

20 MR. MAGRUDER: It is late in the day.

21 The lighting I am talking about, the ones are
22 the substation security lighting. The company has
23 proposed shaded lights that are aimed down. And that's
24 fine, because there is no use to light the sky because
25 there is no benefit unless you are trying to see an

1 airplane or a bird.

2 CHMN. FOREMAN: Mr. Magruder --

3 MR. MAGRUDER: So the lights --

4 CHMN. FOREMAN: -- let me stop you there a
5 moment. Mr. Beck is still here.

6 Is my understanding correct that TEP will be
7 complying with the county light pollution ordinance to
8 which Mr. Magruder is making reference if the CEC is
9 granted?

10 MR. BECK: Yes, Mr. Chairman, we would comply
11 with all local ordinances and requirements.

12 CHMN. FOREMAN: And that is a part of the
13 requested CEC language?

14 MR. BECK: Correct.

15 CHMN. FOREMAN: I think that's covered,
16 Mr. Magruder.

17 MEMBER HAENICHEN: Mr. Magruder, what is your
18 position then on what the utility is proposing regarding
19 the lighting?

20 MR. MAGRUDER: I am backing the company. I
21 think the company in their CEC application says it fine.
22 I just wanted to put the words in the CEC.

23 MEMBER HAENICHEN: Okay, now I understand.

24 MR. MAGRUDER: The reason I want it in the CEC
25 is there is another possible utility company called

1 Rosemont Copper Company. And if they are ever made a
2 part of the CEC, I feel that their switchyard should be
3 under the same lighting as the rest of the switchyards
4 in Pima County.

5 MEMBER HAENICHEN: Now I understand it. Thank
6 you.

7 CHMN. FOREMAN: All right. Let me talk -- we
8 are going to postpone cross-examination until tomorrow
9 in case there are any of you over there holding your
10 breath waiting to get ready. And we will start again at
11 9:00 in the morning.

12 MR. ROBERTSON: Mr. Chairman.

13 CHMN. FOREMAN: Yes.

14 MR. ROBERTSON: Might I make a comment? I need
15 to be out of town tomorrow and Friday, so this will
16 conclude my involvement in this hearing. Mr. Metli will
17 be here throughout the remainder.

18 I just wanted to express my appreciation for the
19 opportunity to appear before the Committee again. It
20 has been approximately one and a half or two years since
21 I have seen those of you who have been on the Committee
22 before, and this is my first time to see the new
23 members. And I look forward to appearing to you again
24 perhaps in the first few months of next year. Thank
25 you.

1 CHMN. FOREMAN: Very good.

2 Committee members, I am not sure that we are
3 going to get done tomorrow, but I am going to try
4 really, really hard. So please be here at 9:00. And we
5 will go as hard and as long as we can.

6 I need for the parties to understand that we are
7 going to start losing Committee members tomorrow. And
8 so if we do not finish tomorrow afternoon, my
9 expectation is that we are probably going to have to
10 bump over into January. And we will just have to talk
11 about days that make sense for people later, so just so
12 everybody would know.

13 Is there anything else that we need to address
14 in here amongst the Committee members?

15 (No response.)

16 CHMN. FOREMAN: Tomorrow we will have the
17 opportunity for Rosemont to make whatever presentation
18 you folks wish to make. Do you anticipate you will be
19 calling witnesses?

20 MR. BLACK: Your Honor, no, we do not, unless
21 the Committee requests it.

22 CHMN. FOREMAN: Okay. And will the applicant be
23 presenting any rebuttal or reply?

24 MR. GELLMAN: Mr. Chairman, we don't anticipate
25 at this time. We will confirm that tomorrow.

1 CHMN. FOREMAN: Okay. So with a little bit of
2 luck, then, we can get the closings done before noon
3 tomorrow, get into deliberations by noon, certainly, and
4 certainly if not by noon, we can get into deliberations
5 in the afternoon. Does that sound like a doable
6 tentative schedule to everyone?

7 MR. GELLMAN: We believe so.

8 MR. BLACK: We believe so, Your Honor.

9 MR. METLI: Yes, Your Honor.

10 MS. BERGLAN: Yes, Mr. Chairman.

11 CHMN. FOREMAN: All right. Then let's all get a
12 good night's sleep, and we will see you all tomorrow at
13 9:00.

14 (The hearing recessed at 5:05 p.m.)

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

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7 I, COLETTE E. ROSS, Certified Reporter
8 No. 50658 for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, true
10 and accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
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14 WITNESS my hand this 18th day of December,
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